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**CITY OF FIRCREST
ORDINANCE NO. 1618**

AN ORDINANCE OF THE CITY OF FIRCREST, WASHINGTON, AMENDING ORDINANCE NO. 1156 SECTION 1 AND FMC 5.04.010 DEFINITIONS; AMENDING ORDINANCE NO. 1475 SECTION 1 AND FMC 5.04.020 BUSINESS LICENSE REQUIRED; AMENDING ORDINANCE NO. 1156 SECTION 9 AND FMC 5.04.085 SERVICE CHARGE FOR RETURNED CHECKS; AND AMENDING ORDINANCE NO. 1475 SECTION 10 AND FMC 5.04.100 EXEMPTIONS.

WHEREAS, the 2017 State Legislature passed Engrossed House Bill (EHB) 2005, now codified as Chapter 35.90 RCW, requiring Washington Cities and Towns with business licenses to create a model business ordinance with a minimum threshold and a definition of “engaging in business”; and

WHEREAS, the City staff recently reviewed the business licensing process and procedures set for in Fircrest Municipal Code Chapter 5.04; and

WHEREAS, the City Council reasonably believes the adoption of this Ordinance is in furtherance of the health, safety, and welfare of citizens of the City. Now, Therefore,

THE CITY COUNCIL OF THE CITY OF FIRCREST DO ORDAIN AS FOLLOWS:

Section 1. Ordinance 1156 §1 and FMC 5.04.010 are hereby amended to read as follows:

5.04.010 Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed in this section, except where the context clearly indicates a different meaning:

(a) “Business” means and includes vocations, occupations, professions, enterprises, and establishments and all other activities and matters conducted for private profit or benefit, either directly or indirectly, anywhere within the city.

(b) “Engaging in Business”

(1) "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 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.

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- (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.

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- (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 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.

(c) "Licensee" means any business granted a business license by the city.

(d) "Person" means any individual, corporation, company, firm, joint stock company, co-partnership, joint venture, trust, business trust, club, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, receiver, administrator, executor, assignee, or trustee in bankruptcy.

(e) "Premises" shall mean and include all lands, structures and places, and also any personal property which either is affixed to, or is used in connection with, any such business conducted on such premises.

Section 2. Ordinance 1475 §1 and FMC 5.04.020 are hereby amended to read as follows:

5.04.020 Business license required.

No person shall engage in business within the city limits, regardless whether the person has a permanent business location within the city limits, without first having been issued a city business license through the master license service in coordination with the city, unless such activity is exempt as provided in FMC 5.04.100.

1 **Section 3.** Ordinance 1156 §9 and FMC 5.04.085 are hereby amended to read as follows:

2 **5.04.085 Service charge for returned checks.**

3 A service charge of \$40.00 in addition to the restitution amount of the check shall be
4 imposed upon any business who tenders a check to the city which is thereafter returned
to the city unpaid. The city manager shall have the authority to waive the service charge.

5 **Section 4.** Ordinance 1475 §10 and FMC 5.04.100 are hereby amended to read as
6 follows:

7 **5.04.100 Exemptions.**

8 To the extent set forth in this section, the following persons and businesses shall be
9 exempt from the registration, license and/or license fee requirements as outlined in this
chapter:

- 10 (a) Casual or isolated sales or services made by persons who are not engaged in the
11 ongoing business of selling the type of property involved. “Casual or isolated” is
12 defined as not more than four such sales made during any tax year. Examples
include garage sales, yard sales, bake sales, or occasional parties for the sale or
distribution of goods or services.
- 13 (b) Minors engaged in babysitting, delivery of newspapers, lawn mowing, car washing,
14 and similar activities.
- 15 (c) Nonprofit organizations are required to apply for a city business license but are
16 exempt from the fee, provided a certificate of tax exempt status under 26 U.S.C.
17 Section 501(c)(3), or certified incorporation papers showing that the organization
is nonprofit, is submitted as proof of charitable or nonprofit status.
- 18 (d) Any person or business whose annual value of products, gross proceeds of sales, or
19 gross income of the business in the city is equal to or less than \$2,000 (or higher
20 threshold as determined by city) and who does not maintain a place of business
21 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.

22 **Section 5.** Severability. If any section, sentence, clause or phrase of this title shall be
23 held to be invalid or unconstitutional by a court of competent jurisdiction, such
24 invalidity or unconstitutionality shall not affect the validity or constitutionality of any
other section, sentence, clause or phrase of this title.

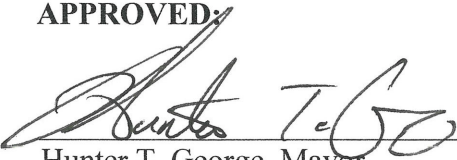
25 **Section 6.** Publication and Effective Date. A summary of this ordinance consisting of
26 its title shall be published in the official newspaper of the city. This ordinance shall be
effective five (5) days after such publication.

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**PASSED BY THE CITY COUNCIL OF THE CITY OF FIRCREST,
WASHINGTON,** at a regular meeting thereof this 25th day of September, 2018.

APPROVED:




Hunter T. George, Mayor

ATTEST:



Jessica Nappi, City Clerk

APPROVED AS TO FORM:



Michael B. Smith, City Attorney

**DATE OF PUBLICATION:
EFFECTIVE DATE:**