

ORDINANCE 2018 - 016

**AN ORDINANCE OF THE CITY OF SUNNYSIDE, WASHINGTON AMENDING CHAPTER 5.52 SMC TO INCLUDE AMENDMENTS REQUIRED UNDER CHAPTER 35.90 RCW FOR BUSINESS LICENSE, PROVIDING FOR SEVERABILITY, AND ESTABLISHING EFFECTIVE DATES FOR THE AMENDMENTS AND THE ORDINANCE**

**WHEREAS**, the City of Sunnyside's business license requirements, including fees, are adopted in Chapter 5 SMC; and

**WHEREAS**, RCW 35.90 RCW requires the City to update its business license code by January 1, 2019 to include a new definition of what constitutes "engaging in business" in the City and licensing fee exemptions for certain businesses that do not maintain a place of business within the City; and

**WHEREAS**, Chapter 5.52 SMC includes classification of certain types of business license and exemption that are no longer relevant or desired;

**NOW, THEREFORE, the City Council of the City of Sunnyside, Washington, do hereby ordain as follows:**

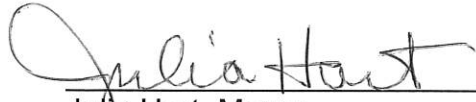
**Section 1:** Amended. That Chapter 5.52 "Fees for Businesses Operating Within the City" of the Sunnyside Municipal Code shall be amended as set forth in Exhibit A to this Ordinance. Exhibit A is incorporated herein by this reference as if set forth in full.

**Section 2:** Effective Date of Amendments. Chapter 5.52 SMC, Business License Code, as amended in Section 1 of this Ordinance, shall become effective on December 31, 2018.

**Section 3:** Severability. If any section, sentence, clause or phrase of this Ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

**Section 4:** Effective Date of Ordinance. This Ordinance shall take effect and be in force on 5 days after its passage and publication.


**PASSED** by the City Council of the City of Sunnyside, Washington at its regular meeting on the 24<sup>th</sup> day of September 2018 and signed in authentication of its passage.

  
\_\_\_\_\_  
Julia Hart, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Jacqueline Renteria, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
KERR LAW GROUP  
Attorneys for the City of Sunnyside

## EXHIBIT A

### Chapter 5.52 FEES FOR BUSINESSES OPERATING WITHIN THE CITY

#### Sections:

5.52.010	Created.
5.52.015	Definitions – <u>Engaging in Business</u> .
5.52.020	Fee Schedule
5.52.030	Exemptions.
5.52.040	Payment – When – Late – Penalty.
5.52.050	Finance Director – Authority.
5.52.060	Separate licenses required.- Exceptions.

#### **5.52.010 Created.**

There is created a business license fee for all businesses situated within the City or doing business within the City limits of the City. It shall be unlawful for any person to operate or do business within the City when said license fee is unpaid.

As a condition of any and all business licenses issued by the City, it shall be a requirement that the operator of the business comply with federal, state and local laws, regulations and licensing requirements. [Ord. 2016-18 § 1 (Exh. A), 2016; Ord. 2012-6 § 1, 2012; Ord. 1765 § 1, 1991; Ord. 1518 § 1, 1985; Ord. 1299 § 1, 1980.]

#### **5.52.015 Definition – Engaging in Business.**

~~As used in this chapter, the term "business" means all vocations, occupations, professions, and activities which are conducted for private profit, directly or indirectly. The term "business" does not include schools, recognized churches, or other not-for-profit organizations which are recognized by the Internal Revenue Service as nontaxable entities. The term "business" does include medical marijuana dispensaries, collective gardens and other entities authorized or regulated by Chapter 69.51A RCW, as presently enacted or hereafter amended, regardless of whether said entities or organizations are not-for-profit or otherwise nontaxable.~~

A. The term "engaging in business" (or variations thereof) as used in this chapter 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.

B. 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 minimis 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" in subsection (1). 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.

C. 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.

1. 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.

2. Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City.

3. Soliciting sales.

4. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.

5. 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.

6. Installing, constructing, or supervising installation or construction of, real or tangible personal property.

7. Soliciting, negotiating, or approving franchise, license, or other similar agreements.

8. Collecting current or delinquent accounts.

9. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

10. 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.

11. 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.

12. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

13. 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.

14. Investigating, resolving, or otherwise assisting in resolving customer complaints.

15. 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.

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

D. 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.

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

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

3. 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.

4. Renting tangible or intangible property as a customer when the property is not used in the City.

5. 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.

6. Conducting advertising through the mail.

7. Soliciting sales by phone from a location outside the City.

E. 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 (D).

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. [Ord. 2016-18 § 1 (Exh. A), 2016; Ord. 2012-6 § 2, 2012.]

#### **5.52.020 Fee schedule.**

The fee for said businesses shall be based on a per-employee amount which shall be determined as follows:

For the purpose of this section, volunteers, members and owners shall be counted as employees. The number of employees shall be determined as the sum of the number of full-time regular employees and the number of hours worked by part-time, temporary and seasonal employees during the previous calendar years (or for new businesses, the number of hours estimated to be worked by part-time, temporary and seasonal employees during a calendar year) divided by 2080 hours, and rounded to the nearest integer. [Ord. 2016-18 § 1 (Exh. A), 2016; Ord. 2012-6 § 2, 2012; Ord. 2180 § 1, 2007; Ord. 1518 § 2, 1985; Ord. 1299 § 2, 1980.]

#### **5.52.030 Exemptions.**

~~All businesses which are subject to the City franchise tax are exempt from the business license fee. Out-of-town businesses which sell advertising or which sell goods, merchandise or other items wholesale to businesses licensed within the City are also exempt from the business license fee.~~

~~All businesses which are subject to specific licensing tax, fee and/or permit provisions of the other chapters of this title are exempt from complying with the provisions of this chapter in addition to the compliance with the provisions of such other chapter(s); provided, that the businesses are in full compliance with the provisions of such other chapter(s); and further provided, that the business involves no activities other than those which are addressed, regulated or provided for in such other chapter(s); provided, that the requirement for a business to obtain a general business license under this chapter does not relieve the business from the requirement to obtain a special license or permit under the other chapters of this title, where the business engages in conduct regulated, provided for or addressed in such other chapters.~~

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:

A. 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. [Ord. 2016-18 § 1 (Exh. A), 2016; Ord. 2012-6 § 3, 2012; Ord. 1617, 1967; Ord. 1555, 1986; Ord. 1395 § 1, 1983; Ord. 1299 § 3, 1980.]

**5.52.040 Payment – When – Late – Penalty.**

The business license fees, as set forth in SMC 2.02.020 shall be payable annually in conjunction with the Washington State business license, during the month of January and shall be delinquent if not paid on or before the first day of March of each year; provided, that license fees for new businesses operating within the City shall become delinquent if not paid within two months of the business commencing its operation within the City. For each business whose license fee becomes delinquent, there shall also be charged a late penalty in the additional amount of 50 percent of the business license fee which would otherwise be payable and which penalty shall be in addition to the other remedies and actions available to the City to enforce its ordinance. [Ord. 2016-18 § 1 (Exh. A), 2016; Ord. 1776 § 3, 1992; Ord. 1395 § 3, 1985; Ord. 1299 § 4, 1980.]

**5.52.050 Finance Director – Authority.**

The Finance Director is authorized to institute procedures for ascertaining the number of employees present in all businesses within the City or doing business within the City and to implement these procedures in order to give notice to the businesses in time for them to pay their license fee by January 1st of each year. ~~The Finance Director is further authorized, within his discretion, to waive late penalties for delinquent license applications upon consideration of factors involved therewith, including but not limited to the following:~~

~~A. The length of time involved in the performance of contracts or duties by contractors or persons engaged in similar enterprises dependent upon the award of contracts;~~

~~B. Seasonal or temporary occupations or operations;~~

~~C. Businesses or occupations which are unable to predict or anticipate whether or not the businesses will be in existence at the time the business license fee would otherwise become delinquent; and~~

~~D. Instances where the owner or operator of the business may not have received the business license application or renewal in a timely manner. [Ord. 2016-18 § 1 (Exh. A), 2016; Ord. 1566 § 1, 1986; Ord. 1299 § 5, 1980.]~~

**5.52.060 Separate licenses required – Exceptions.**

Separate licenses shall be obtained for each place of business, or branch thereof, except when such businesses are served by one set of business records or books. It is further provided that when a business moves from one location to another location within the City, the business license shall be reviewed in light of the change of location and shall be subject to approval for code compliance prior to occupancy. [Ord. 2016-18 § 1 (Exh. A), 2016; Ord. 1700 § 1, 1990; Ord. 1299 § 6, 1980.]