

First Reading: December 4, 2018

Second Reading: December 18, 2018

ORDINANCE NO. 990

**AN ORDINANCE OF THE CITY OF BENTON CITY,
WASHINGTON, AMENDING SECTION 5.04.030
"DEFINITIONS", SECTION 5.04.130 "FEE PAYMENT",
AND SECTION 5.04.150 "DUPLICATE PROCEDURE"**

WHEREAS, the City of Benton City imposes a general business license requirement in Chapter 5.04 of the Benton City Municipal Code; and

WHEREAS, the Washington State Legislature's EHB 2005 requires all cities and towns that impose a general business license requirement to adopt the mandatory provisions of the model ordinance by January 1, 2019; and

WHEREAS, EHB 2005 considers as a mandatory provision the definition of "engaging in business within the city" for purposes of delineating the circumstances under which a general business license is required; and

WHEREAS, EHB 2005 also considers as a mandatory provision a uniform minimum licensing threshold, and that a person that is under the uniform minimum licensing threshold obtain a city registration with no fee due to the city; NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, DO
ORDAIN AS FOLLOWS:**

Section 1. That Section 5.04.030 entitled "Definitions" of the Benton City Municipal Code shall be and hereby is amended and shall read as follows:

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" includes all kinds of activities and matters, together with the devices, machines, vehicles and appurtenances used therein, which are conducted in this city or anywhere else within its jurisdiction.~~

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. 392 SI (part), 1981.)

Section 2. That Section 5.04.130 entitled "Fee payment" of the Benton City Municipal Code shall be and hereby is amended and shall read as follows:

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. 392 S1 (part), 1981.)

Section 3. That Section 5.04.150 entitled "Duplicate procedure" of the Benton City Municipal Code shall be and hereby is amended and shall read as follows:

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. Persons or businesses described in Section 5.04.130(B) are exempt from the one dollar fee of this Section. (Ord. 392 S1 (part) 1981.)

Section 4. This Ordinance shall take full force and effect five (5) days after its approval, passage and publication as required by law.

PASSED by the City Council of the City of Benton City, Washington, and approved as provided by law this 18 day of December, 2018.



Linda Lehman, Mayor

Attest:



Stephanie Haug, MMC
City Clerk/Treasurer

Approved as to Form:



Kerr Law Group
City Attorney