

## Chapter 5.04

### GENERAL PROVISIONS

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**5.04.010** **License code established.** There is established a code for the enforcement of licensing provisions of the city. The procedural aspects of this title apply to all licenses which lack procedural provisions. (Ord. 392 SI (part), 1981.)

**5.04.020** **Scope.**

- A. This title in no way impairs existing provisions of other laws or ordinances. Where this title imposes greater restrictions or obligations than are imposed by existing provisions of law, ordinance, contract or deed, the provisions of this title shall control.
- B. The requirements and provisions of this chapter apply to all licenses issued under this title unless otherwise specified. Unless otherwise indicated, the

requirements for licensing are cumulative. (Ord. 392 SI (part), 1981.)

**5.04.030**

**Definitions.** Words are to be given their usual meaning. The following terms and their derivations shall have the meaning given when used in this title. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

A. "Business"

1. The term "business" or "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 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 "business" or "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.
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, 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).

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.

- B. "City" is the City of Benton City.
- C. "City council" is the city council of the city of Benton City.
- D. "License officer" is, unless otherwise designated, the city clerk-treasurer or his/her designee.
- E. "License" or "licensee" includes the words "permit" or "permittee" and means the privilege or the holder of any privilege, respectively, under this title or other law or ordinance.
- F. "Person" is meant to include individual natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts or corporations.
- G. "Premises" is meant to include all lands, structures, places, the equipment and appurtenances connected or used in any business, and any personal property or fixture used in connection with any business. (Ord. 990, Dec. 2018; Ord. 392 SI (part), 1981.)

**5.04.040** **Compliance required.** It is unlawful for any person, either directly or indirectly, to conduct any business, nonprofit enterprise, or do any act for which a license or permit is required, without a license or permit therefor being first procured and kept in effect. (Ord. 392 SI (part), 1981.)

**5.04.050** **Agents responsible.** Agents or other representatives who are doing business in this city are responsible for the compliance of their principals and of the businesses they represent. (Ord. 392 SI (part), 1981.)

**5.04.060** **Exemptions.**

- A. The provisions of this title apply to all persons whether acting for profit, charitable purpose or otherwise, unless expressly exempted.
- B. Whenever a person is exempt from the provisions of the title, it shall be his duty, if requested to comply, to demonstrate that he is entitled to the

exemption claims.

- C. In criminal proceedings for violation of this title, the person charged shall have the burden of coming forth with sufficient evidence to show that he is exempt. So much evidence as will raise a reasonable doubt is sufficient for a finding of not guilty. (Ord. 392 S1 (part), 1981.)

**5.04.070** **City license officer--Authority.** Unless otherwise provided, the city clerk shall issue all licenses under this title upon proper application and receipt of the required fee. In all cases the license office may:

- A. Make Rules. Promulgate and enforce all reasonable rules and regulations for the operation and enforcement of this title.
- B. Adopt Forms. Adopt all forms and prescribe the information to be given.
- C. Require Affidavits. Require applicants to submit affidavits and oaths.
- D. Obtain Endorsement. Submit all applications, in a proper case to interested city officials for their endorsement or inspection.
- E. Investigate. Investigate the eligibility of any applicant for a license; and the business of any licensee to determine compliance.
- F. Examine Records. Examine the books and records of any applicant or licensee when reasonably necessary. (Ord. 392 SI (part), 1981.)

**5.04.080** **City license officer--Public disclosure.**

- A. The license officer shall keep all information furnished or secured under the authority of this title in strict confidence. The information shall not be subject to public inspection and shall be kept so that the contents do not become known except to persons charged with the administration of this title or other public officers and agents in the course of their official business.
- B. So much of the information as appears on the face of the license, or as required by the Public Records Act or similar legislation, is public record and subject to disclosure. The license officer will index every license according to the items of information appearing on the face of the license. (Ord. 392 S1 (part), 1981.)

**5.04.090** **Category A licenses.** Category A licenses include ordinary vocations and businesses pursued on private property by private means.

- A. The license officer shall require information necessary to determine the fee imposed, to complete the face of the license as required by Section 5.04.190, and to comply with any other requirement or bond imposed by a particular chapter.
- B. The license officer shall refuse to grant or renew a Category A license only when:
  - 1. The information supplied by the applicant is false.
  - 2. The applicant has not paid the required license fee.

3. The applicant has failed to comply with some term or condition of this title. (Ord. 442, February 1983.)

**5.04.100**

**Category B licenses.** Category B licenses include such activities that require greater regulation such as gambling or liquor traffic, together with such useful occupations as may, under certain circumstances, become a public or private nuisance because offensive or dangerous to safety, health, etc.

- A. The license officer may require, in addition to that information required for Category A license:
  1. Evidence of compliance with other applicable laws or ordinances, as well as the provisions of this chapter relating to the particular license.
  2. Evidence of any required bond or certificate of insurance.
  3. Information regarding the past criminal record of the applicant and those officers and agents who will be engaged in the performance of the licensed conduct.
- B. The license officer will make a reasonable investigation to determine if the license should be issued or renewed.
- C. The license officer will refuse to grant a license for any reason that he would refuse to grant a Category A license, or whenever:
  1. He has a reasonable belief that the applicant is not entitled to the license because of failure to comply with some term or condition thereof.
  2. A written affidavit is filed with the license officer under the provisions of Section 5.04.230 and the proceedings have not been resolved in favor of the applicant.
  3. The applicant has failed to supply all information lawfully required by the license officer.
  4. The applicant has committed a crime which disqualifies him under a particular ordinance or chapter of this title. (Ord. 442, February 1983.)

**5.04.110**

**Category C licenses.** Category C licenses include claims of a private right in, or the extraordinary use of, public property such as streets and parks.

- A. The license officer shall require, in addition to that information required for a Category A license:
  1. Evidence of compliance with other applicable laws or ordinances as well as the provisions of the chapter relating to the particular license.
  2. Evidence of any required bond or certificate of insurance.
  3. Information regarding the past criminal record of the applicant and those officers and agents who will be engaged in the performance of the licensed conduct.
- B. The license officer shall make a reasonable investigation to determine if the license should be issued or renewed.

- C. The license officer shall refuse to grant a license for any reason that he could refuse to grant a Category B license. (Ord. 442, February 1983.)

**5.04.120** **Formal application required.** Every person required to procure a license shall submit his application to the license officer unless otherwise provided. The application shall:

- A. Be a written statement upon forms provided by the license officer.
- B. Require the disclosure of all information necessary for compliance with Section 5.04.090.
- C. Unless otherwise provided, be approved or disapproved within fifteen days. (Ord. 392 S1 (part), 1981.)

**5.04.130** **Fee payment.**

- A. Prior to issuance of a license, the applicant shall pay the required fee to the license officer.
- B. Persons or Businesses Exempt from License Fee.
  - 1. Tax exempt and charitable organizations shall be exempt from payment of the license fee.
  - 2. For purposes of the license by this title, 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 submit a business license registration to the license officer or designee at no cost. The threshold does not apply to regulatory license requirements or activities that require a specialized permit. (Ord. 990, Dec. 2018; Ord. 392 S1 (part), 1981.)

**5.04.140** **Renewal procedure.** The applicant for the renewal of a license shall submit an application to the license officer. The application shall:

- A. Be a written statement upon forms provided by the city license officer.
- B. Require information concerning the applicant's business during the preceding licensing period reasonably necessary to determine his eligibility for a renewal license and the computation of license fees. (Ord. 392 S1 (part), 1981.)

**5.04.150** **Duplicate procedure.** A duplicate license shall be issued for one dollar to replace any license which has been lost, stolen, defaced, or destroyed. (Ord. 392 SI (part) 1981.)

**5.04.160** **Supplemental license procedure.** When a licensee places himself in a new status under this title, a new business license application must be submitted per Section 5.04.120. (Ord. 946, Sept. 2015; Ord. 392 S1 (part), 1981.)

**5.04.170** **Issuance denial--Reapplication.** When the issuance of a license is denied and any action is instituted to compel its issuance, the applicant shall not engage in the activity for which the license was refused until a license is

issued to him. Reapplications may not be made within six months unless a deficiency is corrected sooner. (Ord. 392 SI (part), 1981.)

**5.04.180** **Outside corporate limits.** All shows, exhibitions and lawful games located within one mile of the corporate limits shall pay the same fee that would be required if they are located within the corporate limits of the city. Shows, exhibitions and lawful games include but are not limited to the following: billiard and pool halls, bowling alleys, circuses, professional boxing and wrestling exhibitions, shooting galleries, skating rinks, dance halls tent shows, theaters, and vaudeville and touring shows. (Ord. 392 SI (part), 1981.)

**5.04.190** **Contents of license.** Each license shall state upon its face:

- A. The name of the licensee or other name under which the activity is to be conducted.
- B. The kind and address of the activity licensed.
- C. The date of expiration.
- D. Any other information required by a particular chapter. (Ord. 392 SI (part), 1981.)

**5.04.200** **Investigations.** Investigation of Category A licensee is limited to the examination of required books and records and violation of this title. Investigation of Category B and C licensees is limited to examination of required books and records, inspection of the premises to insure compliance with this title and compliance with public safety requirements, and investigation of complaints alleging violations of the municipal ordinance or state law. All investigations shall be during business hours except when after-hours operations are suspected, in which case the investigation shall be limited to that subject and shall be conducted so as not to unreasonably interfere with business or intrude upon unlicensed activity. All other investigations shall be by consent or warrant. Failure of a licensee to allow an inspection when authorized is grounds for suspending or revoking any license. (Ord. 702, March 2000; Ord. 392 SI (part), 1981.)

**5.04.210** **General standards of conduct.** Every licensee shall:

- A. Not permit his activity to become a nuisance.
- B. Ascertain and comply with all laws and regulations applicable to his license activity.
- C. Avoid all forbidden, improper or unnecessary practices or conditions which do or may affect the public health, morals or welfare.
- D. Not conduct the licensed activity after expiration of his license and during any period his license is revoked or suspended, and pay all penalty assessments within ten days. (Ord. 392 SI (part), 1981.)

**5.04.220** **Display of license.** Every licensee shall:

- A. Post and maintain his license upon the licensed premises in a place where it may be seen at all times.

- B. Carry his license on his person when he has no licensed business premises, and display it upon demand to any police officer.
- C. Affix any license on the outside of any machine or device so that it may be seen at all times.
- D. Not allow any license to remain posted, displayed, or used after the period for which it was issued has expired or when it has been suspended or revoked or for any other reason become ineffective. The licensee shall promptly return any inoperative license, special permit or insignia to the license officer.
- E. Not loan, sell, give or assign, except as authorized, any license or insignia which has been issued to him. (Ord. 392 SI (part), 1981.)

**5.04.230      Inspectors.**

- A. The following persons are authorized inspectors:
  - 1. License Officer. The license officer shall make all investigations reasonably necessary for the enforcement of this title.
  - 2. Police Officers. All police officers may investigate activities to enforce compliance with this title.
- B. Authority of Inspectors. Inspectors shall have the authority to take all reasonable measures for the enforcement of this title, and they shall be entitled to the assistance of all other city agencies in that enforcement. The license officer may seek the assistance of any governmental agency or the process of any court to enforce this title.
- C. Reports by Inspectors. Inspectors will report all violations of this title or of other laws or ordinances to the license officer.
- D. Duty of City Agencies. When any agency of city government discovers that a licensee is creating a nuisance or is in continuing violation of a municipal ordinance, or that the premises upon which any licensee conducts any activity for which the license was issued is in violation of municipal ordinance, that agency will notify the license officer of the violation of affidavit, the affidavit shall be sufficient cause for a suspension of the license, or refusal to renew the same. (Ord. 392 SI (part), 1981.)

**5.04.240      Provisional order.** When an inspector has reported the violation of his title of any law or ordinance, the license officer will issue to the affected person a provisional order to comply or a notice of violation.

- A. Nature of Notice. The provisional order, and all other notices issued under this title, shall be in writing and shall be served either personally or by certified mail. In the absence of the licensee, a copy of the notice shall be affixed to some structure on the premises, and a copy mailed to the last known address of the licensee.
- B. Period for Compliance. The provisional order or notice shall require compliance within ten days of service.

- C. Application for Hearing. Upon written application by the person affected before the expiration of the period for compliance, the license officer shall order a hearing. Notice of hearing shall be given the affected person in the manner prescribed above. (Ord. 392 SI (part), 1981.)

**5.04.250** **Right to hearing.** Any licensee or applicant aggrieved by any determination, ruling, assessment, etc., may within ten days after the action, petition for and receive a hearing. The decision after hearing shall have the effect of a final order. (Ord. 392 SI (part), 1981.)

**5.04.260** **Final order.** A provisional order or decision made upon a hearing shall be a final order ten days after service.

- A. Authority of License Officer. The license officer shall have the authority to suspend, revoke or refuse to issue any license and otherwise enforce this title upon a final order.
- B. Effect of Revocation or Suspension. Upon revocation or suspension, no refund of any portion of the license fee shall be made, and the licensee shall immediately cease all licensed activity. (Ord. 392 SI (part), 1981.)

**5.04.270** **Right of appeal.** Any person aggrieved by any decision of the license officer after hearing shall have the right to appeal to the mayor.

- A. Contents of Appeal. The appeal shall set out the order or decision appealed from and shall include a statement of the facts relied upon to avoid the order.
- B. Notification of License Officer. At the time of filing any appeal, a copy shall be filed with the license officer.
- C. Hearing. The mayor shall fix a time and place for hearing the appeal and shall serve a written notice upon the appellant and the license officer, who shall be entitled to appear and defend his order.
- D. Hearing Officer. The mayor shall appoint a hearing officer for each appeal. The hearing officer shall not be the license officer nor any employee under his control nor his immediate superior. If the appellant has objection to the hearing officer appointed, he shall notify the mayor of the reason for his objection before the date of hearing. The mayor shall consider the objection, and if he finds it unfounded, he shall so state in writing for the record.
- E. Effect of Decision. The findings of the hearing officer shall be final and conclusive, unless the appellant petitions the Superior Court within twenty days for such relief as he may be entitled. (Ord. 392 SI (part), 1981.)

**5.04.280** **Record of proceedings.** A record shall be made of all proceedings including any finding of facts and decision. The record shall be retained for at least one year after the matter is final. (Ord. 392 S1(part), 1981.)

**5.04.290** **Expiration/Late Fees.** All licenses shall be for the year ending January 31<sup>st</sup>, unless otherwise stated. All persons engaged in business shall procure their license to operate before the first day of March. A late payment fee shall be added to each annual license fee not paid by March 1<sup>st</sup> of the current year,

with said late fees to be set by the most current resolution entitled "City Fee Schedule." Businesses who fail to renew their license before April 1<sup>st</sup> of the current year will be required to apply for a new business license. (Ord. 946, Sept. 2015; Ord. 619, April 1995.)

**5.04.300** **Existing licenses.** Every present licensee and any other person whose activities will be licensed under this title shall be treated as licensed under this chapter. Renewal licenses shall be required on or before the expiration date as established by this title, but otherwise the term of this title and regulations adopted by the license officer shall be in force on the effective date or when adopted. (Ord. 392 SI (part), 1981.)

**5.04.310** **Violation--Penalty.** Any person who violates any provision of this title relating to a Category A license shall be guilty of a misdemeanor. Any person who violates the provisions of this title relating to a Category B or Category C license or regardless of class of license gives false information to the license officer shall be guilty of a gross misdemeanor. Each violation committed or each day a violation is permitted to continue constitutes a separate offense. (Ord. 702, March 2000; Ord. 392 SI (part), 1981.)