

**ORDINANCE NO. 07-2018**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON TO REPEAL AND REPLACE COVINGTON MUNICIPAL CODE CHAPTER 5.10 BUSINESS LICENSE ACQUISITION.

WHEREAS, the Washington State Legislature passed Engrossed House Bill (EHB) 2005 (RCW 35.90) in July 2017 requiring cities to establish a workgroup to create a model business license ordinance that includes a licensing threshold by July 2018 for adoption by all business license cities by January 1, 2019; and

WHEREAS, the Association of Washington Cities (AWC) held the first meeting of the city work group in August 2017; and

WHEREAS, AWC requested comments on the proposed model business license ordinance with a licensing threshold from cities and the business community; and

WHEREAS, the model business license ordinance includes the mandatory definition of “engaging in business” and a \$2,000 per year licensing threshold for businesses that do not have a location in the city; and

WHEREAS, the model business license ordinance requires a license for businesses with a location in the city without regard to the threshold; and

WHEREAS, the model business license ordinance allows cities the option to require registration with no fee for businesses under the threshold; and

WHEREAS, the deadline of July 1, 2018 for the city work group to develop the model ordinance with a minimum threshold was met; and

WHEREAS, the current deadline for current Business Licensing Service partner cities to adopt the model business license ordinance with the minimum threshold and notify the Department of Revenue of changes to business licensing is October 17, 2018, to take effect January 1, 2019;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON, DOES ORDAIN AS FOLLOWS:

**Section 1. Findings of Fact.** The “Whereas” provisions above shall constitute Findings of Fact and are incorporated by reference as if fully set forth herein.

**Section 2. Chapter 5.10 CMC, Repealed and Replaced.** Chapter 5.10 CMC, “Business License Acquisition,” as adopted by Ordinance No. 14-07 and all amendments thereafter, is hereby repealed in its entirety and replaced with new Chapter 5.10 CMC as set forth in Exhibit A of this ordinance.

**Section 3. Savings.** The enactment of this ordinance shall not affect any application, case, proceeding, appeal, or other matter currently pending administratively or judicially in any court or in any way

modify any right or liability, civil or criminal, which may be in existence on the effective date of this ordinance.

**Section 4. Severability.** Should any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Section 5. Corrections.** Upon approval of the city attorney, the city clerk and/or code codifier is authorized to make necessary corrections to this ordinance, including, but not limited to, the correction of clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or section/subsection numbering.

**Section 6. Effective Date.** This ordinance shall be in full force and effect five (5) days after publication in the city's newspaper of record. A summary of this ordinance may be published in lieu of publishing the ordinance in its entirety.

**PASSED BY THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, at a regular meeting thereof on the 25<sup>nd</sup> day of September 2018 and signed in authentication of its passage.**

  
\_\_\_\_\_  
Mayor Jeff Wagner

PUBLISHED: 09-28-2018

EFFECTIVE: 10-03-2018

ATTESTED:

  
\_\_\_\_\_  
Sharon Scott, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kathy Hardy, City Attorney

# EXHIBIT A

## Chapter 5.10 BUSINESS LICENSE ACQUISITION

### Sections:

- 5.10.010 Purpose.
- 5.10.020 Definitions.
- 5.10.030 Business license required.
- 5.10.040 Exemptions.
- 5.10.050 Issuance of licenses – Procedure and fees.
- 5.10.060 Posting of license.
- 5.10.070 Change of place of business.
- 5.10.080 Ownership change – License not transferable.
- 5.10.090 Fraudulent use of business license.
- 5.10.100 Revocation of business license.
- 5.10.110 License renewal.
- 5.10.120 Compliance with codes required.
- 5.10.130 Notice of noncompliance – Revocation – Final action.
- 5.10.140 Appeal to Hearing Examiner.
- 5.10.150 Enforcement.

### **5.10.010 Purpose.**

The purpose of this chapter is to provide for a means for obtaining public information and compiling statistical information on existing and new businesses in the city, to regulate and ensure the legal conduct of business, and to assist in the effective administration of health, fire, building, zoning, and other codes of the city.

### **5.10.020 Definitions.**

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given in this section:

(1) "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 person engaging in the same, or to any other person or class, directly or indirectly. It also includes general contractors, home occupations, and businesses temporarily conducted within the city including but not limited to traveling salespersons and fruit vendors. It does not include, however, persons conducting garage sales upon their residential real property or wholesale distributors selling products to businesses within the city unless the distributor has an office, warehouse, or other business establishment located within the city.

(2) "City" means the city of Covington.

(3) "Engaging in business"

(a) 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.

(b) 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 this subsection. If an activity is not listed, the determination of whether it constitutes engaging in business in the city shall be determined by considering all the facts and circumstances and applicable law.

(c) 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.

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

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

(3) Soliciting sales.

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

(5) 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.

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

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

(8) Collecting current or delinquent accounts.

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

(10) 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.

(11) 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.

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

(13) 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.

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

(15) 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.

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

(d) 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.

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

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

(3) 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 member or attendee of a board of directors engaging in business such as a member of a board of directors who attends a board meeting.

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

(5) 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.

(6) Conducting advertising through the mail.

(7) Soliciting sales by phone from a location outside the city.

(e) 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). 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.

(4) "License" or "licensee," as used generally in this chapter, means and includes respectively the words "permit" or "permittee" or the holder for any use for a period of time of any similar privilege, whether relevant to any provision of this chapter or other law or ordinance.

(5) "Person" includes the singular and the plural and also means and includes any person, firm, corporation, association, club, partnership, limited liability company, individual receiver, assignee, trustee in bankruptcy, trust, estate, joint venture, company, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and includes the United States or any instrumentality thereof.

(6) "Premises" means and includes all lands, structures and places, and also any personal property which is either affixed to, or is otherwise used in connection with, any business conducted on the premises.

(7) "City Manager" means the Covington city Manager or his or her appointed designee.

### **5.10.030 Business license required.**

Unless exempted in this chapter, no person shall engage in any business within the city without first having obtained from the city a valid and current business license to carry on that business. This license shall be in addition to any other licenses or permits required by any other section of this code or by State or Federal laws. Business licenses are not transferrable and a separate business license shall be obtained for each location at which a business operates. Licenses shall be displayed at each business location so as to be viewable by the public.

### **5.10.040 Exemptions**

(1) The provisions of this chapter shall not apply to minors doing business or operating a business concern where no other person is employed by the minor;

(2) The United States or any instrumentality thereof and the State of Washington or any municipal subdivision thereof;

(3) Fee-free License/Registration-only Requirement:

(a) Fraternal benefit associations or societies as defined in RCW [48.36A.010](#);

(b) Nonprofit religious organizations;

(c) Nonprofit associations, clubs, or corporations maintained for the purpose of organized sports, charity, public school-related activities or municipal corporation-related activities, including police and fire department reserve organizations;

(d) Farmers, for the sale of agricultural, horticultural, or farm products they have actually grown, harvested or produced; and

(e) Non-farmer vendors of a farmers' or public market; provided, that sales do not occur more than two days per week.

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

### (3) Special Event Business Licenses

The organizers of a permitted special event may apply for a special event business license that will eliminate the need for individual business licenses for all vendors operating at the special event under the authority of the special event license. A list of the participating vendors shall be supplied with a special event business license application. The vendor list should contain the name of the vendor, address, UBI number, and phone number. The administrative cost for a special event business license shall be as set forth in the current fee resolution. Special event business licenses shall be valid only on the days authorized for the special event and shall not be valid for a period in excess of three days; provided, however, no business subject to the city's admissions tax pursuant to Chapter 3.50 CMC may use the special event license and shall obtain a city of Covington business license endorsement from the Department of Revenue, Business Licensing Service.

#### **5.10.050 Issuance of licenses – Procedure and fees.**

(1) Every person required to procure a license under the provisions of this chapter shall make application for a business license prior to commencing business in the city. Application for a business license shall be accomplished by submitting a Business License Application for a city of Covington endorsement to the Washington State Department of Revenue, Business Licensing Service in coordination with the city of Covington Community Development Department ("Permit Services"). The applicant shall be required to provide all information requested on said form and failure to do so shall be grounds for refusing to issue the business license. It is the business license holder's responsibility to inform the Business Licensing Service of any update of business information that was given on the original license application. Failure to supply said update as requested shall be sufficient grounds for revocation of the business license.

(2) Persons applying for a business license must pay an application fee as established by the city Council as set forth in the current fee resolution unless exempted by Chapter 5.10.040(2) CMC. The Business Licensing Service processing fee is determined by the Department of Revenue.

#### **5.10.060 Posting of license.**

Each person required to obtain a business license under this chapter shall post the business license at all times in the place of business for which it is issued.

#### **5.10.070 Change of place of business.**

When the place of business is changed, the person shall inform the Department of Revenue, Business Licensing Service of the change, in coordination with Permit Services. A change of place of business may require the filing of a new Business License Application and city License. Upon approval by the city of the new place of business, a new license shall be issued for the person's new place of business.

**5.10.080 Ownership change – License not transferable.**

When a licensed business changes ownership, the license of the previous owner may not be transferred to the new owner. The new owner shall apply for a business license for that place of business by filing a business license application and city license with the Business Licensing Service, in coordination with Permit Services.

**5.10.090 Fraudulent use of business license.**

No person holding a city business license shall suffer or allow any other person for whom a separate license is required to operate under or display such person's license, and no person may maintain a business license obtained through a false or fraudulent application or return of any false statement or representation in or in connection with any such application or return for such business license.

**5.10.100 Revocation of business license.**

Permit Services may revoke the license issued to any person required to obtain a business license who is in default in any payment of any license fee or who shall fail to comply with any of the provisions of this chapter. Notice of such revocation shall be mailed to the person by Permit Services, and on and after the date thereof any such person who continues to engage in business shall be deemed to be operating without a license and shall be subject to any or all penalties provided for in this chapter.

**5.10.110 License renewal.**

Persons continuing to engage in business within the city shall renew their business license(s) each year. Unless exempt, businesses must pay the annual renewal fee, as well as the Business Licensing Service processing fee. The annual business license renewal fee shall be as set forth in the current fee resolution. The annual fee may be prorated in order to conform the license expiration date with the expiration date established by the Business Licensing Service. Persons not renewing their business license by the expiration date may be subject to a late renewal penalty charged by the Business Licensing Service.

**5.10.120 Compliance with codes required.**

Notwithstanding any contrary provision thereof, a business license issued under this chapter may not be issued to any person using or occupying any real property in violation of the provisions of the city zoning, building and fire codes and all amendments thereto.

**5.10.130 Notice of noncompliance – Revocation – Final action.**

A pending application for renewal under this chapter shall be deemed in compliance with this chapter unless the applicant is notified by Permit Services in writing that said application may not be granted because of noncompliance with the provisions of this chapter. In the event such notice is given, the applicant shall have 90 days from the date of such notice to comply with any section violated under this

chapter prior to final action upon said application for renewal unless an extension for compliance is granted by the council.

**5.10.140 Appeal to Hearing Examiner.**

Any person aggrieved under the provisions of this chapter may appeal to the hearing examiner pursuant to the procedures outlined in Chapter 14.45 CMC.

**5.10.150 Enforcement.**

(1) It is unlawful for any person either directly or indirectly to conduct any business for which a license or permit is required by any regulation or ordinance of the city without a license or permit being first procured and kept in effect at all times as required by this chapter or other regulation or ordinance of the city. Any violation of this chapter shall be subject to enforcement under Chapter 1.30 CMC.

(a) Violation – Penalty.

- (i) Each day any person allows a violation of this chapter to continue shall be considered a separate violation.
- (ii) Whenever the City has determined that a violation of this chapter has occurred or is occurring, the City shall remedy the violation by issuing a civil infraction, punishable by a monetary penalty in accordance with Chapter 1.30 CMC.

(2) The city may revoke the license issued to any licensee who fails to comply with any ordinance or regulation of the city. Notice of such revocation shall be mailed to the licensee by the city Manager and on and after the date any such licensee who continues to engage in business shall be deemed to be operating without a license and shall be subject to any and all penalties herein provided.

(3) The city shall revoke the business license issued to any licensee who shall fail to comply with any of the provisions of the municipal code requiring such licensee to procure and maintain any other regulatory or revenue license, and to pay taxes to the city, whether sales tax, use tax, gambling tax or other tax imposed by the city or the State upon such licensee.