

ORDINANCE NO. 2021- 004

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARLINGTON, WASHINGTON, AMENDING PROVISIONS OF TITLE 5 OF THE ARLINGTON MUNICIPAL CODE PERTAINING TO BUSINESS LICENSES

WHEREAS, Washington State law, chapter 19.02 RCW, provides for a centralized, "onestop" process for business licensing known as the Business Licensing Service, administered by the Washington State Department of Revenue; and

WHEREAS, the Washington State Legislature, through enacted legislation, 2017 EHB 2005, codified as chapter 35.90 RCW, has set terms for municipalities to connect to the Business Licensing Service in the administration of their business licensing activities; and

WHEREAS, for the City to contract with the Business Licensing Service for business licensing services, the City's code must be revised; and

WHEREAS, the Arlington City Council has considered this matter during a regularly and duly called public meeting of said Council, and believes adoption of this ordinance to be in the best interests of the citizens of Arlington;

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

SECTION 1. Arlington Municipal Code Section 5.04.070 shall be and hereby is amended to read as follows:

5.04.070 - License required.

It is unlawful for any person to engage in business as a peddler/solicitor in the city without first obtaining a city of Arlington peddler/solicitor license for each person selling on behalf of the business. Any peddler/solicitor as defined in this chapter shall apply for and receive a city peddler/solicitor license prior to engaging in such activity, unless the peddler/solicitor is exempt as indicated in AMC 5.04.080. The license required by this chapter is separate from and in addition to the business license issued under Chapter 5.28 AMC, which may also be required when applicable.

SECTION 2. Arlington Municipal Code Section 5.12.020 shall be and hereby is amended to read as follows:

5.12.20 - Taxicab operation-Compliance with conditions-License required.

It is unlawful to operate any taxicab upon the streets of Arlington until any person owning or operating said taxicab has first complied with the following conditions:

- (1) Comply with all the laws of the state relating to the operation of taxicabs, and obtain a permit from the director of licenses of the state for the operation of said taxicab;
- (2) File the required bond or liability insurance with the director of licenses of the state, as is now or may hereafter be required by law;
- (3) Have on file with the city clerk of the city a receipt from the insurance company showing payment of the premium upon such bond or liability insurance required to be filed with the director of licenses of the state, together with a copy of such bond;
- (4) Have paid all license fees due to the state or city; providing this section shall not apply to any taxicab entering the city for the purpose of discharging passengers who have entered said taxicab at points outside the corporate limits of the city;
- (5) A person owning or operating any of the vehicles defined in Section 5.12.10 (a) and (c) shall first secure a license to do so from the city clerk, obtained in the following manner:
 - (A) The applicant shall upon blanks provided for the purpose by the city clerk, furnish full information concerning ownership; the number and classification of vehicles to be operated; the name, fictitious or otherwise, under which the applicant intends to operate; and such other information as may be deemed necessary for proper supervision and the public good;
 - (B) If it appears from the information obtained that the applicant has met all of the requirements of this chapter, that the vehicles are equipped with valid state licenses, and that they are properly bonded or insured for the protection of the public as required by the motor vehicle laws of the state, a license may be issued upon payment of the license fee herein provided for in Section 5.12.030;
 - (C) All licenses shall expire one year from the date the same is granted.
- (6) The person, firm or corporation owning or operating such taxicab shall file with the city clerk a true, accurate, and detailed statement of its rates, fares or

charges in current use by such taxicab, and shall also post said rates in a conspicuous place in said taxicab where the same can be readily observed and read by a passenger for hire therein and it is unlawful to charge any higher or greater fare than that set forth in said schedule of rates.

(7) The license required by this chapter is separate from and in addition to the business license issued under Chapter 5.28 AMC, which may also be required when applicable.

(8) The provisions of this chapter shall not apply to motor vehicles operated by any municipal or privately owned nonprofit transit system.

SECTION 3. Arlington Municipal Code Section 5.28.040 shall be and hereby is amended to read as follows:

5.28.40 Definitions.

Except as otherwise expressly declared or clearly apparent from the context in which used, the following definitions shall be applied in construing the provisions of this chapter.

"Business" means all services, activities, occupations, pursuits or professions located and/or performed within the city with the object of pecuniary gain, benefit or advantage to the person, or to another person or class, directly or indirectly, whether part-time or full-time. Each business location shall be deemed a separate business. This definition includes, without limitation, home occupations, peddlers, hawkers, and utility companies. It also includes the activities of businesses that are located outside the city where sales or services are solicited by the physical presence of business representatives inside the city. Businesses that are exempt from this chapter are specified in Section 5.28.060.

"Business Licensing Service" or "BLS" means the office within the Washington State Department of Revenue providing business licensing services to the city.

"City clerk" means the city clerk of the city of Arlington, or his/her designee.

"Engaging in Business" shall have the following meaning:

(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 definition 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" in subsection (1) of this definition. 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.
- (l) 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.

(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.

(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.

(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 (4) of this definition.

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.

"Pecuniary" means of or pertaining to money.

"Person" means one or more persons, corporations, partnerships, associations or other entities, but shall not include employees of persons licensed pursuant to this chapter.

SECTION 4. Arlington Municipal Code Section 5.28.050 shall be and hereby is amended to read as follows:

5.28.050 Business license required.

It is unlawful for any person to conduct, operate, engage in or practice any business within the city, whether his or her office or place of business is located within and/or outside city limits, without having first obtained a business license from the city. A business license or annual renewal is required for a business to operate or to continue to operate during each and every year pursuant to Section 5.28.130 of this chapter. If a person conducts business at more than one location within the city each such location must be licensed separately. If more than one distinct business activity is conducted on single premises, a separate license is required for each separate business conducted, operated, engaged in or practiced. If two or more persons each conduct business at the same premises, each such person must obtain a separate license. All licenses issued pursuant to the provisions of this chapter must be posted in a prominent location at the premises for which it was issued.

SECTION 5. Arlington Municipal Code Section 5.28.060 shall be and hereby is amended to read as follows:

5.28.60 - Exemptions.

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.
- (b) Farmers or gardeners occasionally selling their own unprocessed farm products raised, grown, and sold exclusively upon lands owned or occupied by them;

(c) Garage sales conducted on residential premises in compliance with any provisions of the city's land use code

- (d) Any business which is owned and operated by a person under the age of eighteen years, and which is exempt from federal income tax reporting;
- (e) Any business which operates only as a temporary booth during approved community celebrations and which is approved by the entity which has been authorized to run said celebration.
- (f) Nonprofit activities carried on by religious, charitable, benevolent, fraternal or social organizations, such as are described by 26 USC§ 501(c)(3);
- (g) Any instrumentality of the United States, state of Washington, or political subdivision thereof with respect to the exercise of governmental functions.

SECTION 6. A new Arlington Municipal Code Section 5.28.065 shall be and hereby is adopted to read as follows:

5.28.065 Nonprofit businesses.

Business engaged in within the city by nonprofit organizations, other than those exempted under AMC 5.28.060 (f), must be license as required by this chapter. Provided, however, such a nonprofit organization is exempt from the city business license fee if it submits proof of a federal tax exemption issued by the Internal Revenue Service under a provision of 26 USC § 501(c).

SECTION 7. Arlington Municipal Code Section 5.28.120 shall be and hereby is amended to read as follows:

5.28.120 Application procedure.

Application for a city business license is made through the Business Licensing Service, and must include all information required for each license requested, the total fees due for all licenses, and the application handling fee required by RCW 19.02.075.

- (a) The city clerk may request additional information as may be needed to determine whether an application may be approved, including, but not limited to

if the business premises are to be located on property owned by another person, written evidence of the property owner's consent.

(b) The city clerk shall forward copies of all applications to appropriate city department and divisions. All departments and divisions shall conduct current review of applications and report their approval or denial back to the city clerk within twenty working days of the date the application was received and the city clerk shall act on the license application within twenty-five working days of the same being submitted.

(c) If the city clerk receives a recommendation of denial from any city official because of noncompliance with city regulations or policy, the applicant shall be notified and provided sufficient time (generally two weeks) to amend his/her application so as to comply with the appropriate regulations.

(d) If an application is denied, the reason for denial shall be stated in writing. The applicant shall have a period of ten days after a license denial to appeal the decision to the city's hearing examiner. Upon receiving such an appeal, the hearing examiner shall review the application and any staff recommendations to consider whether or not the license should be issued. The applicant has the right to provide testimony to the hearing examiner prior to his decision. Such review and testimony may be in the form of a meeting, a conference call, or through the submission of written argument, the choice being the applicants. The applicant shall be given not less than seven days advance notice of the review. The decision of the hearing examiner shall be final, subject only to an appeal filed with Snohomish County Superior Court within fourteen days following the date of such decision.

(e) Neither the filing of an application for a license or the renewal thereof, nor any payment of any application or renewal fee, shall authorize a person to engage in or conduct a business until such license has been granted or renewed.

SECTION 8. Arlington Municipal Code Section 5.28.130 shall be and hereby is amended to read as follows:

5.28.130 Term of license and renewals.

(a) A business license issued pursuant to the provisions of this chapter will expire on the date established by the Business Licensing Service (BLS), and must be renewed on or before that date to continue engaging in business in the city.

(b) Applications for renewal of business licenses is made through the BLS and must include all information required to renew each license involved, the total fees due for each license, and the renewal application handling fee required by

(c) The license term and respective fee amount may be prorated as needed to synchronize the license expiration with the expiration of the business account maintained by the BLS.

(d) Failure to complete the license renewal by the expiration date will incur the late renewal penalty fee required by RCW 19.02.085 in addition to all other fees due.

(e) Failure to complete the license renewal within 120 days after the expiration of the license will result in the cancellation of the license and will require submitting an application for a new license to continue to engage in business within the city. The city may require payment of all past due amounts prior to approving the new license.

SECTION 9. Arlington Municipal Code Section 5.28.140 shall be and hereby is amended to read as follows:

5.28.140 Compliance with all other codes when a business changes.

Whenever a business changes in operation, use, number of employees, amount of services (e.g., sewer, water, etc.) it uses, etc., and the changes adversely affect the service or the site's ability to minimize off-site impacts, it is the owner's responsibility to comply with all codes regulating those particular issues. For example, if employees are added, but there is only enough on-site parking for the original number, then more spaces need to be added. Similarly, if a manufacturing process changes such that additional sewage is generated, then additional connection charges may be required. The business owner must report such changes directly to the city as soon as possible. However, the obligation to upgrade a site or service commences with the actual change in the business.

SECTION 10. Arlington Municipal Code Section 5.28.150 shall be and hereby is amended to read as follows:

5.28.150 Fees and penalties.

- (a) The annual city fee for each business license required by this chapter, and each renewal thereof, will be set by resolution of the city council.
- (b) The annual city license fee must accompany the application.
- (c) If pursuant to the provisions of this chapter, the applicant's request for a license is denied, either upon original application or renewal, twenty-five percent of the city fee tendered will be retained by the city as a processing fee and seventy-five percent of the city fee tendered will be refunded to the applicant by the city no later than ninety days following such denial.
- (d) In addition to other penalties specified in this chapter, the city may assess

an additional late payment penalty, as set by resolution of the city council, for late payment of the city license fee. This additional penalty will be assessed by, and is payable directly to the city.

(e) A fee for an appeal of a decision to issue a license, as set by resolution, must be paid by the applicant. Such fee will cover the cost of engaging a hearing examiner and any staff time or other costs incurred by the city in processing said appeal.

SECTION 11. Arlington Municipal Code Section 5.36.040 shall be and hereby is amended to read as follows:

5.36.40 License for business required-Fee.

(a) No public place of amusement, including but not limited to places which offer sexually-oriented adult entertainment, shall be operated or maintained in the city unless the owner or lessee thereof has obtained a license from the city clerk. For places offering sexually-oriented adult entertainment, the required license shall be the adult entertainment premises license as set forth in Section 5.36.070(a). It is unlawful for any entertainer, employee or operator to

knowingly work in or about, or to knowingly perform any service directly related to, the operation of an unlicensed public place of amusement/entertainment.

- (b) The annual fee for such a license shall be five hundred dollars.
- (c) This license expires annually on December 31 and must be renewed by January 1.
- (d) There will be no prorating of the fee.
- (e) The applicant must be eighteen years of age or older.
- (f) The License required by this section is separate from and in addition to the business license issued under Chapter 5.28 AMC, which may also be required when applicable.

SECTION 12. Arlington Municipal Code Section 5.36.050 shall be and hereby is amended to read as follows:

5.36.50 License for managers and entertainers required-Fee.

- (a) No person shall work as a manager or entertainer at a public place of amusement offering sexually-oriented adult entertainment without having first obtained a manager's or entertainer's license from the city clerk pursuant to Section 5.36.070.
- (b) The annual fee for such a license shall be one hundred dollars.

- (c) This license expires annually on December 31 and must be renewed by January 1.
- (d) There will be no prorating of the fee.
- (e) The applicant must be eighteen years of age or older.
- (f) The licenses required by this section are separate from the business license issued under Chapter 5.28 AMC, which may also be required when applicable.

SECTION 13. Arlington Municipal Code Section 5.40.020 shall be and hereby is amended to read as follows:

5.40.020 License-Required-Application.

It is unlawful for any person, firm or corporation engaged in the business of motor vehicle wrecker or towing operator as defined in Section 5.40.010 to tow or otherwise remove motor vehicles from the scene of an accident, disability or impounding, without first obtaining a license pursuant to the provisions of this chapter, by making written application to the city clerk or his/her designee for such license. The license required by this chapter is separate from and in addition to the business license issued under Chapter 5.28 AMC, which may also be required when applicable.

SECTION 14. Arlington Municipal Code Section 5.44.020 shall be and hereby is amended to read as follows:

5.44.020 Permit required.

A special event permit or authorization from the city is required for any event in a park, public place or on private property where it will significantly impact public sidewalks or roadways. Such special event permit shall be in addition to any street or park use, or other regular permits as may be required by ordinance. The permit required by this chapter is separate from and in addition to the business license issued under Chapter 5.28 AMC, which may also be required when applicable.

When such an event will be an exercise of rights protected by the First and Fourteenth Amendments to the United States Constitution, the application shall be processed promptly, without charging a fee for political or religious activities or imposing terms or conditions that infringe constitutional freedoms, and in a manner that respects the liberty of applicants and the public.

A special event permit is not required for the following:

- (1) Parades, athletic events or other special events that occur exclusively on city property and are sponsored or conducted in full by the city of Arlington;
- (2) Funeral and wedding processions;
- (3) Groups required by law to be so assembled;

- (4) Gatherings of thirty or fewer people in a city park, unless merchandise or services are offered for sale or trade;
- (5) Temporary sales conducted by businesses, such as holiday sales, grand opening sales, or anniversary sales;
- (6) Garage sales and rummage sales;
- (7) The exhibition of films or motion pictures;
- (8) Other similar events and activities which do not directly affect or use city services of property.

Any person desiring to sponsor a parade, athletic event or special event shall be encouraged to apply for a special event permit by filing an application with the city at least sixty days prior to the date on which the event is to occur.

Waiver of Application Deadline. Upon a showing of good cause or at the discretion of the city, the city may consider an application that is filed after the filing deadline if there is sufficient time to process and investigate the application and obtain police and other city services for the event. Good cause can be demonstrated by the applicant showing that the circumstance that gave rise to the permit application did not reasonably allow the participants to file within the time prescribed, and the event is for the purpose of exercising rights under the First and/or Fourteenth Amendments of the United States Constitution.

SECTION 15. Arlington Municipal Code Section 5.48.030 shall be and hereby is amended to read as follows:

5.48.30 License required-Application.

(a) It shall be unlawful for any person, firm or corporation to operate or cause to be operated (as described in section 5.48.020(a) within the city limits an ambulance or ambulance service without first being issued a license therefore by the city. It shall also be unlawful for any person, firm or corporation to violate any of the provisions of this chapter. The license required by this chapter is separate from and in addition to the business license issued under Chapter 5.28 AMC, which may also be required when applicable.

(b) It shall be unlawful for any person, firm or corporation (other than the city fire department or other fire districts working on a mutual aid basis or from an E-911 response) to operate or cause to be operated (as described in section 5.48.020(a) emergency ambulance service within the city limits, except as provided in section 5.48.100.

(c) Such license may be obtained by applying therefore at the office of the city finance director on forms provided.

(d) To the extent not inconsistent with other provisions of this chapter, the provisions of chapter 5.28 dealing with general issuance of city licenses, shall be applicable to this chapter and are hereby incorporated herein by this reference.

SECTION 16. Severability. If any one or more sections, subsections, or sentences of this Ordinance are held to be unconstitutional or invalid such decision shall not affect the validity of the remaining portions of this Ordinance and the same shall remain in full force and effect.

SECTION 17. Effective Date. This ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication as provided by law.

PASSED by the City Council and approved by the Mayor this 16th day of February, 2021.

CITY OF ARLINGTON

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Barbara Tolbert, Mayor

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Wendy Van 6er Meersche, City Clerk

APPROVED AS TO FORM:



Steven J. Reiffle, City Attorney

CERTIFICATION OF ORDINANCE

I, Wendy Van Der Meersche, being the duly appointed City Clerk of the City of Arlington, Washington, a municipal corporation, do hereby certify that the following Ordinance No. 2021-004 was approved at the February 16, 2021 City Council meeting.

ORDINANCE NO. 2021-004

"AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARLINGTON, WASHINGTON, AMENDING PROVISIONS OF TITLE 5 OF THE ARLINGTON MUNICIPAL CODE PERTAINING TO BUSINESS LICENSES"

A true and correct copy of the original ordinance is attached.



Wendy Van Der Meersche

Wendy Van Der Meersche
City Clerk for the City of Arlington

Dated this 16th day of February, 2021.