

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO BUSINESS LICENSES AND FEES AND REPEALING AND REPLACING KMC 7.02.

The City Council of the City of Kirkland do ordain as follows:

Section 1. Kirkland Municipal Code Chapter 7.02 is repealed effective May 1, 2003.

Section 2. The Kirkland Municipal Code is amended effective May 1, 2003 by the adoption of a new Chapter to be known as Chapter 7.02 and to read as follows:

**Chapter 7.02
BUSINESS LICENSES AND REGULATIONS**

7.02.010 Purpose.

The provisions of this chapter shall be deemed an exercise of the power of the city to license for regulation and for revenue.

7.02.020 Policy and Scope.

All persons engaging in a business or occupation within the limits of the city shall be subject to the provisions of this chapter. The city council finds that in order for the city of Kirkland to responsibly carry out the duties and authorities delegated to it by the Washington State Constitution and the laws of the state of Washington as a noncharter code city, maintenance of current information with respect to business, trade, service, commercial and professional activities carried on within the city is necessary and essential for the maintenance of the public health, safety and welfare; that such information can best be accumulated and maintained on a current basis through establishment of a license fee supported program for the licensing and registration of such activities.

7.02.030 Definitions.

Where used in this chapter, the following words and terms shall have the meanings as defined in this section, unless, from the context, a more limited or different meaning is clearly defined or apparent:

(a) "Business" includes all activities, occupations, pursuits, or professions located and/or engaged 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, and includes nonprofit enterprises.

(b) "Business license" is that document issued by the city licensing the transaction of the indicated business by the person whose name appears thereon for the stated period.

(c) "Engaging in business" means commencing, conducting or continuing in any business within the city, whether or not an office or

physical location for the business lies within the city. Engaging in business includes the performance of work or services by contractors, consultants, representatives, agents or other persons within the city, even though the office location of the contractor, consultant, representative, agent or other person is not within the city limits; the exercise of corporate or franchise powers, as well as the liquidation of a business when the liquidators hold themselves out to the public as conducting such business; acting as a solicitor or canvasser; and furnishing temporary employees and/or workers to other businesses.

(d) "Finance director" or "director" means the City of Kirkland Director of Finance or his/her designee.

(e) "Gross Receipts" shall have its ordinary meaning and also means the value accruing from the business activity within the city or conducted from the city including compensation for the rendition of services (without any deduction for labor costs or the cost of materials used), sale of personal property (without any deduction for the cost of property sold), gains or dividends realized, rents, royalties, contributions, fees and commissions, all without any deduction for any expense, taxes, or losses.

(f) "Person" includes individual natural persons, any firm, corporation, association, sole proprietor, club, partnership, trust, receiver, administrator, executor, estate, company, independent contractor, society, any officer, agent, personal representative, any group of individuals acting as a unit, the United States or the State of Washington or any instrumentality thereof, and includes the singular and the plural.

(g) "City" means the City of Kirkland, Washington.

(h) "Year" means a calendar year, except where otherwise specified or when permission is obtained from the Director to use a different fiscal year.

(i) "L & I" means the Washington State Department of Labor and Industries.

7.02.040 Business license required.

(a) It is unlawful to engage in any business within the city without first having obtained a business license ("license") from the city and being the holder of a currently valid license to engage in such business or activity.

(b) If a business is conducted from more than one premises in the city a separate registration and license shall be required for each premises within the city.

(c) If more than one business is conducted upon or from a single premises a separate registration and license shall be required for each separate business conducted, operated, engaged in or practiced.

(d) Persons or companies doing business in Kirkland must comply with this chapter regardless of the physical location of the business (i.e., whether inside or outside Kirkland city limits).

(e) Limited exemption from multiple license requirement. A business which holds a currently valid city of Kirkland general business license need not obtain an additional business license to conduct business at a second location so long as the second location is not rented, leased, sub-leased or owned by such business.

7.02.050 Operating without a license.

(a) Any person who engages in or carries on a business without having obtained a business license when required to do so shall be guilty of a violation of this chapter for each day during which the business is so engaged in or carried on. Any person who fails or refuses to pay a fee required under this chapter, or any part thereof, on or before the due date, shall be deemed to be operating a business without having obtained a license to do so. Except as otherwise specified, any person violating this chapter shall be guilty of a misdemeanor crime.

(b) A business failing to obtain or maintain a currently valid license and yet conducting business within the city is hereby declared to be a public nuisance. Any remedy provided by this code with respect to a public nuisance is in addition to other remedies provided under this chapter.

7.02.060 No license required in certain circumstances.

(a) Employees. The requirement for a separate business license shall not apply to a person in respect to the person's employment in the capacity as an employee, as distinguished from, for example, that of an independent contractor. For purposes of this Section, it shall be presumed that a person is not an employee of a business unless that business makes contributions to the state employment security department on behalf of such person. The fact that the business makes industrial insurance contributions on behalf of such worker will not rebut this presumption.

(b) Farmers. No license or registration fee will be required for 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; PROVIDED, That, this exemption does not apply to any dairy product, meat, poultry, eel, fish, mollusk, or shellfish (except as otherwise provided with regard to wild-caught salmon and crab under RCW 36.71.090).

(c) Real Estate Agents. For the purposes of this Chapter, "real estate agent" means a person who is licensed under RCW Chapter 18.85 and whose license is being retained by a broker licensed as a broker under RCW Chapter 18.85 ("designated broker"). Due to the unique legal controls placed upon the real estate agent/broker relationship, a real estate agent whose license is retained by a designated broker holding a currently valid City of Kirkland business license is not required to have his/her own separate business license if all of the following is true:

(1) The real estate agent engages in no business in Kirkland other than the work with the designated broker; and

(2) The designated broker notifies the city in writing as part of each year's business license renewal of the name of each real estate agent that the city should consider to be the equivalent of an employee of the designated broker for the purposes of this Chapter; and

(3) The designated broker includes the real estate agent in counting the number of employees to determine the surcharge to be

paid for the designated broker's business license and includes the real estate agent's gross receipts in calculating the designated broker's gross receipts for the purposes of this Chapter.

(d) No license is required if a person engages in no activities within the City but the following:

- (1) mere delivery of goods;
- (2) activities that are within the term and scope of a City special event permit (e.g., vendors at a temporary booth who are included under an entity's special event permit, consistent with the term and activity for which the permit was issued);
- (3) meeting with suppliers of goods and services as a customer;
- (4) attending meetings where the person does not provide training for a fee;
- (5) renting personal property as a customer when the property is not used in the City;
- (6) sale of one's own residence; or
- (7) employing a household employee or being a customer of a domestic worker (e.g., babysitters, nannies, health aides, maids, or yard workers).

7.02.070 Presumptions.

The following presumptions shall be made in interpreting and applying this Chapter, unless rebutted as provided in this Chapter.

(a) It shall be presumed that an entity that has been issued a Unified Business Identifier Number ("UBI") by the State of Washington is a separate business that is required to have its own City of Kirkland business license.

(b) It shall be presumed that an entity that has been issued a state industrial insurance account number, a state self-insurer number, or a state revenue tax reporting account number is a separate business that is required to have its own City of Kirkland business license.

(c) It shall be presumed that average annual gross receipts of an entity are at least \$20,000 per each employee who works for the entity in Kirkland.

(d) It shall be presumed that an entity with average annual gross receipts of \$40,000 or more has at least 2 employees, as "employee" is defined in Section 7.02.160.

(e) It shall be presumed that an entity with average annual gross receipts of \$120,000 or more has at least 6 employees, as "employee" is defined in Section 7.02.160.

(f) It shall be presumed that an entity with average annual gross receipts of \$420,000 or more has at least 21 employees, as "employee" is defined in Section 7.02.160.

(g) It shall be presumed that an entity with average annual gross receipts of \$2,020,000 or more has at least 101 employees, as "employee" is defined in Section 7.02.160.

(h) It shall be presumed that a business' average annual gross receipts are equal to its prior year's gross receipts or the average of its gross receipts for the last three years, whichever is higher.

(i) With regard to a business that did not operate for the full prior year, it shall be presumed that the prior year's gross receipts are equal to the annualized product of the prior year's actual gross receipts.

(j) It shall be presumed that a business' average annual gross receipts are greater than or equal to the business' annual gross volume of business, gross revenue, or gross proceeds of sales.

(k) It shall be presumed that a business with premises in the City of Kirkland has all of its employees working within the City of Kirkland.

(l) It shall be presumed that an owner, manager, and/or managing partner of a business that is more than 60 days late in paying any amount due under this Chapter is willfully, knowingly and intentionally evading his or her legal duties under this Chapter.

7.02.080 Finance Director as license officer.

(a) The administration of this chapter shall be accomplished under the direction of the Director. The Director may make and publish rules of procedure and regulations for the administration of this chapter. It is unlawful to violate or knowingly fail to comply with any such rule or regulation.

(b) The Finance Director shall collect all license fees and shall issue licenses in the name of the city to all persons qualified under the provisions of this chapter and shall have the authority to:

(1) Adopt Forms. Adopt application, license, renewal, annual return, and all other necessary or convenient forms and prescribe the information to be provided. Such required information shall include, but not be limited to, the name of the applicant, his or her residence address, place of business, the nature of the business, the form of ownership, the names of all officers of the business and the number of employees.

(2) Obtain Endorsement. Submit applications, when deemed appropriate, to other city officials for their endorsements thereon as to compliance by the applicant with all city regulations which the officials have the duty of enforcing.

(3) Investigate. Investigate and determine the eligibility of any applicant for a license, the amount of fees or other amounts due as prescribed herein, and the correctness of data submitted to the city.

(4) Examine Records. Examine and audit the books and records of any applicant, licensee, or business when reasonably necessary to the administration of this chapter. The records of a business, including federal and state tax returns and invoices, shall be open for examination by the Director or authorized agent at any time to the extent authorized by law. The Director may require the attendance of any person at a time and place fixed by the Director or authorized agent in accordance with and to the extent authorized by applicable law.

(5) Give Notice. Notify any applicant of the acceptance or rejection of the application.

(6) Regulate Form of Licenses. Ensure that each license is numbered, and shows the name of the licensee, and business address.

7.02.090 Confidentiality.

(a) For the purposes of this Section, "Confidential Data" means facts and information that a business asks the city to treat as confidential and that are not authorized or required to be disclosed by the Public Disclosure Act, Chapter 42.17 RCW or other laws. The city, or any official, employee, agent, or representative thereof, shall not make known or reveal any Confidential Data contained in an application filed by an applicant or disclosed in any investigation or examination of business books and records pursuant to this chapter; provided that this shall not be construed to prohibit the city or any official, employee, agent or representative thereof from:

(1) Giving such facts or information in evidence in any appeal before the hearing examiner or in any court action.

(2) Giving such facts and information to the applicant, licensee or duly authorized agent thereof.

(3) Publishing statistics so classified as to prevent the identification of a particular business.

(4) Giving such facts or information, for official purposes only, to any employee of the city, the mayor and city council, or to any subcommittee of the city council dealing with matters of revenue, commerce, taxation or business regulation.

(5) Permitting the business records to be audited and examined by the proper city officer, agent or employee.

(6) Giving such facts or information, for official purposes only, to the Federal Internal Revenue Service, State Department of Revenue, and tax or law enforcement officials of any government agency for official purposes only, but only if substantially similar privileges are granted to the proper offices of the city.

(7) Disclosing facts and information as authorized or required by RCW 42.17 or other laws.

(b) A person who reveals or makes known "Confidential Data" to any person or entity not so entitled under this section, is subject to discipline and/or forfeiture of office or employment.

7.02.100 Application for license.

(a) Formal Application Required. Every person required to have a license shall submit the city's application for business license form to the Finance Department. At the same time, the applicant should deposit with the Finance Department the total amount due for the annual license. Alternatively, the applicant may request city assistance in determining the amount due. An application will not be considered complete until the city receives the total amount due for the annual license.

(b) The applicant shall state: the address or addresses of the business or proposed business or businesses; the name and address of the owner or applicant; an emergency notification name, phone number and address; the type of business; the number of employees; and other information as requested by the Director.

(c) If the applicant is a partnership, the application must be made by one of the partners; if a corporation, by one of the officers thereof; if a foreign corporation, partnership or nonresident individual, by the

resident agent or local manager of the corporation, partnership or individual.

(d) **Commencement of Business Activities.** No person shall be entitled or authorized to engage in business within the city until such time as the Director has approved the issuance of a business license pursuant to the terms of this chapter. The issuance of a receipt for the amount deposited with the application and/or the acceptance of a business license application by the city shall not be deemed to grant any right or privilege under this chapter, except as otherwise provided by law.

(e) **Burden on Applicant.** The Director is authorized, but not required, to mail to persons engaging in business forms for applications for licenses, but failure of the person to receive any such form shall not excuse the person from making application for and obtaining the license required by this chapter.

7.02.110 Review of Application.

(a) The Director, upon receipt of an application form, shall cause an investigation and review of the application to be made by the proper city officials, and shall issue or deny issuance of the license within 15 days after the city receives a complete application.

(b) The proposed use of premises shall not be in violation of any city building, safety, fire, health or land use regulations as determined by the city department charged with the enforcement of said regulations.

(c) If a person required by the terms and provisions of this chapter to pay a license fee for any period fails or refuses to do so, he/she/it shall not be granted a license for the current period until the delinquent license fee, together with penalties, has been paid in full. Neither the applicant nor the proposed business shall be in default under the provisions of this chapter or indebted or obligated in any manner to the city, except for current taxes and other obligations not past due.

(d) **Qualifications of applicants.** The Director may deny issuance (or renewal) of a business license or permit when the licensee, officer or partner thereof, or another person with a legal interest in the license:

(1) Knowingly causes, aids, abets, or conspires with another to cause any person to violate any of the laws or regulations of this state or the city which may affect or relate to the licensed business;

(2) Has obtained a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake;

(3) Is convicted of, forfeits bond upon, or pleads guilty to any offenses related to the operation of the licensed business or had a license revoked or suspended by the city or another jurisdiction;

(4) Makes a misrepresentation or fails to disclose a material fact to the city related to any of the obligations set forth in this chapter;

(5) Violates any building, safety, fire or health regulation on the premises in which the business is located after receiving warning from the city to refrain from such violations; or

(6) Is in violation of a zoning regulation of the city.

(e) If an application is denied, any person aggrieved may request Director Review as provided in this Chapter.

7.02.120 Basic license fee.

The basic license fee for the annual license issued under this Chapter shall be as follows:

(a) Basic fee. Each business shall pay a basic business license fee of \$100 per year.

(b) Exemptions. The following entities may claim an exemption from the basic license fee, but, if exempt under this sub-paragraph, such entity shall instead pay a \$25 registration fee per year.

(1) Any business with less than \$2000 average annual gross receipts.

(2) Certain Organizations Exempt from Federal Income Tax. An organization that files with the City a copy of its current IRS 501(c)(3) exemption certificate issued by the Internal Revenue Service.

(3) A governmental entity that engages solely in the exercise of governmental functions. Activities which are not exclusively governmental, such as some of the activities of a hospital or medical clinic, are not exempt under this chapter.

(4) A nonprofit business operated exclusively for a religious purpose, upon furnishing proof to the Finance Director of its nonprofit status. For the purposes of this chapter, the activities that are not part of the core religious functions are not exempt.

(5) A business that can demonstrate to the satisfaction of the Director that it is exempt due to preemption by state or federal law.

7.02.130 Regulatory licenses.

(a) A business that holds a current valid City of Kirkland regulatory license under another Chapter of this Code must also file the general business license application form, pay the general business license fee and pay the surcharge pursuant to this Chapter; provided, however, that such business may take a credit for the amount paid for the regulatory license up to the total amount of general business license fee plus the surcharge.

(b) Regulatory licensees under the following KMC Chapters may apply the credit described in this Section:

7.08 Ambulances

7.12 Amusement Devices

7.16 Auctions, Auctioneers

7.20 Cabarets

7.22 Carnivals and Circuses

7.24 Dances and Dance Halls

7.32 Massage Parlors and Public Bath Houses

7.36 Pawnbrokers — Junk Dealers

7.44 Taxicabs and For Hire Vehicles

7.61 Cable Television – Procedures and Terms for Grant of Franchises

7.02.140 Utilities.

(a) A business that pays a utility occupation tax to the City pursuant to KMC Chapter 5.08 must also file the general business license application form, but need not pay a general business license fee. This is a waiver of the basic fee, not an exemption.

(b) A business that pays a utility occupation tax to the City pursuant to KMC Chapter 5.08 is subject to the surcharge which is set forth in this Chapter; provided that such a business may take a credit for the amount of such tax paid, up to the total amount of the surcharge.

7.02.150 Temporary Business.

(a) General. One act of engaging in business in the City is sufficient to require a City business license. However, a person may apply to the City for a temporary business permit instead of a general business license. The City will be the sole judge as to whether a business qualifies for a temporary permit, considering factors such as whether the business has a fixed location within the City, whether the business has previously applied for a temporary permit within the last twelve months, and the City's experience with similar activities.

(b) Permit. If a temporary business permit is approved by the City, it will allow the conduct of business for not more than 35 consecutive days. The permit shall state an expiration date which shall be not more than 35 calendar days after its term begins. The fee for this permit is \$20. There will be no charge for this permit when business will be engaged in solely by an organization with a current IRS 501(c)(3) exemption certificate. A person who engages in business in accordance with the requirements of this Section is not required to obtain a general City business license.

(c) Revocation. Once a permit has been issued, the City may find that the actual conduct of the business does not qualify for a temporary permit. If so, the City may revoke the temporary permit and require the person to immediately obtain a general business license.

7.02.160 Surcharge.

(a) General. In addition to the basic license fee, the highest applicable surcharge in this Section shall be paid for the annual license issued under this Chapter.

(1) A business with less than \$50,000 of average annual gross receipts shall be exempt from any surcharge.

(2) For the purposes of this Section and in determining the applicable surcharge, the term "employee" means and includes each of the following persons who are not required by the City to have his/her/its own separate City of Kirkland business license:

(A) any person who is on the business' payroll, and includes all full-time, part-time, and temporary employees or workers; and

(B) self-employed persons, sole proprietors, owners, managers, and partners; and

(C) any other person who performs work, services or labor at the business, including an independent contractor who is not required to have a separate City of Kirkland business license.

(3) An entity that is entirely exempt from paying the basic license fee shall be exempt from any surcharge.

(4) An entity with some activities or functions that are exempt from the basic license fee and some that are not exempt shall pay a surcharge based on the number of its employees that are involved in the functions or activities that are not exempt.

(b) Amount of surcharge.

(1) 1 employee: \$125. A business with 1 employee shall pay a surcharge of \$125. If such a business has less than \$100,000 of average annual gross receipts ("GR"), then the surcharge shall be \$75.

(2) 2 to 5 employees: \$225. A business with at least 2 but not more than 5 employees shall pay a surcharge of \$225. If such a business has less than \$100,000 of GR, then the surcharge shall be \$150.

(3) 6 to 20 employees: \$750. A business with a least 6 but not more than 20 employees shall pay a surcharge of \$750. If such a business has less than \$100,000 of GR, then the surcharge shall be \$500.

(4) 21 to 100 employees: \$1,500. A business with at least 21 but not more than 100 employees shall pay a surcharge of \$1,500. If such a business has less than \$100,000 of GR, then the surcharge shall be \$1,000.

(5) More than 100 employees: \$2,500. A business with more than 100 employees shall pay a surcharge of \$2,500. If such a business has less than \$100,000 of GR, then the surcharge shall be \$2,000.

(c) Multiple locations. If a business is conducted from more than one premises in the city, a separate license is required for each premises. The applicable surcharge shall be determined for each premises and then paid for such separate premises.

(d) In the event that no employee of a business physically works within the city, the applicable surcharge shall be the amount for one employee.

(e) If no higher surcharge applies under this section, then the minimum surcharge shall be \$75.

7.02.170 Determination of Number of Employees for Surcharge.

For the purposes of this Section, "employee" shall be defined as in Section 7.02.160.

(a) Standard rule. In determining the amount of surcharge to be paid for the upcoming license year, the number of employees shall be the current number of employees or the number of employees on the last regular working day of each of the last twelve months divided by twelve, whichever is higher. Each person who comes under the definition of "employee" shall be counted as one employee, even if the person works part-time.

(b) Alternative Method ("FTE"). A business may choose to calculate the number of employees for the purpose of the surcharge according to the following alternative method based on the number of employee hours worked for the business during the previous year.

(1) The business must notify the City of its choice to use the FTE method. It will be the responsibility of the business to determine the number of hours worked for the business, taking into account the information submitted to L & I in the last 4 quarterly reports. The business must demonstrate, to the satisfaction of the Director, that the alternative calculation is accurate. The Director may require the business to submit copies of its L & I reports.

(2) Each employee who worked more than 1,920 hours during the previous year (including paid time off) shall be counted as one employee. If a person such as an owner or partner devotes more than 1,920 hours per year to the business then that person must be counted as one employee for surcharge purposes.

(3) Where there are employees who work less than 1,920 hours per year, the total number of hours worked by all such employees during the previous year shall be added together and divided by 1,920. A fraction of .5 or over shall be rounded up. Hours worked by persons who are defined as employees for surcharge purposes must be included in the calculation even if the business is not required to report to L & I concerning such persons.

(4) The results from subparagraph (2) plus subparagraph (3) shall be the total number of employees used to determine the amount of the surcharge.

(c) New Businesses. The surcharge for a business that did not submit reports for each of the last 4 quarters to L & I shall be based on the estimated number of employees of that business. The business shall provide its estimate of the average number of employees for the upcoming year. The City will determine the number of employees that will be used in calculating the amount of the surcharge. If, during the license year, the City determines that the actual number of employees is significantly different than estimated, then the amount of the surcharge will be recalculated for the new business. If the revised surcharge is higher, the business must pay the difference within 30 days after notification. If the revised surcharge is lower, then the difference will be refunded within 30 days.

(d) Over-reporting number of employees. A licensee may request that the city refund surcharge overpaid on the basis that the business miscounted the number of employees by an error factor of more than fifteen percent. The request must be in writing and the city must receive the request and all supporting documentation no later than 60 days after the end of the licensee's fiscal year in which the error was made. If the city is satisfied that the licensee paid an excess surcharge, then the city will refund the excess surcharge paid by the licensee during either the current calendar year or one prior calendar year.

(e) Under-reporting of employees. If the city determines that the number of employees was under-reported at the time of application or renewal by an error factor of more than fifteen percent, the business shall pay the balance of the applicable surcharge together with a penalty of 20% of such balance due. The business shall also reimburse the city for any accounting, legal, or administrative expenses incurred by the city in determining the under-reporting or in collecting the additional amounts. The Director shall mail written notice of the amount to be paid and the business shall pay said amount to the city within 20 days. If the city does not receive timely

payment, an additional penalty shall be added, applying the schedule for late payments in this chapter.

7.02.180 License Period, Renewal and Terms.

(a) A business license will expire on the last day of the twelfth month after it is issued ("license year"). Each licensee shall be responsible for renewal of the license for each license year. A business shall submit its application for renewal at least 15 calendar days prior to the expiration of its license.

(b) Display of License. A license granted under this chapter shall be posted in a conspicuous place in the place of business of the licensee. No person shall allow any license to be posted, displayed, or used after its expiration, suspension, or revocation, or if it is not a valid license for the premises where displayed.

(c) The business name, address and application form of each licensed business is for the purposes of Chapter 42.17 RCW a public record, subject to request for public record disclosure.

(d) Change of Location. A licensee must notify the city of a change in location and obtain a new business license unless the city will issue a replacement license. The replacement license will be issued free of charge if the licensee demonstrates, to the satisfaction of the Director, that the business can be legally conducted at the new location and that no changes are being made other than that the existing business is moving to the new location.

(e) Payment made by draft or check shall not be deemed a payment of the fee unless and until the same has been honored in the usual course of business, nor shall acceptance of any such check or draft operate as a quittance or discharge of the amounts due unless and until the check or draft is honored.

7.02.190 Penalty for late payment.

(a) A business that fails to renew its license on time shall pay a penalty in addition to the amount charged for the annual license as follows:

(1) up to 29 days late, a penalty of \$25 or 10% of the amount for the license, whichever is greater;

(2) between 30 and 59 days late, a penalty of \$50 or 50% of the amount for the license, whichever is greater;

(3) 60 or more days late, a penalty of \$100 or 100% of the amount for the license, whichever is greater;

(4) The Director is authorized, but not obligated, to waive all or a portion of the penalties provided herein in the event that the Director determines that the late payment was the result of excusable neglect or extreme hardship.

(b) Late application. A business that fails to obtain a license before first commencing business in Kirkland shall pay a penalty in addition to the amount charged for the annual license according to the schedule in subparagraph (a) above, provided that the number of days late shall mean the number of days between the commencement of business and the date the city receives a complete application.

7.02.200 Debt owed to city.

(a) Any amount due and unpaid under this chapter and any penalty thereon shall constitute a debt to the city and may be collected in the same manner as any other debt, including through court proceedings, and these remedies shall be in addition to all other existing remedies. Interest shall accrue on amounts owed to the city under this chapter at the same rate as provided for superior court judgments.

(b) Issuance of a business license does not forgive amounts owed to the city or penalties thereon.

7.02.210 Transfer or sale of business—New license required.

A city business license is personal to the licensee and is nontransferable, except as provided in this chapter. Upon the sale or transfer of a business, the license issued to the prior owner or transferor shall automatically expire on the date of such sale or transfer. The new owner must obtain a new business license; provided that the Director may waive the provisions of this Section if the business demonstrates, to the satisfaction of the Director, that the change in the entity is not a change in ownership.

7.02.220 Notification of termination of business activities.

(a) Any person who obtains a city business license and thereafter ceases to engage in business shall so notify the city in writing. A business shall be presumed to continue in operation within the city until the city receives such notice of termination of business activities and enforcement proceedings may be conducted on the basis of this presumption.

(b) There shall be no pro-rata refund of the basic license fee. However, a business may request a pro-rata refund of the surcharge if the city receives such request within 90 days after business activities cease. The city shall calculate and refund such pro-rata amount based on the date business ceased or the date the city received the required notice, whichever is later.

7.02.230 Notification of exemption.

(a) A licensee may request that the city reissue a business license on the basis of a new or newly recognized exemption or partial exemption. The request must be in writing and the city must receive the request and all supporting documentation no later than 30 days prior to the expiration date of the current license.

(b) If the city is satisfied that the exemption or partial exemption applies, then the city will refund a pro-rata amount of excess fees based on the date the city received all information necessary to consider the request. Both the basic license fee and the surcharge are subject to pro-rata refund.

7.02.240 Requests for Director Review.

(a) Any person aggrieved by a presumption or rule in this chapter and any person seeking a waiver or interpretation under this chapter may request Director Review of the same.

(b) The request for review shall be delivered in writing to the Finance Department within 14 calendar days after the person discovers the issue of concern.

(c) The Director may require the person to submit background information and may hold a conference with the person. After review, and the conference if one is held, the Director will make a determination regarding the issue of concern. The Director will mail notice of the determination to the person. This determination is subject to appeal pursuant to Section 7.02.250. If no such appeal is filed, the determination shall become final.

7.02.250 Appeal.

(a) Any person aggrieved by a determination of the Director may appeal such determination to the hearing examiner pursuant to this Section.

(b) Form of Appeal. An appeal must be in writing and must contain the following:

- (1) The name and address of the appellant;
- (2) A statement identifying the determination of the Director from which the appeal is taken;
- (3) A statement setting forth the grounds upon which the appeal is taken and identifying specific errors the Director is alleged to have made in making the determination; and
- (4) A statement identifying the requested relief from the determination being appealed.

(c) Time and Place to Appeal. An appeal shall be filed with the director with a copy to the city clerk's office no later than 14 calendar days following the date on which the city mailed the notice of the determination. Failure to follow the appeal procedures in this section shall preclude the taxpayer's right to appeal.

(d) Appeal Hearing. The Director shall transmit the appeal to the hearing examiner. The hearing examiner shall schedule a hearing date and notify the appellant and the Director of such hearing date. The hearing examiner shall conduct an appeal hearing in accordance with this chapter and procedures developed by the hearing examiner, at which time the appellant and the Director shall have the opportunity to be heard and to introduce evidence relevant to the subject of the appeal.

(e) Burden of Proof. The appellant shall have the burden of proving by a preponderance of the evidence that the determination of the Director is erroneous.

(f) Hearing Record. The hearing examiner shall make an electronic sound recording of each appeal hearing unless the hearing is conducted solely in writing.

(g) Decision of the Hearing Examiner. Following the hearing, the hearing examiner shall enter a decision on the appeal, supported by written findings and conclusions in support thereof. A copy of the findings, conclusions and decision shall be mailed to the appellant and to the Director.

(h) Appeal not a stay. Filing an appeal will not stay the effect of the Director's determination. Interest and/or penalties shall continue to

accrue on all unpaid amounts, notwithstanding the fact that an appeal has been filed. If the hearing examiner determines that the taxpayer is owed a refund, the city shall pay such refund within 30 days.

(i) A writ of review regarding the decision of the hearing examiner may be sought from King County Superior Court by the appellant or by the city. A proper request for a writ of review must be filed with the superior court within 20 calendar days following the date that the decision of the hearing examiner was mailed to the parties. Review by the superior court shall be on, and shall be limited to, the record on appeal created before the hearing examiner. Filing with the court does not automatically stay the effect of the city's decision.

7.02.260 Suspension or revocation of license--criteria.

The Director may suspend or revoke a business license or permit when the licensee, officer or partner thereof, or another person with a legal interest in the license:

(1) Knowingly causes, aids, abets, or conspires with another to cause any person to violate any of the laws of this state or the city which may affect or relate to the licensed business;

(2) Has obtained a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake;

(3) Is convicted of, forfeits bond upon, or pleads guilty to any offenses related to the operation of the licensed business;

(4) Makes a misrepresentation or fails to disclose a material fact to the city related to any of the obligations set forth in this chapter;

(5) Violates any building, safety, fire or health regulation on the premises in which the business is located after receiving warning from the city to refrain from such violations;

(6) Is in violation of a zoning regulation of the city; or

(7) Is indebted or obligated to the city for past due fees or taxes, excluding special assessments such as LID assessments.

7.02.270 Procedures for revocation or suspension.

(a) When the Director determines that there is a reasonable basis for suspending or revoking a business license, the Director shall notify the licensee by regular and certified mail of the city's intention to suspend or revoke such license. The notice shall also state the reason for the suspension or revocation and the date that the suspension or revocation will become effective unless a hearing is requested. The suspension or revocation shall become effective 8 days after the date the notice is mailed unless the licensee, within such 8 day period, files a written request with the Director for a hearing. The licensee shall state why the criteria in 7.02.260 do not apply to his/her/its business.

(b) Hearing Procedure. The Director shall schedule and hold a hearing within 20 days following receipt of a request that meets the requirements of subparagraph (a). The suspension or revocation will be stayed pending the Director's decision after the hearing. At the hearing, both the licensee and the city shall be entitled to present evidence.

(c) Upon the completion of the hearing, the Director shall make a decision about the suspension or revocation and shall deliver the written decision to the licensee. If delivery is via mail, it shall be by

both regular and certified mail. If the decision is to suspend or revoke the license, such action shall be effective 1 day after delivery of the decision; provided that the effective date shall be 3 days after the date of mailing, if delivery is via mail. This decision shall be the final decision of the city.

(d) Any person who continues to engage in business after the effective date of their license suspension or revocation shall be deemed to be knowingly operating without a license for the purposes of the crime of "Operating without a license" (see Section 7.02.050(a)); provided that a person convicted of a crime involving a suspended or revoked license shall be guilty of a gross misdemeanor.

(e) Return of License upon Revocation. Whenever a license is revoked, the licensee shall immediately return the license to the Finance Department. There shall be no refund of any part of the amount paid for the annual license. In order for the business to resume operation, city approval of a new application for a new annual license is required.

(f) A writ of review regarding the suspension or revocation may be sought from King County Superior Court. A proper request for a writ of review must be filed with the superior court within 20 calendar days after the effective date of the suspension or revocation. Review by the superior court shall be on, and shall be limited to, the information that was before the director. Filing with the court does not automatically stay the suspension or revocation.

7.02.280 License fee additional to others imposed.

The license fee required by this chapter shall be additional to any license fee or tax imposed or levied under the law or any other ordinance of the city, except as expressly provided herein.

7.02.290 License not construed to permit prohibited uses or activities.

Notwithstanding any provisions to the contrary, a license hereunder shall not be issued to any person who uses or occupies or proposes to use or occupy any real property or otherwise conducts or proposes to conduct any business in violation of the provisions of any ordinance of the city of Kirkland or of the statutes of the state of Washington. The granting of a business license shall in no way be construed as permission or acquiescence in a prohibited activity or other violation of the law.

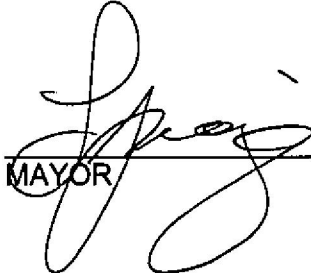
Section 3. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 4. Effective date for new rates: The business license fee and surcharge rates established in this ordinance shall go into effect and become the rates to be charged as of May 1, 2003; provided that, the fees and provisions of the KMC Chapter 7.02 which is being repealed and replaced by this ordinance shall remain in force and effect until and unless the rates set forth in this ordinance go into effect


Section 5. This ordinance shall be in force and effect April 1, 2003, which will be more than five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.107, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this 18th day of March, 2003.

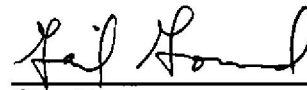
Signed in authentication thereof this 18th day of March, 2003.


MAYOR

Attest:


City Clerk

Approved as to Form:


City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 3884

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO BUSINESS LICENSES AND FEES AND REPEALING AND REPLACING KMC 7.02.

SECTION 1. Repeals KMC Chapter 7.02 effective May 1, 2003.

SECTION 2. Adopts a new KMC Chapter 7.02 effective May 1, 2003. This will implement a new business license program with an annual basic license fee of \$100 (certain exceptions provided). In addition, there will be a surcharge based on the number of employees, ranging from \$75 to \$2,500 per year (unless exempt). The ordinance also sets forth new business license rules and administrative procedures.

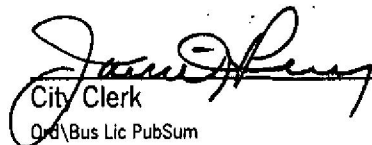
SECTION 3. Provides a severability clause for the ordinance.

SECTION 4. Establishes an effective date for new rates.

SECTION 5. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date of the ordinance as April 1, 2003.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 18th day of March, 2003.

I certify that the foregoing is a summary of Ordinance 3884 approved by the Kirkland City Council for summary publication.



City Clerk
Ord\Bus Lic PubSum