

ORDINANCE NO. 1706

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to business licenses and amending DMMC 5.04.010, 5.04.020, 5.04.030, 5.04.035, and 5.04.080.

WHEREAS, the Legislature has given code cities the authority under RCW 35A.82.020 to license, regulate, and make inspection 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, and to impose excises for regulation or revenue of the same, and

WHEREAS, this authority granted by the Legislature is subject to limitations imposed from time to time by the Legislature, and

WHEREAS, the Des Moines City Council has provided for general business licenses and imposition of fees for obtaining such license, codified at chapter 5.04 DMMC, and

WHEREAS, in 2017 the Legislature passed Engrossed House Bill 2005 which required Washington cities, through the Association of Washington Cities to develop a model ordinance on general business licenses by July 1, 2018, and

WHEREAS, EHB 2005 further requires any city imposing a general business license requirement to adopt two mandatory provisions of the model ordinance that: (1) define "engaging in business within the city" and (2) provide for a minimum licensing threshold under which a person would be relieved of the requirement to obtain the city's general business license, and

WHEREAS, any city that does not adopt the two mandatory provisions of the model ordinance by January 1, 2019 may not enforce its general business license requirements on any person until the date that the mandatory provisions take effect within the city, and

WHEREAS, the City of Des Moines must adopt the mandatory provisions of the model ordinance to maintain the requirement for persons engaging in business within the city to obtain a general business license, and

WHEREAS, the City Council finds that it is in the best interest of the public health, safety, and welfare to adopt the mandatory provisions of the model ordinance developed by the Association of Washington Cities, so that the City may continue

to regulate the conduct of business within the City through general business licensing under chapter 5.04 DMMC, and

WHEREAS, the City Council finds that the following amendments to Des Moines Municipal Code Chapter 5.04 are in the public interest now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. DMMC 5.04.010 and section 1 of Ordinance No. 39 as amended by section 1 of Ordinance No. 114 as amended by section 2 of Ordinance No. 859 as amended by section 1 of Ordinance No. 882 as amended by section 3 of Ordinance No. 1295 as amended by section 13 of Ordinance No. 1351 as amended by section 1 of Ordinance No. 1354 are each repealed, and the following is substituted:

Engaging in business - definition

(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 subsection (1). 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.

(l) 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.

Sec. 2. DMMC 5.04.020 and section 2 of Ordinance No. 39 as amended by section 1(A) of Ordinance No. 460 as amended by section 1 of Ordinance No. 863 as amended by section 6 of Ordinance No. 993 as amended by section 2 of Ordinance No. 1394 are each amended to read as follows:

License or license registration required - Transfer prohibited.

(1) It is unlawful for a person to engage in business within the city without first having secured a license to do so, or continue to engage in business after such license or license registration is revoked. Each business location shall be deemed a separate business.

(2) 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 submit a business license registration to the City Clerk or the City Clerk's designee at no cost, in lieu of obtaining a business license under this chapter. An approved business license registration submitted under this subsection shall fulfill the requirement to secure a business license set forth in subsection (1) of this section. The dollar threshold in this subsection does not apply

to regulatory license requirements or activities that require a specialized permit.

(3) A license issued under this chapter is valid only for operation of the specific business for which application is made and is not transferable to any other person.

(4) Each day that a person engages in business without a valid business license or license registration constitutes a separate offense and may be punished as such; except a person that assumes operation of a business that has a current valid license is allowed 30 days to make application for a business license in the name of the new operator, but only if there is no change in the nature or type of business conducted, location, or use of the business premises and there are no existing violations of federal, state, or local law.

Sec. 3. DMMC 5.04.030 and section 3 of Ordinance No. 39 as amended by section 1(A) of Ordinance No. 454 as amended by section 1(B) of Ordinance No. 460 as amended by section 1 of Ordinance No. 556 as amended by section 1 of Ordinance No. 678 as amended by section 35 of Ordinance No. 770 as amended by section 3 of Ordinance No. 1354 are each amended to read as follows:

Licenses - Fees - Appeal.

(1) Applications for licenses or license registrations shall be made to the City Clerk or the City Clerk's designee on such forms as he or she may direct. All home occupations shall be licensed as a business. All applications for business licenses shall be accompanied by a license fee set by resolution of the City Council. No fee shall be required for business license registrations. The city clerk shall present all applications for licenses or license registrations to the city manager for investigation. No license or license registration shall be granted to any person, firm, or corporation whom the city manager finds:

(a) Will be engaging in a business which violates any federal or state law or city ordinance;

(b) Has had a similar license revoked or has operated without any required license(s) in any jurisdiction within a one-year period prior to the date of making application for a license under this chapter; or

(c) Is using or occupying the real property of the business in violation of the provisions of Title 14 DMMC or all amendments thereto or in violation of city provisions regarding nuisances.

(2) Any appeal from a denial of issuance of such license or license registration shall be taken to the hearing examiner within 10 days of such denial in accordance with the provisions of the hearing examiner code.

Sec. 4. DMMC 5.04.035 and section 1 of Ordinance No. 1227 as amended by section 4 of Ordinance No. 1354 are each amended to read as follows:

**Inspection as condition of license issuance or renewal -
Time limits for compliance.**

(1) A person, firm or corporation applying for or renewing any license under this title shall allow physical inspections by the city's building official and fire marshal, or their respective designee(s) (including re-inspections, as needed), of the premises, objects, equipment, vehicles, instruments, or devices on, in, or with which business is proposed to be conducted by the applicant to determine whether the business complies with city codes, including without limitation Title 14 DMMC, the Uniform Building Code, Uniform Plumbing Code, Uniform Mechanical Code, and American National Standards Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped.

(2) Applicants shall be responsible for scheduling any inspection authorized by this section in a timely manner.

(3) In the event the building official or fire marshal discover a violation of city code(s) during an inspection conducted as part of a business license application process (including applications for business license renewals), the building official shall issue a written notice of violation generally describing the violation and corrective action required to bring the applicant's premises or other equipment into compliance with applicable city codes or regulations.

(4) The building official shall allow applicants found to be in violation of city codes, through an inspection conducted

under authority of this chapter, a grace period of no more than 21 days in which to bring the business, premises, or equipment into compliance. No grace period shall be allowed where the building official determines that any dangerous circumstance or violation of a particular code provision poses an imminent risk of harm or damage to persons or property.

(a) For applicants seeking a new business license, failure to correct a violation within the time period provided by the building official will be cause for the city clerk to reject an application and require that a new application be made, accompanied by an additional fee of 100 percent of the fee payable upon an original application filed for any license required under this title. No license for a new business will be issued until appropriate corrective action is taken to the satisfaction of the building official.

(b) For applicants seeking to renew an existing business license, failure to correct a violation within the time period provided by the building official shall constitute a violation of this chapter in addition to or as an alternative to any other applicable violation of this code and shall expose the applicant to any and all civil and/or criminal penalties provided in this title, code, or other law.

(5) A determination by the building official of compliance with city codes for purposes of issuing or renewing a business license under this title shall in no way be construed as permission or acquiescence in a prohibited activity or other violation of law that occurs or is discovered following an inspection after issuance of any license.

(6) The provisions of this section shall not apply to businesses who does not maintain a place of business within the city of Des Moines.

Sec. 5. DMMC 5.08.080 and section 8 of Ordinance No. 39 as amended by section 1(F) of Ordinance No. 460 are each amended to read as follows:

Posting license.

(1) Any license issued under this title shall be posted in a conspicuous place within the establishment.

(2) The provisions of this section shall not apply to businesses who do not maintain a place of business within the city of Des Moines.

Sec. 6. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

Sec. 7. Effective date. This Ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law.

PASSED BY the City Council of the City of Des Moines this 18th day of October, 2018 and signed in authentication thereof this 18th day of October, 2018.


MAYOR

APPROVED AS TO FORM:


Assistant City Attorney

ATTEST:


City Clerk

Published: October 23, 2018

Effective Date: November 17, 2018

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. 1706, Adopted October 18, 2018.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance relates to business licenses and amends DMMC 5.04.010, 5.04.020, 5.04.030, 5.04.035, and 5.04.080.

The full text of the Ordinance will be mailed without cost upon request.

Bonnie Wilkins, CMC
City Clerk

Published: October 23, 2018