ORDINANCE NO 1535

CITY OF LACEY

AN ORDINANCE OF THE CITY OF LACEY, WASHINGTON RELATING TO BUSINESS LICENSING AND AMENDING SECTION 5.12.010 OF THE LACEY MUNICIPAL CODE AND ADOPTING A SUMMARY FOR PUBLICATION.

WHEREAS, During the 2017 State Legislative session the Washington State Legislature passed EHB 2005, which requires all cities in the state with business license requirements to administer their business license programs with the State's Business License System by 2022 or the FileLocal system by 2020; and

WHEREAS, EHB 2005 also required the creation of a model business license ordinance by July 2018 and for all cities in the state that impose any general business license requirements to adopt the mandatory provisions of the model ordinance by January 1, 2019; and

WHEREAS, A nine-member model business license task force was coordinated by the Association of Washington Cities (AWC) and met monthly to develop the model business license ordinance mandatory provisions; and

WHEREAS, the mandatory provisions of the model ordinance were reviewed by city staff and the Finance and Economic Development Committee; and

WHEREAS, the City Council finds that adoption of the mandatory provisions of the model business license ordinance to be in the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, as follows:

Section 1: Section 5.12.010 of the Lacey Municipal Code is hereby amended as follows:

5.12.010 Definitions--Application--Registration fee.

A. Definitions

1. "Business"

a. Whenever the word "business" is used herein, it applies to any person, firm or corporation which ~~operates any store or place for the sale of goods, services, wares or merchandise at retail or at wholesale.~~engages in business within the corporate limits of the city, on a temporary or permanent basis. Each such store or place shall be considered a separate business even though more than one such store or place is owned by the same person, firm or corporation.

b. "Business," as used solely in this chapter, shall not apply to the temporary sale activities of nonprofit, religious, educational or charitable organizations where such activities are incidental or customary to the charitable, educational or religious purpose of the organization and such organization has notified the city in writing of the dates upon which the activities will be conducted, nor shall "business," as used solely in this chapter, apply to the temporary sale activities of other persons, firms or corporations conducted on premises or in facilities furnished by a person, firm or corporation holding a master business registration certificate for temporary sales pursuant to Section 5.12.015 nor to the sales activities of persons, firms or corporations conducted on premises or in facilities furnished by a person, firm or corporation holding a business registration certificate for a "farmers' market."

2. "Engaging in Business"

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 our 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 defninition 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, 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 directors 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 partivipating 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.

e. A seller located outside the City merely delivering goods into the City by means of a 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" includes any activity sufficient to establish nexus for the 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.

3. "Temporary," as used solely in this chapter, shall be any business operated for thirty consecutive days or less within the corporate limits of the city or which may be located in a mobile unit; provided, however, that the term "temporary" shall not apply to the direct sales of agricultural products grown in Thurston County by the grower or the grower's employees.

4. "Farmers' market", as used solely in this chapter, means an organization of local growers and handcrafters formed for the purpose of selling goods grown or made by said members where the normal requirements for participation is that those members selling have either grown or crafted seventy-five percent of their product.

B. Any proposed new business, and any business which changes its state tax number or moves its location, shall make application for registration to the city. Such application shall be accompanied by the fee established by resolution of the city council; provided, however, that until such time as the council passes a resolution establishing the fee for a "farmers' market", the annual application fee for such organization shall be $60.00; provided, further, that until the city council passes a resolution establishing the fee for the direct sales of agricultural products grown in Thurston County by a grower or a grower's employee, the fee shall be $50.00 for each location for a period of ninety days and an additional fee of $10.00 for each

thirty days thereafter to a maximum of an additional sixty days. The application shall be reviewed by the building official, who shall review the application for compliance with the building codes adopted in Title 14, Lacey Municipal Code; the planner who shall review the application for compliance with the zoning codes as adopted in Title 16 of the Lacey Municipal Code; and the fire marshal who shall review the application for compliance with the requirements of the fire code as adopted in Chapter 14.07 of the Lacey Municipal Code. In addition, the police department shall review the type of business proposed and the products to be sold in order to prevent the potential sale of stolen goods or the practice of fraud upon the public, in addition to reviewing the location of the business for the prevention of a safety hazard to the public. In addition, all applicants for businesses dealing in food services shall provide a copy of the certificate issued by the county health department prior to the business registration certificate being issued. The city shall notify the applicant of the results of such review within ten working days after the application is submitted. If the proposed business location is in compliance with the city's zoning and building code requirements as detailed in Chapters 14 and 16, if the health certificate, when appropriate, has been furnished, and if the police department finds that a public safety hazard will not be created by the business and there shall not be a likelihood of stolen property being sold by the business or fraud upon the public being perpetrated, or if the city fails to notify the applicant of the results of the investigation and inspection within ten working days after the application is submitted, a business registration certificate shall be issued to the applicant. Provided, however, if subsequent investigation and inspection by the city determines that the information provided in the application is either inaccurate or misleading, the registration certificate issued shall be considered temporary in nature and may be revoked by the city based upon the results of such further investigation or inspection.

C. Threshold Exemption. 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 of this chapter. The exemption does not apply to regulatory license requirements or activities that require a specialized permit.

~~C~~D. No business registration application shall be approved or registration certificate issued for any business to occupy space in a building requiring a certificate of occupancy as required in Chapter 14.03, until such certificate of occupancy has been issued.

~~D~~E. Subject to the provisions of Subsection B of this section, a registration certificate will be valid for the period of time for which the fee is paid pursuant to this section and resolution of the city council.

~~E~~F. All appeals from actions or decisions of the city pursuant to this section shall be to the city's Hearing Examiner pursuant to Section 1D of the city's Development Guidelines and Public Works Standards.

Section 2: Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Ordinance, or its application to any person, is for any reason declared invalid in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

Section 3: Corrections. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the

correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4: The Summary attached hereto is hereby approved for publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, at a regularly-called meeting thereof, held this 27th day of September, 2018.

CITY COUNCIL

By: _____
Mayor

Approved as to form:

_____
City Attorney

Attest:

_____
City Clerk

SUMMARY FOR PUBLICATION
ORDINANCE NO 1535
CITY OF LACEY

The City Council of Lacey, Washington passed on September 27, 2018, Ordinance No. 1535, entitled "AN ORDINANCE OF THE CITY OF LACEY, WASHINGTON RELATING TO BUSINESS LICENSING AND AMENDING SECTION 5.12.010 OF THE LACEY MUNICIPAL CODE AND ADOPTING A SUMMARY FOR PUBLICATION.

The main points of the Ordinance are described as follows:

1. The Ordinance Amends Section 5.12.010 of the Lacey Municipal Code by adopting the mandatory provisions of the business license model ordinance.

2. The Ordinance approves this summary for Publication.

A copy of the full text of this Ordinance will be mailed without charge to any person requesting the same from the City of Lacey.

Published: October 1, 2018.