

CITY OF SPOKANE VALLEY Request for Council Action

Meeting Date: September 11, 2018

Department Director Approval: ☒

Check all that apply: ☐ consent ☐ old business ☒ new business ☐ public hearing
☐ information ☐ admin. report ☐ pending legislation ☐ executive session

AGENDA ITEM TITLE: First Reading – Proposed Ordinance No. 18-020 relating to business licensing changes.

GOVERNING LEGISLATION: RCW 35A.82.020; RCW 35.22.280; chapter 35.90 RCW; chapter 5.05 SVMC.

PREVIOUS COUNCIL ACTION TAKEN: The City business license code was last amended in 2004. City Council heard an administrative report on September 4, 2018.

BACKGROUND: Pursuant to RCW 35A.82.020, the City is authorized to license all businesses within the City. Historically, the City has done so through chapter 5.05 SVMC, which requires any business to obtain a license registration with the City. There are certain exemptions and penalties for failure to properly register. The City has partnered with the Washington State Department of Revenue Business Licensing System (“BLS”) to administer the City’s business licensing. Thus, business owners submit license applications through the BLS online portal for a state license and City registration. BLS then provides the information to the City for review and approval. The BLS ultimately issues the owners a business license with the City’s license registration. The City charges \$13 annually for a City license registration. The City fee is in addition to any state business license fees.

The City has imposed business license registration requirements on businesses for two primary purposes. First, the license registration ensures that sales taxes from the business are appropriately distributed to the City of Spokane Valley. Secondly, the City reviews applications to ensure that the proposed business use is allowed within the applicable zoning. This also includes ensuring that any proposed home business applies for and receives a home business permit to ensure that it does not adversely impact the surrounding residential neighborhood.

In 2017, the State Legislature adopted Engrossed House Bill 2005, which is now codified as chapter 35.90 RCW. Chapter 35.90 RCW requires all cities to adopt, by January 1, 2019, a model business license ordinance. The model business license ordinance was developed by a large group of stakeholders with input from cities around the State. The model business license ordinance specifies a uniform definition of “engaging in business” that identifies what business does and does not constitute “engaging in business” for purposes of requiring business license registration. Secondly, the City is required to adopt one of two “threshold” provisions for businesses located outside of the City that provide business within the City. Specifically, the threshold provision provides that businesses located outside of the City that have business activity within the City of less than a specified threshold are either (1) not required to seek business license registration, or (2) must seek license registration, but cannot be required to pay for such application. The initial threshold amount has been determined to be \$2,000 annual gross income. Finally, Chapter 35.90 RCW requires cities to either (1) partner with BLS to operate and administer their business licensing, or (2) use an approved business licensing portal (currently FileLocal).

Chapter 35.90 RCW requires BLS partner cities to adopt the model ordinance by a date such that it will be effective by January 1, 2019. BLS requires 75 days' notice of any changes to a city's business licensing system, so effectively the City is required to adopt the model ordinance provisions by October 17, 2018.

In addition to the model ordinance requirements, City staff have reviewed chapter 5.05 SVMC and determined several updates and changes were necessary to more effectively implement the City's business license registration system. Due to the number of changes, staff are proposing to repeal the existing chapter 5.05 SVMC and replace it with a completely new chapter 5.05 SVMC. All of the changes, including the model business license ordinance provisions, are identified below.

Model Ordinance Provisions – “Engaging in Business.”

Pursuant to chapter 35.90 RCW, the City is required to adopt the definition of “engaging in business” set forth in the model business license ordinance. The City cannot modify the language or it will be prohibited from licensing any businesses within its City. The definition of “engaging in business” is a broad definition and includes businesses that may be located outside of the City, but that clearly conduct business within the City. Historically, that distinction was sometimes unclear in the prior City code. The model ordinance definition of “engaging in business” is set forth in proposed SVMC 5.05.010.

Model Ordinance Provisions – Threshold

Pursuant to chapter 35.90, the City is required to adopt one of two specified threshold provisions. The threshold provisions only apply to businesses based outside of the City. Under the threshold provisions developed, the minimum gross annual threshold is \$2,000. Thus, any business based outside of the City that conducts business within the City boundaries, but has business activity under \$2,000, would qualify for the selected provision. For such businesses, the City may choose to either (1) not require a license, or (2) require a license at no cost. Staff recommends that Council choose option two and require a license at no cost. As a business grows over time, we ensure that we will capture appropriate sales taxes. Further, seeking a Spokane Valley license is relatively easy as it may be done online through the BLS portal. The threshold provision is set forth in proposed SVMC 5.05.020(D).

Application Procedure

Historically, chapter 5.05 SVMC identified the City Clerk as the official responsible for business licensing. This has been removed. Further, the application process has been clarified to require a complete application, including payment of fees, prior to processing. Further, the City's authority to review and approve or deny a business license has been clarified. The criteria include zoning, home business, or other applicable land use regulations. Finally, the effect of approval has been specified so as to clarify that approval of a business license does not preclude the City from enforcing any of its applicable land use, zoning, or development regulations.

Violations and Penalties

The City currently provides for a class 2 civil infraction for violations of chapter 5.05 SVMC. However, it has never been enforced as such. In lieu of a single penalty provision, the proposed chapter 5.05 SVMC identifies a procedure for the City to seek suspension or revocation of a business license and successive increasing penalties that begin as class 1 civil infractions and

escalate to class 3 civil infractions for ongoing violations. Since the process for applying for a business license registration is very easy and accessible and since the City's fee is so small at \$13, the threat of the penalties allows the City a tool to ensure quick and timely response from businesses that fail to register. Currently, a class 3 civil infraction is \$50, a class 2 civil infraction is \$125, and a class 1 civil infraction is \$250.

Appeal

Chapter 5.05 SVMC does not currently identify an appeal procedure. The proposed changes identify an appeal procedure for determinations for denial, suspension, and revocation of licenses. Penalties imposed for failure to obtain a license would proceed through a court of limited jurisdiction like other civil infractions.

During its September 4, 2018 meeting, City Council gave consensus to include the second threshold option and to keep the threshold at \$2,000. The proposed ordinance includes those provisions.

OPTIONS: Move to advance to a second reading, with or without further amendments.

RECOMMENDED ACTION OR MOTION: Move to advance Ordinance No. 18-020, repealing existing chapter 5.05 SVMC and adopting a new chapter 5.05 SVMC related to business licensing, to a second reading.

BUDGET/FINANCIAL IMPACTS: The City currently charges \$13 for a City business license registration. The City received \$124,006 in 2017 from business licenses. The City cannot determine if there will be significant changes from the proposed changes at this time.

STAFF CONTACT: Erik Lamb, Deputy City Attorney

ATTACHMENTS: Proposed Ordinance No. 18-020.

**CITY OF SPOKANE VALLEY
SPOKANE COUNTY, WASHINGTON
ORDINANCE NO. 18-020**

AN ORDINANCE OF THE CITY OF SPOKANE VALLEY, SPOKANE COUNTY, WASHINGTON REPEALING EXISTING CHAPTER 5.05 OF THE SPOKANE VALLEY MUNICIPAL CODE PERTAINING TO BUSINESS LICENSES, ADOPTING A NEW CHAPTER 5.05 OF THE SPOKANE VALLEY MUNICIPAL CODE, AND OTHER MATTERS RELATED THERETO.

WHEREAS, the City of Spokane Valley (City) is authorized pursuant to RCW 35A.82.020 and RCW 35.22.280 to license businesses within its boundaries; and

WHEREAS, the City has adopted chapter 5.05 Spokane Valley Municipal Code (SVMC) regarding the licensing of business within the City; and

WHEREAS, in 2017, the Washington State Legislature adopted chapter 35.90 RCW, which requires the City to (1) adopt a model business license ordinance, (2) adopt a threshold option for certain businesses located outside of the City, and (3) use either the Washington State Department of Revenue Business Licensing (BLS) or other authorized licensing portal to administer its business licensing by January 1, 2019; and

WHEREAS, the City contracts with BLS for administering City business license registrations under chapter 5.05 SVMC; and

WHEREAS, the City has determined that in addition to the changes required pursuant to chapter 35.90 RCW, chapter 5.05 SVMC requires other updates; and

WHEREAS, the City Council hereby determines that repealing existing chapter 5.05 SVMC and replacing it with a new chapter 5.05 SVMC to adopt the required model business license ordinance and other changes proposed by staff is in the best interest of the City and its citizens.

NOW, THEREFORE, the City Council of the City of Spokane Valley ordains as follows:

Section 1. Purpose. The purpose of this Ordinance is to repeal existing chapter 5.05 SVMC and replace it with a new chapter 5.05 SVMC relating to business license requirements.

Section 2. Repeal. Chapter 5.05 SVMC is hereby repealed in its entirety.

Section 3. Adoption. The City Council hereby adopts the following as chapter 5.05 SVMC:

5.05.010 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 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 registration fee. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging

in business" in SVMC 5.05.010(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 registration.

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 except the following, it need not register and obtain a business license registration.

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". Such activities may be subject to other City regulations.

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 registration, provided that it engages in no other business activities in the City. Such activities do not include those in SVMC 5.05.010(D).

The City expressly intends that engaging in business includes any activity sufficient to establish nexus for purposes of applying the license registration 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.

5.05.020 Business license registration required.

A. Every person engaging in business shall register such person's business with the City. License registration shall include completion of a registration request, payment of any applicable license registration fees, and receipt of endorsement or approval of the license registration application by the City. If more than one business is located on a single premises, including residential home-based businesses, separate license registrations shall be required for each separate business conducted. Businesses with more than one City location shall register each location separately.

B. Valid License Registration. No person may engage in business in the City or with the City without first having obtained and being the holder of a valid annual Washington State business license registration, and a valid annual City license registration.

C. The City Manager is hereby authorized to enter into an agreement with the State of Washington Master License Service, its successor, or any other entity as allowed by law under which that agency shall accept and process City business license registration applications.

D. Threshold for Out-of-City Businesses. For purposes of the license registration 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 \$2,000 and who does not maintain a place of business within the City, shall submit a business license registration to the City. The threshold does not apply to regulatory license requirements or activities that require a specialized permit.

5.05.030 Exemptions.

The following services and activities shall be exempt from the provisions of chapter 5.05 SVMC:

- A. Delivering newspapers and periodicals.
- B. Soliciting orders from retail establishments via telephone, Internet or mail for the delivery and sale of goods, wares, and merchandise unless the person's place of business is located within the City.
- C. Minors engaged in babysitting.
- D. The casual sale of items of personal property where the person conducting such sale is not regularly engaged in the business of selling items of personal property (for example, garage sales, service agency bake sales).
- E. Sales by farmers or gardeners of their own farm products raised and grown exclusively upon lands owned or occupied by them.
- F. Providers of Internet or wireless phone services where the provider operates from premises located outside the City and the only event occurring within the City is receipt of such goods and services.
- G. Temporary craft booths and food booths lasting 10 days or less in any one location.

5.05.040 Application procedure.

A. Application for the business license registration or renewal shall be made in writing to the City upon a form provided by the City, which may be electronic, and which may be through any agency the City has contracted with for processing of license registration applications. Business license registrations shall include a physical address for the business which shall not be a post office box or a mail delivery designation for addresses associated with a commercial mail receiving agency. Complete applications shall include all necessary information as set forth on the form, any additional information requested by the City such as additional information about the nature of the business operations, and complete payment of any applicable fees.

B. If the applicant is a partnership, the application shall be made by one of the partners; if a corporation, by one of the officers thereof; if a foreign corporation, partnership or nonresident individual, by the resident agent or local manager of the corporation, partnership or individual.

C. Home businesses. A business license registration application for a home business shall not be approved until a home business permit is applied for and received from the City by the applicant.

D. Review. The City shall review each application for completeness and may return any application that is incomplete. The City may deny and reject any applications that are inconsistent with applicable land use regulations, including zoning, home business, or other applicable land use regulations. The City shall provide applicants with a statement as to the reasons for any denial and rejection of an application. In the event any application is rejected, the City may, but is not required to refund any fees collected.

E. Effect of business license registration. Receipt of a business license registration shall not be deemed or construed as approval of or right to any particular land use, approval of a particular structure, facility, or improvement, or approval under any other Code provision. Persons with business license registrations shall comply with all applicable Code provisions, including but not limited to land use, zoning, environmental, and building regulations. The City may enforce such provisions regardless of any business license registration that may have been received by an owner or operator.

5.05.050 Fee.

A. City business license registration shall occur on an annual basis and shall automatically expire one year from the date of registration or renewal for which the City registration or previous renewal was issued.

B. An annual fee shall be charged for registering a business or businesses and renewing any license registration. Business license registration fees shall be established by City Council through adoption of a resolution. The City may impose an additional delinquency fee for any late renewal that is not paid by the applicable annual renewal due date.

5.05.060 Transfer or sale of business — New registration required.

Upon the sale or transfer of any business, the license registration issued to the prior owner or transferer shall automatically expire on the date of such sale or transfer and the new owner intending to continue such business in the City shall apply for a new license registration pursuant to the procedures established by chapter 5.05 SVMC.

5.05.070 Violation; Penalty.

A. Violation. Failure to comply with any provision herein shall be a violation of chapter 5.05 SVMC. The City may seek any remedy available by law, including but not limited to suspension or revocation of a business license registration and imposition of penalties pursuant to SVMC 5.05.070(C).

B. Suspension or revocation. In the event the City determines to suspend or revoke a City business license registration, it shall issue a determination in writing to the business owner listed on the license registration stating the basis for such determination, the business owner's rights to appeal, and the effect of the determination. A business owner shall cease all business operations upon suspension or revocation of a business license registration. A determination to suspend or revoke a license registration shall not in any way limit the City's right to any other remedy, including but not limited to assessment of applicable penalties.

C. Penalty. Any person, firm, or corporation who knowingly violates or fails to comply with any term or provision of chapter 5.05 SVMC shall be deemed to have committed a civil infraction. A person, firm, or corporation found to have committed a civil infraction shall be assessed a daily monetary penalty pursuant to RCW 7.80.120, as adopted or subsequently amended, including any applicable statutory assessment. The penalties shall be assessed as follows:

1. First offense: Class 3 civil infraction.
2. Second offense arising out of the same facts as the first offense: Class 2 civil infraction.
3. Third offense and any other subsequent offenses arising out of the same facts as the first offense: Class 1 civil infraction.

5.05.080 Appeal.

A. A person may appeal any (1) determination of a violation of chapter 5.05 SVMC other than violations associated with the imposition of penalties, which shall be appealed pursuant to SVMC 5.05.080(B), (2) denial, suspension, or revocation of a City business license registration, or (3) determination that a person is engaged in business and the person disputes that determination to the City Manager within 14 days of such determination. In order for an appeal to be considered, the business owner or applicant shall provide a written statement that describes with particularity the reasons why the City's decision was in error and the reasons the City Manager should reverse the denial, suspension, or revocation. An appeal shall be accompanied by payment of any applicable appeal fees to be considered timely. The City Manager shall review the appeal and issue a written decision to uphold, modify, or reverse the determination within 30 days of receipt of the appeal. The City Manager's decision is the final decision of the City and may be appealed to the Spokane County Superior Court within 21 days of the date of the City Manager's decision.

B. Appeals of the imposition of penalties shall be made pursuant to chapter 7.80 RCW.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 5. Effective Date. This Ordinance shall become effective five days after publication of the Ordinance, or a summary thereof, in the official newspaper of the City.

Adopted this _____ day of _____, 2018

City of Spokane Valley

L.R. Higgins, Mayor

ATTEST:

Christine Bainbridge, City Clerk

Approved as to Form:

Office of the City Attorney

Date of Publication: _____

Effective Date: _____