

Town of Nespelem

Ordinance 2022-02

An Ordinance of the Town of Nespelem, Washington, Adopting Requirements for a Business License in the Town of Nespelem, Adopting Definitions and Penalties for Violation thereof, and Requiring Business Licenses be Obtained Through the Business Licensing Service of Washington State Department of Revenue.

WHEREAS, Town Council for the Town of Nespelem adopted Ordinance 2018-06 on November 11, 2018, which adopted a Business License Threshold and Definitions thereto; and

WHEREAS, Town Council has determined the need to repeal said Ordinance 2018-06 and replace it with a new ordinance which adopts requirements for a Business License in the Town of Nespelem, adopting definitions and penalties thereof, and requiring Business Licenses be obtained through the Business Licensing Service of the Washington State Department of Revenue; and

NOW THEREFORE, be it ordained by the Town Council of the Town of Nespelem, Washington, as follows:

Section 1 – Purpose:

The purpose of this Ordinance is to regulate and ensure the legal conduct of businesses, assist in the effective administration, to impose fees for revenue purposes and to provide a means for obtaining public information and compiling statistical information on existing, and new businesses in town.

Section 2 – Definitions:

Unless the context within this Ordinance clearly provide for otherwise, the following terms have the following respective meaning:

- 1) “Town” means the Town of Nespelem, Washington.
- 2) Business Licensing Service” and “BLS” means the office within the Washington State Department of Revenue providing business licensing services to the Town.
- 3) “Business” means all activities, occupations, pursuit, or professions located and/or engaged in and within the Town, whether conducted from a commercial property or residence, whether for profit or nonprofit, with the object of gain,

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benefit or advantage to a person engaging in the same, or to any other person or class, directly or indirectly.

- 4) "Person" includes individual natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts or corporations, or any other group or association acting as a unit; or any officers, agents, employees, factors, or any personal representatives of any kind, in any capacity, acting either for themselves or other persons, under either personal appointment or pursuant to law.

Section 3 – License Required:

Unless otherwise exempted by this Ordinance, no person may engage in business in the Town with first having obtained and being the holder of a valid business license, issued under the provisions of this Ordinance.

- 1) If a person conducts business in more than one location with the Town each such location must have a separate license.
- 2) If two or more persons each conduct a business at the same location each such person must obtain a separate license for their respective business.

Section 4 – Engaging in Business:

- 1) The term "engaging in business" means commencing, conducting, or continuing in business, and 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 Town and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimis business activities in the Town 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 Town 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 Town by a person, or its employee, agent, representative, independent

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contractor, broker, or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license.

- i. Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently for temporality located in the Town.
- ii. Owning, renting, leasing, using, or maintaining, an office, place of business, or another establishment in the Town.
- iii. Soliciting sales.
- iv. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.
- v. 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.
- vi. Installing, constructing, or supervising installation or construction of, real or tangible personal property.
- vii. Soliciting, negotiating, or approving franchise, license, or other similar agreements.
- viii. Collecting current or delinquent accounts.
- ix. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.
- x. 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.
- xi. 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.

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- xii. Meeting with customers or potential customers, even when no sales or orders are solicited at the meeting.
 - xiii. Training or recruiting agents, representatives, independent contractors, brokers, or others, domiciled, or operating on a job in the Town, acting on its behalf, or for customers or potential customers.
 - xiv. Investigating, resolving, or otherwise assisting in resolving customer complaints.
 - xv. 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.
 - xvi. 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 Town but the following, it need not register and obtain a business license.
- i. Meeting with suppliers of goods and services as a customer.
 - ii. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.
 - iii. 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.
 - iv. Renting tangible or intangible property as a customer when the property is not used in the Town.
 - v. Attending, but not participating in a "trade show" or "multiple vendor events". Persons participating at a trade show shall review the Town's trade show or multiple vendor event Ordinances.
 - vi. Conducting advertising through the mail.

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- vii. Soliciting sales by phone from a location outside the Town.
- 5) A seller located outside the Town merely delivering goods into the Town by means of common carrier is not required to register and obtain a business license if it engages in no other business activities in the Town. Such activities do not include those in subsection (4).
- 6) The Town expressly intends that engaging in business include any activity sufficient to establish a 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 if the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

Section 5 – Exemptions:

To the extent set forth in this section, the following persons and businesses are exempt from the license and/or license fee requirements as outlined in this Ordinance.

- 1) Any person or business whose annual value of products, gross proceeds of sale, or gross income of the business in the Town is equal to or less than \$2000 and who does not maintain a place of business within the Town shall be exempt from the general business license requirements in this Ordinance. The exemption does not apply to regulatory license requirements or activities that require a specialized permit.
- 2) Nonprofit organizations engaging in business activities within the Town must obtain a business license from the Town as provide for in this Ordinance, however:
 - i. A nonprofit organization submitting proof of a federal tax exemption under a provision of 26 USC § 501(c)(3) is exempt from the Town license fee for the business license.
 - ii. Any religious nonprofit organization, such as is assumed to be exempt under 26 USC § 501(c)(3), is fully exempt from the Town business license requirement while conducting only its core religious purposes.
- 3) The following are fully exempted from the business license requirements of this Ordinance:

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- i. Any farmer, gardener or other person selling, delivering, or peddling any fruits, vegetables, berries, eggs, or any farm produce raised, gathered, produced, or manufactured by such person.
- ii. Any instrumentality of the United States, state of Washington, or political subdivision thereof when acting in their official governmental duties.
- iii. Persons engaged in irregular, casual activities such as babysitting, delivery of newspaper, casual lawn mowing, car washing, garage sales, and other similar activities.

Section 6 – License Application:

Application for the Town business license is made through the Business Licensing Service (BLS) and must include all information required for all licenses requested, the total fee due for all licenses, and the application handling fees required by RCW 19.02.075 as amended.

- 1) The BLS will make the application information available to the Town for review. If the Town Clerk determines the applicant is qualified to receive a business license for the proposed business, the Clerk will authorize the BLS to issue the license to the applicant.
- 2) In the event the license issuance is denied, the Town Clerk will notify the applicant in writing, at the address provide by the applicant, stating the reasons for such denial. An applicant which has had an application denied may appeal the decision the Town Council.

Section 7 – License not Transferrable:

The business license issued under this Ordinance is personal to the business or person for which it was issued and may not be transferred or assigned to another business or person. The license must be posted in a conspicuous place at the premises for which it was issued.

- 1) If a person wishes to relocate their business to another location within Town, they must notify the BLS sufficiently prior to the intended move to allow the Town to review and approve the new location. Business may not commence at the new location prior to it being approved by the Town.

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- 2) In the event of the sale of a business, the new owner must obtain their own license, as provide for in this Ordinance, prior to commencing business in the Town under the acquired business.

Section 8 – License Renewal:

The business license issued under the provisions of this Ordinance expires on the date established by the BLS and must be renewed on or before that date to continue in business in the Town after that date.

- 1) Application for renewal of the license is made through the BLS and must include all information required to renew all licenses involved, the total fees due for all license, and the renewal application handing fee required by RCW 19.02.075.
- 2) The license expiration and respective license fee amount may be prorated as necessary to synchronize the license expiration with the expiration of the business account maintained by BLS.
- 3) Failure to complete the license renewal by the expiration date will incur the late renewal penalty required by RCW 19.02.085, in addition to all other fees due.
- 4) Failure to complete the license renewal with 120 days after the expiration date will result in the cancellation of the business license and will require obtaining a new license as otherwise provide in this Ordinance to continue to engage in business in the Town. The Town Clerk is authorized to require payment of all past due amounts prior to approving issuance of the new business license.

Section 9 – Disclaimer of Town Liability:

- 1) Issuance of a business license pursuant to this Ordinance does not constitute the creation of any duty by the Town to indemnify the licensee for any wrongful acts against the public or any individual, or to guarantee the quality of goods, services, or expertise of a licensee.
- 2) The issuance of business license does not shift responsibility from the licensee to the Town for proper training, conduct, or equipment of the licensee or his/her agents, employees, or representatives.

Section 10 – Violations – Penalties:

- 1) The Town may assess a delinquent payment penalty of \$5 for each 30 days of delinquency after a business license fee or renewal fee is due. This penalty is

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payable directly to the Town and is in addition to any other fee required under this Ordinance.

- 2) Any person who violates the provision of this Ordinance shall be guilty of a civil infraction for each day during which the person is engaged in business, and any person who fails or refused to pay the license fee or any part thereof on or before the due date shall be deemed to be operating with a business license to do so. Each violation of this Ordinance shall be punishable by civile penalty of not more than \$250 for each such violation. Each day that the violation occurs shall be deemed to be a separate offence.

Section 11 – Repealer:

Ordinances 2018-06, and any other ordinances or parts of an ordinance in conflict with this Ordinance are hereby repealed.

Section 12 – 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 13 – Effective Date:

This Ordinance shall become effective from and after passage by Town Council, approval by the Mayor for the Town of Nespalem, and publication as required by law.

Passed by Town Council for the Town of Nespalem, Washington at the regular meeting this 13th day April of 2022.



DARCY EPPERSON, Mayor

Attest:

KELLY ROSS, Clerk/Treasurer