

Attachment A
Business Licensing Revised Ordinance Draft

CODE ORDINANCE

CITY OF REDMOND
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, AMENDING SECTIONS 5.04.030, 5.04.045, 5.04.070, 5.04.080 AND 5.04.130 TO ADOPT A MODEL BUSINESS LICENSE ORDINANCE WITH A DEFINITION OF ENGAGING IN BUSINESS AND A MINIMUM THRESHOLD EXEMPTION TO ESTABLISH WHEN OUT-OF-TOWN BUSINESSES ARE REQUIRED TO PAY A LICENSE FEE; UPDATING THE LIST OF MASTER EVENT AND EXEMPTED SPECIAL EVENTS FOR THE CITY OF REDMOND; UPDATING THE FEE FOR EXPIRED APPLICATIONS AND REPLACING WELLHEAD PROTECTION ZONES WITH CRITICAL AQUIFER RECHARGE AREA I AND II; INCREASING THE BUSINESS LICENSE FEE; AND UPDATING EXEMPTIONS BASED ON CHANGES TO TITLE 48 RCW CHAPTER 17 AND HOUSE BILL 2005

WHEREAS, the 2017 State Legislature passed Engrossed House Bill (EMB) 2005, now codified as Chapter 35.90 RCW, requiring Washington Cities and Towns with business licenses to create a model business license ordinance with a minimum threshold and a definition of "engaging in business"; and

WHEREAS, the City staff reviewed the business licensing process and procedures set forth in RMC Chapter 5 Business Licenses and Regulations; and

WHEREAS, the City Council reasonably believes that the adoption of this ordinance is in furtherance of the health, safety, and welfare of the citizens of the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City Code.

Section 2. Amendment of Section. RMC Chapter 5.04.030, Definitions, is hereby amended to read as follows:

5.04.030 Definitions.

Where used in this chapter or title, the following words and terms shall have the meanings as defined in this section, unless, from the context, a more limited or different meaning is clearly defined or apparent:

(A) "Business" includes all activities, occupations, pursuits, or professions located or engaged within the city with the object of gain, benefit or advantage to the person engaging in the same, or to any other person or class, directly or indirectly;

(B) "Business license" is that document issued by the city licensing the transaction of the indicated business by the person whose name appears thereon for the stated year. For the purpose of this chapter, an original or officially issued duplicate shall constitute a valid "business license" for every purpose;

(C) "Employee" means any person who performs work, labor, or services for a business and is on the business' payroll. For the purpose of this chapter, the term "employee" also includes all full-time, part-time, and temporary employees or workers on the business' payroll, and self-employed persons, sole proprietors, owners, managers, partners, any family members working at the business, and any officers, agents or personal representatives acting in a fiduciary capacity;

~~(D) ["ENGAGING IN BUSINESS" MEANS COMMENCING, CONDUCTING OR CONTINUING IN ANY BUSINESS WITHIN THE CITY, WHETHER OR NOT AN OFFICE OR PHYSICAL LOCATION FOR THE BUSINESS LIES WITHIN THE CITY. ENGAGING IN BUSINESS INCLUDES THE PERFORMANCE OF WORK OR SERVICES BY CONTRACTORS, CONSULTANTS, REPRESENTATIVES, AGENTS~~

~~OR OTHER PERSONS WITHIN THE CITY, EVEN THOUGH THE OFFICE LOCATION OF THE CONTRACTOR, CONSULTANT, REPRESENTATIVE, AGENT OR OTHER PERSON IS NOT WITHIN THE CITY LIMITS; THE EXERCISE OF CORPORATE OR FRANCHISE POWERS, AS WELL AS THE LIQUIDATION OF A BUSINESS WHEN THE LIQUIDATORS HOLD THEMSELVES OUT TO THE PUBLIC AS CONDUCTING SUCH BUSINESS; AND FURNISHING TEMPORARY EMPLOYEES AND/OR WORKERS TO OTHER BUSINESSES;]~~ "Engaging in business"

(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 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" 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) 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.

(E) "Finance director" or "director" means the City of Redmond Finance Director or his/her designee;

(F) "Person" includes the singular and the plural and also means and includes any person, firm, corporation, association, club, partnership, society or any group of individuals acting as a unit;

(G) "City" means the City of Redmond, Washington;
and

(H) "Year" means a calendar year.

Section 3. Amendment of Section. RMC Chapter 5.04.045,
Master Event Business License, is hereby amended to read as
follows:

5.04.045 Master event business license.

(A) Any person organizing, promoting, sponsoring,
or conducting any arts or crafts fair, farmer's
market, trade show, or other similar event which:

(1) Does not exceed seven days in duration
and does not occur more than once in any calendar
year; or

(2) Does not exceed two days in duration
during any calendar week and does not operate for more
than six months in any calendar year, at which
multiple dealers or vendors will be present selling
goods or services at a single location, may obtain a
master event business license as provided in this
section. The master event business license shall cover
all dealers and vendors involved in the event and
individual dealers and vendors participating in the
event shall not be required to obtain separate

business licenses in connection with their participation.

(B) The city may also obtain a master event business license for the following city-sponsored community events for which an admission fee is charged: Friday performance arts events, summer music series, [~~SPECIAL ENTERTAINMENT LUNCHES,~~] **Special Monthly Events at the Redmond Senior Center,** [~~TRASH OR TREASURE~~], the father/daughter dance, the mother/daughter tea, Big Truck Day, [~~COMMUNITY SWAP MEET/FLEA MARKET~~], Redmond Senior Center Talent Shows, and the Spring/Fall Farm School Activities. Additional city-sponsored community events for which an admission fee is charged may be added to this list with approval of the event-sponsoring department and the Finance Director.

(C) Applicants for a master event business license shall be required to meet all requirements of this chapter for issuance of a business license and shall be required to pay all fees and taxes imposed by this chapter on behalf of themselves and all dealers and vendors covered by the master event business license.

(D) Holders of master event business licenses shall be required to provide the Finance Director with a list of all participating dealers and vendors at least ten days prior to the event. The list shall include the dealer or vendor's name, address, telephone number, and state UBI number. Only those dealers and vendors set forth on the list are covered under the master event business license.

(E) Nothing in this section is intended to prevent the city from requiring other permits or approvals in connection with an event covered by this section, including but not limited to any necessary building and zoning approvals, and any necessary right-of-way use permits.

Section 4. Amendment of Section. RMC Chapter 5.04.070, Procedures for Issuance of License, is hereby amended to read as follows:

5.04.070 Procedures for issuance of license.

(A) Formal Application Required. Every person required to procure a license under the provisions of this chapter shall submit an application for such license to the finance director. The application shall be made upon forms provided by the finance director.

(1) Determination of whether a business license application is complete for purposes of issuing a business license shall be made by the finance director.

(2) An application for a business license shall be deemed to be abandoned 90 days after the date of application, unless such application has been pursued in good faith or a license has been issued. Expired applications shall forfeit a minimum of [~~\$109.00~~] \$xxx.00 in [~~2017~~] 2019 and [~~\$112.00~~] \$xxx.00 in [~~2018~~] 2020 of the new application fee.

(B) Commencement of Business Activities. No person shall be entitled or authorized to engage in business within the city until such time as the finance director has approved the issuance of a business license pursuant to the terms of this chapter. The acceptance of a business license application by the city shall not be deemed to grant any right or privilege under this chapter, except as otherwise provided by law.

(C) Burden on Applicant. The finance director, or other designated officer, is authorized, but not required, to mail to persons engaging in business forms for applications and/or renewals for licenses, but

failure of the person to receive any such form shall not excuse the person from making application for and securing the license required by this chapter.

(D) New License Applications Meet the Requirement for Hazardous Materials Questionnaire Submittal. Applications for new business licenses, including home businesses, and mobile businesses operating within the boundaries of [~~WELLHEAD PROTECTION ZONES 1, 2, OR 3~~] **Critical Aquifer Recharge Area I and II,** shall be reviewed by the City of Redmond Director of Public Works, or his or her designee for regulatory status related to hazardous materials handling and may require submittal of additional information related to hazardous materials handling. Applications for business license renewals may require submittal of additional information related to hazardous materials handling, by the City of Redmond Director of Public Works, or his or her designee, in accordance with the requirements under Chapter 13.07, Wellhead Protection.

Section 5. Amendment of Section. RMC Chapter 5.04.080, Fees - Payment, is hereby amended to read as follows:

5.04.080 Fees - Payment.

(A) Reporting by Hours Method. The annual business license fee is calculated by determining the number of employee hours worked in the City of Redmond during the previous year and then multiplying that figure by [~~\$0.056770~~ IN 2017] **\$0.XXXXXX IN 2019**. The City shall allocate [~~\$45.00~~] **\$XX.00** out of each [~~\$109.00~~] **\$XXX.00** received to the general fund and [~~\$64.00~~] **\$XX.00** out of each [~~\$109.00~~] **\$XXX.00** received to transportation capital improvements or transportation demand management projects in [~~2017~~] **2019**. The annual business license fee in [~~2018~~] **2020** is calculated by determining the number of employee hours worked in the City of Redmond during the previous year and then multiplying that figure by [~~0.058333~~] **\$0.XXXXXX**. The City shall allocate [~~\$48.00~~] **\$XX.00** out of each [~~\$112.00~~] **\$XXX.00** received to the general fund and [~~\$64.00~~] **\$XX.00** out of each [~~\$112.00~~] **\$XXX.00** received to transportation capital improvements or transportation demand management projects.

(1) *Repealed by Ord. 2546.*

(2) *Repealed by Ord. 2546.*

(3) Annual employee hours are calculated based on the sum of the four quarterly reports submitted

to the Washington State Department of Labor and Industries for the previous year.

(4) It shall be the responsibility of the employer to determine the number of hours worked within the city from these reports. Businesses that did not file quarterly reports with the Washington State Department of Labor and Industries shall determine the number of hours worked within the city and demonstrate, if required, to the satisfaction of the finance director, that the number of employee hours worked is correct.

(5) Employers without a full year history would need to estimate the number of employee hours that will be worked in the current calendar year.

(6) *Repealed by Ord. 2839.*

(7) *Repealed by Ord. 2839.*

(B) Reporting by FTE Method. A business may choose to calculate its annual license fee based on the number of its full-time equivalent employees. Using this method the annual business license fee is calculated by multiplying the number of full-time equivalent employees

during the previous year by [~~\$109.00~~] \$xxx.00 in [2017] 2019 and [~~\$112.00~~] \$xxx.00 in [2018] 2020. The City shall allocate [~~\$45.00~~] \$xx.00 out of each [~~\$109.00~~] \$xxx.00 received to the general fund and [~~\$64.00~~] \$xx.00 out of each [~~\$109.00~~] \$xxx.00 received to transportation capital improvements or transportation demand management projects in [2017] 2019. In [2018] 2020, the City shall allocate [~~\$48.00~~] \$xx.00 out of each [~~\$112.00~~] \$xxx.00 received to the general fund and [~~\$64.00~~] \$xx.00 out of each [~~\$112.00~~] \$xxx.00 received to transportation capital improvements or transportation demand management projects.

(1) *Repealed by Ord. 2546.*

(2) *Repealed by Ord. 2546.*

(3) *Repealed by Ord. 2546.*

(4) *Repealed by Ord. 2546.*

(5) *Repealed by Ord. 2546.*

(6) The number of full-time equivalent employees shall be based on the sum of the full-time employees in the four quarterly reports submitted to the

Washington State Department of Labor and Industries for the previous year divided by four.

(7) It shall be the responsibility of the employer to determine the number of full-time equivalent employees working within the city from these reports. Businesses that did not file quarterly reports with the Washington State Department of Labor and Industries shall determine the number of full-time equivalent employees working in the city and demonstrate, if required, to the satisfaction of the finance director, that the number of full-time equivalent employees is correct.

(8) For businesses with employees who work less than 1,920 hours per year (the work hour figure used by the Washington Department of Labor and Industries) the total number of hours worked by all such employees during the four quarters of the previous year shall be added together and divided by 1,920 to determine the full-time employee equivalency.

(9) Employers without a full year history would need to estimate the number of full-time

equivalent employees that will work in the city for the current calendar year.

(10) *Repealed by Ord. 2839.*

(11) *Repealed by Ord. 2839.*

(C) If at any time during the year it appears that the number of employee hours worked or if using the FTE method the number of employees was under-reported at the time of application or renewal, an additional license fee and a penalty on the additional license fee shall be due. The penalty shall be equal to twenty percent (20%) per annum of the additional fee, plus any accounting, legal, or administrative expenses incurred by the city in determining the under-reporting or in collecting the tax and penalty.

(D) The license fee for a business required to be licensed under this chapter and not located within the city's corporate limits shall be calculated based upon the number of employee hours worked or the number of full-time equivalent employees within the city, but in no event shall the license fee be less than the minimum fee set forth in this chapter.

(E) Businesses doing business in the city that have no employees physically working within the city shall pay the minimum license fee required under this chapter.

(F) The minimum fee for any license issued under this chapter shall be [~~\$109.00~~] \$xxx.00 in [2017] 2019 and [~~\$112.00~~] \$xxx.00 in [2018] 2020.

(1) Exemptions. The following entities may claim an exemption from the license or renewal fee, but if exempt under this subsection such entities shall register under this chapter.

(a) Any entity exempt from taxation under 26 U.S.C. Sec. 501(c)(3), upon furnishing proof to the finance director of its nonprofit status.

(b) Governmental entities that engage solely in activities which are not exclusively governmental, such as some activities of a hospital or medical clinic.

(c) A nonprofit business operated exclusively for a religious purpose that files with the city a copy of its current IRS 501(C)(3) exemption certificate issued by the Internal Revenue Service.

(d) Civic groups, service clubs, and social organizations that are not engaged in any profession, trade, or occupation, but are organized to provide civic, service or social activities in the city. Examples of such organizations may include but are not limited to: Soroptimists; Kiwanis; Lions; Rotary; American Legion; children's and adults' athletic organizations; and similar types of groups, clubs or organizations.

(e) For purposes of the license by this chapter, 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 Director or designee. The threshold does not apply to regulatory license requirements or activities that require a specialized permit.

(G) The annual license fee shall become due and payable on January 1st of each calendar year. The business license fee shall not be prorated for any part of any year.

(H) A licensee may request that the city refund that portion of the annual business license overpaid on the basis that the business miscounted the number of employee hours worked or the number of employees. The request must be in writing and the city must receive the request and all supporting payroll documentation no later than 60 days after the end of the licensee's fiscal year in which the error was made. If the finance director is satisfied that the business paid an excess business license fee, then the city will refund the excess fee paid by the business during either the current calendar year or one prior calendar year.

(I) Payment made by check shall not be deemed a payment of the fee unless and until the same has been honored in the usual course of business, nor shall acceptance of any such check operate as an acquittance or discharge of the fee unless and until the check is honored. Any person who submits a business license fee payment by check to the city pursuant to the provisions of this chapter shall be assessed a NSF fee set by the finance director if the check is returned unpaid by a bank or other financial institution for insufficient funds in the account or for any other reason.

(J) If any person required by the terms and provisions of this chapter to pay a license fee for any period fails or refuses to do so, he shall not be granted a license for the current period until the delinquent license fee, together with penalties, has been paid in full. Any license fee due and unpaid under this chapter and any penalties thereon shall constitute a debt to the city and may be collected in court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

Section 6. Amendment of Section. RMC Chapter 5.04.130, Exemptions, is hereby amended to read as follows:

5.04.130 Exemptions.

(A) The provisions of this chapter shall not apply to:

(1) Any instrumentality of the United States, the State of Washington, or political subdivision thereof with respect to the exercise of governmental functions;

(2) Any farmer, gardener, or other person who sells, delivers or peddles any fruits, vegetables, berries, butter, eggs, fish, milk, poultry, meat or any

farm produce or edibles raised, caught, produced or manufactured by such person in the state;

(3) *Repealed by Ord. 2546;*

(4) Any apartment or condominium, residential rental or leasing activity which does not involve more than four residential units at any one location within the city;

(5) Any [~~INSURERS OR THEIR AGENTS, AS THOSE TERMS ARE DEFINED IN RCW 48.01.050 AND 48.17.010, RESPECTIVELY,~~] **insurance producer** who represent insurance companies or sell insurance to the public and are properly licensed by the state. [~~PROVIDED, HOWEVER, THAT THIS EXEMPTION SHALL NOT APPLY TO INSURANCE BROKERS OR SOLICITORS, AS SAID TERMS ARE DEFINED IN RCW 48.17.020 AND 48.17.030, RESPECTIVELY~~];

(6) Newspaper carriers under the age of 18;

(7) Any person, business, enterprise, firm, or corporation which the city is forbidden to license or tax under state or federal law;

(8) Businesses that do not engage in other business activities within the city limits but are merely complying with destination-based sourcing rules

as outlined in the National Streamlined Sales Tax (SST) Agreement; or

(9) Community special events that are sponsored by the city and that are open to the public without the payment of an admission fee are exempt from the requirement to obtain a business license. In addition, no business license shall be required for dealers, vendors, entertainers, instructors, and others with whom the city or any co-sponsor contracts to provide goods or services at the event. As used in this subsection, "community special event" means the following events sponsored or co-sponsored by the City: Derby Days, Redmond Lights, [~~EGGSTRAVAGANZA,~~] the Digital Arts Festival, the Arts in the Park Series, the Community Lecture Series, Pet Fair, [~~BRIDAL FAIR,~~] the Spring Garden Fair, the Holiday Craft Market, [~~HEALTHY, WEALTHY AND WISE~~] Health Fair, [~~SCULPTURE GARDEN, GREAT DAY OF PLAY,~~] Redmond Bike Bash, City of Redmond Poet Laureate, So Bazaar Night Market and the Redmond Senior Center Outdoor Music Series.

Additional city-sponsored community special events that are open to the public without the payment of an admission fee may be added to this list with

approval of the event-sponsoring department and the Finance Director. The City Council will be notified of changes to the list of free city-sponsored community events.

(10) 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.

(11) 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 (10).

Section 7. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 8. Effective date. This ordinance shall become effective five days after its publication, or publication of a summary thereof, in the city's official newspaper, or as otherwise provided by law.

ADOPTED by the Redmond City Council this _____ day of _____, 2018.

CITY OF REDMOND

JOHN MARCHIONE, MAYOR

ATTEST:

MICHELLE M. HART, MMC, CITY CLERK

(SEAL)

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

JAMES HANEY, CITY ATTORNEY

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
SIGNED BY THE MAYOR:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.