

City of College Place, Washington
ORDINANCE NO. 18-022

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF COLLEGE PLACE, WASHINGTON REPLACING CHAPTER 5.04 – PEDDLERS/SOLICITORS WITH CHAPTER 5.04 – BUSINESS LICENSES AS MORE PARTICULARLY DESCRIBED HEREIN.

Whereas, in 2017, the State of Washington Legislature passed EHB 2005 (Chapter 209, Laws of 2017), adding a new chapter RCW 35.90; and

Whereas, RCW 35.90 requires all cities with business licenses, partnered with Washington State Business License Service, to adopt a licensing threshold as part of a business license model ordinance by October 17th, 2018, to be implemented on January 1st, 2019; and

Whereas, the model ordinance mandates a definition of “engaging in business” and other peripheral language for business license requirements; and

Whereas, review brought about miscellaneous housekeeping changes to clarify code and to mirror current practice; and

Whereas, the City Council finds that it is in the best interest of the citizens of the City of College Place to amend Chapter 5.04 of the College Place Municipal Code to reflect the legislation requirements and updated practices and procedures.

Now therefore, the City Council of the City of College Place do hereby Ordain as follows:

Section 1: Replace Chapter 5.04 – Peddlers/Solicitors with language identified in Exhibit 2 of this Ordinance titled Chapter 5.04 – Business Licenses in the College Place Municipal Code.

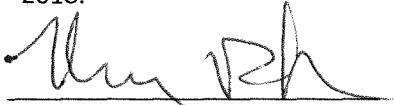
Section 2: Corrections. The City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers, and any references thereto.

Section 3: Ratification. Any act consistent with the authority and prior.

Section 4: 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 portions of this ordinance.

Section 5: Effective Date. This ordinance shall take effect and be in full force five days after its passage and publication as provided by law.

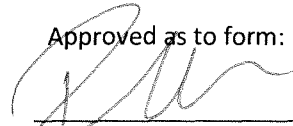
PASSED by the City Council of the City of College Place, Washington, this 9th day of October, 2018.


Harvey R. Crowder, Mayor

Attest:


Lisa R. Neissl, City Clerk

Approved as to form:


Rea Culwell, City Attorney



Chapter 5.04

BUSINESS LICENSES

Yellow highlighted text cannot be changed as that is State of Washington mandated language (RCW 35.90)

Sections:

- 5.04.010 Purpose
- 5.04.020 Definitions.
- 5.04.030 Business license required – Posting.
- 5.04.040 Application and renewal.
- 5.04.050 License term or expiration.
- 5.04.060 Fee.
- 5.04.070 Confidentiality of applications.
- 5.04.080 Prohibited Refunds.
- 5.04.090 License – Nontransferable.
- 5.04.100 Exception – Applicability of provisions.
- 5.04.110 Standards of Conduct.
- 5.04.120 Excise tax returns
- 5.04.130 Health regulation
- 5.04.140 Suspension, denial, or Revocation
- 5.04.150 Use of Streets (Peddler/Solicitor)
- 5.04.160 Hours and notice (Peddler/Solicitor)
- 5.04.170 Violation – Penalty

5.04.010 Purpose

The City of College Place is a licensing partner with the State of Washington Business License Service's (BLS) as required by Chapter 19.02 RCW. This Chapter does not alleviate any person, group of people, or entity from obtaining license(s) and permit(s) required by the City of College Place in addition to the requirements of this Chapter. The requirements herein are to monitor business activities to ensure public safety and code compliance, and generate revenue to, among other activities, enable the City of College Place to monitor business activities.

5.04.020 Definitions.

The following definitions shall apply in construing the provisions of this chapter, except where otherwise declared or clearly apparent from the context:

- A. "Breach of the Peace" A public disturbance or engaging in disorderly conduct, particularly by making an unnecessary or disturbing noise.
- B. "Business Licensing Services" (BLS) means the section of the State of Washington Department of Revenue authorized to provide business licensing services to the City pursuant to RCW Chapter 19.02 as now codified or as hereafter amended.
- C. "City" means the city of College Place.
- D. "Engaging in business"

(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.

E. "Fraud" means a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.

F. "Moral turpitude" means an act or behavior that gravely violates the moral sentiments or the accepted moral standards of the community. Crimes of moral turpitude include, but are by no means limited to, misdemeanor offenses involving the following sorts of conduct, namely, assault, false advertising, false representation, fraud, harassment, theft, sexual exploitation of children, swindles and unlawful possession of a firearm.

G. "Peddler/Solicitor" The terms "peddler" and "solicitor," and the terms "peddle" and "solicit" are used interchangeably in this chapter. A "peddler/solicitor" is defined as follows:

1. All persons, both principals and agents, as well as employers and employees, who shall sell, offer for or expose for sale, or who shall trade, deal or traffic in any personal property or services in the city by going from house to house, from place to place, or by indiscriminately approaching individuals from a location on any street, alley, sidewalk or other public thoroughfare and are otherwise not prohibited by local, state or federal law.

2. Any person, both principals and agents, as well as employers and employees, who, while selling or offering for sale, any goods, wares, merchandise or anything of value, stands in a doorway or on any unenclosed vacant lot, parcel of land, or in any other place not used by such person as a permanent place of business. This definition is not intended to apply to yard sales or other selling related activities by the owners of property where such sales are being conducted and are otherwise not prohibited by local, state or federal law

H “Person” means any individual, firm, partnership, limited liability company, corporation, association, receiver, assignee, trustee in bankruptcy, trust, estate, joint venture, club, joint stock company, business trust, society, or any group of individuals acting as a unit.

I “Registrant” means any person who engages in business or who is required to have a business license, or who performs any act for which a license fee is imposed by this chapter.

5.04.030 Business license required – Posting.

Every person who engages in business must obtain a City business license for the privilege of engaging in business within the City and shall post the City business license at their physical place of business. A business must license each physical location at which it conducts business in the City. Multiple businesses operating at the same physical location must each license its business separately, and post a separate license displaying the City business license. Businesses located outside the City must carry a copy of the City business license while conducting business inside the City.

5.04.040 Application and renewal.

A. Application for a business license shall be made by submitting a completed Master Business Application, and any appropriate addenda forms to the State of Washington Business Licensing Service (BLS), in cooperation with the City giving such information as is deemed reasonably necessary to enable the enforcement of this chapter. Said application shall be accompanied by payment of all applicable license fees due for that application and the BLS application handling fee authorized by RCW 19.02.075.

B. Renewals shall be handled by the BLS in coordination with the City Finance Director or designee. Renewal shall require payment of all license fees due for that renewal and the BLS renewal handling fee authorized by RCW 19.02.075.

C. Failure to renew the license on or before 120 days after the expiration date established by the Business Licensing Service may result in the cancellation of the license, and may require the filing of a new City business application, payment of all appropriate fees, and reapproval by the City in order to continue conducting business in the City.

5.04.050 License term or expiration.

Each City business license issued shall have a term determined by the State of Washington in cooperation with the City. The City business license term or expiration date will be coordinated with the terms or expiration dates of all other licenses or permits required by the state and/or the City for each business.

5.04.060 Fee.

The fee for the City business license required by this chapter shall be as established by resolution of the City Council. The license fees listed in this section are in addition to any other licensing or handling fee collected by the State of Washington Business Licensing Service. The fee imposed by this chapter, and all penalties assessed

thereon by the City, shall constitute a debt to the City, and may be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies. Any judgment entered in favor of the city shall include an award to the City of all court and collection costs including attorneys' fees.

5.04.070 Confidentiality of applications.

The applications made to the city pursuant to this chapter are subject to confidentiality governed by RCW 19.02.155 and as amended and shall not be made public or be subject to inspection except as allowed or required by law.

5.04.080 Prohibited refunds.

No surrender, revocation or other cancellation, irrespective of the cause, of any business license issued, shall entitle the holder thereof to any refund in whole or in part of any business license fee paid. In addition, no refunds shall be paid if the licensee shall fail to operate the business for the full period of the business license.

5.04.090 License – Nontransferable.

No business license issued within the city shall be transferable. Only the persons to whom the business license is issued shall be eligible to engage in business as permitted under that license. No licensee shall allow another person to operate a business under, or display the business license issued to said licensee.

5.04.100 Exception – Applicability of provisions.

This chapter shall not be applicable to:

- A. Suppliers who do not have a place of business in the city and who are engaged solely in wholesale selling to licensed retailers;
- B. Any fraternal, charitable or social entity or organization whose sole purpose is charitable and nonprofit and not organized or operated for the benefit of private interests, other than those operating pursuant to Chapter 69.51A RCW, included, but not limited to educational, scientific, literary, fostering local, national or international amateur sports competition, preventing cruelty to children or animals, relief of the poor, distressed, or underprivileged, erecting or maintaining public buildings, monuments, or works, eliminating prejudice and discrimination, defending human and civil rights secured by law, and combating community deterioration and juvenile delinquency;
- C. Any organization or assemblage whose sole purpose is religious and is not organized or operated for the benefit of private interests;
- D. Any municipality or political subdivision of the United States or the state of Washington;
- E. Any person who is exempt from paying the license fee by the laws of the United States of America or by the State of Washington.

F. Artisans who produce their own art or craftwork, or sellers of prepared foods participating in a special event permit in which the sponsor has a city business license.

G. Artisans who produce their own art or craftwork or sellers of prepared foods participating in a special event permitted by a lease entered into with the City of College Place.

H. A 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.

I. Persons selling trees solely used to celebrate a holiday.

J. A seller located outside the City merely delivering goods into the City by means of a common carrier provided that it engages in no other business activities in the City.

K. Minors engaged in babysitting, newspaper delivery, lemonade stands, lawn mowing, and similar activities.

L. Farmers, agriculturer, or gardeners selling their own farm products raised and grown exclusively upon lands owned or occupied by them. This exclusion is not applicable to the sale of value added products or prepared foods.

M. Individuals who own or rent/lease property or otherwise use real property for their personal residence.

N. Individuals who own real property that is rented/leased to others for residential use. Provided the individual rents/leases no more than two properties. Persons/entities that own three or more separate real properties that is leased/rented for residential use must obtain a license.

5.04.110 Standards of Conduct.

Every licensee under this chapter shall:

- A. Permit reasonable inspections of the business premises by governmental authorities for the purpose of enforcing the provisions of this chapter;
- B. Comply with all federal, state, and city statutes, laws, ordinances, codes, and regulations relating to the business premises and the conduct of the business thereon;
- C. Refrain from unfair or deceptive acts or practices, or consumer fraud, in the conduct of the business and avoid maintaining a public nuisance on the business premises;

- D. Refrain from operating the business after expiration of a business license or during the period that the business license may be suspended or revoked.

5.04.120 Excise tax returns

All persons, firms and corporations who perform labor, services and construction, or who sell goods or any other items deemed taxable by the State of Washington Department of Revenue within the city (as provided in Rule II, WAC 458-20-145), shall report the city of College Place "Location Code Number 3601" on their excise tax returns to the State of Washington Department of Revenue. On any violation hereof the amount of the local sales and use taxes due the city shall be paid to the city by the violator, together with a penalty of one hundred percent in addition to all other penalties, fines and remedies provided in this chapter.

5.04.130 Health regulation.

All food vendors shall comply with all laws, rules and regulations regarding food handling, and all vehicles, equipment, devices or structures used for the preparation, handling, storage, transportation and/or sale of food shall comply with WAC 246-215-050, as presently worded and as may be amended by law, in addition to any other rules and regulations respecting such vehicles, equipment, devices, or structures as established by the Walla Walla County health department and as set forth in the College Place Municipal Code.

5.04.140 Suspension, denial, or revocation.

A. Suspension, Denial or Revocation. Any business license may be suspended, denied, or revoked at any time during the term of such license for any violation by the licensee of any of the provisions of the College Place Municipal Code related to the business license, the subject matter of the business license, or to the premises occupied; such suspension or revocation may be in addition to any fine imposed. Reasons for suspension or revocation include, but are not limited to, any one or more of the following reasons.

B. Reasons for Denial or Suspension. Any business license may be denied or suspended when, for any one or more of the following reasons:

1. The licensee or any of its officers, directors, agents, or employees while acting within the scope of their duties has failed to comply with any of the terms and conditions on which a business license is issued;
2. The licensee or any of its officers, directors, agents, or employees, while acting within the scope of their employment, violates or fails to comply with any federal, state, or local law or regulation, including but not limited to any provision of the College Place Municipal Code, and including but not limited to the commission or acquiescence or permitting of any unlawful activity on the business premises. While not required, a conviction or plea of guilty in the Walla Walla County District Court or any court of record shall be deemed conclusive as to whether such a violation or failure to comply has occurred;

3. The licensee or any of its officers, directors, agents, or employees while acting within the scope of their duties has violated or failed to keep the building, structure, or equipment of the licensed premises in compliance with applicable health, building, fire or safety laws, ordinances, or regulations;
4. When a business becomes an instrument of or a cover for public disorder, crime, or other danger to public safety or health or acts of moral turpitude;
4. The licensee or any of its officers, directors, agents, or employees while acting within the scope of their duties has caused or permitted a public nuisance to exist;
5. The licensee or any of its officers, directors, agents, or employees' continued conduct of the business for which the business license was issued has or will result in a danger to the public health, safety or welfare;
6. The business license is being used for a purpose different from that for which it was issued.

C. **Suspension Not to Exceed Sixty Days.** If a determination is made that licensee has violated any of the provisions of this title or any of the provisions of the College Place Municipal Code, such licensee shall be subject to a suspension not to exceed two days for the first offense, fifteen days for the second offense, or thirty days for the third offense, as the case may be, as determined by the Police Chief or designee. Nothing in this section prohibits the City from revoking or denying a business license as permitted herein or at law.

D. **Reasons for Revocation.** Any business license shall be revoked for , any one or more of the following causes::

1. The business license was issued through mistake or inadvertence;
2. The business license was issued in violation of local, state or federal laws;
3. The business license was procured by fraud, false representation of facts, or omission of material fact, including but not limited to false or misleading statements, evasions or suppressions of material facts in the application;
5. The licensee or any of its officers, directors, agents, or employees has been convicted of a crime involving the business;
6. The business is the subject of a fourth violation under this Chapter within five years of the first violation. The violator need not be the same individual and any officer, director, agent, or employee or licensee is considered to be the same violator;
7. The business, licensee or any of its officers, directors, agents, or employees, while acting within the scope of their duties creates a significant threat to safety of the public, persons or property.

F. Notice. The Police Chief or designee shall send the license holder a notice of suspension, denial, or revocation by certified mail, return receipt requested or by personal service. All business activity must cease immediately.

G. Appeal of Suspension, denial, or Revocation. The licensee may appeal the suspension, denial, or revocation by appealing in writing to the Hearing Examiner (CPMC 2.50) within ten days of the date of mailing or personal service of such notice. Such appeal must state the grounds upon which the licensee is appealing.

H. Hearing by Hearing Examiner. The Hearing Examiner shall hold a hearing to gather facts upon which to make a decision pursuant to CPMC 2.50.100.

I. Notice of Hearing. The Hearing Examiner shall mail written notice of this decision to the licensee at the address stated on the license application.

J. Hearing Examiner Decision--Appeal. The decision of the Hearing Examiner shall be made according to CPMC 2.50.110 and shall be final. A final decision may be appealed pursuant to the procedures in Chapter 19.15 CPMC Walla Walla County Superior Court, except that the grounds of the appeal are limited to the claim that the decision is arbitrary or capricious or in violation of the law. Such notice of appeal shall be given within fourteen days of the date of the decision of the Hearing Examiner

5.04.150 - Use of streets (Peddler/Solicitor).

No peddler shall have any exclusive right to any location in the public streets or publicly owned right-of-way, or be permitted a stationary location, nor be permitted to operate in any congested area where operations might impede or inconvenience the public. For purposes of this section, the judgment of a police officer, exercised in good faith, shall be conclusive as to whether the area is congested or the public impeded or inconvenienced.

5.04.160 - Hours and notice (Peddler/Solicitor)

No person shall engage in the business of peddling between the hours of 8:00 p.m. and 8:00 a.m.

5.04.170 Violation – Penalty.

Any person violating or failing to comply with any provision of this chapter shall be deemed guilty of a misdemeanor, as prescribed in CPMC Chapter 1.20.