

ORDINANCE NO. 694

AN ORDINANCE of the City Council of the City of Lakewood, Washington, amending Title 5 Business Licenses and Regulations, to adopt mandatory provisions pursuant to Chapter 35.90 RCW.

WHEREAS, in 2017, the Washington State Legislature passed Engrossed House Bill 2005, now codified at Chapter 35.90 RCW, to improve the business climate in Washington State by simplifying the administration of municipal general business licenses; and

WHEREAS, with this action, the Washington State Legislature tasked cities, working through the Association of Washington Cities (AWC), to develop a model ordinance with mandatory provisions that a city must adopt by January 1, 2019; and

WHEREAS, the model ordinance was finalized in June 2018 and contains mandatory provisions related to the definition of “engaging in business within a city” and sets a uniform minimum licensing threshold of \$2,000 under which a business is exempt from a city’s general business license requirements; and

WHEREAS, amendments are required to LMC Title 5 Business Licenses to fulfill the City’s obligations under Chapter 35.90 RCW to adopt the mandatory provisions of the model ordinance; and

WHEREAS, these amendments must be effective by January 1, 2019, to satisfy the statutory mandate;

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

Section 1. Amendment – LMC Title 5 Business Licenses and Regulations. Title 5 Business Licenses and Regulations of the Lakewood Municipal Code is adopted as set forth in Exhibit A to this Ordinance.

Section 2. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance

Section 3. Effective Date. This ordinance shall take place thirty (30) days after its publication or publication of a summary of its intent and contents.

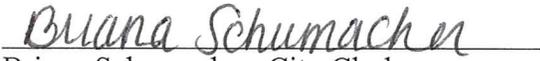
ADOPTED by the Lakewood City Council this 17th day of September, 2018.

CITY OF LAKEWOOD



Don Anderson, Mayor

Attest:


Briana Schumacher, City Clerk

Approved as to Form:


Heidi Ann Wachter, City Attorney

EXHIBIT A - Ordinance BLANK

Amendments to LMC Title 5

1. Amendments to Existing Sections

5.02.010 Definitions.

For purposes of this title, the following definitions shall apply:

~~“Business” includes all lawful activities engaged in with the object of gain, benefit, or advantage, directly or indirectly, whether part-time, full-time or seasonal.~~

“Engaging in business” or “Engage 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.

1. This section sets forth examples of activities that constitute engaging in business in the city, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimus business activities in the city without having to pay a business license fee. The activities listed in this section are illustrative only and are not intended to narrow the definition of “engaging in business” provided in this chapter. 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.

2. 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, 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.

3. 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.

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 director 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.

4. 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 3.

5. The city expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the license fee under the law and the constitutions of the United States and the State of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

5.02.050 Exemptions and waivers.

A. Notwithstanding the requirement of LMC 5.02.020, the following shall be exempt from the requirement to apply for and obtain a business license. Permits, however, may be required if otherwise required by law.

1. Sales, delivery, or peddling of any fruits, vegetables, berries, eggs, or any farm produce or edibles by the farmer, gardener, or other person who raised, gathered, produced, or manufactured them; provided, that this exemption shall not apply to any person selling, delivering, or peddling any dairy product, meat, poultry, eel, fish, mollusk, or shellfish.

2. Any individual in possession of a valid direct retail endorsement, as established in RCW 77.65.510 as currently enacted or as hereafter amended or recodified from time to time, who sells, delivers, or peddles any legally harvested retail-eligible species, as that term is defined in RCW 77.08.010 as currently enacted or as hereafter amended or

recodified from time to time, that is caught, harvested, or collected under rule of the Department of Fish and Wildlife by such a person at a temporary food service establishment, as that term is defined in RCW 69.06.045 as currently enacted or as hereafter amended or recodified from time to time; provided, that such establishment shall not be exempt from inspection to verify that the person is in compliance with State Board of Health and local rules for food service operations.

3. Small or part-time businesses, professions, or trades performed by minors wherein the annual gross income is less than \$2,000 in the nature of babysitting, delivery of newspapers, or sales in the nature of a residential-based "lemonade stand," or the like; provided, that the activity is not one for which a license would otherwise be required by subsections (1) through (4) of the definition of "temporary business" in LMC 5.02.010.

4. Stands used to sell or distribute flowers, fruit, vegetables, produce or plants grown on the property where the stand is located.

5. Vendors at City-sponsored events such as farmers markets, or similar functions. Such events can be organized and sponsored by non-profit organizations or for-profit organizations and are open to all participants on an equal basis. City-sponsored events shall have the purpose of promoting or benefiting the city and its residents and/or sponsoring organizations.

6. Residential sales such as garage or yard sales of a typical size and duration as well as want-ad, online marketplace or similar sales of an isolated and infrequent nature.

7. 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.

B. Any activity, business or function otherwise requiring a license under this title may receive a waiver of any such requirement where the City Manager determines that the activity, business or function otherwise subject to such license is civic rather than commercial in nature, as with civic, community or school events.