

ORDINANCE NO. 1507

AN ORDINANCE OF THE CITY OF RUSTON, WASHINGTON, REGARDING BUSINESS LICENSING, REPEALING AND REPLACING CHAPTER 5.05 OF THE RUSTON MUNICIPAL CODE, ESTABLISHING PROCESSES AND PROCEDURES FOR BUSINESS LICENSING IN THE CITY OF RUSTON, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City first established portions of its business licensing code in 1960; and

WHEREAS, the most recent update was in 2012; and

WHEREAS, the State is requiring all cities with business licenses to make certain updates to its business licensing codes; and

WHEREAS, the deadline for adopting these revisions for Ruston is October 17, 2018; and

WHEREAS, the City deemed it in the best interests to fully update its licensing code, including adoption of several new chapters under subtitle 5.05; and

WHEREAS, on August 21, 2018, the City Council held the first reading on this Ordinance; and

WHEREAS, on September 4, 2018, the City Council adopted this Ordinance during its regular meeting at second reading; **NOW, THEREFORE**

THE CITY COUNCIL OF THE CITY OF RUSTON HEREBY ORDAINS AS FOLLOWS:

Section 1. Chapter 5.05 of the Ruston Municipal code is hereby repealed and replaced with the following new Chapter 5.05 of the Ruston Municipal Code:

**Chapter 5.05
GENERAL LICENSE PROVISIONS**

Sections:

5.05.010	Subtitle designated as “License Code.”
5.05.020	Application of chapter.
5.05.030	Definitions.
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5.05.190	Investigations and background checks.
5.05.200	Death of licensee – continuation of license.
5.05.210	Notice of right to suspend or revoke.
5.05.220	Assignment of licenses.
5.05.230	Licenses subject to specific controls.
5.05.240	Engaging in activity without license – Penalty.
5.05.245	License constitutes debt.
5.05.250	Separate offenses.
5.05.255	Charge-off of uncollectible fees.
5.05.257	Closing agreement provisions.
5.05.260	Violations – Penalties.
5.05.265	Administrative reviews by the Clerk of Notice of Penalty – Appeal.
5.05.268	Additional relief.
5.05.270	Severability.

5.05.010 Subtitle designated as “License Code.” This subtitle shall constitute the Business License Code of the City OF Ruston, and may be cited as such.

5.05.020 Application of chapter. The provisions of this chapter shall apply with respect to the fees imposed under this Subtitle 5.05 and all subparts thereof and under other titles, chapters, and sections in such manner and to such extent as indicated in each such subtitle, chapter, or section.

5.05.030 Definitions.

The following definitions apply to each section in this subtitle of the RMC:

(a) A Definitions:

“Alcohol” means those alcoholic substances controlled by the Liquor Control Board.

“Annual business license” means a license for the privilege of doing business with the City or within the City as required by the provisions of this chapter of the License Code of the City. The annual business license certificate issued by the Clerk is required to be displayed at the place of business by all persons operating a business under the provisions of Title 5.

(b) C Definitions:

“Calendar year” means January 1 through December 31 of each year.

“Certificate” means “registration certificate” as defined below.

“Charitable organization” means any organization recognized as a nonprofit corporation under the provisions of Chapter 24.03 RCW and exempt from the Washington State business and occupation tax pursuant to RCW 82.04.3651.

“City” means the City of Ruston and all its departments.

“Clerk” means the City Clerk-Treasurer of the City or any officer, agent, or employee of the City designated to act on the Clerk’s behalf.

(c) D Definitions:

“Department” means the City Clerk-Treasurer’s Office of the City or any successor department.

“Door-to-door sales” means the carrying of merchandise for sale from place to place, and the making of sales and delivery of merchandise sold at the same time and place.

(d) E Definitions:

“Engaging in Business” means

1. 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) above.

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) F Definitions:

“For-hire Vehicle” means any motor vehicle, whether a personal vehicle, fleet or commercial vehicle, or transportation network company-affiliated vehicle held out to the public for hire or used for the transportation of persons for compensation; subject to call by the public generally, where the route traveled or destination is controlled by the customer, the compensation is calculated on the basis of an amount recorded and indicated on a taximeter, a mobile device app or an application dispatch service, by a written contract or invoice signed by both parties, or based on an initial fee, distance traveled, waiting time, or any combination thereof as permitted under this chapter, provided that, for-hire vehicle shall not mean:

1. School buses operating exclusively under a contract to a school district;
2. Ride-sharing vehicles under Chapter 46.74 RCW;
3. Limousine carriers licensed under Chapter 46.72A RCW;
4. Vehicles used by nonprofit transportation providers solely for elderly or persons with disabilities and their attendants under Chapter 81.66 RCW;
5. Vehicles used by auto transportation companies licensed under Chapter 81.68 RCW;
6. Vehicles used to provide courtesy transportation at no charge to and from parking lots, hotels, and rental offices; and
7. Vehicles licensed under, and used to provide “charter party carrier” and “excursion service carrier” services as defined in, and required by, Chapter 81.70 RCW.

(f) G Definitions:

“Gambling” means any activity included in the provisions of RCW 9.46.0237.

“Gross income” means the value proceeding or accruing by reason of the transaction of business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidence of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments, however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued without any deduction on account of losses.

“Gross receipts” has the same meaning as gross income.

(g) H Definitions:

“Home-based business” means a business, profession, occupation, or trade conducted for gain or support and located entirely within a residential building or a building accessory thereto, which use is accessory, incidental, and secondary to the use of the building for dwelling purposes and does not change the essential residential character or appearance of such building. The intent of this definition is to maintain consistency with home occupations as defined in Ruston Municipal Code (“RMC”) 25.01.020 of the City’s Zoning Code.

(h) L Definitions:

“License” means a regulatory license required under the provisions of Subtitle 5.05 of the RMC.

“License certificate” means the certificate issued by the Department pursuant to Subtitle 5.05 of the RMC.

“License code” means Subtitle 5.05 of the RMC, including all subparts thereof (i.e. 5.05A, 5.05B, etc.).

“License fee” means the amount charged by the City for the issuance of a regulatory license required under the provisions of Subtitle 5.05 and any subparts thereof.

“Licensee” means any person required to be licensed under Subtitle 5.05 and any subparts thereof.

(i) M Definitions:

“Massage” or “Massage therapy” means a health care service involving the external manipulation or pressure of soft tissue for therapeutic purposes. Massage therapy includes techniques such as tapping, compressions, friction, reflexology, Swedish gymnastics or movements, gliding, kneading, shaking, and fascial or connective tissue stretching, with or without the aids of superficial heat, cold, water, lubricants, or salts. Massage therapy does not include diagnosis or attempts to adjust or manipulate any articulations of the body or spine or mobilization of these articulations by the use of a thrusting force, nor does it include genital manipulation.

“Massage business” means the operation of a business where massages are given.

(j) P Definitions:

“Peddling” means the same as door-to-door sales.

“Person” means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States or any instrumentality thereof.

“Public official” means any official designated by the Mayor, or his or her designee, authorized to enforce this chapter, including, but not limited to, officials of the Police Department, Fire Department, Public Works Department, Finance Department, or Clerk’s Office charged with the enforcement of a particular portion of this chapter.

(k) R Definitions:

“Records” means the books of accounts and other business-related records of a licensee subject to the City’s Tax Code or License Code. Such records include ledgers; subsidiary ledgers; invoices; receipts; registration and incorporation documents; federal, state and local tax returns; and any other records necessary to establish the amounts due under the provisions of the City’s Code.

“Registration” or to “register” means an identification of real properties owned by a person, for which they use, or intend to use, as rental property. “Registration certificate” means a non-transferable certificate issued by the Department required of all persons operating a business under the provisions of Title 5.

“RMC” means the Ruston Municipal Code.

(l) S Definitions:

“Subtitle 5.05” means Chapter 5.05 along with all subparts thereof (i.e. 5.05A, 5.05B, etc.).

“Successor” means any person to whom a licensee quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of business of the licensee’s business, any part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the licensee. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

(m) T Definitions:

“Taxpayer” means any person subject to the provisions of Title 5 or 5A, regardless of whether they owe or have previously paid taxes to the City.

“Taxi” or “Taxi Cab” is included in the definition of “For-hire vehicle” above.

(n) V Definitions:

“Vendor” means any person who exhibits goods or services for sale for the purpose of selling, bartering, trading, exchanging, or advertising such goods or services.

5.05.040 License required.

- (a) No person shall maintain or operate any device, vehicle, or thing, or engage in any business, calling, profession, trade, occupation, or activity specified in this subtitle without first procuring a license therefor from the City and paying the fees prescribed herein, unless the City requirement for a license is preempted by state or federal law.

- (b) Persons applying for a city business license shall maintain all local, state, and federal licenses required for the operation of the business and shall remain in compliance with such licenses while the business remains in operation.
- (c) **One-Day Business Licenses for Special Events.** When the City issues a permit under Chapter 14.04 of the Ruston Municipal Code, or when the City Council by resolution recognizes a community event as a special event for the purposes of this section, then any person, corporation, partnership or other organization seeking to conduct business in the City of Ruston as part of that special event shall, before commencing such business, obtain from the City Clerk a one-day special event business license and pay the applicable fee therefor which is established by resolution of the City Council.
- (d) For purposes of the license by this chapter, 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 submit a business license registration to the Clerk or designee, however, no license fee shall be charged. The threshold does not apply to regulatory license requirements or activities that require a specialized permit.

5.05.050 Separate licenses – When required.

- (a) A separate license shall be obtained for each branch, establishment, or separate location in which the business, calling, profession, trade, occupation, or activity licensed by this subtitle is carried on.
- (b) Each different business, calling, profession, trade, occupation, or activity carried on or device situated at any one location shall be described in detail on the application for business license.
- (c) Each license shall authorize the licensee to carry on, pursue, or conduct only that business, calling, profession, trade, occupation, or activity, or operate the device, vehicle, or thing described in such license, and only at the location or in the manner indicated therein, except as may be specifically provided in this chapter.
- (d) Any person renting or making available for rent to the public any dwelling unit is only required to obtain one license for all rental business activity conducted in the City, but shall register each dwelling unit with the City of Ruston and include an agreement certifying that each dwelling unit complies with RCW 59.18.060, as adopted by the state, and does not present conditions that endanger or impair the health or safety of the tenants.

5.05.060 Application for license – Approval or denial – Appeal. No license required hereunder shall be issued except upon application therefor made on forms prescribed by the City. Each application shall be accompanied by the license fee prescribed herein as established by resolution of the City Council. Upon approval of the application, the license shall be issued by the City and delivered to the applicant. The Clerk shall approve or deny all applications for licenses required hereunder. Any applicant denied a license, or any person objecting to the issuance of any such license, shall, within 10 days after the issuance or denial of such license, appeal said ruling by

filing a written notice of appeal. Such notice shall clearly state the grounds that the appeal is based on and be timely filed with the City Clerk. Following expiration of the appeal period, the City Clerk shall then set a date for the hearing of such appeal before the Hearing Examiner of the City. The appeal shall be governed by Chapter 1.20 RMC. The Clerk shall notify the applicant in the case of a denial, and the objector and applicant in the case of issuance, by mail, of the time and place of hearing.

5.05.070 Term of license. All licenses issued pursuant to the provisions of this Title, except as to those licenses for which a shorter term is herein specified, shall be effective as of the first day of the month of issuance regardless of the actual date of issue, and shall expire one year from the effective date thereof unless sooner revoked in the manner provided in this chapter

5.05.075 Clerk to make rules. The Clerk shall have the power, from time to time, to adopt, publish, and enforce rules and regulations not inconsistent with this Subtitle 5.05 or with law for the purpose of carrying out the provisions of this subtitle. It shall be unlawful to violate or fail to comply with any such rule or regulation.

5.05.080 Due date. Except as otherwise provided in this subtitle, any license fee shall be due on or before the last day of the next month following expiration of the current license. If the due date is a Saturday, Sunday, or City or federal legal holiday, then the due date shall be the next succeeding day that is neither a Saturday, Sunday, or City or federal legal holiday.

5.05.090 Late payment – Renewal of license. Any licensee who shall fail to make payment on or prior to the expiration date of said license shall be subjected to penalty payments in the following amounts, unless an extension based upon good cause is granted by the Clerk:

- (a) If the license fee is not received on or before the due date: a penalty of 20 percent of the license fee or \$25, whichever is greater.
- (b) Any person who shall not secure a renewal within a period of over one month following the due date of the license fee shall forfeit any and all rights to the renewal thereof, but may apply for a new license, in which event he or she shall be charged a penalty equal to 50 percent of the license fee or \$50, whichever is greater. The granting of such a license by the City shall be within the discretion of the City.

All licenses issued subsequent to the initial license period shall be deemed renewal licenses if there has been no discontinuance of the licensee's operations or activities. No license shall be renewed as herein provided unless the licensee has paid in full all occupational license fees and taxes due to the City pursuant to the ordinances of the City during the preceding license term. Nonpayment of occupational license fees and taxes when due by the licensee during the term of any license shall constitute a ground for revocation of said license.

5.05.095 Cancellation of penalties.

- (a) The Clerk may cancel any penalties imposed under Section 5.05.090 if the licensee shows that its failure to timely file or pay the license fee was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the licensee shows that it exercised ordinary business care and prudence in making arrangements to file the license and pay the fee but was

nevertheless, due to circumstances beyond the licensee's control, unable to file or pay by the due date. The Clerk has no authority to cancel any other penalties or to cancel penalties for any other reason except as provided in subsection (c).

- (b) A request for cancellation of penalties must be received by the Clerk within 30 days after the date the Department mails the notice that the penalties are due. The request must be in writing and contain competent proof of all pertinent facts supporting a reasonable cause determination. In all cases, the burden of proving the facts rests upon the licensee.
- (c) The Clerk may cancel the penalties in Sections 5.05.090 one time if a person:
 - 1. Is not currently licensed;
 - 2. Was unaware of the person's responsibility to file and pay license fees; and
 - 3. Obtained business licenses and filed past due tax returns within 30 days after being notified by the Department.

5.05.100 Method of payment.

- (a) Fees and penalties shall be paid to the Clerk in United States currency by bank draft, certified check, cashier's check, personal check, money order, cash, or by wire transfer or electronic payment if such wire transfer or electronic payment is authorized by the Clerk. If payment so received is not paid by the bank on which it is drawn, the licensee, by whom such payment is tendered, shall remain liable for payment of the license and for all legal penalties, the same as if such payment had not been tendered. Acceptance of any sum by the Clerk shall not discharge the fee due unless the amount paid is the full amount due.
- (b) Remittance that is transmitted to the City by United States mail shall be deemed filed or received on the date shown by the cancellation mark stamped by the Post office upon the envelope containing it. The Clerk may allow electronic filing of licenses or remittances from any licensee. Remittance which is transmitted to the City electronically shall be deemed filed or received according to procedures set forth by the Clerk.

5.05.105 Advertising unlicensed premises. No person shall place on a building or property within the city limits of Ruston any advertisement about conducting a specific business activity within the building or on the property unless the person conducting the activity has a valid license pursuant to local, state, or federal law. Advertising includes, but is not limited to, any sign, placard, poster, banner, card, or other advertising matter placed, erected, displayed, or maintained on the outside or in close proximity to any building or place, or in the inside in such a manner as it may be seen from the outside thereof. Any such signs shall also comply with the requirements of the City's sign code, Chapter 25.09 RMC.

5.05.110 Posting or carrying of license. Unless otherwise provided in the specific provisions of this subtitle, all licenses issued pursuant to the provisions of this subtitle shall be posted on the device, vehicle, or thing licensed, or at the place where the licensed business, calling, profession, trade, occupation, or activity is carried on; however, that when the licensee's business requires

travel from place to place or from house to house, then such license must be carried on the person of such licensee while actually engaged in the licensed occupation, business, or trade.

5.05.115 Hours of operation – Massage. All massage business locations or offices that offer massage therapy services, as defined by state law, shall not be open between 10:00 p.m. and 6:00 a.m. daily, provided that if a licensed massage business is physically located wholly within the premises of a larger business or location, including, but not limited to, such facilities as a salon, spa, hotel, or health care provider, then only the area where the massage business is conducted shall be closed to customers between 10:00 p.m. and 6:00 a.m.

5.05.117 Unlicensed practice – Massage – Penalties. The following penalties may be imposed upon an owner of a massage business where the unlicensed practice of massage therapy has been committed:

- (a) Any person who with knowledge or criminal negligence allows or permits the unlicensed practice of massage therapy to be committed within his/her massage business by another per RCW 18.108.035 is guilty of a misdemeanor for a single violation. Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a gross misdemeanor punishable according to chapter 9A.20 RCW.
- (b) Unlicensed practice of massage therapy pursuant to RCW 18.130.190(7)(a), constitutes a gross misdemeanor for a single violation. Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter 9A.20 RCW.

5.05.120 Mailing of notices. Any notice required by this chapter to be mailed to any licensee shall be sent by ordinary or electronic mail, delivered to the address of the licensee as shown by the records of the Clerk, or if no such address is shown, to such address as the Clerk is able to ascertain by reasonable effort. Failure of the licensee to receive such mailed notice shall not release the licensee from any fee or any penalties thereon, nor shall such failure operate to extend any time limit set by the provisions of this chapter.

5.05.130 Failure to file. If any licensee fails, neglects, or refuses to file a license application as and when required under this chapter, the Clerk is authorized to determine the amount of fee payable, together with any penalty assessed under the provisions of this chapter, and by mail notify such licensee of the amount so determined, which amount shall become the fee and penalty and shall become immediately due and payable.

5.05.140 Suspension or revocation – Appeal.

- (a) The Clerk shall have the power and authority to suspend or revoke any registration or license issued under the provisions of this Title. The Clerk shall notify such licensee in writing by certified mail or hand delivery of the suspension or revocation of his or her license or registration and the grounds therefor. Any license or registration issued under this title may be suspended or revoked based on one or more of the following grounds:
 - 1. The registration was procured by fraud or false representation of fact, including, but not limited to, the existence of owners who were not identified on the application.
 - 2. The licensee has failed to comply with any provisions of this title.

3. The licensee has failed to comply with any provisions of the RMC.
4. The licensee is in default in any payment of any license fee or tax under Title 5 or 5A.
5. The licensee or employee has been convicted of a crime involving the business.
6. Licensee's continued conduct of the business for which the license or registration was issued will result in a danger to the public health, safety, or welfare by reason of any of the following:
 - i. The licensee, his/her employee or agent has committed a crime or other violation of law, which bears a direct relationship to the conduct of the business under the license or registration issued pursuant to this title. The Clerk may consider any relevant violation of law regardless of whether the same act was charged as a civil infraction or crime or resulted in a finding of committed or conviction or if it is deferred or subject to pretrial diversion. If a licensee appeals such a suspension, revocation, or denial of a license or registration under this subsection, the violation must be proved by a preponderance of the evidence. Provided, however, that a finding of not committed on a civil infraction or a verdict of not guilty on a criminal charge precludes use of that act as a basis for a violation under this chapter.
 - ii. The licensee, or his/her agents or employees, have in the conduct of the business, violated any local, state, or federal law relating to public health or safety.
 - iii. The conduct of the business for which the license or registration was issued has resulted in the creation of a public nuisance as defined in the RMC or in state law.
 - iv. The tolerance of a public nuisance or criminal activity, as defined in local, state, or federal law, for which the business owner or operator can reasonably control or prevent.
7. For any reason that would justify denial or disqualification of a license under Section 5.05.170.

(b) Any licensee may, within 10 days from the date that the suspension or revocation notice was mailed to the licensee, appeal such suspension or revocation by filing a written notice of appeal ("petition") setting forth the grounds therefor with the City Clerk. The hearing shall be conducted in accordance with the procedures for hearing contested cases set out in RMC 1.20. The Hearing Examiner shall set a date for hearing said appeal and notify the licensee by mail of the time and place of the hearing. After the hearing thereon the Hearing Examiner shall, after appropriate findings of fact and conclusions of law, affirm, modify, or overrule the suspension or revocation and reinstate the license or registration, and may impose any terms upon the continuance of the registration.

No suspension or revocation, under this subsection, of a license or registration issued shall take effect until 10 days after the mailing or hand delivery of the notice thereof by the Clerk and, if appeal is taken as herein prescribed, the suspension or revocation shall be stayed pending final action by the Hearing Examiner. All licenses or registrations which are suspended or revoked shall be surrendered to the City on the effective date of such suspension or revocation.

The decision of the Hearing Examiner shall be final. The licensee and/or the Clerk may seek review of the decision by the Superior Court of Washington in and for Pierce County within 21 days from the date of the decision. If review is sought as herein prescribed, the suspension or revocation shall be stayed pending final action by the Superior Court. Upon revocation of any license or registration as provided in this subchapter, no portion of the license fee shall be returned to the licensee.

5.05.145 Summary suspension – Appeal.

- (a) Where conditions exist that are deemed hazardous to life or property, or where the owner or his or her employee or agent has knowingly permitted a violation of the uniform controlled substances act, a violation of any law against gambling, or a violation of any law against prostitution within the business, the public official in charge is authorized to immediately stop such hazardous conditions that are in violation of this code, up to and including closing the business operation. Such order and demand may be oral or written.
- (b) At the time the Clerk notifies the licensee of the summary suspension, either by mail or hand delivery, the Clerk shall also schedule a hearing to be held within 3 business days from the date of the notice of summary suspension. Where an oral summary suspension is ordered or demanded by a public official, the Clerk shall schedule a hearing to be held within 3 business days from the date of the summary suspension and the licensee will be notified by mail, facsimile, email, personal service or hand delivery. Such notices shall state the time and place of the hearing.

The hearing shall be held before the City Clerk. The decision of the Clerk shall be final. The licensee may, within 10 days from the date of the Clerk's decision, appeal such suspension or revocation by filing a written notice of appeal ("petition") setting forth the grounds therefor with the City Clerk. The hearing shall be held by the City Hearing Examiner and conducted in accordance with the procedures for hearing contested cases set out in RMC 1.20. The Hearing Examiner shall set a date for hearing said appeal and notify the licensee by mail of the time and place of the hearing. After the hearing thereon the Hearing Examiner shall, after appropriate findings of fact and conclusions of law, affirm, modify, or overrule the summary suspension and reinstate the license or registration, and may impose any terms upon the continuance of the license.

The decision of the Hearing Examiner shall be final. The licensee and/or the Clerk may seek review of the decision by the Superior Court of Washington in and for Pierce County within 21 days from the date of Hearing Examiner's decision.

5.05.150 Statute of limitations – Unlicensed licensees. With regard to unlicensed licensees, no assessment or correction of an assessment for additional fees and penalties may be made due by the Clerk more than four years after the close of the calendar year, except upon showing of the licensee's failure to file a license application as and when required under this chapter, which failure

to file a license application resulted from the licensee's willful and fraudulent intent to avoid payment of the required fees.

5.05.160 Refund of license fee.

- (a) Revocation. Upon revocation of any license as provided in this chapter, no portion of the license fee shall be returned to the licensee.
- (b) License application withdrawn. Upon licensee request to withdraw the application, the fee paid shall be returned to the applicant by the City, together with notice that the application has been withdrawn; provided that no refund shall be made where the applicant has engaged in the business activity for which the license was intended, where inspection has been performed by any City department to review said license application.
- (c) Overpayment. If, upon request by a licensee for a refund or upon an examination of the records of any licensee, it is determined by the Clerk that a fee has been paid in excess of that properly due, the excess amount paid shall be credited to the licensee's account or shall be refunded to the licensee. No refund or credit shall be allowed with respect to any payment made to the Clerk more than four years before the date of such request or examination.

5.05.170 Grounds for disqualification of licensees. Pursuant to the provisions of this subtitle, no license shall be issued to the following persons:

- (a) Any minor under 18 years of age.
- (b) Any person who, if licensed, is likely to present a danger to the public health, safety, or welfare by reason of any of the following:
 - 1. The applicant or his or her employee or agent has committed a crime or other violation of law which bears a direct relationship to the conduct of the business under the license issued pursuant to this title. The Clerk may consider any relevant violation of law regardless of whether the same act was charged as a civil infraction or crime or resulted in a finding of committed or conviction or if it is deferred or subject to pretrial diversion. If a licensee appeals such a denial of a license under this subsection, the violation must be proved by a preponderance of the evidence. Provided, however, that a finding of not committed on a civil infraction or a verdict of not guilty on a criminal charge precludes use of that act as a basis for a violation under this chapter.
 - 2. The applicant has had a similar license revoked or suspended pursuant to the provisions of Section 5.05.140 above or has had a similar license revoked or suspended by any other administrative authority.
 - 3. The Clerk has reasonable grounds to believe applicant to be dishonest or to desire such license to enable applicant to practice some illegal act or some act injurious to the public health or safety.

(c) Any person who is not qualified under any specific provision of this subtitle for any particular license for which application is made.

(d) The Clerk may deny a license if:

1. The applicant or his or her employee or agent has committed a series of crimes or other violations of law that show a disregard for the law and the Clerk reasonably concludes, based on this conduct that the applicant will not comply with the provisions of this title or other applicable laws applicable to the operation of the business. The Clerk may consider any relevant violation of law, regardless of whether the same act was charged as a civil infraction or crime or resulted in a conviction or finding of committed, or if it is deferred or subject to pretrial diversion. If a licensee appeals such a denial of a license under this subsection, the violation must be proved by a preponderance of the evidence. Provided, however, that a finding of not committed on a civil infraction or a verdict of not guilty on a criminal charge precludes use of that act as a basis for a violation under this chapter.
2. For any reason that would justify denial of the license under Section 5.05.140 or Section 5.05.145;
3. When the Clerk reasonably concludes that the applicant will not comply with the provisions of this title or other applicable local, state, or federal laws applicable to the operation of the business or that the operation of the business is likely to endanger public health or safety. The Clerk may consider any relevant matter, including illegal activity associated with the applicant's operation of another business, or the conduct of the applicant's patrons or employees inside or outside a similar business operated by the applicant.

5.05.180 Inspection. All licensees shall be open to inspection, including records required to be maintained pursuant to this chapter, by the Clerk, during licensee's normal business hours and, in any event, from 8:00 a.m. to 5:00 p.m., Monday through Friday. The licensee, business owner, manager, or other responsible party shall allow entry by City of Ruston officials for the purposes of ensuring for public safety or inspecting for compliance of Title 5 at any time the facility is open. Denial of entry is cause for summary suspension of the license.

5.05.190 Investigations and background checks.

- (a) All applications for licenses shall be investigated by such departments or officers of the City as the Clerk may determine.
- (b) All applicants for a license may be subject to a state and/or federal criminal background check, and the results of such check may be sufficient grounds for denial of a license.

5.05.200 Death of licensee – Continuation of license. In case of the death of any licensee before the expiration of his or her license, his or her administrator or executor, duly appointed as such by order of court, may continue to act under said license for the unexpired term thereof upon filing with the City proof of such appointment.

5.05.210 Notice of right to suspend or revoke. Every license issued pursuant to the provisions of this subtitle shall state thereon, in substance, that such license is issued in consideration of the fee paid therefor and that the same is subject to suspension or revocation in the manner provided in this chapter.

5.05.220 Assignment of licenses. No license may be assigned or transferred, except: where a licensee shall consist of a partnership and there occurs a change in the membership thereof, where a sole proprietor incorporates, or where a corporation dissolves and former shareholders succeed to its interest, then a transfer shall be authorized if the beneficial owners originally procuring the license shall retain not less than a 50 percent interest in said successor entity and appropriate application is made for the transfer of said license. A request for transfer shall be made and shall contain all information required in the original application for license, and the prospective transferee shall pay a transfer fee of \$50. The transfer shall be subject to all terms, conditions, and requirements of the original application, except that the only fee required therefor shall be as above set forth. If a license is issued upon the request for transfer, the term of such license shall be only for the unexpired term of the original license, and thereafter a new or renewal application shall be made.

5.05.230 Licenses subject to specific controls. The issuance of a license pursuant to the terms of this subtitle and all activities of any licensee granted a license hereunder shall at all times be subjected to all ordinances and regulations of the City enacted in the exercise of its police power, and the prohibition or regulation of any specific activity or sale of commodity by specific ordinance shall prevail over the terms and conditions of this subtitle wherever they may conflict.

5.05.240 Engaging in activity without license – Penalty. Unlicensed operations and unlawful occupancy shall be subject to summary suspension. At the order and demand of the City of Ruston official occupants shall be required to immediately vacate the building and cease and desist all activity at the site. Failure to comply with the orders of the City of Ruston official may result in a criminal citation being issued to the responsible party or parties. Such order and demand may be oral or written. Any person engaging in any activity for which a license is required pursuant to the provisions of this subtitle, without making an application for a license at the time of the commencement of said activity, shall pay, in addition to the license fees set forth herein, the penalty as set forth in Section 5.05.090 and shall be subject to such further penalties as set forth herein. The mere filing of an application for a license shall not give the applicant any right to engage in the activity covered thereby.

5.05.245 License constitutes debt. Any license fee due and unpaid under this Title 5, and all interest and penalties thereon, shall constitute a debt to the City and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

5.05.250 Separate offenses. Each day that any person shall operate any device, vehicle, or thing, or engage in any business, calling, profession, trade, occupation, or activity licensed herein without having procured a valid existing license as provided for by this subtitle shall constitute a separate offense and be punished as such.

5.05.255 Charge-off of uncollectible fees. The Clerk may charge off, in accordance with the City's financial procedures, any license fee or penalty that is owed by a licensee or licensee, if the Clerk reasonably ascertains that the cost of collecting such amounts would be greater than the total amount that is owed or likely to be collected from the licensee.

5.05.257 Closing agreement provisions. The Clerk may enter into an agreement, in writing, with any person relating to the liability of such person with respect to any license fee or penalties imposed by any of the chapters within Subtitle 5.05 and administered by this chapter for any license period(s). Upon approval of such agreement, evidenced by execution thereof by the Clerk and the person so agreeing, the agreement shall be final and conclusive as to the liability or immunity covered thereby, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

1. The case shall not be reopened as to the matters agreed upon, or the agreement modified, by the Clerk or the licensee, and
2. In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

5.05.260 Violations – Penalties.

- (a) Unless another criminal penalty has been prescribed for a violation of a specific provision of this chapter, violation of any of the provisions of Subtitle 5.05 is a misdemeanor. Any person violating or failing to comply with any of the provisions of this subtitle or any lawful rule or regulation adopted by the Clerk pursuant thereto, upon conviction thereof, may be punished by a fine in any sum not to exceed \$1,000, or by imprisonment for a term not exceeding 90 days, or by both such fine and imprisonment.
- (b) Any person violating or failing to comply with any of the provisions of this subtitle, or any lawful rule or regulation adopted by the Clerk pursuant thereto, may also be subject to a civil penalty as described below for each day during which the business is carried on in violation of this subtitle. The City will have discretion to impose a civil penalty. It is the responsibility of the business owner to contact appropriate city staff to request inspection for compliance with this code.
- (c) Civil Penalty. Penalties for violations of this chapter may be assessed in the amount of \$250 per violation per day. Each day a person remains in violation is a separate penalty. The penalties shall be cumulative and shall accrue automatically until such time as compliance is achieved.
- (d) Penalties: main procedural requirements:
 1. The City shall give written notice of the penalty.
 2. The notice shall state:
 - i. that the City has imposed a penalty against the person concerned;

- ii. the amount of the penalty;
- iii. the code violation for which the City considers gave it the power to impose the penalty;
- iv. any other facts which the City considers justify the imposition of a penalty and the amount or amounts of the penalty;
- v. the manner in which, and place at which, the penalty is required to be paid to the City;
- vi. that the person concerned has the right to request an Administrative Review under 5.05.265, and the main details of those rights.

3. A notice under this section shall be given by:

- i. first class mail to the person on whom the penalty was imposed; or
- ii. served directly to the person on whom the penalty is imposed; or
- iii. posted on the property.

4. Civil penalties will continue to accumulate until the person comes into compliance with the provisions in this subtitle. A Certificate of Complaint may be filed where the person owns the property. Where the person is leasing or renting a judgment may be filed against the person.

- (e) Once a Certificate of Complaint has been filed, the City of Ruston may place a utility restraint on the property.
- (f) A license may be suspended or revoked in accord with Section 5.05.140 or 5.05.145 above.
- (g) Any person convicted of continuing to engage in business after the revocation of a license shall be guilty of a gross misdemeanor and may be punished by a fine not to exceed \$5,000 or imprisonment not to exceed one year, or both such fine and imprisonment.
- (h) Penalties or punishments provided in this subtitle may be in addition to all other penalties provided by law.

5.05.262 Cancellation of civil penalties. The Clerk may cancel any civil penalties imposed under Section 5.05.260 if the person comes into compliance within 5 calendar days of the notice or shows that its failure to comply was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the person shows that it exercised ordinary business care and prudence in making arrangements to comply but was nevertheless, due to circumstances beyond the person's control, unable to comply. The Clerk has no authority to cancel any other penalties or to cancel penalties for any other reason.

5.05.265 Administrative reviews by the Clerk of Notice of Penalty – Appeal.

- (a) General. A person, to whom a Notice of Penalty for a civil penalty is assessed, may request an administrative review of the Notice of the civil penalty.
- (b) How to request administrative review. A person may request an administrative review of the Notice of the civil penalty by filing a written request with the Clerk within ten calendar days from the date of the Notice of the civil penalty. The request shall state, in writing, the reasons the Clerk should review the Notice for the issuance of the civil penalty. Failure to state the basis for the review in writing shall be cause for dismissal of the review. Upon receipt of the request for administrative review, the Clerk shall review the information provided.
- (c) Decision of Clerk. After considering all of the information provided, the Clerk shall determine whether a violation has occurred and shall affirm, vacate, suspend, or modify the Notice of penalty or the amount of any monetary penalty assessed. The Clerk’s decision shall be delivered in writing to the appellant by first-class mail.
- (d) Appeals to the Hearing Examiner of Clerks Decision. Appeal of the Clerk’s decision shall be made within 10 calendar days after the date of mailing of the Clerk’s decision by filing a written notice of appeal, clearly stating the grounds that the appeal is based on, with the City Clerk, and the City Clerk shall set a date for the hearing of such appeal before the Hearing Examiner of the City, which appeal shall be governed by RMC 1.20, and shall notify the appellant by mail, of the time and place of hearing.

5.05.268 Additional relief. The Clerk may seek any legal or equitable relief available at any time to mitigate any acts or practices that violate the provisions in subtitle 5.05 or abate any condition that constitutes a violation of subtitle 5.05.

5.05.270 Severability. If any provision of this Subtitle 5.05 or its application to any person or circumstance is held invalid, the remainder of the subtitle or the application of the provision to other persons or circumstances shall not be affected.

Section 2. Direction to Clerk. The Clerk is directed to send a copy of this Ordinance to the State Business Licensing Service at the Department of Revenue before October 1, 2018.

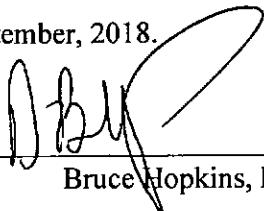
Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 4. Publication. This Ordinance shall take effect on January 1, 2019, which is more than five days after publication as provided by law.

Section 5. Effective Date. This Ordinance shall take effect on January 1, 2019, which is more than five days after publication as provided by law.


ADOPTED by the City Council of the City of Ruston and attested by the City Clerk in authentication of such passage on this 4th day of September, 2018.

APPROVED by the Mayor this 4th day of September, 2018.




Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:



Judy Grams
City Clerk

APPROVED AS TO FORM:



Jennifer S. Robertson
City Attorney's Office

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO: 1507