

**CITY OF KENMORE
WASHINGTON
ORDINANCE NO. 23-0583**

**AN ORDINANCE OF THE CITY OF KENMORE, WASHINGTON, AMENDING KENMORE
MUNICIPAL CODE SECTIONS 5.105.030, 5.105.040, 5.105.080 and 5.105.090;
RELATING TO BUSINESS REGISTRATION REQUIREMENTS, EXCEPTIONS AND FEES;
AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, in 2013 the City Council adopted Ordinance 13-0356, which established Chapter 5.105 of the Kenmore Municipal Code (KMC), the Kenmore Business Registration Program; and

WHEREAS, in 2018, the Washington State Legislature adopted Chapter 35.90 RCW, which required all cities and towns with general business licensing requirements to adopt uniform “model ordinance” language that identifies what types of commercial activities are and are not subject to business licensing requirements; and

WHEREAS, a state task force was created and formulated the “model ordinance” language that includes the definition of “engaging in business” and a minimum threshold standard for requiring business licenses; and

WHEREAS, the City adopted Ordinance 18-0468, which included the model ordinance language, but increased the exemption threshold from \$2,000 under the model ordinance to \$12,000; and

WHEREAS, in 2020, the City Council adopted Ordinance 20-0511, amending the exemptions under KMC 5.105.040.E and KMC 5.105.040F.1 to be consistent with the model ordinance’s minimum threshold amount of \$2,000, and revised KMC 5.105.090 to remove the renewal late fee which has been determined by staff to be administratively unnecessary; and

WHEREAS, the City Council desires to amend Chapter 5.105 of the Kenmore Municipal Code (KMC), entitled “Kenmore Business Registration Program” to require all businesses located within city limits and entering Kenmore city limits to engage in business, earning revenue, to register their business; and

WHEREAS, the City Council desires to amend KMC Chapter 5.105 to add a no-fee registration for businesses with annual gross revenue at or below a defined threshold dollar amount; and

WHEREAS, the City Council desires to amend KMC Chapter 5.105 to increase the no-fee registration threshold from \$2,000 under the model ordinance to \$12,000; and

WHEREAS, the City Council desires to amend KMC Chapter 5.105 to correct action taken in 2020, in Ordinance No. 20-0511, that removed renewal late fee language, to add similar language back to the Code, as the City has determined that the Department of Revenue does charge a registration renewal late fee. No additional fees will be created; and

WHEREAS, pursuant to RCW 35.90.070, City staff will provide appropriate notice to the Department of Revenue (DOR) of the proposed changes to KMC Chapter 5.105, to be effective January 1, 2024. The statutory 75-day notice required prior to those sections becoming effective is October 18, 2023;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Amendment. Chapter 5.105 of the Kenmore Municipal Code is amended to read as set forth in the attached Exhibit "A", incorporated herein by reference as if set forth in full.

Section 2. Effective Date.

- A. This Ordinance shall be published in the official newspaper of the City.
- B. RCW 35.90.070 requires that any change enacted by the City to the City's Business Registration Program may take effect no sooner than seventy-five (75) days after the Department of Revenue (DOR) receives notice of the change, if the change affects in any way who must obtain a license, who is exempt from obtaining a license, or the amount of or method of determining any fees for the issuance or renewal of a license. Accordingly, this Ordinance shall take effect on January 1, 2024, which date shall be at least seventy-five days after the date on which the City provides notice to DOR of the City's changes to KMC 5.105 in this Ordinance.


PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 24th DAY OF July, 2023.

CITY OF KENMORE


Nigel C. Herbig (Jul 25, 2023 18:03 PDT)

Nigel Herbig, Mayor

ATTEST/AUTHENTICATED:


Anastasiya Warhol (Jul 26, 2023 11:50 PDT)

Anastasiya Warhol, City Clerk

Approved as to form:


[Dawn Reitan \(Jul 25, 2023 11:41 PDT\)](#)
Dawn Reitan, City Attorney

FILED WITH THE CITY CLERK: 07/11/23
PASSED BY THE CITY COUNCIL: 07/24/23
ORDINANCE NO.: 23-0583
DATE OF PUBLICATION: 07/28/23
EFFECTIVE DATE: 01/01/24

EXHIBIT "A" TO ORDINANCE -NO. 23-0583-XXXX

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Chapter 5.105
KENMORE BUSINESS REGISTRATION PROGRAM

Sections:

- 5.105.010 Chapter and purpose.
- 5.105.020 Definitions – General.
- 5.105.025 Engaging in business.
- 5.105.030 Business registration required – Posting.
- 5.105.040 Exceptions – Applicability of provisions.
- 5.105.050 Nonprofit businesses and organizations.
- 5.105.060 Program application and renewal.
- 5.105.070 Registration term or expiration.
- 5.105.080 Fee.
- 5.105.090 Late renewal.
- 5.105.100 Registration denial or revocation.
- 5.105.110 Violation – Civil infraction, enforcement.
- 5.105.120 Rules and rulings.

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5.105.010 Chapter and purpose.

Maintenance of current information with respect to business, trade, service, commercial and professional activities carried on within the City allows the City to carry out the duties and authorities delegated to it by the Washington State Constitution and the laws of the State of Washington as a noncharter code city. Such information can best be accumulated and maintained on a current basis through the establishment of a program for the registration of such business activities. The business registration program ("program") is hereby established to protect the public and promote economic development and not intended to benefit any individual or class. [Ord. 18-0468 § 1 (Exh. A); Ord. 15-0402 § 1 (Att. A); Ord. 13-0356 § 1 (Exh. 1).]

5.105.020 Definitions – General.

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given in this section:

A. "Business," "occupation" or "pursuit" means and includes all activities, occupations, trades, pursuits, professions, and matters located or engaged in within the City with the object of gain,

benefit, or advantage to the applicant for business registration or other *person*, directly or indirectly, whether part-time or full-time, whether resident or nonresident.

B. "City" means the City of Kenmore, Washington.

C. "Engaging in business" is defined in KMC 5.105.025.

D. "Person," "firm," or "corporation," used interchangeably in this chapter, means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, corporation, association, canvasser, peddler, solicitor, society, or any group of individuals acting as a unit, whether mutual cooperative, fraternal, nonprofit or otherwise, and includes the United States or any instrumentality thereof. [Ord. 18-0468 § 1 (Exh. A); Ord. 15-0402 § 1 (Att. A); Ord. 13-0356 § 1 (Exh. 1).]

5.105.025 Engaging in business.

A. For purposes of this Chapter, 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.

B. 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 A. 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.

C. 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.

1. 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.

2. Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City.

3. Soliciting sales.

4. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.

5. 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.

6. Installing, constructing, or supervising installation or construction of, real or tangible personal property.

7. Soliciting, negotiating, or approving franchise, license, or other similar agreements.

8. Collecting current or delinquent accounts.

9. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

10. 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.

11. 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.

12. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

13. 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.

14. Investigating, resolving, or otherwise assisting in resolving customer complaints.

15. 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.

16. Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

D. 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.

1. Meeting with suppliers of goods and services as a customer.

2. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.

3. 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.

4. Renting tangible or intangible property as a customer when the property is not used in the City.

5. 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.

6. Conducting advertising through the mail.

~~7. Soliciting sales by phone from a location outside the City.~~ 7. Soliciting sales by phone from a location outside the City.

E. 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 D.

F. 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.

5.105.030 Business registration required – Posting.

A. Any person engaging in *business, occupation*, or home occupation (see Chapter 18.73 KMC), or pursuit in the City shall register that business with the City’s program. ~~To register under the program, a person must submit an application to the State Department of Revenue and pay the applicable registration fee.~~

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B. This section applies regardless whether a fee is owed for obtaining a business license as provided in this chapter.

CB. A business located within the City must be registered with the program.

D. A business located outside the City, engaging in business within City limits, must be registered with the program.

E. Businesses or business activities subject to rRegulatory license requirements or activities will under KMC 5.10 through KMC 5.100 require a specialized permit (See KMC 5.10 through KMC 5.100).

F. To register under the program, a person must submit an application to the State Department of Revenue’s Business Licensing Service and pay the applicable registration fee.

GC. A business registration shall be posted in a conspicuous location at the place of the business on the premises identified on the license. [Ord. 18-0468 § 1 (Exh. A); Ord. 15-0402 § 1 (Att. A); Ord. 13-0356 § 1 (Exh. 1).]

5.105.040 Exceptions – Applicability of provisions.

This chapter does not apply to:

A. The performance of governmental or proprietary functions by any instrumentality of the United States, the State of Washington, or any political subdivision thereof, including City sponsored civic events.

B. The delivery of goods by vehicle 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.

C. Accredited public or private schools, colleges, or universities, as to their education endeavors only; churches and other religious bodies, as to their religious activities only; political groups and organizations as to their political activities only.

D. Minors, a *person* under the age of 18, engaged in *business* or operating a *business* concern where no other *person* is employed by the minor.

~~E. A business located within the City with an annual gross income of \$2,000 or less.~~

~~F. To the extent set forth in this section, the following persons and businesses shall be exempt from the registration, license and/or license fee requirements as outlined in this 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 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 requirements or activities that require a specialized permit.~~

~~G. Notwithstanding KMC 5.105.040.F, a business that is not located within the City is exempt from this chapter regardless of the annual value of products, gross proceeds of sales, or gross income of the business in the City.~~

~~H. Farmers selling fruit, vegetables, berries, eggs, or any farm produce or edibles raised, gathered, produced or manufactured by such *person*; provided, that nothing herein authorizes any *person* to sell, deliver or peddle any dairy product, meat, poultry, eel, fish, mollusk or shellfish without a license as otherwise required by the State of Washington.~~

~~I. Where preempted by federal or State constitutions or laws. [Ord. 20-0511; Ord. 18-0468 § 1 (Exh. A); Ord. 15-0402 § 1 (Att. A); Ord. 13-0356 § 1 (Exh. 1).]~~

5.105.050 Nonprofit businesses and organizations.

Organizations exempt from taxation under 26 USC 501(c)(3) and (4) must register under the *business* registration program, but shall be exempt from paying the registration fee. This shall not constitute an exemption from all other applicable taxes and fees. Such organization

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must be able to show satisfactory proof of such status to the City. [Ord. 18-0468 § 1 (Exh. A); Ord. 15-0402 § 1 (Att. A); Ord. 13-0356 § 1 (Exh. 1).]

5.105.060 Program application and renewal.

A. A *person* shall register a business with the program by submitting an application to the State Department of Revenue's ~~(with its Business Licensing Service)~~, in coordination with the city manager, giving such information as is deemed reasonably necessary to enable the enforcement of this chapter. ~~Businesses that are not required to be registered because they do not exceed the annual gross income threshold may be voluntarily registered with the program, in the same manner set forth in KMC 5.105.030.~~

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B. Only one registration is necessary if a business is located at two or more separate locations within the City, if the same *business* name and type of *business* is operated at the separate locations in the City.

C. If more than one *business* is conducted or operated on premises, a separate business registration shall be required for each *business* that meets the requirements for business registration. Each *business* owner must separately register a business with the program.

D. A *business* registration is nontransferable. A *person* engaged in *business* within the City shall notify the *city manager* and State Department of Revenue of a change of *business* location within 30 days of the location change or by the next registration renewal date, whichever date occurs first.

E. A *person* who has registered a business under the City's program shall renew the registration on an annual basis, in the same manner as the original application for registration including payment of fees.

F. A *person* engaged in business within the City must comply with all applicable City ordinances and code provisions, and State and federal laws. [Ord. 18-0468 § 1 (Exh. A); Ord. 15-0402 § 1 (Att. A); Ord. 13-0356 § 1 (Exh. 1).]

5.105.070 Registration term or expiration.

Business registration shall be valid for a term of 12 months, and shall expire on the date determined by the Department of Revenue, in coordination with the City. [Ord. 18-0468 § 1 (Exh. A); Ord. 15-0402 § 1 (Att. A); Ord. 13-0356 § 1 (Exh. 1).]

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5.105.080 Fee.

A. The fee to register with the City's program, or renew such registration, shall be as set forth in a fee resolution adopted by the city council.

B. ~~From July 1, 2013, to December 31, 2013, p~~Program registration fees may be prorated to coincide with the Washington State Department of Revenue's ~~(its Business Licensing Service)~~ registration term of 12 months. The prorated fee shall be as set forth in a fee resolution adopted by the city council. Thereafter, all registration fees shall be the full amount identified in subsection A of this section.

C. Any person or business, whether located inside or outside City limits, whose annual value of products, gross proceeds of sales, or gross income of the business in the City is equal to or less than \$12,000, shall apply for a no-fee business license registration.

D. Any person or business, whether located inside or outside City limits, whose annual value of products, gross proceeds of sales, or gross income of the business in the City is over \$12,000, shall apply for a regular, home occupation, non-profit or non-resident business license and pay the applicable fee as set forth by a fee resolution adopted by the city council. [Ord. 18-0468 § 1 (Exh. A); Ord. 15-0402 § 1 (Att. A); Ord. 13-0356 § 1 (Exh. 1).]

5.105.090 Late renewal.

Each *business* registration issued must be renewed annually on or before the expiration date, or expiration of any prorated period. Failure to renew a business registration by the expiration date may result in an additional late fee. [Ord. 20-0511; Ord. 18-0468 § 1 (Exh. A); 15-0402 § 1 (Att. A); Ord. 13-0356 § 1 (Exh. 1).]

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5.105.100 Registration denial or revocation.

A. An application for registration required under this chapter may be denied or revoked by the City based on any of the grounds provided below:

1. If the *person* who obtains the registration or any of the *business* officers, directors, agents, owners or employees of the *business* fail to comply with the requirements of this chapter.
2. If a *person* procures registration by fraud or misrepresentation of fact, or the *person* who obtains the registration or any of the *business* officers, directors, agents, owners or employees of the *business* obtain registration so as to practice some illegal act or some act injurious to the public health, safety and welfare.

3. Whenever a *person* fails or refuses to pay the registration or renewal fee.

B. The City shall not deny or revoke a *business* registration without cause. [Ord. 18-0468 § 1 (Exh. A); Ord. 15-0402 § 1 (Att. A); Ord. 13-0356 § 1 (Exh. 1).]

5.105.110 Violation – Civil infraction, enforcement.

A. A violation of this chapter shall constitute a civil infraction. A *person* who violates any provision of this chapter shall be subject to a civil fine in an amount not to exceed \$100.00.

B. The *city manager* and officers authorized to provide police services to the City shall enforce this chapter and are authorized to issue civil infractions for violations of this chapter. The disposition of a civil infraction issued under this chapter shall follow the procedures adopted under the following statutes:

1. A notice of civil infraction issued under this chapter shall comply with the procedures of RCW 46.63.060(1), (2)(a) through (g) and (3), hereby adopted by reference as if set forth in full. A response to the notice of civil infraction and/or request for hearing shall comply with RCW 46.63.070(1) through (4) and (6), hereby adopted by reference as if set forth in full.

2. RCW 46.63.090 and 46.63.100, which regulate hearings on contested infractions and hearings to explain mitigating circumstances, are hereby adopted by reference as if set forth in full.

3. The phrase “traffic infraction” referenced in the above-cited statutes shall mean a “civil infraction” issued under this chapter.

C. A civil infraction issued under this chapter shall be filed with the King County district court, which shall have the exclusive jurisdiction to hear and determine the same. Rules of procedures for the conduct of hearings filed under this chapter may be established by rule of the court. [Ord. 18-0468 § 1 (Exh. A); Ord. 15-0402 § 1 (Att. A); Ord. 13-0356 § 1 (Exh. 1).]

5.105.120 Rules and rulings.

The *city manager* may, from time to time, adopt, publish and enforce rules and regulations not inconsistent with this chapter or with State law. The purpose of such rules and regulations is to carry out the provisions of this chapter. The *city manager* may also issue letter rulings from time to time which are applicable only to specific *businesses*. Such administrative rulings shall be

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binding on the City and the applicable *business*. [Ord. 18-0468 § 1 (Exh. A); Ord. 15-0402 § 1 (Att. A); Ord. 13-0356 § 1 (Exh. 1).]











Ordinance 23-0583 Business Registration Amendment and Exhibit A

Final Audit Report


2023-07-26

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