ORDINANCE NO. 709

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AMENDING CHAPTER 5.05 OF THE UNIVERSITY PLACE MUNICIPAL CODE; RELATING TO BUSINESS LICENSES

WHEREAS, in the 2017 Legislative Session, the Washington Legislature passed EHB 2005, which is now codified as RCW 35.90.080; and

WHEREAS, RCW 35.90.080 requires cities with business licenses, which includes the City of University Place, 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; and

WHEREAS, the workgroup has completed its work and has drafted model changes addressing two areas: a model threshold for licensing and a definition of "engaging in business;" and

WHEREAS, it is now appropriate to amend the municipal code to include the revisions to the model business licensing ordinance in light of those provisions.

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

Section 1. Section 5.05.010 University Place Municipal Code entitled, "Definitions, is amended to read as follows:

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed in this section, except where the context clearly indicates a different meaning:

- A. "Business" shall mean and include vocations, occupations, professions, enterprises, and establishments and all other activities and matters conducted for private profit or benefit, either directly or indirectly, anywhere within the City.
- B. "Designee" shall mean the City Manager's designee.

C. "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 this section. 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.
- (I) 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.
- <u>CD</u>. "Person" shall mean any individual, corporation, company, firm, joint stock company, co-partnership, joint venture, trust, business trust, club, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, receiver, administrator, executor, assignee, or trustee in bankruptcy.

<u>DE</u>. "Premises" shall mean and 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.

Section 2. Section 5.05.060 University Place Municipal Code entitled, "Exemptions, is amended to read as follows:

The following shall be exempt from the <u>registration</u>, <u>license and/or license fee</u> provisions of this chapter: A. Casual or isolated sales made by persons who are not engaged in the ongoing business of selling the type of property involved, providing that not more than four such sales events are made during any tax year.

- B. All businesses with gross annual revenues of less than \$12,000.
- C. All businesses which are exempt from tax registration endorsement under WAC 458-20-101(2)(a).
- D. Minors engaged in babysitting, delivery of newspapers, lawn mowing, car washing, and similar activities.
- E. Any instrumentality of the United States, state of Washington, or any political subdivision thereof, with respect to the exercise of governmental functions.
- F. All special events sponsored by the City, but not to include participating commercial vendors.
- G. Nonprofit organizations, including but not limited to religious, civic, charitable, benevolent, nonprofit, cultural or youth organizations.
- H. Any person or business whose annual value of products, gross proceeds of sales, or gross income of the business in the city is equal to or less than \$2,000 and who does not maintain a place of business within the city shall 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.
- I. Any broker, managing broker or designated broker licensed under RCW Chapter 18.85; provided however, that a real estate firm as defined by RCW Chapter 18.85 with gross income exceeding the amount in subsection (H) from activities within the City of University Place, shall be required to obtain a business license under this chapter.
- Section 3. <u>Corrections by City Clerk or Code Reviser</u>. Upon approval of the city attorney, the city clerk or the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.
- Section 4. <u>Severability</u>. If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances shall not be affected.
- Section 5. <u>Effective Date</u>. This Ordinance will be shall be in full force and effect on December 31, 2018.

PASSED BY THE CITY COUNCIL ON OCTOBER 15, 2018.

Kent/Keel, Mayor

ATTEST:

Emelita Genetia, City Clerk

APPROXEDAS TO FORM:

Matthew S. Kaser, City Attorney

Date of Publication: 10/17/18 Effective Date: 12/31/18