

MLO
02/17/12

ORDINANCE NO. 810

AN ORDINANCE OF THE CITY OF CARNATION, WASHINGTON, AMENDING CHAPTER 5.12 CMC BUSINESS LICENSES GENERALLY; AMENDING AND UPDATING THE CITY'S CODE PROVISIONS GOVERNING THE LOCAL LICENSING AND REGULATION OF BUSINESS ACTIVITY WITHIN THE CITY; AUTHORIZING THE CITY MANAGER TO ENTER INTO A BUSINESS LICENSING SERVICE AGREEMENT WITH THE STATE OF WASHINGTON DEPARTMENT OF REVENUE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, pursuant to state law, including without limitation RCW 35A.82.020, the City has established general provisions governing the general licensing and regulation of local business activity; and

WHEREAS, the City finds that it will be beneficial to enter into an agreement with the State of Washington Department of Revenue Business Licensing Service (BLS) under which that agency shall accept and process City business license applications and renewals; and

WHEREAS, the City Council desires to amend and update Chapter 5.12 CMC to accommodate the acceptance and processing of City business licenses by BLS; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF CARNATION, WASHINGTON, DO
ORDAIN AS FOLLOWS:

Section 1. Amendment of Chapter 5.12 CMC. Chapter 5.12 CMC Business Licenses Generally is hereby amended to provide in its entirety as indicated in Exhibit A, attached hereto and incorporated herein by this reference as if set forth in full.

Section 2. 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 3. Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

APPROVED by the Carnation City Council this 21st day of February, 2012.


MAYOR, JIM BERGER

ATTEST/AUTHENTICATED:


CITY CLERK, MARY OTNESS

FILED WITH THE CITY CLERK: 02/17/2012
PASSED BY THE CITY COUNCIL: 02/21/2012
PUBLISHED: 02/29/2012
EFFECTIVE DATE:..... 03/05/2012
ORDINANCE NO. 810

EXHIBIT A

Chapter 5.12

BUSINESS LICENSES GENERALLY*

* **Editors Note:** Ord. No. 768, § 1, amended Ch. 5.12 in its entirety. Former Ch. 5.12 pertained to similar subject matter and derived from Ord. 529, § 1, adopted in 1996; Ord. No. 592, §§ 65--67, adopted in 1999; Ord. No. 638, § 1, adopted in 2002; and Ord. No. 652, § 1, adopted in 2003.

Sections:

- 5.12.010 Purpose.
- 5.12.020 Definitions.
- 5.12.030 Business license required.
- 5.12.040 Businesses located outside city limits.
- 5.12.050 Exemptions.
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- 5.12.070 Term of license.
- 5.12.080 Procedure for renewing license.
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- 5.12.100 Posting required.
- 5.12.110 Transfer of license.
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- 5.12.140 Fees.
- 5.12.150 Illegal activity.
- 5.12.160 Authority to stop work.
- 5.12.170 Noncompliance--Revocation and final action.
- 5.12.180 Transient merchants, peddlers and solicitors.
- 5.12.190 Appeal.
- 5.12.200 Violation--Penalty.
- 5.12.210 Delegation of administrative functions – Business Licensing Service.

5.12.010 Purpose.

The purpose of this chapter is to regulate and insure the legal conduct of businesses, assist in the effective administration of health, fire, building, zoning and other codes of the City, to impose fees for revenue purposes, and to provide a means for obtaining public information and compiling statistical information on existing and new businesses in the city.
(Ord. No. 768, § 1, 9-2-2009)

5.12.020 Definitions.

For the purposes of this chapter:

- A. The term "business" includes all services and activities engaged in with the object of pecuniary gain, benefit or advantage to the person, or to another person or class, directly or indirectly, whether part-time or full-time, except those business activities for which licenses or franchises are required by other ordinances of the City and for which compliance with this chapter is expressly excused, and except

nonbusiness activities carried on by a religious, charitable, benevolent, fraternal or social organization. For the purposes of this chapter, the owner of any apartment building containing four or more rental units shall be considered to be engaged in a "business."

B. "BLS" means the State of Washington Department of Revenue Business Licensing Service.

BC. "Engaged in business" means every act within the city engaged in for the purpose of business including, but not limited to commencing, conducting or continuing in business or carrying on of any form of activity for gain, profit or advantage, whether direct or indirect. Businesses or persons providing services to people or property within the city, operating from premises located within the city, soliciting business within the city, or using either a telephone number ~~of~~ or business address within the city shall be presumed to be engaged in business within the city.

CD. "Home occupation" means a commercial activity that is conducted by a person on the same lot where such person resides and is not so insubstantial or incidental or is not so commonly associated with the residential use as to be regarded as an accessory use, but that can be conducted without any significantly adverse impact on the surrounding neighborhood.

DE. "Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, corporation, association, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, and includes the United States or any instrumentality thereof.

EF. "Peddler" means any person with no fixed place of business who goes from house to house, from place to place or from state to state, carrying or transporting goods, wares or merchandise and offering or exposing the same for sale, or making sales and deliveries to purchasers.

FG. "Registered solicitor" means and includes any person or business which has obtained a valid certificate or registration as provided in this chapter.

GH. "Sexually oriented business" means any business as defined in Chapter 5.48 or 5.52 of the Carnation Municipal Code.

HI. "Solicitor" means any person who goes from house to house, from place to place, or from state to state, soliciting, taking or attempting to take orders for any goods, wares or merchandise, including books, periodicals, magazines or personal property of any nature whatsoever, including any services for future delivery.

IJ. "Temporary business" means any business other than a solicitor, peddler or

transient merchant that engages in business activity within the city for a period of not more than three consecutive days.

- JK. "Transient merchant" means any person, firm or corporation who engages temporarily in the business of selling and delivering goods, wares or merchandise within the city, and who, in furtherance of such purposes, hires, leases, uses or occupies any building, structure or vacant lot, motor vehicle, or trailer.

(Ord. No. 768, § 1, 9-2-2009)

5.12.030 Business license required.

It is unlawful for any person to conduct, operate, engage in or practice any business within the city of Carnation, without having first obtained a City of Carnation business license from the ~~city~~ [cz1].

- A. If more than one business is conducted on a single premises, a separate license shall be required for each separate business conducted operated, engaged in or practiced.
- B. If a single business operates on multiple premises within the city, a separate business license shall be required for each separate location.
- C. Different activities, occupations, trades, professions or pursuits (collectively, "undertakings"), although carried on at a single physical location, shall be deemed separate businesses, each requiring a separate business license. In determining whether separate business licenses shall be required for such undertakings in accordance with this subsection, the City may consider any relevant factors including without limitation:
1. Whether the undertakings have differing names;
 2. Whether the undertakings have separate signage or other advertisements;
 - and
 3. Whether the undertakings have different owners.

(Ord. No. 768, § 1, 9-2-2009)

5.12.040 Businesses located outside city limits.

Unless otherwise exempt, this chapter covers and applies to any business located outside the city that engages in any business activity inside the city limits of the city of Carnation.

(Ord. No. 768, § 1, 9-2-2009)

5.12.050 Exemptions.

- A. The provisions of this chapter shall not apply to:
1. Delivery persons, and the delivery of goods by vehicle to a customer or client by a business where the sale occurred on a business premises outside of the city and the only event occurring within the city is a delivery.
 2. Minors doing business or operating a business concern where no other person is

employed by the minor.

3. The United States or any instrumentality thereof and the state of Washington or any political subdivision thereof.
4. The sale, delivery or peddling of fruits, vegetables, berries, eggs or farm produce exempt from licensing pursuant to RCW 36.71.090.
5. Casual and isolated sales, including yard sales and garage sales conducted on residential premises in compliance with this code; provided, that such sales are not conducted on the same lot for more than four days (whether consecutive or not) during any ninety-day period.
6. Taxi, limousine, airporter, or similar services where the business operates from premises located outside the city.
7. Sales of goods or services by mail, telephone, internet, or similar means where the seller operates from premises outside the city and the only event occurring within the city is receipt of such goods and services.
8. Provision 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 services.

B. The license fee portion of this chapter shall not apply to:

1. Nonprofit and not-for-profit activities and fundraising sales carried on by religious, charitable, educational, benevolent, fraternal or social organizations which are registered with the State of Washington Secretary of State as a nonprofit corporation~~have been determined by the Internal Revenue Service (IRS) of the United States to be exempt from payment of income tax and whose charitable contributions would be deemed tax deductible; provided, that the organization shall file a true and correct copy of a current IRS 501(c) or 501(d) exemption certificate~~^[MO2].
2. Persons required to obtain a license and pay a license fee for a specific activity or business under other provisions of this code who have indeed procured such a license and paid the fee for such license.
3. Persons engaged to acts as agents, officials or representatives of the city.

C. In addition to the other exemptions set forth in this section, the requirements of this chapter shall not apply to any activity or person to the extent such application: (is) would be ~~clearing clearly~~ preempted by state or federal law, or (ii) would violate the state or federal constitutional rights of a person.

D. Any person claiming an exemption from the requirements of this chapter shall bear the burden of demonstrating the person's entitlement to such exception by providing appropriate documentation and/or legal authority to the city.
(Ord. No. 768, § 1, 9-2-2009)

5.12.060 Application procedure.

A. ~~No business license shall be issued or renewed except upon written application made to the city.~~ submittal of a completed Business License Application, and any appropriate addenda forms to the State of Washington Business Licensing Service (BLS), in cooperation with the City. Such application shall be ~~signed~~ made by the person who intends to conduct, operate or engage in the business for which the license is to be issued, ~~or the person's duly appointed representative,~~ and shall state the nature and address ~~or addresses~~ of the business ~~or businesses,~~ or proposed business ~~or businesses,~~ of the applicant, and such other information as may be required by the City. Said application shall be accompanied by A-a nonrefundable City application fee and the BLS application handling fee authorized by RCW 19.02.075, in an amount equal to the first annual license fee for the business for which the license is sought shall accompany the application. In the event that the license shall be granted, the application fee shall be credited to payment of the said first annual license fee.

B. If the applicant is a partnership, the application must be made ~~and signed~~ 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. ~~The city clerk shall forward copies of all applications for business licenses to the city manager.~~ The City Manager shall cause a review of the application to be made by appropriate city officials and shall approve or deny the license in writing within thirty days of the ~~date of the complete application to BLS,~~ unless, in the determination of the City Manager, additional time is required for completion of the review process. If an application is denied by the City Manager, the reason for denial shall be stated.

D. Neither the filing of an application for license, or the renewal thereof, nor the payment of any application or renewal fee, shall authorize a person to engage in or conduct a business until such license has been granted or renewed.

E. Persons applying for a peddler's, solicitor's, transient merchant's or any other form of temporary business authorization or license must be apply directly with the City on forms provided by the City for such application, and pay all fees due for such application directly to the City.

(Ord. No. 768, § 1, 9-2-2009)

5.12.070 Term of license.

All business licenses issued pursuant to the provisions of this chapter shall ~~be valid until December 31 of the year for which they are issued,~~ and all renewals thereafter shall be for a

period of one calendar year commencing January 1 of the year for which the license is issued and terminating and expiring December 31 of the same year have a term as established by the State of Washington Business Licensing Service (BLS), in cooperation with the City, provided that such term shall not exceed one year..

(Ord. No. 768, § 1, 9-2-2009)

5.12.080 Procedure for renewing license.

Renewals shall be handled by the BLS in coordination with the City. Renewal shall require payment of all license fees due for that renewal, and the BLS renewal handling fee authorized by RCW 19.02.075. Failure to renew the license on or before the expiration date established by the BLS may result in the charge of a delinquent renewal penalty as authorized in RCW 19.02.085. Failure to renew the license on or before 90 days after the expiration date established by the BLS may result in the cancellation of the license, and may require the filing of a new Business License Application, payment of all appropriate fees, and reapproval by the City in order to continue conducting business in the City. ~~The city shall issue to each business in the city a renewal notice, prior to the twentieth of November of each year, which notice shall contain the renewal procedure and required renewal fee. If any license hereunder is not renewed on or before December 31 of each year for the following calendar year, then the city may require a new application to be made accompanied by a fee of one hundred fifty percent of the regular fee payable upon application hereunder.~~

(Ord. No. 768, § 1, 9-2-2009)

5.12.090 Issuance.

~~All licenses shall be issued by the city clerk on forms furnished by the clerk, and the clerk shall keep a register thereof.~~ The issuance of business licenses shall be performed by the State of Washington Department of Revenue Business Licensing Service (BLS) in coordination with the City. Each license shall be numbered and shall show the name, and place and character of business of each person who by this chapter is required to obtain a the business of the licensee and shall provide for only such information as deemed necessary to administer the provisions of this chapter.

(Ord. No. 768, § 1, 9-2-2009)

5.12.100 Posting required.

Each person required to obtain a business license under this chapter shall at all times post such business license in a conspicuous place at the place of business for which it is issued.

(Ord. No. 768, § 1, 9-2-2009)

5.12.110 Transfer of license.

The business license is not transferable. A business owner acquiring an existing business in the City must obtain a new, approved license for that business. A change of physical location of a business inside the City will require approval by the City before business may commence at the new location, and may require the filing of a new Business License Application. ~~When the~~

~~place of business of a person required to obtain a business license under this chapter is changed, the person shall return the license to the city clerk, and a new license shall be issued for such person's new place of business without charge for the balance of the license year provided such new place of business is in compliance with the city's zoning, building, fire and other related codes. No business license shall be transferable to another owner. Should a business be sold or transfer ownership, the new owner of said business shall apply for a new business license as provided in this chapter.~~

~~(Ord. No. 768, § 1, 9-2-2009)~~

5.12.120 Illegal use.

No person holding a City business license shall suffer or allow any other person for whom a separate license is required to operate under or display such person's license, and no person may maintain a business license obtained through a false or fraudulent application or return or any false statement or representation in or in connection with any such application or return for such business license.

(Ord. No. 768, § 1, 9-2-2009)

5.12.130 Revocation.

The City Manager may revoke the license issued to any person required to obtain a business license who is in default in any payment of any license fee and or any other fee or who shall fail to comply with any of the provisions of this chapter or any other provision of the Carnation Municipal Code. ~~notice~~ Notice of such revocation shall be mailed to the person by the ~~city City~~ clerk, and on and after the date thereof any such person who continues to engage in business shall be deemed to be operating without a license and shall be subject to any or all penalties provided for in this Chapter.

(Ord. No. 768, § 1, 9-2-2009)

5.12.140 Fees.

A. ~~Unless otherwise set forth under other provisions of this code, business license fees shall be in the amount set forth by resolution of the City Council.~~

~~B. Any business required to obtain a license under this chapter which has not commenced business within the city before October 1 of a given calendar year shall pay only one half of the annual license fee for the remaining portion of said calendar year.~~

~~(Ord. No. 768, § 1, 9-2-2009)~~

5.12.150 Illegal activity.

Notwithstanding any contrary provision hereof, a business license hereunder may not be issued to any person using or occupying any real property or otherwise engaging in any activity in violation of: (i) the provisions of the Carnation Municipal Code, including without limitation the City's zoning, building and fire codes and all amendments thereto; (ii) any permit, approval or written understanding from or with the City concerning such real property; or (iii) any

applicable provision of state or federal law. The City may revoke any business license for any activity, operation, facility or structure that is not fully compliant as provided herein. Upon notice of revocation, the business shall immediately cease operations until the City has determined that full compliance has been achieved and the license is reinstated.

(Ord. No. 768, § 1, 9-2-2009; Ord. No. 791, § 1, 3-1-2011)

5.12.160 Authority to stop work.

Whenever any business is being conducted, or any work done by persons engaged in business, in violation of the licensing requirements of this chapter, the City Manager or designee is authorized to order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, or engaging in such business, and any such persons shall forthwith stop such work until a business license is obtained as provided herein.

(Ord. No. 768, § 1, 9-2-2009)

5.12.170 Noncompliance--Revocation and final action.

A pending application for renewal hereunder shall be deemed in compliance with this chapter unless the applicant is notified by the eCity clerk in writing that such application may not be granted because of noncompliance with the provisions of this chapter. In the event such notice is given, the applicant shall have ninety days from the date of such notice to comply with any section violated hereunder prior to final action upon such application for renewal unless an extension for compliance is granted by the City Council.

(Ord. No. 768, § 1, 9-2-2009)

5.12.180 Transient merchants, peddlers and solicitors.

A. Registration Required. It is unlawful and a nuisance for any person to engage in commercial or business solicitation and/or canvassing, calling at residences without the previous consent of the occupant for purposes of soliciting orders, sales, subscriptions or business commercial information without first having registered ~~in with~~ with the office of the eCity clerk. The applicant shall provide a written signed application stating:

1. The name, address, telephone number and contact person for the principal applicant;
2. The nature of the products or services involved, the names of the manufacturers, if any;
3. The proposed method of operation in the city;
4. List of persons who will solicit or canvass in the city, including each person's name, address and telephone number, a general description of each person; and
5. Any other information required by the City.

B. Identification. Every peddler, solicitor, registered solicitor or transient merchant shall not conduct business within the city limits without possessing a valid copy of their solicitor/peddler license at all times.

C. Hours of Operation. Peddlers, solicitors, registered solicitors or transient merchants shall not operate within the city limits between the hours of 8:00 p.m. and 8:00 a.m. without a prearranged appointment.

D. No Soliciting Signs Compliance. No peddler, solicitor, registered solicitor, or transient merchant shall contact any residence that is posted by signage that such contacts are not desired by the residents.

E. Use of Streets, Parks or Rights-of-Way. No peddler, solicitor, registered solicitor or transient merchant shall have any exclusive right to any location in the public streets, parks or public rights-of-way, nor be permitted a stationary location, nor be permitted to operate in any congested area where operations might impede or inconvenience the public. For the purpose of this section the judgment of a law enforcement officer, exercised in good faith, shall be conclusive as to whether the area is congested or the public impeded or inconvenienced.

F. Exemptions. Charitable, religious, nonprofit organizations, any political campaign on behalf of (or in opposition to) any candidate for public office or other similar civic, charitable, or nonprofit organizations shall be exempt from all provisions of this section except the section pertaining to compliance with "No soliciting" signage.
(Ord. No. 768, § 1, 9-2-2009)

5.12.190 Appeal.

A. Any decision of the City Manager or his/her designee with respect to the issuance, conditioning, denial or revocation of a license or imposition of a fee under this chapter may be appealed to the hearing examiner by filing a written notice of appeal with the City Clerk. The notice of appeal shall be accompanied by an administrative fee in an amount established by resolution of the City Council. The right to appeal shall be deemed waived if said notice is not filed within five days of the date of the decision being appealed. The notice of appeal shall set forth the alleged reasons why the challenged decision is erroneous. Upon receipt of a timely appeal, the hearing examiner shall conduct a hearing on the appeal and shall issue a written decision in accordance with Chapter 2.78 CMC.

B. The City Manager or his/her designee may, in his/her sole discretion, stay the revocation of a license issued under this chapter during the pendency of any appeal.
(Ord. No. 768, § 1, 9-2-2009)

5.12.200 Violation--Penalty.

Any violation of this chapter shall be deemed a misdemeanor and shall be punished by a fine not to exceed five hundred dollars and any person who engages in or carries on any business subject to the provisions of this chapter without obtaining a business license, or who carries on

such activities in violation of this chapter shall be guilty of a separate violation of this chapter for each day during which the business is so engaged in or carried on, and any taxpayer who fails or refused to pay the business license fee or any part thereof on or before the due date shall be deemed to be operating a business without having a proper license to do so.

(Ord. No. 768, § 1, 9-2-2009)

5.12.210 Delegation of administrative functions – Business Licensing Service.

The City Manager is hereby authorized to enter into an agreement with the Washington State Department of Revenue delegating certain administrative functions under this chapter to the Business Licensing Service (BLS). References to BLS in this chapter shall be construed as meaning the agent of the City for this purpose.