

ORDINANCE # 571

AN ORDINANCE RELATING TO BUSINESS LICENSES AND REGULATIONS; PRESCRIBING PENALTIES FOR THE VIOLATION THEREOF; AND REPEALING ORDINANCES #402 AND #526

WHEREAS: The Town Council of Yacolt, Washington, is in regular session this 3rd day of December, 2018; and

WHEREAS, each member of the Town Council has had notice of time, place and purpose of said meeting; and

WHEREAS, The Town Council desires to repeal the Town of Yacolt's Business License Ordinances, Ordinance # 402 and Ordinance # 526.

WHEREAS, ESHB 2005, enacted by the 2017 Legislature, requires local governments to review their business license regulations to address entities with certain limited business connections to a jurisdiction, but no physical presence or contact; and

WHEREAS, the State of Washington operates a cooperative Business Licensing Service on behalf of local governments in the state as a centralized business license registration and fee collection service for local governments, which can facilitate business registration for out-of-state business entities wishing to conduct business in jurisdictions throughout the state; and

WHEREAS, The Town of Yacolt has the authority pursuant to RCW 35.27.370(14) to impose fines, penalties and forfeitures for any and all violations of ordinances, and to provide that violations of ordinances constitute a civil violation subject to monetary penalty, but no act which is a state crime may be made a civil violation; and

WHEREAS, The Town of Yacolt has the authority pursuant to RCW 35.27.370(9) to license, for purpose of regulation and revenue, all kind of businesses, authorized by law and transacted or carried on in the Town;

WHEREAS, The Town Council is of the opinion that it would be in the best interest for the Town to adopt this Ordinance; and

NOW THEREFORE, be it ordained by the Town Council of Yacolt, Washington, as follows:

SECTION 1: Repeal Ordinances # 402 and # 526.

Ordinances # 402, adopted October 16, 2000 and Ordinance # 526, adopted January 20, 2015, are hereby repealed in their entirety.

Section 2: Adoption.

The provisions set forth in Exhibit A attached hereto and incorporated herein by reference are adopted by the Town of Yacolt Town Council

SECTION 3: Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by a court of competent jurisdiction, the remaining portion of this Ordinance shall remain in full force and effect.

APPROVED AND ADOPTED This 3rd day of December, 2018, upon publication of the following summary, according to law.

Town of Yacolt – Summary of Ordinance # 571

The Town Council of the Town of Yacolt adopted Ordinance # 571 at its regularly scheduled Town Council meeting held on December 3rd, 2018. The content of the Ordinance is summarized in its title as follows:

AN ORDINANCE RELATING TO BUSINESS LICENSES AND REGULATIONS; PRESCRIBING PENALTIES FOR THE VIOLATION THEREOF; AND REPEALING ORDINANCES #402 AND #526.

A copy of the full text of the Ordinance will be mailed upon request to the undersigned at the Town of Yacolt Town Hall, P.O. Box 160, Yacolt, WA 98675: (360) 686-3922.

Published this 19 Day of December, 2018.

Dawn Salisbury, Town Clerk

PASSED by the Town Council of the Town of Yacolt, Washington, at a regular meeting thereof this 3rd^h day of December, 2018.

TOWN OF YACOLT



Vince Myers, Mayor

Attest:



Dawn Salisbury, Clerk

Ayes: Boget, Bryant, Noble, Rowe-Tice
Nays: 0
Absent: Moseley
Abstain: 0

TOWN CLERK'S CERTIFICATION

I hereby certify that the foregoing Ordinance is a true and correct copy of Ordinance # 571 of the Town of Yacolt, Washington, entitled AN ORDINANCE RELATING TO BUSINESS LICENSES AND REGULATIONS; PRESCRIBING PENALTIES FOR THE VIOLATION THEREOF; AND REPEALING ORDINANCES #402 AND #526 as approved according to the law by the Town Council on the date therein mentioned. The Ordinance has been published or posted according to law.

Attest:



Dawn Salisbury, Clerk

Published: 12-19-18

Effective Date: December 3rd, 2018

Ordinance Number: 571

Exhibit A

Business Licenses

SECTION 1: Exercise of revenue license power.

For the Town of Yacolt to carry out its duties delegated to it by the laws of Washington State, maintenance of current information with respect to business, trade, service, commercial and professional activities carried on within the Town is necessary and essential for the protection of public health, safety and welfare.

SECTION 2: Definitions.

In construing the provisions of this chapter, except when otherwise declared or clearly apparent from context, the following definitions shall be applied:

A. "Canvasser" means any person, whether a resident of the Town or not, who goes from house to house, from place to place, or from street to street, soliciting or taking or attempting to take orders for the sale of goods, wares or merchandise, including magazines, books, periodicals, or personal property of any nature whatsoever for future delivery, or for service to be performed in the future, whether or not the individual has carries, or exposes for sale an example of such subject of such orders. Such definition shall include any person who for himself, or for another person, firm or corporation, hires, leases or occupies any building, motor vehicle, trailer, structure, apartment, shop, or other place within the Town for the primary purpose of exhibiting samples and taking orders for future delivery.

B. "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.

1. This section sets forth examples of activities that constitute engaging in business in the Town, and establish safe harbors for certain of those activities so that a person who meets certain criteria may engage in de minimus business activities in the Town 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 this subsection. If an activity is not listed, whether it constitutes engaging in business in the Town shall be determined by considering all the facts and circumstances and applicable law.
2. Without being all inclusive, any one of the following activities conducted within the Town 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, using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the Town.
- b. Owning, renting, leasing, using, or maintaining an office, place of business, or other establishment in the Town.
- c. Soliciting sales.
- d. Making repairs or providing maintenance or service to real or tangible 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, construction, 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 pesticide 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 listing of homes and maintaining real property.
- k. Rendering personal services such as those provided by accountants, architects, attorneys, auctioneers, 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, 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 Town, 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 or delivery of goods took place.
- p. Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

3. The Town expressly intends that engaging in business include any activity sufficient to establish nexus for the purpose of applying the license fee under the law and 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.

C. "Hawker" means every person, either as principal or agent, selling or offering for sale any goods, wares, or merchandise, articles, things, or personal property of whatsoever nature or description, by peddling the same from house to house, upon any street, highway, or public place, who shall make public outcry or give any musical or other public entertainment or make any public speech to draw customers or attract notice is hereby defined to be a hawker.

D. "Peddler" means any person, whether a resident of the Town or not, who goes from house to house, from place to place, or from street to street, conveying or transporting goods, wares or merchandise, or offering or exposing the same for sale, or making sales and delivering articles to purchasers.

E. "Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, company, firm, co-partnership, joint venture company, joint stock company, business trust, corporation, association, or any group of individuals acting as a unit. It shall not include clubs, fraternities or any other type of association of a benevolent, charitable, religious or fraternal nature, nor shall it include any public or private school or members of associations thereof.

F. "Taxpayer" includes any individual, group of individuals, corporations or associations required to have a business license hereunder, or liable for any license fee, or for the collection of any license fee hereunder or who engages in any business, or who performs any act, service, or labor receiving wages, salary, commissions or other compensation having monetary value.

G. "Town" means Town of Yacolt.

H. "Transient Merchant" means any person, firm or corporation whether as owner, agent, consignee, or whether a resident of the Town of Yacolt or not, who engages in a temporary business of selling, delivering goods, wares and merchandise within said Town, and who in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, trailer, tent, apartments, shops, or any street, alley, or other place within the town for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction provided that such definition shall not be construed to include any person, firm, or corporation who while occupying such temporary location, does not sell from stock, but exhibits examples for the purpose of securing orders for future delivery only. The person, firm or corporation so engaged shall not be relieved from complying with the provisions of this ordinance merely by reason of associating temporarily with any local dealer, trader, merchant,

or auctioneer, or by conducting such transient business in connection with, as part of, or in the name of any local dealer, trader, merchant, or auctioneer.

I. Words in the singular shall include the plural, and the plural shall include the singular. Words in one gender shall include all other genders.

SECTION 3: Exemptions.

The provisions of this ordinance shall not apply to:

- A. Persons selling personal property at wholesale to dealers;
- B. Newspaper delivery people;
- C. Merchant or their employees delivering goods in the regular course of business;
- D. Persons conducting garage sales;
- E. Sales or solicitations conducted by a charitable, religious, patriotic or philanthropic organization; provided, however, that such organization, association or corporation shall furnish all of its members, agents and representatives conducting solicitation credentials, stating the name of the organization, the name of the agent and the purpose of the solicitation.
- F. 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 section:
 - 1. 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 \$2,000.00, and who does not maintain a place of business within the Town, shall be exempt from the general business license requirements in this section. The exemption does not apply to regulatory license requirements or activities that require a specialized permit.
 - 2. If a person, or its employees, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the Town 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 Town.
- e. Conducting advertising through the mail.
- f. Soliciting sales by phone from a location outside the Town.

3. A seller located outside the Town merely delivering goods into the Town 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 Town. Such activities do not include those in subsection 2.

SECTION 4: Business license required.

- A. No person shall engage in any retail business or home business activity in the Town without first having obtained, and being the holder of, a valid and existing license to do so, to be known as a business license, issued under the provisions of this chapter as hereafter provided, without paying the license fee as set forth in The Town's fee schedule for Business License issuance. Such business licenses issued will expire one (1) year from the date it was issued, and a new business license shall be required for each ensuing year. Business licenses that are continually renewed on or before the anniversary date of the original issuing date shall be charged a renewal fee as set forth in the Town's Fee Schedule for Business License Issuance. A Peddler's licenses shall expire at the end of the day on the date the license was issued and is not renewable. A separate peddler's license is required for each day persons are conducting business. Application for the license shall be made to and issued by the Clerk of the Town.
- B. The license shall be personal and non-transferable. In case the same type of business is transacted under the same business name at two or more separate places by one taxpayer on a permanent basis, a separate license for each place at which business is transacted with the public shall be required, but for such additional license no additional fee shall be required. Each license shall be numbered, shall show the name, place and character of the business of the taxpayer, and such other information as the Clerk of the Town deems necessary, and shall at all times be conspicuously posted in the place of business for which it is issued. If the place of business of the taxpayer is changed, the taxpayer shall return to the Clerk of the Town and a new license shall be issued for the new place of business free of charge.

- C. No person to whom a license has been issued pursuant to this chapter shall suffer or allow any other person for whom a separate license is required to operate under or display such license.

SECTION 5: Additional license fees.

The license fees herein levied shall be additional to any license fee imposed or levied under any law or any other ordinance of the Town except as herein otherwise expressly provided.

SECTION 6: Violations – Penalties.

Any person violating or failing to comply with any of the provisions of this chapter shall be assessed a civil penalty not to exceed five hundred dollars (\$500.00) plus legal fees.

SECTION 7: Method of business license payment.

The license fee payable under this Ordinance shall be paid to the Town Clerk by cash, certified check, cashier's check, personal check, money order or credit card. If payment is made by check, the fee shall not be deemed paid unless the draft or check is honored in the usual course of business; nor shall the acceptance of any sum by the Clerk to be a quittance or discharge of the fee due unless the amount of the payment is the full and actual amount due. The Clerk is authorized, but not required, to mail to persons forms for application for the license, but failure of the person to receive any such forms shall not excuse him from making application for and securing the license required as due under this chapter.

SECTION 8: Sale or transfer of business.

Upon the sale or transfer during any calendar year of a business on account of which a license fee is required by this Ordinance, the original license will be invalid and the purchaser or transferee shall be responsible for obtaining a new license.

SECTION 9: Fee constitutes debt.

Any license fee due and unpaid under this Ordinance, and all penalties thereon, shall constitute a debt to the Town and may be collected by 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 10: License Revocation.

The Town Council may revoke the license issued to any person who is in default of any payment of license fee hereunder, or who shall fail to comply with any provisions of this chapter. Notice of such revocation shall be mailed to the person by the Clerk, and on and after the date thereof any such person who continue to engage in business shall be deemed to be operating without a license and shall be subject to any and all penalties herein provided.

SECTION 11: Notices.

Any notice required by this chapter to be mailed shall be sent by ordinary mail, addressed to the address of the person or taxpayer shown by the records of the Town Clerk, or if no such address is shown, to such address as the Town Clerk is able to ascertain by reasonable effort. Failure of the person or taxpayer to receive such mailed notice shall not release the taxpayer from any license fee or penalties thereon, nor shall such failure to operate to extend any time limit set by the provisions of this chapter.

Exhibit A

Fee Type	Fee Description	2018 Fee
Business License	New or Expired License	\$ 50.00
Business License	Yearly Renewal	\$ 45.00
Peddler's License	Daily (New License for each day)	\$ 5.00