ORDINANCE NO. 4001

AN ORDINANCE of the City Council of the City of Kent, Washington, repealing Chapter 5.01 of the Kent City Code, and enacting a new Chapter 5.01 entitled “General Business Licenses,” to assign administrative responsibility of the business licensing function to the Finance Director; to clarify the basis and procedures for issuing, denying, and revoking a license; and to streamline the hearing process in the event a license is denied or revoked.

RECITALS

A. Pursuant to RCW 35A.82.020, the city of Kent has maintained a system of licensing businesses since 1955.

B. The city’s business licensing chapter has not been substantially updated for over 19 years. As a result, some of the sections of the chapter are outdated and no longer applicable to the manner in which the city performs its licensing function.

C. This ordinance clarifies the business licensing function, provides that the Finance Department is the department within the city to perform the licensing function, clarifies the basis and procedures for issuing, denying and revoking a license, and streamlines the hearing process in the event a license is denied or revoked.
NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Repealer. Chapter 5.01 of the Kent City Code, entitled, "General Business Licenses," is hereby repealed in its entirety.

SECTION 2. - Amendment. Title 5 of the Kent City Code is amended to adopt a new Chapter 5.01, entitled "General Business Licenses," as follows:

Sec. 5.01.010 Title. This chapter shall constitute the general business license code of the city and may be cited as such.

Sec. 5.01.020. Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

A. Business means all activities, occupations, trades, pursuits, professions and matters located within the city, whether operated with the object of gain, benefit, advantage, or profit, or operated not-for-profit, to the business or to another person, directly or indirectly. The term business shall also mean apartment and residential rental properties of three or more units, but shall not mean governmental agencies.

B. Business enterprise means each location at which business is conducted within the city. A business may have more than one business enterprise within the city.

C. Director means the finance director of the city or his or her designee.
D. *Department* means the finance department of the city.

E. *Licensee* means any business or business enterprise that applies for or is granted a business license. The term licensee shall also mean the person who submits a business license for approval, the owner or operator of a business or business enterprise, and any corporation, partnership, non-profit or organization which owns or operates the business or business enterprise.

**Sec. 5.01.030. Administration and enforcement.**

A. The director shall have general charge of, and supervision over, the administration and enforcement of this chapter.

B. The director may call upon other city departments to aid in the enforcement of this chapter.

C. The licensee shall, upon reasonable request, provide or allow the director to inspect relevant documentation for verification of the information provided by the licensee on the business license application.

**Sec. 5.01.040. General business license required.** It is unlawful for any business to operate in the city without having first obtained a general business license for the current calendar year or unexpired portion thereof, and paid the fees prescribed in this chapter; provided, that a business solely owned and operated by a person under the age of 18 years shall not be required to have a business license. A business with premises, primary places of business, or main offices outside the city limits must be licensed before conducting business within the city limits.
Sec. 5.01.050. Separate business license required. A separate license shall be obtained for each business enterprise within the city and each license shall authorize the licensee to carry on, pursue, or conduct business only at that business enterprise. A separate license shall not be required for a facility determined by the director to be an accessory facility to a business for which a license is issued. When the location of a business changes, the licensee shall return the license to the department and a new license shall be issued for the new place of business free of charge so long as no grounds exist for denial or revocation of the license as set forth in KCC 5.01.130.

Sec. 5.01.060. License not transferable. No license issued under the provisions of this chapter shall be transferable or assignable. In the event that ownership of a business changes, the license shall be returned to the department and a new license shall be applied for.

Sec. 5.01.070. License to be posted. All licenses issued pursuant to this chapter shall be posted in a conspicuous place at each business enterprise.

Sec. 5.01.080. Disclaimer of city liability. 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 any individual, 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 his agents, employees, or representatives.
Sec. 5.01.090. Application procedure, license fee.

A. The director is authorized to prepare a schedule of fees for the issuance of a license, and when approved by the city council, that schedule shall govern the amount of the license fee.

B. All businesses operated not-for-profit shall be required to be licensed but shall be exempt from paying a business license fee upon satisfactory proof to the director of their not-for-profit status.

C. The licensee shall make application for any business license required under this chapter to the director on a form prepared by the department, which application shall be accompanied by a receipt from the department showing payment of the required fee. A new business license shall be required annually. If the application for a new license is made within six months of the date fixed for expiration, the fee shall be one-half the annual fee; provided, there shall be no reduction in the fee for a license renewal.

Sec. 5.01.100. License does not indicate legality of business.
The issuance of a license pursuant to this chapter shall not be evidence of the legality of a business or that such business is conducted in conformity with any laws or regulations of the city of Kent, the state of Washington, or the United States. The issuance of a business license shall not prevent the city, the state of Washington or the United States from taking any action relating to the conduct of the business or the licensee, including but not limited to, action to revoke the license or deny an application for a future license, an action to cause the cessation of the business, or any action set forth in KCC 5.01.190.
Sec. 5.01.110. Renewal.

A. The director shall mail the forms for application of business license renewals to business enterprises in the city to the last address provided to the director by the licensee. Failure of the business to receive any such form shall not excuse the business from securing the required license or renewal, or for payment of the license fee when due.

B. Failure to pay the license fee within 90 days of the required renewal date shall subject the licensee to a monetary penalty in the amount of fifty dollars ($50) to reinstate the license, in addition to the required license fee.

Sec. 5.01.120. Overpayment or refund of license fee. Whenever a business makes an overpayment, and within two years after the date of such overpayment, makes an application for a refund or credit for the overpayment, the claim shall be considered by the director, and if approved, shall be repaid by the city.

Sec. 5.01.130. Grounds for denial or revocation of license.

A. In addition to other actions or penalties provided by law, the city may deny or revoke any license applied for or issued pursuant to this chapter for any of the following reasons:

1. The license application contains an omission or misrepresentation of material fact;

2. The license was procured by fraud;

3. The license is used, or is intended to be used, for a business materially different from that applied for;
4. The licensee or business fails to pay the licensing fee applicable to such license;

5. The licensee or business violates any of the requirements of this chapter;

6. The business engages in, or the licensee seeks a license to engage in, an unlawful business or activity;

7. The business operates in a manner that constitutes a nuisance pursuant to common law or the ordinances, codes, and statutes of the city of Kent or the state of Washington;

8. The licensee is not eighteen years of age or older at the time the license is applied for;

9. The licensee or the business is delinquent in the payment of any fees, taxes, assessments, or fines owed to the city, including but not limited to permit fees, utility fees, gambling taxes, local improvement district assessments, and civil fines; or

10. The licensee or business has had a similar license denied or revoked and has not corrected the basis for the denial or revocation.

B. The issuance of a license that could have been denied pursuant to subsection A of this section shall not prohibit the city from taking action to revoke the license at a later date, and it shall at all times remain the exclusive responsibility of the licensee to ensure that the business complies with the requirements of this chapter.

Sec. 5.01.140. Denial or revocation of license – Notice and opportunity to be heard. A licensee shall have the right to notice and an opportunity to be heard subsequent to the denial of a business license, or, in the case of a revocation of an existing license or refusal to renew a license following its annual expiration, prior to the revocation of such business license.
Sec. 5.01.150. Notice of license denial or revocation and scheduling of hearing.

A. Denial of License. Any action to deny a license applied for or issued shall be commenced by notice of the denial. A notice issued under this subsection shall substantially comply with the following:

1. The notice shall be delivered, by first class mail, or by personal service, to the business license applicant or the holder of the business license as set forth in the most recent business license application.

2. The notice shall describe the basis for the denial.

3. The notice shall describe corrective action, if any, that may be taken to eliminate the basis for denial.

4. The notice shall specify a date for which a hearing to contest the denial has been scheduled before the hearing examiner in order for the licensee to appeal the denial. Such date shall occur not less than 14 but not more than 60 days after the date the notice is delivered in accordance with KCC 5.01.150(A).

5. The notice shall provide that if the licensee fails to appear on the date specified in the notice, that the appeal of the denial is waived.

B. Revocation of License. Any action to revoke a license issued shall be commenced by a notice of the revocation. A notice issued under this subsection shall substantially comply with the following:
1. The notice shall be delivered, by first class mail, or personal service, to the holder of the business license as set forth in the most recent business license application or business license issued.

2. The notice shall describe the basis for the revocation.

3. The notice shall describe corrective action, if any, that may be taken to eliminate the basis for revocation.

4. The notice shall specify a date for which a hearing to contest the revocation has been scheduled before the hearing examiner. Such date shall be schedule to occur not less than 14 but not more than 60 days after the date the notice is delivered in accordance with KCC 5.01.150(B).

5. The notice shall provide that if the holder of the business license fails to appear on the date specified in the notice, default judgment shall be entered, and the license shall be revoked upon the failure to appear.

6. The business may continue to operate until such time as the hearing examiner issues an order regarding the revocation unless the city obtains an order enjoining the operation of the business pending the hearing examiner’s order.

Sec. 5.01.160. Hearing to deny or revoke business license.

A. Parties to Hearing. The parties to a hearing provided pursuant to this chapter shall be the city and the licensee. Either party may be represented by legal counsel properly licensed in the state of Washington.
B. **Date for Hearing.** Hearings shall be scheduled to occur no less than 14, but not more than 60 days after the date the notice is delivered in accordance with KCC 5.01.150; provided, additional hearings may be held after 60 days as determined by the hearing examiner. The hearing examiner shall have discretion to grant continuances and reschedule hearings in the interest of the parties and justice.

C. **Prehearing Conferences.** The hearing examiner may, at his or her discretion, or at the request of either of the parties, hold a prehearing conference to schedule additional hearings, order discovery, and to make other appropriate pretrial determinations. A prehearing conference may be held by telephone.

D. **Hearing Process.** The parties to the hearing, or legal counsel for the parties, may call witnesses and present evidence and rebuttal evidence subject to the following:

1. The city shall have the burden of proving, by a preponderance of the evidence, that there are sufficient grounds for the denial or revocation of the license pursuant to KCC 5.01.130.

2. The parties shall be responsible for securing the appearance of any witnesses they may call. Neither the city nor the hearing examiner shall have the burden of securing any witnesses on behalf of the licensee.

3. Formal rules of evidence shall not apply. The hearing examiner may allow hearsay evidence and may permit the admission of evidence without proof of the chain of custody of evidence. Notes, reports, summaries, notices, photographs, or other materials prepared by the parties may be admitted into evidence if requested without satisfaction of formal rules of evidence. Notwithstanding the admission of evidence,
the hearing examiner shall determine the proper weight to be assigned to any evidence admitted.

E. **Default Judgment.** If the licensee fails to appear on the hearing date specified in the notice, or at any other hearing set by the hearing examiner, the right to a hearing shall be forfeited, default judgment shall be entered, and the license shall be denied or revoked.

**Sec. 5.01.170. Authority of hearing examiner – Order – Appeal.**

A. **Authority of Hearing Examiner.** The hearing examiner shall have the authority to determine whether or not there are sufficient grounds for the denial or revocation of the business license pursuant to KCC 5.01.130.

B. **Order of Hearing Examiner.** The hearing examiner shall issue a written order that sets forth a procedural summary of the hearing, his or her findings of fact and conclusions of law, and his or her determination. In the event of a default judgment, the written order shall set forth whether notice was properly issued, the facts regarding the failure of the licensee to appear, and a determination of default in the event notice was proper. The written order shall be delivered to the parties by first class mail, deposited in the mail no more than 21 days following the conclusion of the hearing. The order of the hearing examiner shall become effective on the third day following placement of the order in the mail.

C. **Appeal.** An appeal of the order of the hearing examiner must be filed with the King County superior court within 21 calendar days of the effective date of the order.

**Sec. 5.01.180. Corrective action prior to hearing.** In the event a licensee takes corrective action and the grounds for the denial or revocation are abated, and such corrective action and abatement occurs...
prior to the date set for hearing, the hearing shall be cancelled, and the license shall be issued or reissued.

Sec. 5.01.190. Penalties.

A. Civil Violation.

1. The violation of any provision of this chapter is a civil violation as provided for in Chapter 1.04 KCC, for which a monetary penalty may be assessed and abatement may be required as provided therein.

2. Any license fee or penalty due and unpaid and delinquent under this chapter shall constitute a debt of the city. The city may, pursuant to Chapter 19.16 RCW, use a collection agency to collect unpaid license fees, or it may seek collection by court proceedings, which remedies shall be in addition to all other remedies.

B. Criminal violation. In addition to or as an alternative to any penalty provided in this chapter, the violation of any provision of this chapter shall constitute a misdemeanor punishable by imprisonment in jail for a maximum term fixed by the court of not more than 90 days, or by a fine in an amount fixed by the court of not more than one thousand dollars ($1,000), or by both such imprisonment and fine.

SECTION 3. - Savings. The existing chapter 5.01 of the Kent City Code, which is repealed and replaced by this ordinance, shall remain in full force and effect until the effective date of this ordinance.

SECTION 4. - Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such
decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**SECTION 5.** - *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 6.** - *Effective Date.* This ordinance shall take effect and be in force thirty (30) days from and after its passage as provided by law, and shall apply to businesses operating on or after the effective date, and to any license submitted prior to or after the effective date.

**Suzette Cooke**, MAYOR

**ATTEST:**

**Brenda Jacober**, CITY CLERK

**APPROVED AS TO FORM:**

**Tom Brubaker**, CITY ATTORNEY

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Amendment to KCC 5.01
PASSED: 2nd day of August, 2011.
APPROVED: 2nd day of August, 2011.
PUBLISHED: 5th day of August, 2011.

I hereby certify that this is a true copy of Ordinance No. 4021 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

[Signature]
BRENDA JACOBER, CITY CLERK

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