ORDINANCE NO. 4287

AN ORDINANCE of the City Council of the City of Kent, Washington, amending various sections of Chapter 5.01 of the Kent City Code, entitled “General Business Licenses,” to adopt mandatory code provisions required by RCW 35.90.080, which the state Legislature adopted during its 2017 session and required be in place by January 1, 2019, by any city that imposes a general business license requirement.

RECITALS

A. In 2017, the state passed legislation requiring cities with business licenses to establish a workgroup through the Association of Washington Cities (AWC) to create a model business license ordinance by July 1, 2018. This legislation was codified in Chapter 35.90 of the Revised Code of Washington (RCW). In addition, any city that imposes a general business license requirement was required by RCW 35.90.080(2) to adopt, by January 1, 2019, two mandatory provisions provided for in the model business license ordinance—one that defines “engaging in business within the city” and one that establishes a $2,000 minimum licensing threshold under which a person would be relieved of the city’s general business licensing requirement. While the statute authorized cities to create a higher threshold than that required by the model ordinance, they could not deviate lower than the level required by the model ordinance.
B. The model ordinance was timely created and included provisions that defined "engaging in business" and established a business licensing threshold for out-of-town or transient businesses at $2,000 in annual value of products, gross proceeds of sales, or gross business income. These are the two mandatory provisions RCW 35.90.080(2) requires the City adopt by January 1, 2019 in order to continue applying and enforcing its general business license requirement.

C. In order to comply with RCW 35.90.080 and adopt the mandatory provisions into the City’s business licensing code, various sections of Chapter 5.01 of the Kent City Code need to be revised. This ordinance makes those revisions.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Amendment. Section 5.01.020 of the Kent City Code, entitled “Definitions,” is hereby amended as follows:

Section 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, pursuits, or professions located and/or engaged in within the city, with the object of gain, benefit or advantage to the person engaging in the same, or to any other person or class, directly or indirectly, and includes nonprofit enterprises. The term business shall also mean apartment and residential rental properties of two or more units, as well as rental housing and rental property as those terms are defined in Chapter 5.14 KCC, 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. **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 minimis* business activities in the city without having to register and obtain a business license or pay city business and occupation taxes. 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.

q. Accepting or executing a contract with the city, irrespective of whether goods or services are delivered within or without the city, or whether the person’s office or place of business is within or without the city.

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 and pay tax.

   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).

6. The city expressly intends that engaging in business includes 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 licensee benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

EE. 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, nonprofit, or organization which owns or operates the business or business enterprise.

**SECTION 2. - Amendment.** Section 5.01.040 of the Kent City Code, entitled “General business license required,” is hereby amended as follows:

Sec. 5.01.040. General business license required. Except as provided in KCC 5.01.045, 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 eighteen (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.

**SECTION 3. - Amendment.** Chapter 5.01 KCC is amended by adding a new Section 5.01.045, entitled “Threshold exemption,” as follows:

**Sec. 5.01.045. Threshold exemption.** To the extent set forth in this section, the following persons and businesses shall be exempt from the registration, license and/or license fee requirements as outlined in this chapter:

A. 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 be exempt from the general business license requirements in this chapter. The exemption does not apply to regulatory license requirements or activities that require a specialized permit.

**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; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.
SECTION 6. - Effective Date. This ordinance shall take effect and be in force thirty days from and after its passage, as provided by law.

DANA RALPH, MAYOR

November 6, 2018
Date Approved

ATTEST:

KIMBERLEY A. KOMOTO, CITY CLERK

November 6, 2018
Date Adopted

November 9, 2018
Date Published

APPROVED AS TO FORM:

ARTHUR "PAT" FITZPATRICK, CITY ATTORNEY