

ORDINANCE NO. 1439

AN ORDINANCE OF THE CITY OF KALAMA, WASHINGTON AMENDING CHAPTERS OF THE KALAMA MUNICIPAL CODE TITLE 5 BUSINESS LICENSES AND REGULATIONS TO UPDATE THE CODE TO MEET THE REQUIREMENTS FOR THE WASHINGTON STATE DEPARTMENT OF REVENUE TO COLLECT GENERAL BUSINESS LICENSE FEES ON BEHALF OF THE CITY AND SIMPLIFY OTHER LICENSE RELATED REGULATIONS FOR THE CITY

WHEREAS, the legislature of the State of Washington adopted EHB 2005 in 2017 which requires that all cities having general business licenses join a combined licensing system;

WHEREAS, the City of Kalama as entered into an agreement with the Washington State Department of Revenue for Business Licensing Services beginning in April 2020;

WHEREAS, the Kalama Municipal Code needs to be update to include the regulations and payment processes that have changed due to the new collection process;

WHEREAS, in reviewing the code, staff has found code sections that require additional criteria for business licensing for certain activities such as vehicles for hire or manufactured home parks, which are difficult for the City to enforce cost effectively and are not compatible with the state licensing services;

NOW THEREFORE the City Council of the City of Kalama do ordain

Section 1. Kalama Municipal Code Chapter 5.04 is amended to read as follows.

5.04.010 - Purpose.

The purpose of this chapter shall be deemed an exercise of the power of the city, as provided in Chapter 35A.82.020 RCW to license and revoke the same for cause, to regulate, make inspections and to impose excises for regulation or revenue in regard to all places and kinds of business, production, commerce, entertainment, exhibition, and upon all occupations, trades and professions and any other lawful activity.

5.04.020 - License—Required.

A. Every person who is subject to the provisions of this chapter must, before engaging in any business or performing any act for which a license or fee is required, apply for and obtain from the City of Kalama through the Washington State Department of Revenue's Business Licensing Service, in coordination with the city clerk, a business license endorsed for a City of Kalama city business license. No person may engage in any business for which a city business license is required under this chapter without being licensed in compliance with the provisions of this chapter.

B. If a person conducts business at multiple locations within the city, each such location must be licensed separately as provided in this chapter. If two or more persons conduct their own separate business at the same location, each such person

must obtain a separate license for their respective business, provided that no one person is required to obtain more than one license per location regardless of that person conducting multiple types of activities at a location.

5.04.025 - Engaging in Business—Defined.

A. 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. and do not constitute a comprehensive list. 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.

17. Taxicab company or business or a transportation network company or driver that transports any passenger or item of property for compensation whether calculated by metered mileage or time or based on an internet online-enabled platform or applications connecting passengers and drivers.

18. Operations of a manufactured home or RV park within the City limits.

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".

6. Conducting advertising through the mail.

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.

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.

5.04.030 - License—Term—Prerequisite for conducting business.

A business license must be obtained prior to conducting business in the city. In no case may a business or profession begin operation until a license has been obtained. The license is personal and nontransferable, and is valid until the expiration date established by the Business Licensing Service, or as long as the licensee continues in business and pays the license fee required under the provisions of this chapter, whichever event occurs first. No business may be granted a renewal of the city business license if said business is delinquent in payment of any other business related taxes or fees owed to the city.

5.04.035 – License application.

Application for a City of Kalama business license is made through the Business Licensing Service, and must include all information required for all licenses requested, as well as the total fees due for all licenses, including the application handling fee required by RCW 19.02.075.

5.04.036 – License renewal - Penalties.

A. Application for renewal of a City of Kalama business license is made through the Business Licensing Service, and must include all information required to renew all licenses held, as well as the total fee due for renewal of all licenses, including the renewal handling fee required by RCW 19.02.075.

B. The city license term and respective fee amount may be prorated as necessary to synchronize the city license expiration with the expiration date of the business account maintained by the Business Licensing Service.

C. Failure to complete the renewal of the license by the expiration date will incur the late renewal penalty required by RCW 19.02.085 in addition to all other fees due.

D. Failure to complete the renewal of the license within 120 days after the expiration date will result in the cancellation of the license, and will require submitting a new application as provided for in this chapter to continue to conduct business in the city.

5.04.040 – Late application for license—Penalties.

The city fee payable for a license to conduct or engage in any business or profession, including the operation of billboards, is as established by resolution of the city council. New businesses or professions beginning operations prior to obtaining a city business license may be subject to a late filing penalty of ten percent of the current license fee, assessed by, and payable directly to the city.

5.04.050 - License—Exemption.

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 two thousand dollars and who does not maintain a place of business within the city, shall submit a business license registration to the city without fee. The threshold does not apply to regulatory license requirements or activities that require a specialized permit.

5.04.060 - Games of skill—Fee.

Any place of business operating "games of skill," which term means and includes any electrical, mechanical, or other amusement device, which devices may be played by the insertion of a coin or coins, shall pay directly to the city an amusement device license fee as established by resolution of the city council, for each such skill game operated at the licensed business location, which license fee shall be in addition to any other license fee or tax required by any ordinances of the city, including the business license otherwise required under this chapter.

5.04.070 - Reserved.

5.04.080. - Reserved.

5.04.090 - Issuance of license.

A. All licenses hereunder are issued through the Business Licensing Service upon approval of the city clerk-treasurer. The clerk-treasurer may not approve any city license for a business, the conduct of which, he/she reasonably believes violates local, state, or federal law or any applicable regulation rendering such business conduct unlawful.

B. Issuance of a business license does not relieve the applicant from the need to comply with all other applicable city ordinances, state and federal laws.

C. It is required that all businesses applying for a license with the city be licensed by the State of Washington including all specialty/regulatory license requirements for the profession or business activity, or provide evidence of exemption from the state licensing.

5.04.100 - License nontransferable.

A license issued hereunder is not transferable. In the event of a change in business ownership, the new owner of the business must obtain their own license, as provided for in this chapter, prior to conducting business in the city under the acquired business. If the place of business is to be changed, the business owner must notify the Business Licensing Service sufficiently before the change to allow review and approval by the city prior to conducting business at the new location. A change of location may require submitting a new application for license as provided for in this chapter. The license issued under this chapter must be posted in a conspicuous place at the place of business for which it was issued.

5.04.110 - Violation—Penalty.

A. It shall be unlawful for any person liable for fees under this chapter (or other chapters as listed):

1. To violate or fail to comply with any of the provisions of this chapter or any lawful rule or regulation adopted by the city;
2. To make any false statement on any license application or tax return;

3. To aid or abet any person in any attempt to evade payment of a license fee or tax;
4. To fail to appear or testify in response to a subpoena issued pursuant to law;
5. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this chapter.

B. Violation of any of the provisions of this chapter is a gross misdemeanor. Any person convicted of a violation of this chapter may be punished by a fine not to exceed one thousand dollars, imprisonment not to exceed one year, or both fine and imprisonment. Penalties or punishments provided in this chapter shall be in addition to all other penalties provided by law.

C. Any person, or officer of a corporation, convicted of continuing to engage in business after the revocation of a license shall be guilty of a gross misdemeanor and may be punished by a fine not to exceed five thousand dollars, or imprisonment not to exceed one year, or both fine and imprisonment.

D. Each such person is guilty of a separate offense for each and every day during any portion of which any violation of this chapter is committed, continued or permitted by any such person, and he shall be punished accordingly.

5.04.120 - Revocation of license.

A. The city administrator, or designee, shall have the power and authority to suspend or revoke any license issued under the provisions of this title. The administrator, or designee, shall notify such licensee in writing by certified mail of the suspension or revocation of his or her license and the grounds therefor. Any license issued under this title may be suspended or revoked based on one or more of the following grounds:

1. The license was procured by fraud or false representation of fact.
2. The licensee has failed to comply with any provisions of this chapter.
3. The licensee has failed to comply with any provisions of Chapter 5.04.
4. The licensee is in default in any payment of any license fee or tax under Chapter 5.04.
5. The licensee or employee has been convicted of a crime involving the business.

B. Any licensee may, within ten days from the date that the suspension or revocation notice was mailed to the licensee, appeal from such suspension or revocation by filing a written notice of appeal ("petition") setting forth the grounds therefor with the hearing examiner. A copy of the petition must be provided by the licensee to the director and the city attorney on or before the date the petition is filed with the city hearing examiner. The hearing examiner shall set a date for hearing said appeal and notify the licensee by mail of the time and place of the hearing. After the hearing thereon the hearing examiner shall, after appropriate findings of fact and conclusions of law, affirm, modify, or overrule the suspension or revocation and reinstate the license, and may impose any terms upon the continuance of the license.

No suspension or revocation of a license issued pursuant to the provisions of this chapter shall take effect until ten days after the mailing of the notice thereof by the department, and if appeal is taken as herein prescribed the suspension or revocation shall be stayed pending final action by the city hearing examiner. All licenses which are suspended or revoked shall be surrendered to the city on the effective date of such suspension or revocation. The decision of the hearing examiner shall be final. The licensee and/or the department may seek review of the decision by the Superior Court of Washington in and for Cowlitz County within twenty-one days from the date of the decision. If review is sought as herein prescribed, the suspension or revocation shall be stayed pending final action by the superior court.

C. Upon revocation of any license as provided in this chapter, no portion of the license fee shall be returned to the licensee.

Section 2. Kalama Municipal Code Chapters 5.12 Solicitors, Chapter 5.16 Musical Entertainment – Cabaret, Chapter 5.18 Special Events, Chapter 5.20 Business and Occupation Utility Tax remain unchanged in Title 5.

Section 3. Kalama Municipal Code Chapters 5.23 Manufactured Home Park Licensing and 5.24 Vehicles for Hire are deleted in their entirety

~~5.23—Manufactured Home Park Licensing~~

~~**5.23.010 – License—Required.**~~

~~No person shall maintain or operate a manufactured home park within the city without first obtaining a general business license from the city. Operators of manufactured home parks existing prior to the approval of this chapter, shall obtain within ninety days thereafter a license and comply with this chapter.~~

~~**5.23.020 – License—Application—Filing.**~~

~~Application for a license to operate a new manufactured home park shall be filed with the city clerk treasurer and referred to the building department for approval. An enlargement of a manufactured home park site or an increase in the number of manufactured home spaces in an existing park shall be subject to the provisions of this chapter regulating new parks.~~

~~**5.23.030 – License display.**~~

~~Any required manufactured park license shall be displayed in a conspicuous place on the park premises.~~

~~**5.23.040 - License transferability procedures.**~~

~~A. If a transfer of license for a manufactured home park under the provisions of this chapter is desired, an application for transfer shall be filed with the city clerk treasurer accompanied by a fee per current fee schedule. The application shall contain the name and address of the present licensee, the applicant and the location of the park and the name and address of the transferee. Before the transfer of license is approved, it shall be referred to the building department to determine if the park~~

complies with all applicable regulations. Upon receipt of approval, the city clerk-treasurer shall issue a new license to be valid until December 31st of the same year.

B. If the application for transfer is disapproved, the city clerk-treasurer shall set forth in writing the reasons therefore and state the action necessary to receive approval. The applicant may appeal the ruling to the city council by filing a written notice of appeal with the city clerk-treasurer within ten days of the decision.

5.23.050 – Revocation of license—Reissuance.

A. The city council may revoke any license to maintain and operate a manufactured home park if the park does not conform to the provisions of this chapter and other ordinances of the city relative thereto.

B. Prior to revocation of a license, the city clerk-treasurer shall give notice in writing setting forth the reason for revocation and of a hearing before the city council, at which time the revocation will be considered. The notice shall be in writing and shall be sent to the licensees at least ten days before the hearing. For the purpose of the notice, the name and address that appears on the application for license or transfer of license shall be used.

C. The license may be reissued if the park is made to conform to the provisions of this chapter and other ordinances of the city relative thereto.

5.23.100 – Failure to apply for business license.

Any person failing to apply for a business license within thirty days after engaging in the manufactured home park business shall be considered delinquent and shall pay a penalty of fifty percent of the business license fee in addition to the fee provided elsewhere in manufactured home park regulations.

5.23.110 – Violations—Penalty.

Any person violating any provision of this chapter upon conviction thereof shall be punished by imprisonment not to exceed ninety days or by a fine not to exceed one thousand dollars, or both. Each day that a violation of this chapter continues shall constitute a separate offense.

5.24 Vehicles for Hire

5.24.030 – Taxicab and transportation network company—Special license.

A. The clerk/treasurer or designee may issue a special license to a taxicab company or TNC; provided, that the taxicab company or TNC submits an affidavit sworn under penalty of perjury that the taxicab company or TNC is in compliance with standards for vehicle safety, driver training and background, and insurance established under the rules provided for at Section 5.24.040. The special license shall be effective for one year. The special license required under this chapter is separate from and in addition to the business license issued under Chapter 5.04 KMC, which may also be required when applicable.

B. Annual application review fee shall be in an amount set by resolution of the city council. The application review fee prescribed by this section shall be paid at the time of submitting initial and renewal taxicab company and TNC special license application.

C. Special License Issuance Fee. No taxicab company or TNC special license shall be issued or valid until the application or attestation has been reviewed and approved and the fee prescribed in this section has been paid. The city may accept the review and attestation

~~of compliance provided by another jurisdiction within Cowlitz County so long as the standards of that jurisdiction are substantially similar to the standards set by the city under Section 5.24.040.~~

~~D. Independent Contractors. Drivers who are independent contractors, affiliated with special-licensed taxicab companies or TNCs shall obtain a city business license or a determination of exemption as allowed under Chapter 5.04.~~

Section 4. Kalama Municipal Code Chapters 5.32 Temporary Business Licenses and 5.36 Telephone Business Licensing Regulations remain unchanged in Title 5.

Section 5. Kalama Municipal Code Section 5.40.030 Sexually Oriented Business Activity Licensing Requirements is amended to read as follows with all other sections of Chapter 5.40 remaining unchanged.

5.40.030 - Adult entertainment business license, fees, terms, assignments and renewals.

A. No adult entertainment business shall be operated or maintained in the city, unless the owner or lessee thereof has a current adult entertainment license under this chapter. It is unlawful for any operator, manager, entertainer or employee to knowingly work in or about, or to knowingly perform any service directly related to the operation of an adult entertainment business, when such business does not have a current adult entertainment business license.

B. The license year for an adult entertainment business license shall be from January first to December thirty-first of each year. Each such license shall expire at close of business or midnight, whichever is earlier, on December thirty-first of such year.

C. The license fees are as follows:

Adult entertainment cabaret license	\$500.00
Adult arcade	\$500.00
Adult theater	\$500.00
Adult book/novelty/videos stores	\$250.00
Adult hotel/motel	\$500.00

D. Except as hereinafter provided, the license fee for such license is payable for a full year only and is not refundable.

E. An adult entertainment business license under this chapter shall not be assigned or transferred.

F. In order to obtain renewal of a current adult entertainment business license for the next year, a license holder must file an application for renewal with the clerk-treasurer. The renewal fee for each year is the same as original fee.

G. The business and individuals' occupational licenses and fees required under this chapter are separate from and in addition to the business license required under Chapter 5.04 KMC, which may also be required when applicable.

Section 6. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

Section 7. Acts taken by authorized officers and staff of the City, pursuant to this ordinance, but prior to its effective date are hereby ratified and confirmed.

Section 8. This ordinance shall become effective five days after passage, approval, and publication as provided by law.

Passed by the City Council of the City of Kalama at a regular meeting held on the 7th day of May, 2020

Mayor Mike Reuter

Attest:

Coni McMaster, Clerk/Treasurer

Approved as to form:

City Attorney

Published:

Effective:

DRAFT