

## ORDINANCE NO. 740

### AN ORDINANCE OF THE TOWN OF NACHES, WASHINGTON, AMENDING CHAPTER 5.04: BUSINESS LICENSES

**WHEREAS**, the Town of Naches has not updated its business license ordinance for some time; and

**WHEREAS**, the Town of Naches desires to provide for additional regulations regarding examples for engaging in business which require a business license as well as to set forth thresholds for fee-free licenses, among other changes to the business license chapter of the Naches Municipal Code; and

**WHEREAS**, the Town Council deems it to be in the best interests of the residents of the Town of Naches to update and amend its business license ordinance;

#### **NOW, THEREFORE,**

The Town Council of the Town of Naches, Washington, does ordain as follows:

**Section 1:** A new Section 5.04.025 is added to the Naches Municipal Code, to read as follows:

#### **5.04.025 Examples of activities constituting Engaging in Business.**

A. This Section sets forth examples of activities that constitute engaging in business in the Town, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimis business activities in the Town 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 Section 5.04.010. If any activity is not listed, whether it constitutes engaging in business in the Town 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 Town 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 Town.
- (2) Owning, renting, leasing, using, or maintaining an office, place of business, or other establishment in the Town.
- (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 systems services, surveying, and real estate service 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 Town, 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 within the Town 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 Town.

- (5) Attending, but not participating in a “trade show” or “multiple vendor events”. Persons participating at a trade show shall review the Town’s trade show or multiple vendor event ordinances.
- (6) Conducting advertising through the mail.
- (7) Soliciting sales by phone from a location outside the Town.

D. A seller located outside the Town merely delivering goods into the Town 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 Town. Such activities do not include those in subsection C.

E. The Town 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 tax payer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

F. A home occupation is required to obtain a business license to obtain a business license in the same manner as any other business and must pay the same fees.

**Section 2:** Section 5.04.030 shall be amended to read as follows:

**5.04.030 Business license required.**

It is unlawful for any person, partnership, company, association or corporation to conduct, operate, engage in or practice any business within the Town without having first obtained a business license from the Town. 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.

**Section 3:** A new Section 5.04.035 shall be added to read as follows:

**5.04.035 Threshold with Fee-free Business License/Registration-only.**

For purposes of license requirements under this chapter, any person or business whose annual value of products, gross proceeds of sale, or gross income of the business in the Town is equal to or less than \$2,000 and who does not maintain a place of business within the Town, shall submit a business license registration to the Town. Also, business activities carried on by nonprofit corporations, recognized by the Internal Revenue Service shall also submit business license registrations to the Town. However, businesses covered by this section shall not be charged a license fee by the Town. A nonprofit corporation must provide proof of Internal Revenue Service nonprofit status prior to waiver of the license fee. This section does not apply to regulatory license requirements or activities that require a specialized permit.

**Section 4:** Section 5.04.110 shall be amended to read as follows:

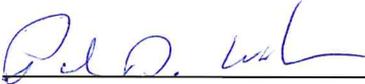
**5.04.110 Fees - Time for Payment.**

A. The initial license fee for each license required by this chapter shall be forty dollars (\$40.00). The annual renewal fee for each license required by this chapter shall be forty dollars (\$40.00), payable on or before February 28 of the year for which the renewal is issued.

B. All businesses required to obtain licenses under this chapter shall obtain the same and pay all fees required on or before the payment due date of each respective year. Any business which fails to obtain and pay the license fees within thirty (30) days of the payment due day shall, in addition to any other penalties provided in this chapter, be assessed twenty-five dollars (\$25.00) for each month past due as a penalty for such late application and/or payment.

**Section 5:** Severability. If any portion of this ordinance, or its application to any person or circumstances, is held invalid, the validity of the chapter as a whole, or any other portion thereof, and its application to other persons or circumstances, shall not be affected.

PASSED BY THE TOWN COUNCIL, of the Town of Naches, Washington this 5<sup>th</sup> day of November, 2018.

  
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Paul Williams, Mayor

ATTEST:

  
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Elvira Biruetta, Town Clerk/Treasurer

APPROVED AS TO FORM:

  
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Michael F. Shinn, Town Attorney