

ORDINANCE 4161

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO BUSINESS LICENSES AND REGULATIONS AND AMENDING CHAPTER 7.02 OF THE KIRKLAND MUNICIPAL CODE.

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

Section 1. Section 7.02.020 of the Kirkland Municipal Code is hereby amended to read as follows:

**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.~~

Section 2. Section 7.02.030 of the Kirkland Municipal Code is hereby amended to read 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" means 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 pickup, 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.

(l) "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:

1. any person who is on the business' payroll, and includes all full-time, part-time, and temporary employees or workers; and
2. self-employed persons, sole proprietors, owners, managers, and partners; and
3. 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.

(m) "Contractors" means any person who, in the capacity of an independent contractor, contracts with any business, property owner or person to perform a particular job or jobs, whether the remuneration received for performing the job or jobs is on a cost-plus basis, a flat sum basis or salary computed at so much per hour.

(n) "Subcontractors" means any person who in the capacity of an independent contractor contracts with any contractor to perform a particular trade or job, whether the remuneration received for performing the job or jobs is on a cost-plus basis, a flat sum basis, or salary basis computed at so much per hour.

Section 3. Section 7.02.040 of the Kirkland Municipal Code is hereby amended to read as follows:

**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~~ premise in the city a separate registration and license shall be required for each ~~premises~~ premise 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 Requirements. 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, subleased or owned by such business.

Section 4. Section 7.02.060 of the Kirkland Municipal Code is hereby amended to read 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~~Revenue Generating Regulatory License (RGRL) 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 KMC 19.24 (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;
  - (7) Employing a household employee or being a customer of a domestic worker (e.g., babysitters, nannies, health aides, maids, or yard workers); or
  - (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 filing a judicial or hearing examiner position for the city of Kirkland.

Section 5. Section 7.02.070 of the Kirkland Municipal Code is hereby amended to read as follows:

### **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 twenty thousand dollars per each employee who works for the entity in Kirkland.

~~(d) It shall be presumed that an entity with average annual gross receipts of forty thousand dollars or more has at least two employees, as "employee" is defined in Section 7.02.160.~~

~~(e) It shall be presumed that an entity with average annual gross receipts of one hundred twenty thousand dollars or more has at least six employees, as "employee" is defined in Section 7.02.160.~~

~~(f) It shall be presumed that an entity with average annual gross receipts of four hundred twenty thousand dollars or more has at least twenty-one employees, as "employee" is defined in Section 7.02.160.~~

~~(g) It shall be presumed that an entity with average annual gross receipts of two million, twenty thousand dollars or more has at least one hundred one 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 years 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.~~

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

Section 6. Section 7.02.090 of the Kirkland Municipal Code is hereby repealed.

Section 7. Section 7.02.110 of the Kirkland Municipal Code is hereby amended to read as follows:

**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 ~~fifteen~~ thirty 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.

Section 8. Section 7.02.120 of the Kirkland Municipal Code is hereby amended to read 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 with twelve thousand dollars or more in average annual gross receipts shall pay a basic business license fee of one hundred dollars per year.

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

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

(1) 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.

(2) 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.

(3) 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's and adults' 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 9. Section 7.02.130 of the Kirkland Municipal Code is hereby amended to read as follows:

**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 Revenue Generating Regulatory License Fee (RGRL) 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.~~ The license fee levied in 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.

(b) ~~Regulatory licensees under the following KMC chapters may apply the credit described in this section:~~

<del>7.08</del>	<del>Ambulances</del>
<del>7.12</del>	<del>Amusement Devices</del>
<del>7.16</del>	<del>Auctions and Auctioneers</del>
<del>7.20</del>	<del>Cabarets</del>
<del>7.22</del>	<del>Carnivals and Circuses</del>
<del>7.24</del>	<del>Dances and Dance Halls</del>
<del>7.32</del>	<del>Massage Parlors and Public Bathhouses</del>
<del>7.36</del>	<del>Pawnbrokers and Secondhand Dealers</del>
<del>7.44</del>	<del>Taxicabs and For-Hire Vehicles</del>
<del>7.61</del>	<del>Cable Television—Procedures and Terms for Grant of Franchises</del>

Section 10. Section 7.02.140 of the Kirkland Municipal Code is hereby amended to read as follows:

**7.02.140 Utilities.**

(a) A business that pays a utility occupation tax to the city pursuant to Chapter 5.08 must also file the general business license application form, ~~but need not~~ and 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 Chapter 5.08 is subject to the surcharge RGRL 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.~~

Section 11. Section 7.02.150 of the Kirkland Municipal Code is hereby amended to read as follows:



**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 thirty-five consecutive days. The permit shall state an expiration date which shall be not more than thirty-five calendar days after its term begins. The fee for this permit is ~~twenty-five~~ twenty-five dollars. 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.

Section 12. Section 7.02.160 of the Kirkland Municipal Code is hereby amended to read as follows:

**7.02.160 Surcharge Revenue Generating Regulatory License Fee (RGRL).**

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

(1) A business with less than ~~forty-two~~ forty-two thousand dollars of average annual gross receipts shall be exempt from any ~~surcharge~~ RGRL.

(2) For the purposes of this section and in determining the applicable ~~surcharge~~ RGRL, 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~~ RGRL.

(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 RGRL based on the number of its employees that are involved in the functions or activities that are not exempt.

(b) Amount of Surcharge RGRL.

(1) Revenue Generating Regulatory License (RGRL) Fee Method. Except as otherwise provided by this chapter, every person engaging in business within the city shall pay an RGRL based upon the number of employee hours worked in Kirkland during the previous year. Annual employee hours are calculated based on the sum of the four quarterly reports submitted to the Washington State Department of Labor and Industries for the previous year. It will be the responsibility of the employer to determine the number of hours worked within the city from these reports. Businesses that did not file quarterly reports with the Washington State Department of Labor and Industries shall determine the number of hours worked within the city and demonstrate, if required, to the satisfaction of the Finance Director or his/her authorized agent, that the number of employee hours worked is correct.

(2) The annual license fee (base fee and RGRL) shall be calculated by adding the base fee of one-hundred dollars per business license to the full-time equivalent employees that worked in Kirkland multiplied by one-hundred dollars. The approved tax rate per full-time employee is \$0.052084 (which represents a RGRL multiplier of \$0.052084 per employee hour worked), as may be adjusted herein. Employers without a full year history would need to estimate the number of employee hours that will be worked in the current calendar year.

(3) If a business has more than one location in Kirkland the annual business license fee calculation must include a base fee for each location and the RGRL for annual employee hours at all locations.

(c) Alternative FTE Method. A business may choose to calculate its annual license fee by adding the one-hundred dollar base fee to the RGRL based on multiplying one-hundred dollars by the number of its employees. The number of employees shall be based on the sum of the employees in the four quarterly reports submitted to the Washington State Department of Labor and Industries for the previous year divided by four. It will be the responsibility of the employer to determine the number of employees working within the city from these reports. Businesses that did not file quarterly reports with the Washington State Department of Labor and Industries shall determine the number of employees working in the city and demonstrate, if required, to the satisfaction of the Finance Director or his/her authorized agent, that the number of employees is correct. Employers without a full year history would need to estimate the number of employees that will work in the city for the current calendar year.

(1) Once the FTE methodology has been selected, it must be used for future renewals.

(2) Businesses with more than one location must use the same method of calculation for all locations.

(3) For businesses with employees who work less than 1,920 hours per year (the work hour figure used by the Washington Department of Labor and Industries) the total number of hours worked by all such employees during the four quarters of the previous year shall be added together and divided by 1,920 to determine the FTE equivalency.

(4) It will be the responsibility of the business to determine the total number of FTE's (or equivalency) and demonstrate, if required, to the satisfaction of the Finance Director or his/her authorized agent, that the calculation is accurate.

(d) The license fee for a business required to be licensed under this chapter and not located within the city's corporate limits shall be calculated by adding the one-hundred dollar base fee and the RGRL based upon the number of employee hours worked within the city, but in no event shall the license fee be less than the minimum fee set forth in this chapter. If the number of employee hours worked is not known at the time of renewal, the business shall estimate the maximum number of employee hours they anticipate using in Kirkland during the year.

(e) Businesses doing business in the city that have no employees physically working within the city shall pay the minimum license fee required under this chapter.

(f) The minimum fee for any license issued under this chapter shall be \$200.00 (a base fee of \$100.00 and a RGRL of \$100.00), as may be adjusted herein.

(g) 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 an a quittance or discharge of the fee unless and until the check or draft is honored. Any person who submits a business license fee payment by check to the city pursuant to the provisions of this chapter shall be assessed a NSF fee set by the Finance Director if the check is returned unpaid by a bank or other financial institution for insufficient funds in the account or for any other reason.

(h) If any 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 shall not be granted a license for the current period until the delinquent license fee, together with penalties, has been paid in full. Any license fee due and unpaid under this chapter and any penalties thereon shall constitute a debt to the city and may be collected in court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

(i) If no higher RGRL applies under this section, then the minimum RGRL shall be one hundred dollars.

~~(1) One employee: one hundred twenty-five dollars. A business with one employee shall pay a surcharge of one hundred twenty-five dollars. If such a~~

~~business has less than one hundred thousand dollars of average annual gross receipts ("GR"), then the surcharge shall be seventy-five dollars.~~

~~(2) Two to five employees: two hundred twenty-five dollars. A business with at least two but not more than five employees shall pay a surcharge of two hundred twenty-five dollars. If such a business has less than one hundred thousand dollars of GR, then the surcharge shall be one hundred fifty dollars.~~

~~(3) Six to twenty employees: seven hundred fifty dollars. A business with at least six but not more than twenty employees shall pay a surcharge of seven hundred fifty dollars. If such a business has less than one hundred thousand dollars of GR, then the surcharge shall be five hundred dollars.~~

~~(4) Twenty-one to one hundred employees: one thousand five hundred dollars. A business with at least twenty-one but not more than one hundred employees shall pay a surcharge of one thousand five hundred dollars. If such a business has less than one hundred thousand dollars of GR, then the surcharge shall be one thousand dollars.~~

~~(5) More than one hundred employees: two thousand five hundred dollars. A business with more than one hundred employees shall pay a surcharge of two thousand five hundred dollars. If such a business has less than one hundred thousand dollars of GR, then the surcharge shall be two thousand dollars.~~

~~(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 seventy-five dollars.~~

Section 13. Section 7.02.170 of the Kirkland Municipal Code is hereby amended to read as follows:

**7.02.170 Determination of number of employees for surcharge~~RGR~~.**

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

(a) Standard Rule. In determining the amount of ~~surchargeRGR~~ 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 ~~surchargeRGR~~ 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 four 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 one thousand, nine hundred twenty 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 one thousand, nine hundred twenty hours per year to the business then that person must be counted as one employee for ~~surcharge~~RGRL purposes.

(3) Where there are employees who work less than one thousand, nine hundred twenty hours per year, the total number of hours worked by all such employees during the previous year shall be added together and divided by one thousand, nine hundred twenty. A fraction of 0.5 or over shall be rounded up. Hours worked by persons who are defined as employees for ~~surcharge~~RGRL 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 subsection (b)(2) of this section plus subsection (b)(3) of this section shall be the total number of employees used to determine the amount of the ~~surcharge~~RGRL.

(c) New Businesses. The ~~surcharge~~RGRL for a business that did not submit reports for each of the last four 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~~RGRL. 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~~RGRL will be recalculated for the new business. If the revised ~~surcharge~~RGRL is higher, the business must pay the difference within thirty days after notification. ~~If the revised surcharge is lower, then the difference will be refunded within thirty days.~~

(d) Over-Reporting Number of Employees. A licensee may request that the city refund ~~surcharge~~RGRL 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 sixty 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~~RGRL, then the city will refund the excess ~~surcharge~~RGRL 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~~RGRL together with

a penalty of twenty percent 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 ~~twenty~~thirty days. If the city does not receive timely payment, an additional penalty shall be added, applying the schedule for late payments in this chapter.

Section 14. A new Section 7.02.175 of the Kirkland Municipal Code is hereby created to read as follows:

**7.02.175 Temporary employees.**

The following provisions shall apply to businesses engaged in the practice of providing temporary employees or workers ("temporary agencies") to businesses located within the city and to businesses located within the city which utilize the services of such employees or workers:

(1) Temporary agencies located within the city shall include all temporary employees and workers placed with businesses located within the city in calculating the number of employee hours worked in addition to employees described under KMC 7.02.160.

(2) Temporary agencies located outside the city which place temporary employees or workers with businesses located within the city shall include all such temporary employees and workers in calculating the number of hours worked by their employees;

(3) Businesses located within the city which utilize temporary employees or workers provided by a temporary agency shall not include the temporary employees or workers in calculating the number of their employee hours,

(4) Temporary agencies placing temporary employees and workers within the city shall calculate the number of hours worked by such employees and workers in the manner provided by KMC 7.02.160(a),

(5) In submitting an initial business license application or subsequent renewal application, all businesses located within the city which use temporary employees or workers furnished by a temporary agency shall indicate the number of employee hours worked by using the formula set forth in KMC 7.02.160(a) and further indicate the names and addresses of the temporary agencies furnishing said employees or workers. Failure to so report the number of hours worked by temporary employees or workers or the names and addresses of the agencies furnishing said employees or workers shall result in imposition of a penalty equal to 10% of the company's total business license fee. In addition, failure to report may result in revocation, suspension, or denial of the business license.

Section 15. Section 7.02.190 of the Kirkland Municipal Code is hereby amended to read as follows:

**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 twenty-nine days late, a penalty of twenty-five dollars or ten percent of the amount for the license, whichever is greater;

(2) Between thirty and fifty-nine days late, a penalty of fifty dollars or fifty percent of the amount for the license, whichever is greater;

(3) Sixty or more days late, a penalty of one hundred dollars or one hundred percent 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 subsection (a) of this section in addition to the amount charged for the annual license for all years the business has been in operation or to the greatest extent allowed by law; 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.

Section 16. Section 7.02.220 of the Kirkland Municipal Code is hereby amended to read as follows:

**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~~RGRL if the city receives such request within ~~ninety~~ thirty 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.

Section 17. Section 7.02.230 of the Kirkland Municipal Code is hereby amended to read as follows:

**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 thirty 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 RGRL are subject to pro rata refund.

Section 18. Section 7.02.250 of the Kirkland Municipal Code is hereby amended to read as follows:

**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 fourteen 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 thirty 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 twenty 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.

Section 19. 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.

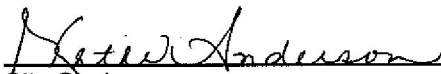
Section 20. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this 16th day of December, 2008.

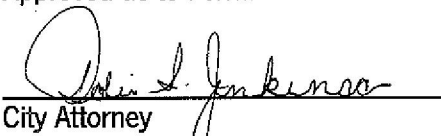
Signed in authentication thereof this 16th day of December, 2008.

  
\_\_\_\_\_  
MAYOR

Attest:

  
\_\_\_\_\_  
City Clerk

Approved as to Form:

  
\_\_\_\_\_  
City Attorney

PUBLICATION SUMMARY  
OF ORDINANCE NO. 4161

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO BUSINESS LICENSES AND REGULATIONS AND AMENDING CHAPTER 7.02 OF THE KIRKLAND MUNICIPAL CODE.

SECTION 1. Amends Section 7.02.020 of the Kirkland Municipal Code relating to policy and scope.

SECTION 2. Amends Section 7.02.030 of the Kirkland Municipal Code by adding definitions for the words "Employee" "Contractor" and "Subcontractor" and adding "city" as a defined term.

SECTION 3. Amends Section 7.02.040 of the Kirkland Municipal Code changing premises to premise.

SECTION 4. Amends Section 7.02.060 of the Kirkland Municipal Code regarding calculation of the number of employees to reflect the change by this ordinance from collection of a surcharge to collection of a Revenue Generating Regulatory License (RGRL) fee and clarifying that the exemption from the requirement of having a license for a special event arises only under KMC Chapter 19.24.

SECTION 5. Amends Section 7.02.070 of the Kirkland Municipal Code removing certain presumptions.

SECTION 6. Repeals Section 7.02.090 of the Kirkland Municipal Code.

SECTION 7. Amends Section 7.02.110 of the Kirkland Municipal Code to require issuance or denial of a permit within 30 days instead of 15.

SECTION 8. Amends Section 7.02.120 of the Kirkland Municipal Code regarding which businesses must pay a basic fee or a registration fee.

SECTION 9. Amends Section 7.02.130 of the Kirkland Municipal Code to reflect businesses are paying the RGRL instead of a surcharge and that this fee is in addition to other regulatory fees.

SECTION 10. Amends Section 7.02.140 of the Kirkland Municipal Code to require that utilities paying a utility occupation tax also pay the general business license fee and the RGRL.

SECTION 11. Amends Section 7.02.150 of the Kirkland Municipal Code by increasing the temporary business permit fee to fifty dollars.

SECTION 12-13. Amends Sections 7.02.160 and 7.02.170 of the Kirkland Municipal Code by replacing "surcharge" with "Revenue Generating Regulatory License Fee (RGRL)" and providing for how the RGRL will be calculated.

SECTION 14. Adds a new Section 7.02.175 to the Kirkland Municipal Code relating to the calculation of employee hours for temporary employees and providing a penalty for failure to properly report such employees and their hours.

SECTION 15. Amends Section 7.02.190 to clarify that businesses are responsible for payment of all fees retroactively to the commencement of business operations.

SECTION 16. Amends Section 7.02.220 to reflect that a business may request a refund of the RGRL instead of surcharge and requiring the request be made within 30 days of closing the business.

SECTION 17. Amends Section 7.02.230 of the Kirkland Municipal Code to reflect that a business may request a refund of the RGRL instead of surcharge upon finding an exemption applies.


SECTION 18. Amends Section 7.02.250 of the Kirkland Municipal Code regarding refunds.

SECTION 19. Provides a severability clause for the ordinance.

SECTION 20. 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 as five days after publication of summary.

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 16th day of December, 2008.

I certify that the foregoing is a summary of Ordinance 4161 approved by the Kirkland City Council for summary publication.

  
\_\_\_\_\_  
City Clerk