

ORDINANCE NO. 952-2018

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GRANITE FALLS, WASHINGTON ADOPTED UNDER EHB 2005 (RCW 35.90) CONCERNING BUSINESS LICENSING RELATED TO THE DEFINITION OF “ENGAGING IN BUSINESS” AND AN EXEMPTION FOR BUSINESS WITH ANNUAL GROSS REVENUES IN THE CITY OF LESS THAN \$2,000 BY AMENDING GFMC 5.28.020 DEFINITIONS, 5.28.030 LICENSE REQUIRED AND GFMC 5.28.040 EXEMPTIONS.

Recitals

- A. EHB 2005 codified in Chapter 35.90 RCW adopted in 2017 requires amendment of the City’s business licensing code;
- B. Model Code language has been provided to the City.

NOW THEREFORE, it is hereby ordained by the City Council of the City of Granite Falls, Washington as follows:

Section 1 Granite Falls Municipal Code Section 5.28.020 Definitions is hereby amended to read as follows:

5.28.020 Definitions.

For the purpose of this chapter and unless otherwise declared or clearly apparent from the context, the following definitions shall be applied:

“Business” shall include without limitation:

- (1) All activities, occupations, pursuits, sales, services or professions, engaged in or in premises located within the city, with the object of gain, benefit, advantage or profit to the business enterprise or person or to another person or class, directly or indirectly, regardless where their permanent location of business is located;
- (2) The rental and/or leasing of commercial or industrial properties;
- (3) Business activities of nonresident businesses and specifically:
 - (a) Sales or services that are solicited or performed by the physical presence of business representatives within the city;

(b) General and specialty contractors who perform work in or on premises located within the city.

“City” means the city of Granite Falls.

“City clerk” means the city clerk for the city or the clerk’s designee.

“Employee” means any person employed at any business location within the city, and/or any person furnishing and/or performing services within the city, and in addition thereto shall include all persons who are self-employed.

~~“Engage in” or “engaging in” means commencing, conducting or continuing in any business activity including soliciting business within the city or using either a business telephone number or business address within the city. It also includes 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.~~

"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. 3 (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). 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.

“Nonresident business” means any business which is not occupying a fixed place of operation within the city.

“Person” means any individual, partnership, corporation or other entity or group of persons however organized.

“Premises” is meant to include all lands, structures and places, and also any personal property which either is affixed to, or is used in connection with, any such business conducted on such premises.

“Taxpayer” includes any individual, group of individuals, corporation or association required to have a business license hereunder, or liable for any license fee or tax, for the collection of any license fee or tax, for the collection of any business fee or tax hereunder or who engages in any business, or who performs any act, for which a license fee or tax is imposed by this chapter.

Words in the singular number shall include the plural, and the plural shall include the singular. Words of one gender shall include the other gender.

Section 2 Granite Falls Municipal Code Section 5.28.030 License required is hereby amended to read as follows:

5.28.030 License required.

It is unlawful for any person to conduct, operate, engage in or practice any business within the city without first obtaining or maintaining a valid business license issued under the provisions of this chapter.

(A) Single Business – Multiple Locations. If a business actively operates from more than one location in the city, a separate license shall be required for each location; provided, however, warehouses, distributing plants and/or storage yards used in connection with and incidental to a business licensed under the provisions of this chapter shall not be deemed to be a separate place of business. Location of such warehouse, distributing plants and/or storage yard shall be provided to the city clerk, and must comply with the provisions of all applicable city codes, laws and/or regulations.

(B) Single Location – Multiple Nature of Business. If more than one separate business is conducted on a single premises within the city, a separate license shall be required for each business.

(C) Applicability to Subcontractors. All subcontractors shall be subject to this chapter and shall obtain a separate license as provided in this chapter, and they are not privileged to operate under the prime contractor's license.

(D) Firms with Two or More Licensed Members. Whenever a firm is established in any of the various professions in which two or more members of the firm are licensed under state law to practice such profession, a separate license shall be required for each member.

(E) Businesses Located Outside the City Limits. As to any businesses located outside the city *not exempt and engaging in business within* ~~furnishing and performing services within the city~~, a business license shall be required, ~~provided one or more employees of said business perform any part or all of their duties within the city.~~

(F) Neither the filing of an application for a license or the renewal thereof, nor 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.

Section 3 Granite Falls Municipal Code Section 5.28.040 Exemptions is hereby amended to read as follows:

5.28.040 Exemptions.

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

- (A) Nonprofit activities carried on by religious, charitable, educational, benevolent, fraternal or social organizations which have been determined by the Internal Revenue Service of the United States to be exempt from the payment of income tax;
- (B) The performance of governmental or proprietary functions by any instrumentality of the United States, the state of Washington, or any political subdivision thereof;
- (C) Sales by farmers or gardeners of their own farm products raised and grown exclusively upon lands owned or occupied by them within the state;
- (D) Casual or isolated sales, including garage sales conducted on residential premises in compliance with this code;
- (E) The delivery of goods by vehicles to a customer or client by a business where the sale occurred on a business premises outside of the city and the only event occurring within the city is a delivery;
- (F) Taxi, limousine, airporter, or similar service where the business operates from premises located outside the city;
- (G) Sales of goods or services by mail, telephone, Internet or similar means where the seller operates from premises located outside the city and the only event occurring within the city is receipt of such goods and services;
- (H) Provision of Internet or wireless phone services where the provider operates from premises located outside of the city and the only event occurring within the city is receipt of such services.
- (I) *Any person or business whose annual value of products, gross proceeds of sales, or gross income of the business in the city is equal to or less than \$2,000 and who does not*

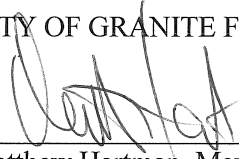
maintain a place of business within the city. The exemption does not apply to regulatory license requirements or activities that require a specialized permit.

Section 4. Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 5. Effective Date. This ordinance shall become effective five days after the date of its publication by summary.

ADOPTED by the City Council and APPROVED by the Mayor this 15th day of August, 2018

CITY OF GRANITE FALLS


Matthew Hartman, Mayor

ATTEST:


Darla Reese, City Clerk

APPROVED AS TO FORM:


Thom H. Graafstra, City Attorney

Date of Publication: August 18, 2018

Effective Date: August 23, 2018