

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: October 8, 2018

AGENDA ITEM:	
Amendments to MMC Chapter 5.02 <i>Business Licenses</i>	
PREPARED BY:	DIRECTOR APPROVAL:
Chris Holland, Planning Manager	
DEPARTMENT:	
Community Development	
ATTACHMENTS:	
<ol style="list-style-type: none"> 1. Final City Business License Model Threshold Fact Sheet 2. Model Business License Threshold – FINAL Version 3. EHB 2005 4. MMC Chapter 5.02 Amendments (redline) 5. Adopting Ordinance 	
BUDGET CODE:	AMOUNT:
SUMMARY:	

In the 2017 Legislative Session, Engrossed House Bill (EHB) 2005 (RCW 35.90) was passed requiring three actions by cities with business licenses and local B&O taxes:

1. Requires cities with business licenses to establish a workgroup to create a model business license with a licensing threshold;
2. Requires all cities with business licenses to administer their business license through the state’s Business Licensing System (BLS);
3. Establish a task force on local B&O tax service appointment under RCW 35.102.130 to report to the Legislature by October 2018.

EHB 2005 includes a mandatory definition of “engaging in business” and a minimum threshold exemption of \$2,000 to establish when out-of-town or transient businesses are required to be licensed.

The attached amendments include a business license exemption for businesses whose gross proceeds of sales, or gross income is equal to or less than \$2,000. This includes both businesses located within the city and businesses that do not maintain a place of business within the city. The amendments also include the required “engaging in business” definition and some general code clean-up.A

Marysville currently administers business licenses through the state’s BLS service. Therefore, the model business threshold revisions are required to be adopted, no later than October 17, 2018.

RECOMMENDED ACTION:
Adopt amendments to MMC Chapter 5.02 <i>Business Licenses</i> as required by Engrossed House Bill 2005.



Final city business license model threshold

Contact: Victoria Lincoln, Andrew Pittelkau, Sheila Gall

Business license and city B&O tax simplification

In the 2017 session, **EHB 2005** (RCW 35.90) passed requiring three actions by cities with business licenses and local B&O taxes. The law:

1. Requires cities with business licenses to establish a workgroup to create a model business license with a licensing threshold by July 2018 for adoption by all business license cities by January 1, 2019;
2. Requires all cities with business license to administer their business license through the state's Business Licensing System (BLS) by 2022 or FileLocal by 2020; and
3. Establishes a task force on local B&O tax service apportionment under RCW 35.102.130 to report to the Legislature by October 2018.

Final model ordinance for local business licenses – minimum threshold

Cities were required to develop a model ordinance for business licensing by July 1, 2018. The ordinance includes a mandatory definition of “engaging in business” and a minimum threshold (or occasional sale) exemption to establish when out-of-town or transient businesses are required to be licensed. All business license cities must adopt it by the end of the year ([RCW 35.90.080](#)).

What is in the model?

The [model threshold](#) has two pieces: a model threshold and a definition of “engaging in business.”

1. The model business license threshold language would:
 - Apply a minimum threshold of \$2,000 per year in the city for businesses that do not have a location in the city;
 - Require a license for businesses with a location in the city without regard to the threshold;
 - Allow cities the option to require registration with no fee for businesses under the threshold; and
 - Only apply to general business licenses, not regulatory licenses or local taxes.
2. The definition of “engaging in business” includes examples of what constitutes business activities in cities that would subject a business to license requirements, as well as those activities that would not. The model language is adapted from the definition that the 45 cities with local B&O taxes have already adopted for the definition of “engaging in business” in the B&O tax model ordinance.

What are the deadlines for all cities with business licenses to adopt the model?

Cities with a business license must adopt the model by January 1, 2019. However, cities that currently partner with the state's Business Licensing Service (BLS) for business licensing administration have a deadline of October 17, 2018, because they must provide BLS 75-day notice of any changes to their business licenses (including this mandatory change).

Where can I learn more about implementing the threshold?

AWC is hosting a webinar to tell you everything you need to know to comply with the mandatory model threshold.

[Prepare to streamline your business license](#)

August 8 at 10 am | Webinar

AWC also held a presentation on this topic at its [Annual Conference](#) in June and will present at the WFOA Annual Conference on September 19 and EWFOA on October 12.

What happens if we don't enact the threshold by the deadline?

RCW 35.90.090 provides that a city cannot enforce its business license after January 1, 2019, until it has adopted the mandatory threshold.

RCW 35.90.090: "A city that has not complied with the requirements of this section by January 1, 2019, may not enforce its general business licensing requirements on any person until the date that the mandatory provisions of the model ordinance take effect within the city."

What if my city wants a higher threshold?

Cities can choose to enact a higher threshold. The \$2,000 threshold level per city per year for out-of-city businesses is the minimum level that every city must enact.

How was the business license threshold developed?

Section 8 of **EHB 2005** required cities to work through the Association of Washington Cities (AWC) to develop a model business license threshold by July 1, 2018 with a focus on determining a threshold for when a license should be required for out-of-city businesses. The bill also required input from the business community.

AWC convened a task force of city business license officials to begin drafting a model license threshold in August 2017. The group met monthly in person or via conference call to research city business license systems and existing options for establishing a model threshold and to review feedback on the proposed model from cities and the business community. AWC sent a survey to cities last fall on preferences for approaching the

model threshold and sent a draft for review to cities in March 2018. In April-June 2018, AWC sent drafts of the model to the business community for comment, and the task force met in person with business community representatives.

In response to business community concerns about the level of the threshold, the committee proposed doubling its initial proposed level to \$2,000 per year in the city for businesses without a location in the city. The committee agreed to review the threshold level in four years when the model B&O tax model ordinance will also be due for review and more information on impacts of the license threshold is known. In late June, the committee finalized the model language.

Business license model threshold implementation timeline

July 2017 – EHB 2005 takes effect

August 2017 – First meeting of city workgroup

July 1, 2018 – Deadline for city work group to develop model ordinance with minimum threshold to get a license

August 8, 2018 – AWC webinar on implementing model threshold

October 17, 2018 – Deadline for current BLS partner cities to adopt model minimum threshold and notify DOR of changes to business license for threshold adoption

(Cities on BLS plan but not yet onboarded would have later deadline of January 1, 2019)

January 1, 2019 – Deadline for all other cities to adopt model minimum threshold

How many cities does this impact?

More than 230 cities issue local business licenses.

Where can I find more information on the Business Licensing Service or FileLocal?

Business licensing service: citypartners.dor.wa.gov

FileLocal: filelocal.org

What about the provision of EHB 2005 and the scope of work for the B&O service apportionment task force?

The two-factor formula for B&O tax service apportionment was required by RCW 35.102.130, effective in 2008. The two factors, payroll and service income, have complicated multi-part tests to determine how much of business service revenues should be apportioned to a city.

EHB 2005 created a seven-member task force to make recommendations to simplify two-factor service apportionment by October 2018 with the following members:

- One Department of Revenue, non-voting chair
- Three cities with local B&O taxes
- Three business representatives

The task force has been meeting monthly since August 2017, and the deadline by which it must submit a report to the Legislature is October 31, 2018. The city representatives are:

- Chris Bothwell, Lake Forest Park
- Joseph Cunha, Seattle
- Danielle Larson, Tacoma

How did this legislation come about?

During the 2016 legislative session, lawmakers passed [HB 2959](#), establishing a task force to evaluate options to continue local business tax and licensing simplification. On December 30, 2016, the task force released its final report on local tax and licensing simplification with four main recommendations. The task force did not recommend that all cities with a business license be required to participate in the state's Business Licensing Service, nor did it recommend any centralized collection of city B&O tax at the state level. However, some of the items recommended represented a significant compromise on the part of cities.

Where can I find more information on the 2016 task force?

The report included four recommendations related to licensing, establishing a business license threshold, recommending a task force on service income apportionment, and providing for data sharing between DOR and FileLocal. Read the [full report](#).

Model Business License Threshold Final Version

June 2018

Model business license threshold options: (cities would adopt one of the options)

1. Threshold Exemption:

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:

- (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 (or higher threshold as determined by city) 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.

2. Threshold with Fee-free License/Registration-only Option:

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 (or higher threshold as determined by city) 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.

[City would list this fee-free license in its business license rates section as \$0 or no fee.]

Engaging in business model definition:

"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) 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.

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 2005

Chapter 209, Laws of 2017

65th Legislature
2017 Regular Session

MUNICIPAL BUSINESS LICENSING--STATE PARTNERSHIP--TAX APPORTIONMENT

EFFECTIVE DATE: 7/23/2017

Passed by the House April 17, 2017
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 12, 2017
Yeas 49 Nays 0

CYRUS HABIB

President of the Senate

Approved May 5, 2017 10:37 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 2005** as passed by House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 5, 2017

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 2005

AS AMENDED BY THE SENATE

Passed Legislature - 2017 Regular Session

State of Washington 65th Legislature 2017 Regular Session

By Representatives Lytton, Nealey, Kagi, and Ormsby

Read first time 02/07/17. Referred to Committee on Finance.

1 AN ACT Relating to improving the business climate in this state
2 by simplifying the administration of municipal general business
3 licenses; adding a new chapter to Title 35 RCW; and creating a new
4 section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

9 (1) "Business licensing service," "business licensing system,"
10 and "business license" have the same meaning as in RCW 19.02.020.

11 (2) "City" means a city, town, or code city.

12 (3) "Department" means the department of revenue.

13 (4) "General business license" means a license, not including a
14 regulatory license or a temporary license, that a city requires all
15 or most businesses to obtain to conduct business within that city.

16 (5) "Partner" means the relationship between a city and the
17 department under which general business licenses are issued and
18 renewed through the business licensing service in accordance with
19 chapter 19.02 RCW.

20 (6) "Regulatory business license" means a license, other than a
21 general business license, required for certain types of businesses

1 that a city has determined warrants additional regulation, such as
2 taxicab or other for-hire vehicle operators, adult entertainment
3 businesses, amusement device operators, massage parlors, debt
4 collectors, door-to-door sales persons, trade-show operators, and
5 home-based businesses.

6 NEW SECTION. **Sec. 2.** (1) Except as otherwise provided in
7 subsection (7) of this section, a city that requires a general
8 business license of any person that engages in business activities
9 within that city must partner with the department to have such
10 license issued, and renewed if the city requires renewal, through the
11 business licensing service in accordance with chapter 19.02 RCW.

12 (a) Except as otherwise provided in subsection (3) of this
13 section, the department must phase in the issuance and renewal of
14 general business licenses of cities that required a general business
15 license as of July 1, 2017, and are not already partnering with the
16 department, as follows:

17 (i) Between January 1, 2018, and December 31, 2021, the
18 department must partner with at least six cities per year;

19 (ii) Between January 1, 2022, and December 31, 2027, the
20 department must partner with the remaining cities; or

21 (iii) Between July 1, 2017 and December 31, 2022, the department
22 must partner with all cities requiring a general business license if
23 specific funding for the purposes of this subsection (iii) is
24 appropriated in the omnibus appropriations act.

25 (b) A city that imposes a general business license requirement
26 and does not partner with the department as of January 1, 2018, may
27 continue to issue and renew its general business licenses until the
28 city partners with the department as provided in subsection (4) of
29 this section.

30 (2)(a) A city that did not require a general business license as
31 of July 1, 2017, but imposes a new general business license
32 requirement after that date must advise the department in writing of
33 its intent to do so at least ninety days before the requirement takes
34 effect.

35 (b) If a city subject to (a) of this subsection (2) imposes a new
36 general business license requirement after July 1, 2017, the
37 department, in its sole discretion, may adjust resources to partner
38 with the imposing city as of the date that the new general business
39 licensing requirement takes effect. If the department cannot

1 reallocate resources, the city may issue and renew its general
2 business license until the department is able to partner with the
3 city.

4 (3) The department may delay assuming the duties of issuing and
5 renewing general business licenses beyond the dates provided in
6 subsection (1)(a) of this section if:

7 (a) Insufficient funds are appropriated for this specific
8 purpose;

9 (b) The department cannot ensure the business licensing system is
10 adequately prepared to handle all general business licenses due to
11 unforeseen circumstances;

12 (c) The department determines that a delay is necessary to ensure
13 that the transition to mandatory department issuance and renewal of
14 general business licenses is as seamless as possible; or

15 (d) The department receives a written notice from a city within
16 sixty days of the date that the city appears on the department's
17 biennial partnership plan, which includes an explanation of the
18 fiscal or technical challenges causing the city to delay joining the
19 system. A delay under this subsection (3)(d) may be for no more than
20 three years.

21 (4)(a) In consultation with affected cities and in accordance
22 with the priorities established in subsection (5) of this section,
23 the department must establish a biennial plan for partnering with
24 cities to assume the issuance and renewal of general business
25 licenses as required by this section. The plan must identify the
26 cities that the department will partner with and the dates targeted
27 for the department to assume the duties of issuing and renewing
28 general business licenses.

29 (b) By January 1, 2018, and January 1st of each even-numbered
30 year thereafter, the department must submit the partnering plan
31 required in (a) of this subsection (4) to the governor; legislative
32 fiscal committees; house local government committee; senate
33 agriculture, water, trade and economic development committee; senate
34 local government committee; affected cities; association of
35 Washington cities; association of Washington business; national
36 federation of independent business; and Washington retail
37 association.

38 (c) The department may, in its sole discretion, alter the plan
39 required in (a) of this subsection (4) with a minimum notice of
40 thirty days to affected cities.

1 (5) When determining the plan to partner with cities for the
2 issuance and renewal of general business licenses as required in
3 subsection (4) of this section, cities that notified the department
4 of their wish to partner with the department before January 1, 2017,
5 must be allowed to partner before other cities.

6 (6) A city that partners with the department for the issuance and
7 renewal of general business licenses through the business licensing
8 service in accordance with chapter 19.02 RCW may not issue and renew
9 those licenses.

10 (7) A city may decline to partner with the department for the
11 issuance and renewal of a general business license as provided in
12 subsection (1) of this section if the city participates in the online
13 local business license and tax filing portal known as "FileLocal" as
14 of July 1, 2020. For the purposes of this subsection (7), a city is
15 considered to be a FileLocal participant as of the date that a
16 business may access FileLocal for purposes of applying for or
17 renewing that city's general business license and reporting and
18 paying that city's local business and occupation taxes. A city that
19 ceases participation in FileLocal after July 1, 2020, must partner
20 with the department for the issuance and renewal of its general
21 business license as provided in subsection (1) of this section.

22 (8) By January 1, 2019, and each January 1st thereafter through
23 January 1, 2028, the department must submit a progress report to the
24 legislature. The report required by this subsection must provide
25 information about the progress of the department's efforts to partner
26 with all cities that impose a general business license requirement
27 and include:

28 (a) A list of cities that have partnered with the department as
29 required in subsection (1) of this section;

30 (b) A list of cities that have not partnered with the department;

31 (c) A list of cities that are scheduled to partner with the
32 department during the upcoming calendar year;

33 (d) A list of cities that have declined to partner with the
34 department as provided in subsection (7) of this section;

35 (e) An explanation of lessons learned and any process
36 efficiencies incorporated by the department;

37 (f) Any recommendations to further simplify the issuance and
38 renewal of general business licenses by the department; and

39 (g) Any other information the department considers relevant.

1 NEW SECTION. **Sec. 3.** (1) A general business license that must
2 be issued and renewed through the business licensing service in
3 accordance with chapter 19.02 RCW is subject to the provisions of
4 this section.

5 (2)(a) A city has broad authority to impose a fee structure as
6 provided by RCW 35.22.280, 35.23.440, and 35A.82.020. However, any
7 fee structure selected by a city must be within the department's
8 technical ability to administer. The department has the sole
9 discretion to determine if it can administer a city's fee structure.

10 (b) If the department is unable to administer a city's fee
11 structure, the city must work with the department to adopt a fee
12 structure that is administrable by the department. If a city fails to
13 comply with this subsection (2)(b), it may not enforce its general
14 business licensing requirements on any person until the effective
15 date of a fee structure that is administrable by the department.

16 (3) A general business license may not be renewed more frequently
17 than once per year except that the department may require a more
18 frequent renewal date as may be necessary to synchronize the renewal
19 date for the general business license with the business's business
20 license expiration date.

21 (4) The business licensing system need not accommodate any
22 monetary penalty imposed by a city for failing to obtain or renew a
23 general business license. The penalty imposed in RCW 19.02.085
24 applies to general business licenses that are not renewed by their
25 expiration date.

26 (5) The department may refuse to administer any provision of a
27 city business license ordinance that is inconsistent with this
28 chapter.

29 NEW SECTION. **Sec. 4.** The department is not authorized to
30 enforce a city's licensing laws except to the extent of issuing or
31 renewing a license in accordance with this chapter and chapter 19.02
32 RCW or refusing to issue a license due to an incomplete application,
33 nonpayment of the appropriate fees as indicated by the license
34 application or renewal application, or the nonpayment of any
35 applicable penalty for late renewal.

36 NEW SECTION. **Sec. 5.** Cities whose general business licenses are
37 issued through the business licensing system retain the authority to
38 set license fees, provide exemptions and thresholds for these

1 licenses, approve or deny license applicants, and take appropriate
2 administrative actions against licensees.

3 NEW SECTION. **Sec. 6.** Cities may not require a person to obtain
4 or renew a general business license unless the person engages in
5 business within its respective city. For the purposes of this
6 section, a person may not be considered to be engaging in business
7 within a city unless the person is subject to the taxing jurisdiction
8 of a city under the standards established for interstate commerce
9 under the commerce clause of the United States Constitution.

10 NEW SECTION. **Sec. 7.** A general business license change enacted
11 by a city whose general business license is issued through the
12 business licensing system takes effect no sooner than seventy-five
13 days after the department receives notice of the change if the change
14 affects in any way who must obtain a license, who is exempt from
15 obtaining a license, or the amount or method of determining any fee
16 for the issuance or renewal of a license.

17 NEW SECTION. **Sec. 8.** (1)(a) The cities, working through the
18 association of Washington cities, must form a model ordinance
19 development committee made up of a representative sampling of cities
20 that impose a general business license requirement. This committee
21 must work through the association of Washington cities to adopt a
22 model ordinance on general business license requirements by July 1,
23 2018. The model ordinance and subsequent amendments developed by the
24 committee must be adopted using a process that includes opportunity
25 for substantial input from business stakeholders and other members of
26 the public. Input must be solicited from statewide business
27 associations and from local chambers of commerce and downtown
28 business associations in cities that require a person that conducts
29 business in the city to obtain a general business license.

30 (b) The department, association of Washington cities, and
31 municipal research and services center must post copies of, or links
32 to, the model ordinance on their internet web sites. Additionally, a
33 city that imposes a general business license requirement must make
34 copies of its general business license ordinance or ordinances
35 available for inspection and copying as provided in chapter 42.56
36 RCW.

1 (c) The definitions in the model ordinance may not be amended
2 more frequently than once every four years, except that the model
3 ordinance may be amended at any time to comply with changes in state
4 law or court decisions. Any amendment to a mandatory provision of the
5 model ordinance must be adopted with the same effective date by all
6 cities.

7 (2) A city that imposes a general business license requirement
8 must adopt the mandatory provisions of the model ordinance by January
9 1, 2019. The following provisions are mandatory:

10 (a) A definition of "engaging in business within the city" for
11 purposes of delineating the circumstances under which a general
12 business license is required;

13 (b) A uniform minimum licensing threshold under which a person
14 would be relieved of the requirement to obtain a city's general
15 business license. A city retains the authority to create a higher
16 threshold for the requirement to obtain a general business license
17 but must not deviate lower than the level required by the model
18 ordinance.

19 (3)(a) A city may require a person that is under the uniform
20 minimum licensing threshold as provided in subsection (2) of this
21 section to obtain a city registration with no fee due to the city.

22 (b) A city that requires a city registration as provided in (a)
23 of this subsection must partner with the department to have such
24 registration issued through the business licensing service in
25 accordance with chapter 19.02 RCW. This subsection (3)(b) does not
26 apply to a city that is excluded from the requirement to partner with
27 the department for the issuance and renewal of general business
28 licenses as provided in section 2 of this act.

29 NEW SECTION. **Sec. 9.** Cities that impose a general business
30 license must adopt the mandatory provisions of the model ordinance as
31 provided in section 8 of this act by January 1, 2019. A city that has
32 not complied with the requirements of this section by January 1,
33 2019, may not enforce its general business licensing requirements on
34 any person until the date that the mandatory provisions of the model
35 ordinance take effect within the city.

36 NEW SECTION. **Sec. 10.** Cities must coordinate with the
37 association of Washington cities to submit a report to the governor;
38 legislative fiscal committees; house local government committee; and

1 the senate agriculture, water, trade and economic development
2 committee by January 1, 2019. The report must:

3 (1) Provide information about the model ordinance adopted by the
4 cities as required in section 8 of this act;

5 (2) Identify cities that have and have not adopted the mandatory
6 provisions of the model ordinance; and

7 (3) Incorporate comments from statewide business organizations
8 concerning the process and substance of the model ordinance.
9 Statewide business organizations must be allowed thirty days to
10 submit comments for inclusion in the report.

11 NEW SECTION. **Sec. 11.** (1) The legislature directs cities,
12 towns, and identified business organizations to partner in
13 recommending changes to simplify the two factor apportionment formula
14 provided in RCW 35.102.130.

15 (2)(a) The local business and occupation tax apportionment task
16 force is established. The task force must consist of the following
17 seven representatives:

18 (i) Three voting representatives selected by the association of
19 Washington cities that are tax managers representing municipalities
20 that impose a local business and occupation tax, including at least
21 one jurisdiction that has performed an audit where apportionment
22 errors were discovered.

23 (ii) Three voting representatives selected by the association of
24 Washington business, including at least one tax practitioner or legal
25 counsel with experience representing business clients during
26 municipal audits that involved apportionment errors or disputes.

27 (iii) One nonvoting representative from the department.

28 (b) The task force may seek input or collaborate with other
29 parties, as it deems necessary. The department must serve as the task
30 force chair and must staff the task force.

31 (c) Beginning in the first month following the effective date of
32 this section, the task force must meet no less frequently than once
33 per month until it reports to the legislature as provided under
34 subsection (3) of this section.

35 (3) By October 31, 2018, the task force established in subsection
36 (2) of this section must prepare a report to the legislature to
37 recommend changes to RCW 35.102.130 and related sections, as needed,
38 to develop a method for assigning gross receipts to a local
39 jurisdiction using a market-based model. The task force must focus on

1 methods that rely on information typically available in commercial
2 transaction receipts and captured by common business recordkeeping
3 systems.

4 (4) The task force terminates January 1, 2019, unless legislation
5 is enacted to extend such termination date.

6 NEW SECTION. **Sec. 12.** Sections 1 through 10 of this act
7 constitute a new chapter in Title 35 RCW.

Passed by the House April 17, 2017.

Passed by the Senate April 12, 2017.

Approved by the Governor May 5, 2017.

Filed in Office of Secretary of State May 5, 2017.

--- END ---

Chapter 5.02 BUSINESS LICENSES

Sections:

5.02.010	Definitions.
5.02.020	Business license required.
<u>5.02.030</u>	<u>Activities that constitute engaging in business.</u>
5.02.030 5.02.040	Exempt businesses.
5.02.040 5.02.050	Application procedure.
5.02.045 5.02.060	Procedures for issuance or denial of license.
5.02.050 5.02.070	Term of license.
5.02.060 5.02.080	Procedure for renewing licenses.
5.02.070 5.02.090	Fees – Penalty.
5.02.080 5.02.100	Ineligible activities.
5.02.090 5.02.110	Standards of conduct.
5.02.100 5.02.120	New location.
5.02.110 5.02.130	Suspension or revocation of licenses.
5.02.111 5.02.140	Summary suspension.
5.02.130 5.02.150	Sale or transfer of business – New license required.
5.02.140 5.02.160	Penalties for violation.

5.02.010 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. This definition includes, without limitation, home occupations, peddlers, hawkers, and the rental of four or more residential dwelling units. It also includes the activities of businesses which are located outside the city where sales or services are solicited by the physical presence of business representatives inside the city, and it includes general and specialty contractors with offices outside the city who do work on property located inside the city. Businesses which are exempt from this chapter are listed in MMC 5.02.030 5.02.040.

“Director” means the means the director of the community development department or his or her designee.

"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. 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. See MMC 5.02.030 for a list of example activities that constitute "engaging in business."

“Person” means one or more natural persons of either sex, corporations, partnerships, associations or other entities capable of having an action at law brought against such entity, but shall not include employees of persons licensed pursuant to this chapter.

5.02.020 Business license required.

It is unlawful for any person to ~~conduct, operate, engage in or practice any business~~ engage in business in the city without having first obtained a business license from the city. If more than one separate business is conducted on a single premises, a separate license shall be

required for each such business. If a business actively operates from more than one location in the city, a separate license shall be required for each location.

5.02.030 Activities that constitute engaging in business.

This section sets forth examples of activities that constitute engaging in business in the City. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business." 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.

(1) 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.

(2) Section 5.02.040 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.

~~5-02-0305.02.040~~ Exempt businesses.

~~The following businesses shall be exempt from the licensing provisions of this chapter~~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:

~~(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. The exemption does not apply to regulatory license requirements or activities that require a specialized permit.~~

~~(2) Nonprofit activities carried on by religious, charitable, benevolent, fraternal or social organizations;~~

~~(3) Public utility companies;~~

~~(4) Any instrumentality of the United States, state of Washington, or political subdivision thereof with respect to the exercise of governmental functions;~~

~~(5) National banks, state banks, trust companies, mutual savings banks, credit unions and building and loan associations, with respect to their banking business, trust business, or savings and loan business;~~

~~(6) Farmers or gardeners selling their own unprocessed farm products raised or grown exclusively upon lands owned or occupied by them;~~

~~(7) Garage sales conducted on residential premises in compliance with the city zoning code;~~

~~(8) Businesses where the sale, or contract for services, occurred on business premises outside of the city, and the only event occurring within the city was the mere delivery of the goods or services to the customer or client;~~

~~(9) Any business which is owned and operated by a person under the age of 18, and which does not generate a net income of more than \$1,500 per year;~~

~~(10) Any business which operates only during the annual Strawberry Festival, and which is authorized by the entity which holds the Strawberry Festival Master Permit;~~

~~(11) Any business which sublets or purchases space from a farmer's market where the sponsor leases property owned by the city of Marysville; provided, the sponsor/lessee shall not be exempt from the business license requirements of this chapter.~~

~~(12) Any person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, that engages in no other activities in or with the City but the following:~~

~~(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.~~

~~(13) 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 (12).~~

~~5-02-0405.02.050~~ Application procedure.

- (1) No business license shall be issued or renewed except upon written application made to the city of Marysville community development department or designated licensing official. Each application shall be signed by the person who intends to conduct, operate or engage in the business for which the license is to be issued, and shall state the nature of the business, its proposed address and telephone number, the names and addresses of all owners of the business (or their registered agent), and such other information as may be required by the city of Marysville community development department or designated licensing official. A nonrefundable application fee, as identified in MMC ~~5.02.070(1)~~5.02.090(1), shall accompany the application. In the event that the license is granted, the application fee shall be credited toward payment of the annual license fee.
- (2) If the applicant is a partnership, the application must be made and signed by one of the partners; if a corporation, by one of the officers thereof; if a foreign corporation, partnership or nonresident individual, by the resident agent or local manager of the corporation, partnership or individual.
- (3) If the business premises are to be located on property owned by another person, the application shall include written evidence of the property owner's consent.
- (4) If the applicant or the business applying for a license is regulated, licensed or certified by any other governmental agency or professional association, the application must include written evidence of good standing with said regulatory authority. In such cases the continuing validity of the city business license shall be conditioned upon compliance with the requirements of the regulatory authority.
- (5) 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.

~~5.02.045~~5.02.060 Procedures for issuance or denial of license.

After receiving a complete application for a business license the city shall follow the following procedures:

- (1) The city of Marysville community development department or designated licensing official shall forward copies of the application to appropriate city officials for their comments regarding compliance with regulations under their jurisdiction. The city of Marysville community development department or designated licensing official shall consider all materials and comments submitted and shall issue or deny the license within 20 working days after the date on which a completed application was filed unless the applicant agrees to an extension of said time period in writing.
- (2) A business license may only be denied by the city of Marysville community development department or designated licensing official on one or more of the following grounds:
 - (a) If the business or the premises on which it is located do not comply with all applicable regulatory codes of the city, the Snohomish health district, and the state of Washington;
 - (b) If the application is incomplete or if it contains any material misrepresentation;
 - (c) If the application does not propose adequate measures for the protection of public health, safety and welfare in terms of pedestrian and vehicular traffic control, security, avoidance of public nuisances and avoidance of consumer fraud;
 - (d) If the person making the application, if licensed, is likely to present a danger to the public health, safety, or welfare by reason of any of the following:
 - (i) The applicant or his or her employee or agent has committed a crime or other violation of law which bears a direct relationship to the conduct of the business under the license issued pursuant to this title. The director may consider any relevant violation of law regardless of whether the same act was charged as a civil infraction or crime or resulted in a finding of committed or conviction or if it is deferred or subject to pretrial

diversion. If an applicant appeals a denial of a license under this subsection, the violation must be proved by a preponderance of the evidence; provided, however, that a finding of not committed on a civil infraction or a verdict of not guilty on a criminal charge precludes use of that act as a basis for a violation under this chapter.

(ii) The applicant has had a similar license revoked or suspended by the city or has had a similar license revoked or suspended by any other jurisdiction or administrative authority.

(iii) The director has reasonable grounds to believe applicant to be dishonest or to desire such license to enable applicant to practice some illegal act or some act injurious to the public health or safety;

(e) If the applicant is not qualified under this chapter or is in violation of this chapter.

(3) If the city of Marysville community development department or designated licensing official denies a license, written notice of said denial, stating the reasons therefor, shall be sent to the applicant within one working day thereafter. The applicant shall have a period of 10 working days after the date of license denial to appeal the same to the city's hearing examiner. Upon receiving written notice of appeal the hearing examiner shall hold a public hearing within 21 days thereafter to consider, de novo, whether to issue or deny the license. The applicant shall be given not less than seven days' advance written notice of the hearing. The decision of the hearing examiner shall be announced at the conclusion of the hearing and shall be final, subject only to a petition for writ of certiorari being filed with the Snohomish County superior court within 14 days following the date of the hearing examiner's decision.

5.02.0505.02.070 Term of license.

All business licenses issued pursuant to the provisions of this chapter shall be valid for a period of one year after the receiving date is stamped on the application at City Hall; all renewals thereafter shall be for a period of one year commencing on the anniversary of said receiving date.

5.02.0605.02.080 Procedure for renewing licenses.

All business licenses issued pursuant to the provisions of this chapter may be renewed by following the procedures specified above for original applications; provided, that application forms for renewals may be abbreviated by only requesting updated or changed information.

5.02.0705.02.090 Fees – Penalty.

(1) The annual fee for each business license required by this chapter, and each renewal thereof, shall be as follows:

- (a) All new businesses: \$65.00;
- (b) Renewals: \$40.00;
- (c) Short-term businesses: \$7.00 per day.

(2) There shall be assessed a late payment penalty of \$20.00 for each 30 days of delinquency after a license fee or renewal fee is due. This penalty shall be added to the license fee.

(3) Any business relocating to another address in the city shall pay an administrative transfer fee of \$5.00 to have its business license reissued to reflect the new address.

5.02.0805.02.100 Ineligible activities.

Notwithstanding any other provisions of this chapter, a license hereunder may not be issued to or held by any person who uses or occupies or proposes to use or occupy any real property or otherwise conducts or proposes to conduct any business in violation of the provisions of any ordinance of the city or the statutes of the state of Washington or any

other applicable law or regulation. The granting of a business license shall not authorize any person to engage in any activity prohibited by a federal, state or local law or regulation.

~~5-02-09~~5.02.110 Standards of conduct.

Every licensee under this chapter shall:

- (1) Permit reasonable inspections of the business premises by governmental authorities for the purpose of enforcing the provisions of this chapter;
- (2) Comply with all federal, state and city statutes, laws, regulations and ordinances relating to the business premises and the conduct of the business thereon;
- (3) Refrain from unfair or deceptive acts or practices, or consumer fraud, in the conduct of the business, and avoid maintaining a public nuisance on the business premises;
- (4) Refrain from operating the business after expiration of a license or during the period that the license may be suspended or revoked.

~~5-02-10~~5.02.120 New location.

A licensee shall have the right to change the location of the licensed business. Prior to such a change, the licensee shall notify the city of Marysville community development department or designated licensing official, in writing, and shall pay the administrative transfer fee specified above.

~~5-02-11~~5.02.130 Suspension or revocation of licenses.

- (1) The director may suspend a business license whenever the licensee, or any manager, officer, director, agent or employee of the licensee, has caused, permitted, or knowingly done any of the following:
 - (a) Failed to keep the building structure or equipment of the licensed premises in compliance with the applicable health, building, fire or safety laws, regulations or ordinances in a way which relates to or affects public health or safety on the business premises;
 - (b) Failed to comply with the standards of conduct specified in this chapter;
 - (c) Whenever the licensee or any manager, officer, director, agent or employee of the licensee engages in or knowingly permits conduct on the licensed premises that violates any federal, state or city law or ordinance;
 - (d) Whenever operation of the business constitutes a public nuisance.

Such suspension shall remain in effect until the conditions causing the suspension are cured and reasonable measures are taken to ensure that the same will not recur, as determined by the director.

- (2) The director may revoke a business license on any one or more of the following grounds:
 - (a) Whenever the city learns that the licensee or any manager, officer, director, agent or employee of the licensee made a material false statement or representation, or failed to disclose any material information to the city, in connection with any application for a business license or any renewal thereof;
 - (b) Whenever the licensee or any manager, officer, director, agent or employee of the licensee fails within a reasonable time to cure a condition that caused a license suspension;
 - (c) Whenever the licensee or any manager, officer, director, agent or employee of the licensee knowingly permits conduct on the licensed premises that violates any federal, state or city law or ordinance;
 - (d) Whenever the licensee or any manager, officer, director, agent or employee of the licensee knowingly engages in unfair or deceptive acts or practices in the conduct of the business;
 - (e) Whenever operation of the business constitutes a public nuisance.

(3) Whenever the director determines that there is probable cause for suspending or revoking a business license, he or she shall notify the licensee of the suspension or revocation and specify the grounds for suspension or revocation. The director will notify a licensee of the suspension or revocation of that person's license by personal service or by mailing. If by mailing, the notice shall be mailed first class and certified mail to the address used in the licensee's license application or current address provided by the license holder in writing. A licensee may, within 10 days from the date that the suspension or revocation notice was delivered or mailed to the licensee, appeal such suspension or revocation by filing a written notice of appeal ("petition") setting forth the grounds therefor with the city clerk. The licensee must provide a copy of the petition to the director and to the city attorney on or before the date the petition is filed with the city clerk. The hearing will be before the hearing examiner and be conducted in accordance with the procedures for adjudicative proceedings under Chapter 34.05 RCW. The hearing examiner shall set a date for hearing the appeal and notify the licensee by mail of the time and place of the hearing. The hearing shall be set no later than 21 days after the receipt of an appeal. After the hearing, the hearing examiner shall enter appropriate findings of fact and conclusions of law, and affirm, modify, or reverse the decision to suspend or revoke the license.

No suspension or revocation of a license or registration shall take effect until 10 days after the mailing or hand delivery of the notice to the licensee. If appeal is taken in accordance with this section, the suspension or revocation shall be stayed pending final action by the hearing examiner. A license that is suspended or revoked must be surrendered to the city on the effective date of such suspension or revocation. The decision of the hearing examiner is final. The licensee or the director may seek review of the decision by the superior court of Washington in and for Snohomish County within 14 days from the date of the decision. The suspension or revocation will be stayed pending final action by the superior court on the petition for review.

No portion of the license fee will be returned to the licensee due to suspension or revocation of the license.

5.02.1115.02.140 Summary suspension.

(1) Where conditions exist that are deemed hazardous to life or property, or where the owner or his or her employee or agent has knowingly permitted a violation of the Uniform Controlled Substances Act, a violation of any law against gambling, a violation of any law against prostitution within the business, or a violation of any law against unlawful public exposure, the director is authorized to immediately stop such hazardous conditions that are in violation of this code, up to and including closing the business operation. Such order and demand may be oral or written. A police officer or code enforcement officer or fire marshal also may order a business to close under this section. The effect of the closure shall be to suspend the owner's business license until such time it is reinstated by the director.

(2) At the time the director notifies the licensee of the summary suspension, either by mail or hand delivery, the director shall also schedule a hearing to be held within three business days from the date of the notice of summary suspension. Where an oral summary suspension is ordered or demanded by another public official, the director will schedule a hearing to be held within three business days from the date of the summary suspension and the licensee will be notified by at least one of the following means: mail, facsimile, email, personal service, or hand delivery. Such notices shall state the time and place of the hearing.

(3) The decision of the director shall be final. The licensee may, within 10 days from the date of the director's decision, appeal such suspension or revocation by filing a written notice of appeal setting forth the grounds therefor with the city clerk. A copy of the notice of appeal must be provided by the licensee to the director and the city attorney on or before

the date it is filed with the city clerk. The hearing examiner will set a date for hearing the appeal and notify the licensee by mail of the time and place of the hearing. After the hearing, the hearing examiner will make appropriate findings of fact and conclusions of law and affirm, modify, or reverse the summary suspension and reinstate the license, and may impose conditions on the continuance of the license.

(4) The decision of the hearing examiner shall be final. The licensee and/or the director may seek review of the decision by the superior court of Washington in and for Snohomish County within 21 days from the date of hearing examiner's decision.

~~5.02.130~~5.02.150 Sale or transfer of business – New license required.

Upon the sale or transfer of any business which is licensed pursuant to this chapter, the license issued to the prior owner shall automatically expire on the date of such sale or transfer and the new owner shall apply for and obtain a new business license prior to engaging in, conducting or operating the business.

~~5.02.140~~5.02.160 Penalties for violation.

(1) ~~(a)~~—Any person, including an employee, who conducts, operates, practices, or engages in a business knowing that the license for that business is suspended or revoked or was denied is guilty of a gross misdemeanor.

~~(b2)~~ Any person, including an employee, who fails to obey an order to close a business under MMC ~~5.02.111~~5.02.140 is guilty of a gross misdemeanor.

~~(23)~~ Other violations of, or failure to comply with, any provision of this chapter shall constitute a commercial violation and any person found to have violated any provision of this chapter is punishable by a penalty as set forth in MMC 4.02.040(3)(g). Each day that a violation continues shall constitute a new and separate violation.

~~(34)~~ The imposition of a penalty for violation of this chapter shall be in addition to any other penalties provided for in any other ordinances of the city or any other ordinances or laws applicable to the violation, and any premises upon which a business is operated in violation of this chapter is hereby declared to be a public nuisance.

~~(45)~~ Any license fee or penalty which is delinquent or unpaid shall constitute a debt to the city and may be collected by a court proceeding in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

~~(56)~~ The city shall not enter into any contract or conduct any trade or commerce with any business which fails to comply with this chapter.

CITY OF MARYSVILLE
Marysville, Washington
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MARYSVILLE, WASHINGTON, REPEALING MARYSVILLE MUNICIPAL CODE 5.02 BUSINESS LICENSES, IN ITS ENTIRETY, AND ADOPTING A NEW MARYSVILLE MUNICIPAL CODE CHAPTER 5.02 BUSINESS LICENSES RELATED TO AMENDMENTS REQUIRED PURSUANT TO ENGROSSED HOUSE BILL 2005.

WHEREAS, in the 2017 Legislative Session, Engrossed House Bill 2005 (RCW 35.90) was adopted as a business license and tax simplification bill; and

WHEREAS, Engrossed House Bill 2005 requires adoption of a model business license threshold, utilization of business licensing portals, such as the state’s Business Licensing Services (BLS) and FileLocal, and B&O tax service apportionment; and

WHEREAS, Marysville currently utilizes the state’s BLS, which requires adoption of the amendments required in Engrossed House Bill 2005, no later than October 17, 2018; and

WHEREAS, at a public meeting on October 8, 2018, the Marysville City Council reviewed and considered repealing MMC Chapter 5.02 *Business Licenses* and adopting a new MMC Chapter 5.02 *Business Licenses*, including revisions required by Engrossed House Bill 2005.

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

Section 1. MMC Chapter 5.02 *Business Licenses* is hereby repealed in its entirety.

Section 2. **Amendment of Municipal Code.** In order to comply with Engrossed House Bill 2005 (RCW 35.90), a new MMC Chapter 5.02 *Business Licenses*, is hereby adopted as outlined in **Exhibit A**, attached hereto.

Section 3. **Severability.** If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

Section 4. **Effective Date.** This ordinance shall become effective five days after the date of its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2018.

CITY OF MARYSVILLE

By: _____
JON NEHRING, MAYOR

Attest:

By: _____
DEPUTY CITY CLERK

Approved as to form:

By: _____
JON WALKER, CITY ATTORNEY

Date of Publication: _____

Effective Date: _____
(5 days after publication)

Exhibit A

Chapter 5.02 BUSINESS LICENSES

Sections:

- 5.02.010 Definitions.
- 5.02.020 Business license required.
- 5.02.030 Activities that constitute engaging in business.
- 5.02.040 Exempt businesses.
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- 5.02.090 Fees – Penalty.
- 5.02.100 Ineligible activities.
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- 5.02.120 New location.
- 5.02.130 Suspension or revocation of licenses.
- 5.02.140 Summary suspension.
- 5.02.150 Sale or transfer of business – New license required.
- 5.02.160 Penalties for violation.

5.02.010 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. This definition includes, without limitation, home occupations, peddlers, hawkers, and the rental of four or more residential dwelling units. It also includes the activities of businesses which are located outside the city where sales or services are solicited by the physical presence of business representatives inside the city, and it includes general and specialty contractors with offices outside the city who do work on property located inside the city. Businesses which are exempt from this chapter are listed in MMC5.02.040.

“Director” means the means the director of the community development department or his or her designee.

"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. 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. See MMC 5.02.030 for a list of example activities that constitute “engaging in business.”

“Person” means one or more natural persons of either sex, corporations, partnerships, associations or other entities capable of having an action at law brought against such entity, but shall not include employees of persons licensed pursuant to this chapter.

5.02.020 Business license required.

It is unlawful for any person to engage in business in the city without having first obtained a business license from the city. If more than one separate business is conducted on a single premises, a separate license shall be required for each such business. If a business actively operates from more than one location in the city, a separate license shall be required for each location.

5.02.030 Activities that constitute engaging in business.

This section sets forth examples of activities that constitute engaging in business in the City. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business." 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.

(1) 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.

(2) Section 5.02.040 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.

5.02.040 Exempt businesses.

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:

(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. The exemption does not apply to regulatory license requirements or activities that require a specialized permit.

(2) Nonprofit activities carried on by religious, charitable, benevolent, fraternal or social organizations;

(3) Public utility companies;

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

(5) National banks, state banks, trust companies, mutual savings banks, credit unions and building and loan associations, with respect to their banking business, trust business, or savings and loan business;

(6) Farmers or gardeners selling their own unprocessed farm products raised or grown exclusively upon lands owned or occupied by them;

(7) Garage sales conducted on residential premises in compliance with the city zoning code;

(8) Any business which operates only during the annual Strawberry Festival, and which is authorized by the entity which holds the Strawberry Festival Master Permit;

(9) Any business which sublets or purchases space from a farmer's market where the sponsor leases property owned by the city of Marysville; provided, the sponsor/lessee shall not be exempt from the business license requirements of this chapter.

(10) Any person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, that engages in no other activities in or with the City but the following:

(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).

5.02.050 Application procedure.

- (1) No business license shall be issued or renewed except upon written application made to the city of Marysville community development department or designated licensing official. Each application shall be signed by the person who intends to conduct, operate or engage in the business for which the license is to be issued, and shall state the nature of the business, its proposed address and telephone number, the names and addresses of all owners of the business (or their registered agent), and such other information as may be required by the city of Marysville community development department or designated licensing official. A nonrefundable application fee, as identified in MMC 5.02.090(1), shall accompany the application. In the event that the license is granted, the application fee shall be credited toward payment of the annual license fee.
- (2) If the applicant is a partnership, the application must be made and signed by one of the partners; if a corporation, by one of the officers thereof; if a foreign corporation, partnership or nonresident individual, by the resident agent or local manager of the corporation, partnership or individual.
- (3) If the business premises are to be located on property owned by another person, the application shall include written evidence of the property owner's consent.
- (4) If the applicant or the business applying for a license is regulated, licensed or certified by any other governmental agency or professional association, the application must include written evidence of good standing with said regulatory authority. In such cases the continuing validity of the city business license shall be conditioned upon compliance with the requirements of the regulatory authority.
- (5) 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.

5.02.060 Procedures for issuance or denial of license.

After receiving a complete application for a business license the city shall follow the following procedures:

- (1) The city of Marysville community development department or designated licensing official shall forward copies of the application to appropriate city officials for their comments regarding compliance with regulations under their jurisdiction. The city of Marysville community development department or designated licensing official shall consider all materials and comments submitted and shall issue or deny the license within 20 working days after the date on which a completed application was filed unless the applicant agrees to an extension of said time period in writing.
- (2) A business license may only be denied by the city of Marysville community development department or designated licensing official on one or more of the following grounds:
 - (a) If the business or the premises on which it is located do not comply with all applicable regulatory codes of the city, the Snohomish health district, and the state of Washington;
 - (b) If the application is incomplete or if it contains any material misrepresentation;
 - (c) If the application does not propose adequate measures for the protection of public health, safety and welfare in terms of pedestrian and vehicular traffic control, security, avoidance of public nuisances and avoidance of consumer fraud;
 - (d) If the person making the application, if licensed, is likely to present a danger to the public health, safety, or welfare by reason of any of the following:
 - (i) The applicant or his or her employee or agent has committed a crime or other violation of law which bears a direct relationship to the conduct of the business under the license issued pursuant to this title. The director may consider any relevant violation of law regardless of whether the same act was charged as a civil infraction or crime

or resulted in a finding of committed or conviction or if it is deferred or subject to pretrial diversion. If an applicant appeals a denial of a license under this subsection, the violation must be proved by a preponderance of the evidence; provided, however, that a finding of not committed on a civil infraction or a verdict of not guilty on a criminal charge precludes use of that act as a basis for a violation under this chapter.

(ii) The applicant has had a similar license revoked or suspended by the city or has had a similar license revoked or suspended by any other jurisdiction or administrative authority.

(iii) The director has reasonable grounds to believe applicant to be dishonest or to desire such license to enable applicant to practice some illegal act or some act injurious to the public health or safety;

(e) If the applicant is not qualified under this chapter or is in violation of this chapter.

(3) If the city of Marysville community development department or designated licensing official denies a license, written notice of said denial, stating the reasons therefor, shall be sent to the applicant within one working day thereafter. The applicant shall have a period of 10 working days after the date of license denial to appeal the same to the city's hearing examiner. Upon receiving written notice of appeal the hearing examiner shall hold a public hearing within 21 days thereafter to consider, de novo, whether to issue or deny the license. The applicant shall be given not less than seven days' advance written notice of the hearing. The decision of the hearing examiner shall be announced at the conclusion of the hearing and shall be final, subject only to a petition for writ of certiorari being filed with the Snohomish County superior court within 14 days following the date of the hearing examiner's decision.

5.02.070 Term of license.

All business licenses issued pursuant to the provisions of this chapter shall be valid for a period of one year after the receiving date is stamped on the application at City Hall; all renewals thereafter shall be for a period of one year commencing on the anniversary of said receiving date.

5.02.080 Procedure for renewing licenses.

All business licenses issued pursuant to the provisions of this chapter may be renewed by following the procedures specified above for original applications; provided, that application forms for renewals may be abbreviated by only requesting updated or changed information.

5.02.090 Fees – Penalty.

(1) The annual fee for each business license required by this chapter, and each renewal thereof, shall be as follows:

- (a) All new businesses: \$65.00;
- (b) Renewals: \$40.00;
- (c) Short-term businesses: \$7.00 per day.

(2) There shall be assessed a late payment penalty of \$20.00 for each 30 days of delinquency after a license fee or renewal fee is due. This penalty shall be added to the license fee.

(3) Any business relocating to another address in the city shall pay an administrative transfer fee of \$5.00 to have its business license reissued to reflect the new address.

5.02.100 Ineligible activities.

Notwithstanding any other provisions of this chapter, a license hereunder may not be issued to or held by any person who uses or occupies or proposes to use or occupy any real property or otherwise conducts or proposes to conduct any business in violation of the provisions of any ordinance of the city or the statutes of the state of Washington or any

other applicable law or regulation. The granting of a business license shall not authorize any person to engage in any activity prohibited by a federal, state or local law or regulation.

5.02.110 Standards of conduct.

Every licensee under this chapter shall:

- (1) Permit reasonable inspections of the business premises by governmental authorities for the purpose of enforcing the provisions of this chapter;
- (2) Comply with all federal, state and city statutes, laws, regulations and ordinances relating to the business premises and the conduct of the business thereon;
- (3) Refrain from unfair or deceptive acts or practices, or consumer fraud, in the conduct of the business, and avoid maintaining a public nuisance on the business premises;
- (4) Refrain from operating the business after expiration of a license or during the period that the license may be suspended or revoked.

5.02.120 New location.

A licensee shall have the right to change the location of the licensed business. Prior to such a change, the licensee shall notify the city of Marysville community development department or designated licensing official, in writing, and shall pay the administrative transfer fee specified above.

5.02.130 Suspension or revocation of licenses.

(1) The director may suspend a business license whenever the licensee, or any manager, officer, director, agent or employee of the licensee, has caused, permitted, or knowingly done any of the following:

- (a) Failed to keep the building structure or equipment of the licensed premises in compliance with the applicable health, building, fire or safety laws, regulations or ordinances in a way which relates to or affects public health or safety on the business premises;
- (b) Failed to comply with the standards of conduct specified in this chapter;
- (c) Whenever the licensee or any manager, officer, director, agent or employee of the licensee engages in or knowingly permits conduct on the licensed premises that violates any federal, state or city law or ordinance;
- (d) Whenever operation of the business constitutes a public nuisance.

Such suspension shall remain in effect until the conditions causing the suspension are cured and reasonable measures are taken to ensure that the same will not recur, as determined by the director.

(2) The director may revoke a business license on any one or more of the following grounds:

- (a) Whenever the city learns that the licensee or any manager, officer, director, agent or employee of the licensee made a material false statement or representation, or failed to disclose any material information to the city, in connection with any application for a business license or any renewal thereof;
- (b) Whenever the licensee or any manager, officer, director, agent or employee of the licensee fails within a reasonable time to cure a condition that caused a license suspension;
- (c) Whenever the licensee or any manager, officer, director, agent or employee of the licensee knowingly permits conduct on the licensed premises that violates any federal, state or city law or ordinance;
- (d) Whenever the licensee or any manager, officer, director, agent or employee of the licensee knowingly engages in unfair or deceptive acts or practices in the conduct of the business;
- (e) Whenever operation of the business constitutes a public nuisance.

(3) Whenever the director determines that there is probable cause for suspending or revoking a business license, he or she shall notify the licensee of the suspension or revocation and specify the grounds for suspension or revocation. The director will notify a licensee of the suspension or revocation of that person's license by personal service or by mailing. If by mailing, the notice shall be mailed first class and certified mail to the address used in the licensee's license application or current address provided by the license holder in writing. A licensee may, within 10 days from the date that the suspension or revocation notice was delivered or mailed to the licensee, appeal such suspension or revocation by filing a written notice of appeal ("petition") setting forth the grounds therefor with the city clerk. The licensee must provide a copy of the petition to the director and to the city attorney on or before the date the petition is filed with the city clerk. The hearing will be before the hearing examiner and be conducted in accordance with the procedures for adjudicative proceedings under Chapter 34.05 RCW. The hearing examiner shall set a date for hearing the appeal and notify the licensee by mail of the time and place of the hearing. The hearing shall be set no later than 21 days after the receipt of an appeal. After the hearing, the hearing examiner shall enter appropriate findings of fact and conclusions of law, and affirm, modify, or reverse the decision to suspend or revoke the license.

No suspension or revocation of a license or registration shall take effect until 10 days after the mailing or hand delivery of the notice to the licensee. If appeal is taken in accordance with this section, the suspension or revocation shall be stayed pending final action by the hearing examiner. A license that is suspended or revoked must be surrendered to the city on the effective date of such suspension or revocation. The decision of the hearing examiner is final. The licensee or the director may seek review of the decision by the superior court of Washington in and for Snohomish County within 14 days from the date of the decision. The suspension or revocation will be stayed pending final action by the superior court on the petition for review.

No portion of the license fee will be returned to the licensee due to suspension or revocation of the license.

5.02.140 Summary suspension.

(1) Where conditions exist that are deemed hazardous to life or property, or where the owner or his or her employee or agent has knowingly permitted a violation of the Uniform Controlled Substances Act, a violation of any law against gambling, a violation of any law against prostitution within the business, or a violation of any law against unlawful public exposure, the director is authorized to immediately stop such hazardous conditions that are in violation of this code, up to and including closing the business operation. Such order and demand may be oral or written. A police officer or code enforcement officer or fire marshal also may order a business to close under this section. The effect of the closure shall be to suspend the owner's business license until such time it is reinstated by the director.

(2) At the time the director notifies the licensee of the summary suspension, either by mail or hand delivery, the director shall also schedule a hearing to be held within three business days from the date of the notice of summary suspension. Where an oral summary suspension is ordered or demanded by another public official, the director will schedule a hearing to be held within three business days from the date of the summary suspension and the licensee will be notified by at least one of the following means: mail, facsimile, email, personal service, or hand delivery. Such notices shall state the time and place of the hearing.

(3) The decision of the director shall be final. The licensee may, within 10 days from the date of the director's decision, appeal such suspension or revocation by filing a written notice of appeal setting forth the grounds therefor with the city clerk. A copy of the notice of appeal must be provided by the licensee to the director and the city attorney on or before

the date it is filed with the city clerk. The hearing examiner will set a date for hearing the appeal and notify the licensee by mail of the time and place of the hearing. After the hearing, the hearing examiner will make appropriate findings of fact and conclusions of law and affirm, modify, or reverse the summary suspension and reinstate the license, and may impose conditions on the continuance of the license.

(4) The decision of the hearing examiner shall be final. The licensee and/or the director may seek review of the decision by the superior court of Washington in and for Snohomish County within 21 days from the date of hearing examiner's decision.

5.02.150 Sale or transfer of business – New license required.

Upon the sale or transfer of any business which is licensed pursuant to this chapter, the license issued to the prior owner shall automatically expire on the date of such sale or transfer and the new owner shall apply for and obtain a new business license prior to engaging in, conducting or operating the business.

5.02.160 Penalties for violation.

(1) Any person, including an employee, who conducts, operates, practices, or engages in a business knowing that the license for that business is suspended or revoked or was denied is guilty of a gross misdemeanor.

(2) Any person, including an employee, who fails to obey an order to close a business under MMC 5.02.140 is guilty of a gross misdemeanor.

(3) Other violations of, or failure to comply with, any provision of this chapter shall constitute a commercial violation and any person found to have violated any provision of this chapter is punishable by a penalty as set forth in MMC 4.02.040(3)(g). Each day that a violation continues shall constitute a new and separate violation.

(4) The imposition of a penalty for violation of this chapter shall be in addition to any other penalties provided for in any other ordinances of the city or any other ordinances or laws applicable to the violation, and any premises upon which a business is operated in violation of this chapter is hereby declared to be a public nuisance.

(5) Any license fee or penalty which is delinquent or unpaid shall constitute a debt to the city and may be collected by a court proceeding in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

(6) The city shall not enter into any contract or conduct any trade or commerce with any business which fails to comply with this chapter.