

ORDINANCE 1665

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, RELATING TO BUSINESS LICENSING, AND SPECIFICALLY AMENDING NBMC SECTIONS 5.04.015 AND 5.04.030(I); PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, North Bend Municipal Code (NBMC) Title 5, Chapter 4, regulates the licensing of businesses to protect the public health, safety and welfare; and

WHEREAS, in 2017, the Washington State Legislature adopted Engrossed House Bill 2005, which directed cities in Washington to adopt model business licensing language, including a uniform definition of “engaging in business;” and

WHEREAS, in June 2018, at the direction of the Legislature, the Association of Washington Cities (AWC) released draft model language, and the City Attorney prepared the requisite amendments to NBMC Chapter 5.04; and

WHEREAS, the City Council finds that in the interest of compliance with the State law, and to improve current business licensing practices both for the public and City Staff, the City should adopt the proposed amendments to its business licensing regulations; and

WHEREAS, the City Council has considered this Ordinance, together with all public comment, and has determined that the proposed amendments are in accord with the Comprehensive Plan, will not adversely affect the public health, safety, or general welfare, and are in the best interests of the citizens of the City; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. North Bend Municipal Code Section 5.04.015 (Business License Required), Amended: North Bend Municipal Code Section 5.04.015 (Business license required) is hereby amended to read as follows:

5.04.015 Business license required.

A. Every person engaging in business within the city during any portion of any taxable year in any business or activity for which a license fee or tax is provided by this chapter must obtain a valid and subsisting license to do so, to be known as a “business license,” issued under the provisions of this chapter and having paid the license fee and tax imposed by the taxes, rates and fees schedule adopted by ordinance. Application for the license is

made through the business licensing service on forms or systems provided. The total licensing fees due, including the business license registration fee and the business licensing service handling fee established by RCW 19.02.075 must accompany the application for the license.

B. The license will expire on the date established by the business licensing service. Each license is personal and nontransferable. In case a business is transacted at two or more separate places by one taxpayer, a separate license is required for each place and a separate registration fee and handling fee must be paid for each place that a business license is issued.

C. All licenses will be issued by the business licensing service in coordination with the finance department. Each license will show the name, and place of business of the taxpayer. The license must at all times be posted in the place of business for which it is issued. When the place of business of a taxpayer is changed, the taxpayer must reapply for the license and pay the appropriate fees as provided for in this chapter, and, upon approval of the change, a new license will be issued for the new place of business. No person may engage in any business for which a license is required under this section, without being registered and licensed in compliance with the provisions of this section; nor may any person holding such business license allow any other person, for whom a separate license is required, to operate under or display his license.

D. The business license must be obtained prior to commencing business within the city and must be renewed and the annual license registration fee paid by the expiration date established by the business licensing service. The license renewal is made through the business licensing service on forms or systems provided. Failure to renew a license by the expiration date may result in the assessment of the business licensing service late renewal penalty established in RCW 19.02.085. If a license remains delinquent for at least 120 days after the expiration date it will be considered abandoned and will be cancelled. A business whose license has been cancelled must reapply for licensure in order to continue to conduct business in the city.

E. There may be an additional administrative assessment, as established by the taxes, rates and fees schedule adopted by ordinance, imposed from the date the license should have been initially obtained, or renewed as the case may be, if the license is not obtained or renewed in a timely manner. The finance director may waive the penalty and interest of the administrative assessment if the license is obtained within 30 days of the date it should have been obtained or renewed, if good cause is shown.

F. Exemption From Business License Requirement. Threshold Exemption: To the extent set forth in this section, the following persons and businesses shall be exempt from the registration, license, and/or

license fee requirements as outlined in this chapter: Any person or business whose annual value of products, gross proceeds of sales, or gross income of the business in the city is equal to or less than \$2,000 and who does not maintain a place of business within the city shall be exempt from the general business license requirements in this chapter. The exemption does not apply to regulatory license requirements or activities that require a specialized permit.

Section 2. North Bend Municipal Code Subsection 5.04.030(I) (Definitions – Engaging in Business), Amended: North Bend Municipal Code Subsection 5.04.030 (I) is hereby amended to read as follows:

I. Engaging in Business.

1. The term “engaging in business” means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

2. This section sets forth examples of activities that constitute engaging in business in the city, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimus business activities in the city without having to pay a business license fee~~having to register and obtain a business license or pay city business and occupation taxes~~. The activities listed in this section are illustrative only and are not intended to narrow the definition of “engaging in business” in subsection (I)(1) of this section. If an activity is not listed, whether it constitutes engaging in business in the city shall be determined by considering all the facts and circumstances and applicable law.

3. Without being all-inclusive, any one of the following activities conducted within the city by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf, constitutes engaging in business and requires a person to register and obtain a business license:

- a. Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the city.
- b. Owning, renting, leasing, using, or maintaining an office, place of business, or other establishment in the city.
- c. Soliciting sales.

- d. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.
- e. Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.
- f. Installing, constructing, or supervising installation or construction of real or tangible personal property.
- g. Soliciting, negotiating, or approving franchise, license, or other similar agreements.
- h. Collecting current or delinquent accounts.
- i. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.
- j. Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.
- k. Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, and veterinarians.
- l. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.
- m. Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the city, acting on its behalf, or for customers or potential customers.
- n. Investigating, resolving, or otherwise assisting in resolving customer complaints.
- o. In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.

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

~~q. Accepting or executing a contract with the city, irrespective of whether goods or services are delivered within or without the city, or whether the person's office or place of business is within or without the city.~~

4. If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the city but the following, it need not register and obtain a business license ~~and pay tax~~:

a. Meeting with suppliers of goods and services as a customer.

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

c. Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of directors member or attendee engaging in business such as a member of a board of directors who attends a board meeting.

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

e. Attending, but not participating in, a "trade show" or "multiple-vendor events." Persons participating at a trade show shall review the city's trade show or multiple-vendor event ordinances.

f. Conducting advertising through the mail.

g. Soliciting sales by phone from a location outside the city.

5. A seller located outside the city merely delivering goods into the city by means of common carrier is not required to register and obtain a business license; provided, that it engages in no other business activities in the city. Such activities do not include those in subsection (I)(4) of this section. The city expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the license fee~~tax~~ under the law and the constitutions of the United States and the state of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus-generating contact or subsequent contacts.

Section 3. Severability: Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4. Effective Date: This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 18TH DAY OF SEPTEMBER, 2018.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Kenneth G. Hearing, Mayor

Michael R. Kenyon, City Attorney

ATTEST/AUTHENTICATED:

Published: September 28, 2018
Effective: October 3, 2018

Susie Oppedal, City Clerk