

ORDINANCE 3990

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO BUSINESS LICENSES, AMENDING SECTIONS 7.02.030, 7.02.060 AND 7.02.120 OF THE KIRKLAND MUNICIPAL CODE, CLARIFYING THE DEFINITION OF ENGAGING IN BUSINESS, ADDING A DEFINITION FOR PLACE OF BUSINESS OR OFFICE, ADDING A DEFINITION AND EXEMPTION FOR CASUAL OR ISOLATED SALES, ADDING AN EXEMPTION FOR MUNICIPAL COURT JUDGES, COURT COMMISSIONERS, AND HEARING EXAMINERS, AND ADDING AN EXEMPTION FOR CERTAIN NONPROFIT AND SERVICE ORGANIZATIONS.

WHEREAS, RCW 35A.82.020 authorizes code cities to impose business licensing requirements upon business transacted within such a city; and

WHEREAS, the City has acted upon this authority by enacting business licensing requirements which are set forth in Title 7 of the Kirkland Municipal Code; and

WHEREAS, the City Council desires to clarify Chapter 7.02 of the Kirkland Municipal Code with respect to the definition of engaging in business, add a definition for place of business or office, add a definition and exemption for casual and isolated sales, add an exemption for judges, court commissioners, and hearing examiners, and add an exemption for certain nonprofit and service organizations.

NOW THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Section 7.02.030 of the Kirkland Municipal Code is hereby amended as follows:

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. By way of illustration only and without being all inclusive, a business with an office or physical location outside the city limits which sells or leases personal property to buyers or lessees in the city; accepts or executes a contract to perform construction or installation services contracts in the city; solicits sales in the city; or renders services to others in the city; is engaged in business in this city, irrespective of whether or not such business maintains a permanent place of business in the city.

(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.

(j) "Place of business or office" includes, but is not limited to, the following: maintaining, occupying, or using a permanent building or facility, or fixed location as an office or location for conducting business; or a location where the regular business of the person is conducted and which is either owned by the person or over which the person exercises legal dominion and control; or a location which includes a business sign, mailing address, and permanent phone. A vehicle such as a pick-up, van, truck, boat or other motor vehicle will not be considered a place of business for purposes of this chapter.

(k) "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved. Persons who hold themselves out to the public as making sales at retail or wholesale are deemed to be engaged in business, and sales made by them of the type of property which they hold themselves out as selling, are not casual or isolated sales even though such sales are not made frequently.

Section 2. Section 7.02.060 of the Kirkland Municipal Code is amended as follows:

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 Chapter 18.85 RCW and whose license is being retained by a broker licensed as a broker under Chapter 18.85 RCW ("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 brokers 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).

(8) Casual and isolated sales.

(e) No license or registration fee will be required for any judge or court commissioner of the Kirkland Municipal Court or for any person filling a judicial or hearing examiner position for the City of Kirkland.

Section 4. Section 7.02.120 of the Kirkland Municipal Code is amended as follows:

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 one hundred dollars per year.

~~(b) Exemptions. The following entities may claim an exemption from the basic license fee, but, if exempt under this subparagraph, such entity shall instead pay a twenty-five dollar registration fee per year.~~

~~(1) Registration Fee. Any business with less than two thousand dollars average annual gross receipts shall pay a registration fee of twenty-five dollars per year.~~

(c) Exemptions. The following entities may claim an exemption from the basic license fee or registration, but if exempt under this subparagraph, such entities shall still register under this chapter:

(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.

(4) Civic groups, service clubs, and social organizations that are not engaged in any profession, trade, calling, or occupation, but are organized to provide civic, service, or social activities in the city. Examples of such organizations may include, but are not limited to: Soroptomists; Kiwanis; Lions; Rotary; American Legion; children and adult athletic organizations; and similar types of groups, clubs or organizations.

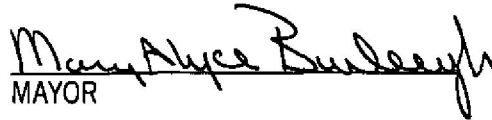
(5) A business that can demonstrate to the satisfaction of the director that it is exempt due to preemption by state or federal law.

Section 5. 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.

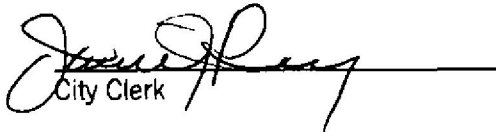
Section 6. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this 5th day of April, 2005.


Signed in authentication thereof this 5th day of April, 2005.


MAYOR

Attest:


City Clerk

Approved as to Form:


City Attorney
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