AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, AMENDING VARIOUS ORDINANCES AS CODIFIED IN TUKWILA MUNICIPAL CODE CHAPTER 5.04, "LICENSES GENERALLY," TO ADOPT MODEL BUSINESS LICENSE LANGUAGE AS DIRECTED BY THE STATE; REPEALING ORDINANCE NO. 2425; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in 2017, the Washington State legislature adopted Engrossed House Bill 2005, which directed cities in Washington to adopt model business license language, including a uniform definition of "engaging in business" and related issues; and

WHEREAS, in June 2018, at the direction of the legislature, the Association of Washington Cities released draft model language, and staff prepared the requisite amendments to Tukwila Municipal Code Chapter 5.04; and

WHEREAS, the City Council finds that in the interest of compliance with state law and to improve the current licensing practice for the public and City staff, the City should adopt the proposed amendments to its business licensure regulations; and

WHEREAS, the City Council has considered this ordinance, together with all public comment, and has determined the proposed amendments are in accord with the Comprehensive Plan; will not adversely affect the public health, safety, or general welfare; and are in the best interest of the citizens of the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. No Impact on 2018 Business Licenses. It is the City Council's intention that the following amendments apply to Business Licenses issued for 2019 and beyond, and have no impact on Business Licenses issued by the City for 2018.
Section 2. TMC Section 5.04.010 Amended. Ordinance Nos. 2544 §2, 2496 §1, 2381 §1, 2356 §1, 2333 §1 and 2315 §1 (part), as codified at Tukwila Municipal Code (TMC) Section 5.04.010, are hereby amended to read as follows:

5.04.010 Definitions

For the purpose of this chapter, the following definitions shall apply:

1. "Business," means and includes all activities, occupations, trades, pursuits, or professions located or engaged within the City that involves the manufacturing or processing of materials of any type; the sale of goods, wares or merchandise; the rendition of services or the repair of goods, wares or merchandise for any consideration to the person engaging in the same or to any other person or class, directly or indirectly, whether or not an office or physical location for the business lies within the City limits.

2. "Department," means Finance Department.

3. "Director," means the Finance Director or his or her designee.

4. "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.

   a. 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" as defined above. 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.

   b. 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.

c. 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". 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.

d. 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 5.04.010(4)(c).

e. 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. "License or licensee," as used generally in this chapter, means and includes respectively the words "permit" or "permittee" or the holder for any use or period of time of any similar privilege, wherever relevant to any provision of this chapter or other law or ordinance.

6. "Nonprofit organization" includes individual person(s), partnerships, joint ventures, societies, associations, churches, clubs, trustees, trusts or corporations; or any officers, agents, employees, factors or any kind of personal representatives of any thereof, in any capacity, acting either for himself or any other person under either personal appointment or pursuant to law who qualifies under definition of and certification by the Internal Revenue Service as nonprofit.

7. "Person," means any individual, receiver, agent, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, company, joint stock company, business trust, corporation, society, or group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise.

8. "Person engaged in business" means the owner or one primarily beneficially interested in lawful business for profit and not employees.

9. "Home occupation" means any business conducted in a residence within the corporate city limits of Tukwila, such business being subject to the requirements set forth in TMC Chapter 18.06, "Definitions," in the section entitled "Home Occupation."
10. "Employee" means and includes each of the following persons who are not required by the City to have his/her/its own separate City of Tukwila business license:

   a. Any person employed at any business who performs any part of their duties within the City of Tukwila or reports from a location within the City's corporate limits; and

   b. Any person who is on the business’s payroll, and includes all full-time, part-time, and temporary employees or workers; and

   c. Owners, officers, managers, and partners; and

   d. Any other person who performs work, services or labor at the business including, but not limited to, family members, regardless of whether they receive a wage from the business.

   e. Self-employed persons, sole proprietors, owners, officers, managers, and partners; and

   f. Any other person who performs work, services or labor at the business, including an independent contractor who may be exempt from requirements to have a separate City of Tukwila business license.

Employee is a unit of measure used to determine the Business License fee.

Section 3. TMC Section 5.04.015 Amended. Ordinance Nos. 2381 §2, 2333 §2 and 2315 §1 (part), as codified at TMC Section 5.04.015, are hereby amended to read as follows:

5.04.015 Business License Required

A. No person or persons shall conduct, maintain, operate, or engage in any business within the City without first applying for and obtaining a business license, or renewing an existing license, and paying the fee(s) as prescribed herein, unless exempted in this chapter. All businesses operating or engaging in business within the City are required to submit a business license application or renewal, as appropriate, unless exempted in this chapter.

B. This license shall be in addition to any other licenses or permits required by any other section of this code or by State or Federal laws.

C. Business licenses are nontransferable and a separate business license shall be obtained for each location at which a business operates. Licenses shall be displayed at each business location so as to be viewable by the public.

Section 4. TMC Section 5.04.020 Amended. Ordinance Nos.2544 §3, 2496 §2, 2381 §3, 2356 §2, 2333 §3 and 2315 §1 (part), as codified at TMC Section 5.04.020, are hereby amended to read as follows:
5.04.020 Applications and fees required

A. Application Required. Any person desiring to establish or conduct any business enterprise or undertaking within the corporate limits of the City shall first file a master application through the Washington State Department of Licensing Master License Service in coordination with the City of Tukwila Finance Department for a license to conduct such business. The application shall be upon a form furnished by the Washington State Department of Licensing Master License Service on which the applicant shall state the company name and address; the nature of the business activity or activities in which he/she desires to engage; the place where the business will be conducted; the number of employees, whether full or part-time, on the payroll as of January 1, or, if a new business, the number to be employed on the opening date; the Washington State Unified Business Identifier (UBI) number; and other information pertaining to the business as required by the City. The applicant shall be required to provide all information requested on said form and failure to do so shall be grounds for refusing to issue the business license. Owners of residential rental property are not subject to the application requirements in this chapter but shall adhere to the application requirements in TMC Chapter 5.06.

B. Fee – General.

1. The application must be accompanied by the appropriate application fee in accordance with the fee schedule adopted by resolution of the City Council, as well as the Master License Service handling fee. The license fee for the annual license (Business License fee) issued under this chapter shall be determined based on the total number of employees. The business license fee shall be determined by multiplying the appropriate Business License fee by the number of employees working at or reporting from a location within the City's corporate limits, in accordance with the fee schedule adopted by resolution of the City Council. In no event shall the Business License fee be less than the minimum fee set forth in this chapter. If the number of employees is not known at the time of application or renewal of the license, the business shall estimate the maximum number of employees they anticipate working any time during the 12-month period subject to licensure.

2. It will be the responsibility of the business to determine the total number of employees and, if required, demonstrate to the satisfaction of the Finance Director that the information pertaining to the Business License fee is accurate. Businesses without a full year of operating history shall estimate the number of employees that will be employed in a 12-month period.

C. Minimum Fee. There shall be an annual minimum fee for a Business License in accordance with the fee schedule adopted by resolution of the City Council.

1. 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 $2,000 and who does not maintain a place of business within the City, shall submit a business license registration to the Finance Director or designee. The threshold does not apply to regulatory license requirements or activities that require a specialized permit.
2. Businesses doing business in the City that have no employees physically working within the City's corporate limits shall pay the minimum fee required under this chapter.

3. An entity subject to exemption pursuant to TMC Section 5.04.090 need not pay a Business License fee. An entity engaging in some activities or functions that are exempt from the Business License fee and some that are not exempt shall pay a Business License fee based on the number of employees involved in the functions or activities that are not exempt.

D. New Businesses. The Business License fee for a new business shall be based on the estimated number of employees that will work in Tukwila for a 12-month period. If, during the first license year for a new business, the City determines the actual number of employees is significantly different than the estimated number identified by the business owner, the amount of the Business License fee will be recalculated for the new business. If the revised Business License fee is higher than the original Business License fee paid by the business owner for the first license year, the business owner must pay the difference to the City within 30 days after written notice of the amount owed is sent to the business owner by the City.

E. Over-reporting of Employees. In the event the business owner miscounted the number of employees by an error factor of more than 15% and paid an excess Business License fee as a result, a business may request that the City refund the overpayment. The request must be made in writing to the Finance Department, and the City must receive the request and all supporting documentation no later than 60 days after the end of the calendar year in which the error was made. If the City is satisfied the business owner paid an excess Business License fee, the City will refund the excess amount paid to the business owner.

F. Under-reporting of Employees. If, at the time of license renewal, the City determines the business owner under-reported the number of employees for the preceding year by an error factor of more than 15%, the business shall pay the balance of the corrected Business License fee (calculated as the difference between the paid Business License fee and the corrected Business License fee). The Finance Director shall mail written notice of the balance due to the business owner, and the business shall pay the balance due to the City within 30 days of the date the written notice is mailed by the City. A penalty of 20% of the balance due will be applied if payment is not received within 30 days.

G. Payment by Draft or Check. Payment made by draft or check shall not be deemed a payment of the Business License fee unless and until the same has been honored in the usual course of business, nor shall acceptance of any such check or draft operate as a quittance or discharge of the Business License fee unless and until the check or draft is honored. Any person who submits a Business License fee payment by check to the Washington State Department of Licensing Master License Service or City, pursuant to the provisions of this chapter, shall be assessed an NSF fee set by the Finance Director if the check is returned unpaid by a bank or other financial institution for insufficient funds in the account or for any other reason.
Section 5. TMC Section 5.04.030 Amended. Ordinance No. 2315 §1 (part), as codified at TMC Section 5.04.030, is hereby amended to read as follows:

5.04.030 Issuance of a License and Annual Renewal

A. Upon review and approval of the application, the Washington State Department of Licensing Master License Service or the Finance Director or designee shall issue a license to the applicant. The license shall grant to the applicant the privilege to conduct such business at a designated location in the City.

B. Persons continuing to engage in business within the City shall renew their business license(s) each year. Businesses must pay a renewal fee, as well as the Master License Service handling fee. The annual business license renewal fee shall be in accordance with the fee schedule adopted by resolution of the City Council. The annual fee may be prorated in order to conform the license expiration date with the expiration date established by the Master License Service. Persons not renewing their business license by the expiration date may be subject to a late renewal penalty charged by the Master License Service.

Section 6. TMC Section 5.04.090 Amended. Ordinance Nos. 2544 §5, 2356 §6, 2333 §7 and 2315 §1 (part), as codified at TMC Section 5.04.090, are hereby amended to read as follows:

5.04.090 Exemption

A. Exemptions. The following entities may claim an exemption from the Business License fee, but if exempt under this subsection such entities shall still register under this chapter:

1. Certain Organizations Exempt from Federal Income Tax. An organization that files with the City a copy of its current IRS 501(c)(3) exemption determination letter issued by the Internal Revenue Service.

2. A governmental entity that engages solely in the exercise of governmental functions. Activities that are not exclusively governmental, such as some of the activities of a hospital or medical clinic, are not exempt under this chapter.

3. A nonprofit business operated exclusively for a religious purpose, upon furnishing proof to the Finance Director of its nonprofit status. For the purposes of this chapter, the activities that are not part of the core religious functions are not exempt.

4. Civic groups, service clubs, and social organizations that are not engaged in any profession, trade, or occupation, but are organized to provide civic, service, or social activities in the City.

   a. Examples of such organizations include but are not limited to: Soroptomists, Kiwanis, Lions’ Rotary, American Legion, children’s and adults’ athletic leagues and similar types of groups, clubs or organizations.
5. Court interpreters who provide an oral translation between speakers who speak different languages, and who are either a certified interpreter, qualified interpreter, or registered interpreter, and who make less than $12,000 in gross annual revenue in Tukwila, Washington. Certified, qualified and registered interpreters are defined as follows:

a. "Certified interpreter" means an interpreter who is certified by the administrative office of the courts.

b. "Qualified interpreter" means a person who is readily able to interpret or translate spoken and written English for non-English-speaking persons and to interpret or translate oral or written statements of non-English-speaking persons into spoken English.

c. "Registered interpreter" means an interpreter who is registered by the administrative office of the courts.

B. Nothing in this chapter shall be construed to require a license for any farmer, gardener, or other person to sell, deliver or peddle any fruits, vegetables, berries, butter, eggs, fish, milk, poultry, meats or any farm produce or edibles raised, caught, produced or manufactured by such person in any place within the State.

Section 7. TMC Section 5.04.100 Amended. Ordinance No. 2315 §1 (part), as codified at TMC Section 5.04.100, is hereby amended to read as follows:

5.04.100 Failure to pay fee

If any person engaged in business fails or refuses to pay the license fee for any year as herein provided, they shall not be granted a license for the current year until such delinquent license fees in accordance with the fee schedule adopted by resolution of the City Council have been paid, in addition to the current years' required fee(s). Such fees may be collected by the City by proper legal action brought for that purpose if any person engaged in business fails or refuses to pay the license fee. This remedy is cumulative and not exclusive.

Section 8. TMC Section 5.04.105 Amended. Ordinance No. 2315 §1 (part), as codified at TMC Section 5.04.105, is hereby amended to read as follows:

5.04.105 Additional Requirements for Issuance of Business License

A. A business license will only be issued provided the building, structure, operation or location of the business for which the license is sought complies with the requirements or standards of the Tukwila Municipal Code.

B. In any case where an applicant seeks a business license for a business to be located in a building or structure for which a building or land use permit is required to operate the business as proposed, whether as a newly constructed building or structure or a remodeled building or structure, the permit process, including final inspections/issuance of occupancy permits, shall be completed prior to issuance of a business license.
C. In any case where an applicant seeks a business license for a business to be located in a building or structure for which no building or land use permit is required to operate the business as proposed, the building department may require the business premises to be inspected for compliance with life and safety codes. If the inspection reveals outstanding code violations, the business license will not be issued until all life and safety code violations are resolved.

Section 9. TMC Section 5.04.110 Amended. Ordinance Nos. 2496 §5, 2352 §2, 2333 §8 and 2315 §1 (part), as codified at TMC Section 5.04.110, are hereby amended to read as follows:

5.04.110 Denial, Suspension, Revocation

A. The Finance Director may deny any business license application pursuant to TMC Section 5.04.105.

B. The Finance Director may deny, suspend or revoke any license under this chapter where one or more of the following conditions exist:

1. The licensee is in default of any fee, charges or amounts due and payable to the City of Tukwila, as outlined in the Tukwila Municipal Code or City policy.

2. The license was procured by fraud or by a false or misleading representation of fact in the application, or in any report or record required to be filed with the Finance Department.

3. The building, structure, equipment, operation or location of the business for which the license was issued does not comply with the requirements or standards of the Tukwila Municipal Code.

4. The license holder, his or her employee, agent, partner, director, officer or manager has knowingly violated any provisions of any chapter of the Tukwila Municipal Code, or has knowingly permitted, failed to prevent, or has otherwise allowed a violation of any of the provisions of any chapter of the Tukwila Municipal Code to occur on his or her business premises.

5. The license holder, his or her employee, agent, partner, director, officer or manager has repeatedly violated any provision of City policies or the Tukwila Municipal Code after having received notice of such violation.

6. Conduct of the business would be in violation of any local, state or federal law, rule or regulation prohibiting the conduct of that type of business.

7. The property at which the business is located has been determined by a court to be a chronic nuisance property, a Violation Notice and Order for a chronic nuisance property has been issued and not timely remedied or appealed, or the Hearing Examiner has determined the property to be a chronic nuisance property, as provided in TMC Chapter 8.27.
C. Upon determination that grounds for denial, suspension or revocation of a license exist, the Finance Director shall send the applicant or license holder a Notice of Denial, Suspension or Revocation. The Notice of Denial, Suspension or Revocation shall set forth the grounds for and terms of the denial, suspension or revocation, and a statement advising the applicant or license holder that he/she may appeal the Notice of Denial, Suspension or Revocation in accordance with the provisions of TMC Section 5.04.112. The filing of such appeal shall stay the action of the Finance Director pending decision on the appeal by the City Hearing Examiner or other hearing body pursuant to TMC Section 5.04.112.

D. Receipt of the Notice of Denial, Suspension or Revocation. The Notice of Denial, Suspension or Revocation shall be: (1) sent to the applicant or license holder by registered mail at the address provided on the license application; (2) hand delivered to the address provided on the license application; or (3) posted upon the premises where such applicant or license holder conducts the business that is the subject of the denied, suspended or revoked license. Notice shall be deemed received by the applicant or license holder upon posting, hand delivery, or 3 business days after mailing, whichever occurs first.

Section 10. TMC Section 5.04.130 Adopted. TMC Section 5.04.130, "Disclaimer of City liability," is hereby established to read as follows:

5.04.130 Disclaimer of City liability

The City of Tukwila expressly finds and requires that responsibility for compliance with the provisions of this chapter rests with license applicants and their agents and that no action, inaction, or omission of the City or any of its agents or employees shall serve to assume or shift responsibility for compliance with the provisions of this chapter to any other party, including the City. Furthermore, issuance of a license pursuant to this chapter does not constitute the creation of a duty by the City to indemnify the licensee for any wrongful acts against the public, or to guarantee the quality of goods, services or expertise of a licensee. The issuance of a license does not shift responsibility from the licensee to the City for proper training, conduct or equipment of the licensee or their agents, employees or representatives, even if specific regulations require standards of training, conduct or inspection.

Section 11. Repealer. Ordinance No. 2425 is hereby repealed in its entirety.

Section 12. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.
Section 13. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Section 14. Effective Date. This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this 15th day of October, 2018.

ATTEST/AUTHENTICATED:

Christy O'Flaherty, MMC, City Clerk

Allan Ekberg, Mayor

APPROVED AS TO FORM BY:

Rachel B. Turpin, City Attorney

Filed with the City Clerk: 10-10-18
Passed by the City Council: 10-15-18
Published: 10-18-18
Effective Date: 10-23-18
Ordinance Number: 2583
City of Tukwila Public Notice of Ordinance Adoption for Ordinance 2588.

On October 15, 2018 the City Council of the City of Tukwila, Washington, adopted the following ordinance, the main points of which are summarized by title as follows:

**Ordinance 2588:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, AMENDING VARIOUS ORDINANCES AS CODIFIED IN TUKWILA MUNICIPAL CODE CHAPTER 5.04, “LICENSES GENERALLY,” TO ADOPT MODEL BUSINESS LICENSE LANGUAGE AS DIRECTED BY THE STATE; REPEALING ORDINANCE NO. 2425; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this ordinance will be provided upon request.

Christy O'Flaherty, MMC, City Clerk

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