

Introduced by: City Manager Griffin
 Date: December 14, 2010
 Public Hearing: January 11, 2011
 Action: Adopted
 Vote: Unanimous

Yes:	No:
Brown	
Erbey	
Johnson	
DeVries	
Hanson	
Vanover	

CITY OF PALMER, ALASKA

ORDINANCE NO. 10-017

AN ORDINANCE OF THE PALMER CITY COUNCIL AMENDING PALMER MUNICIPAL CODE CHAPTER 5.04 BUSINESS LICENSES TO ADD CLARITY FOR BUSINESSES AND IMPROVE COLLECTIONS

THE CITY OF PALMER, ALASKA ORDAINS:

Section 1. Classification. This ordinance shall be permanent in nature and shall be incorporated into the Palmer Municipal Code.

Section 2. Severability. If any provisions of this ordinance or application thereof to any person or circumstances are held invalid, the remainder of this ordinance and the application to the other persons or circumstances shall not be affected thereby.

Section 3. Palmer Municipal Code Chapter 5.04 is amended to read as follows (new language is underlined and deleted language is stricken):

~~5.04.010 State statutes adopted by reference.~~

~~In this chapter, unless the context requires, and insofar as applicable, the definitions set forth in AS 43.70.110 shall be used, together with the procedures, powers, rules and regulations set out in or adopted by virtue of AS 43.05.040, 43.70.090 and 43.70.020 as now in effect, so that the city manager shall be empowered to such procedures, powers, rules and regulations, which are incorporated by reference and have effect as though fully set out in this chapter, unless or until the city manager, with council approval, adopts specific regulations in place of them conformable with this chapter.~~

5.04.010 Definitions.

In this chapter, unless the context requires otherwise,

1. "business" means a for profit or nonprofit entity engaging or offering to engage in a trade, a service, a profession, or an activity with the goal of receiving a financial benefit in exchange for the provision of services, or goods or other property;
2. "department" means the department of administration;

3. "director" means the director of the department of administration;
4. "licensee" means the person to whom a business license is issued pursuant to this chapter;
4. "person" includes an individual, firm, partnership, joint venture, association, corporation, estate trust, business trust, receiver, or any group or combination acting as a unit;
5. "state fair business license" means a temporary business license issued by the city to a person for the sole purpose and privilege of engaging in business at the Alaska State Fair grounds during the Alaska State Fair;
6. "seller" shall have the same meaning given in section 3.16.020 of this code.

5.04.020 License – Required – Application.

- A. For the privilege of engaging in business in the city, a person shall first apply upon on forms prescribed required by the city-clerk Department of Administration, and obtain a license to do so, and pay the license fee provided in PMC 5.04.070. A license issued for a particular line of business covers all of a licensee's operations in the city for that line of business, regardless of the number of its establishments.
- B. An application for a city business license shall be made to the director on a form approved by the director and shall be accompanied by the following:
 1. An application fee established in the current, adopted budget;
 2. Proof that the applicant has the following
 - a. A current State of Alaska business license;
 - b. Any other license as may be required by the city or state, such as occupational or professional licensing requirements.
 3. The business address and telephone number to be used by the applicant for the business to be operated pursuant to the license;
 4. A complete description of the type(s) of goods and/or services that shall be offered under the business license.
- C. No business license shall be issued unless a person is compliant with the requirements of this chapter and is current in the payment and collection of sales taxes, or any other payments, fees, taxes, charges, penalties, interest, or other amounts that are due and owing to the city except as provided in this subsection. The department may issue a license to an applicant who does not meet the requirements of this section or who has a history of noncompliance with the code if such applicant posts a bond, furnishes a statement of net worth or additional security to ensure the full and prompt payment of all fees, taxes, charges, penalties, interest or other amounts due the city.
- D. Each person who obtains or is required to obtain a business license in accordance with this chapter consents to the inspection of that person's state business license, application, or other business records as necessary in order to facilitate the accomplishment of the provisions and objectives of this chapter.

5.04.030 License – Renewal.

Application for renewal of a license and payment of the initial fee shall be made before February 1 of each year.

5.04.040 License – Duration.

~~No license may be issued for a period extending beyond the end of the calendar year in which it is issued.~~ A business license is issued for the calendar year for which an application is received

and shall expire on December 31 of the calendar year for which it was issued. Upon expiration, a business license shall be renewed pursuant to section 5.04.030 of this chapter.

5.04.050 Display of business license.

The city business license must be prominently displayed in all locations where the seller conducts business, including temporary locations. A licensee with no permanent place of business shall display the license upon request.

5.04.060 License – Compliance with other provisions required.

A person engaging in a business subject to licensing provisions of a regulatory nature must, in addition to filing the regular application required by this chapter, comply with any other or additional regulatory provisions before being entitled to a license.

5.04.070 License – Fee.

The license fee, established in the current, adopted budget, shall be paid to the city for each business license and shall be applicable for the calendar year in which the fee is paid, or any part thereof. If payment is made by check, bill of exchange, or note which is later returned by the drawee as uncollectible because of insufficient funds or is dishonored by the drawee for any reason, the dishonor is prima facie evidence of nonpayment of the license fee. In event of nonpayment, the applicant shall be subject to additional penalty as prescribed by section 5.04.080 of this chapter.

5.04.080 License – Failure to apply – Penalty.

~~If a person engaged in a business fails to file a business license application or pay the fee as prescribed in the current, adopted budget an additional percentage as established in the current adopted budget shall be added to the fee. The amount added to the fee shall be collected at the same time and in the same manner as part of the fee. In case of delinquency, the legal rate of interest shall be assessed. If payment is made by check, bill of exchange, or note which is later returned by the drawee as uncollectible because of insufficient funds or is dishonored by the drawee for any reason, the dishonor is prima facie evidence of nonpayment of the license fee.~~

- A. Failure to file a business license application or pay the license fee as prescribed by this chapter shall result in a penalty. The amount of penalty shall be prescribed in the current, adopted budget and shall be due at the same time a license fee is due.
- B. Failure to pay a penalty at the time the fee for the license is made may result in denial of a license application.
- C. In case of delinquency in the payment of any fee or penalty due under this chapter, the legal rate of interest shall be assessed.

5.04.090 Surrender of license.

- A. A business license must be surrendered to the city by the licensee to whom it was issued immediately upon the licensee ceasing to do business.
- B. If there is a change in ownership or form of organization, such as from a sole proprietorship to a partnership or a corporation, the admission or withdrawal of a partner, or any other change in the ownership structure, the licensee making such change shall surrender the current city business license to the city for cancellation. The successor owner shall be

required to file a new application for a city business license pursuant to section 5.04.020 of this chapter and upon approval, a new city business license will be issued

5.04.100 City manager regulation promulgation authority.

The city manager may, with the approval of the council, promulgate regulations necessary to determine and collect fees imposed and to otherwise enforce the provisions of this chapter.

5.04.110 Unlawful acts designated.

It is unlawful for a person to:

- A. Willfully evade the licensing provisions of this chapter;
- B. Fail to make an application for license or fail to keep or produce any records required under this chapter or by regulation;
- C. Make a false or fraudulent return or false statement with intent to defraud the city or evade payment of the fee; or
- D. Aid or abet another in an attempt to evade payment of the fee.

5.04.120 False statements by agents prohibited.

It is unlawful for an executive officer or agent of a corporation or agent of a person to make or permit to be made for his or her principal a false return or false statement in answer to an inquiry from the Director of Administration ~~city clerk~~ with intent to evade the payment of the fee or to comply with the provisions of this chapter.

5.04.130 Violation – Penalty.

Any person violating any requirement of this chapter or any regulation adopted pursuant thereto shall be penalized as an ordinance violator. Nothing in this section shall be construed to limit, but may be in addition to, any other remedy available under this chapter, at law or at equity to enforce violations of this chapter.

5.04.140 Violation – Testimony required – Compromise.

In a prosecution for a violation under this chapter, no person otherwise competent as a witness is privileged to refuse to testify on the grounds that his or her testimony may incriminate him or her; however, no indictment or prosecution shall afterwards be brought against the witness on account of an offense or transaction concerning which he testifies as a witness. In a prosecution under this chapter, the city attorney may, with the consent of the city council, compromise the case by accepting from the defendant a sum not less than the fee, penalties and interest provided in PMC 5.04.080 and costs of such prosecution.

5.04.150 License – Suspension or Revocation.

- A. The city manager, or designee, may suspend or revoke a business license if a licensee is in violation of any requirement of this chapter, code, or any regulation adopted pursuant thereto pursuant to the notice requirements of section 5.04.160.
- B. The city manager, or designee, may immediately suspend the license of a licensee who is delinquent in the remittance of sales tax or sales tax returns under PMC Chapter 3.16 Sales Tax. A suspension issued under this subsection shall be effective immediately upon the giving of written notice of suspension for failure to remit and pay city sales taxes to the licensee. A license suspended under this subsection shall be lifted upon the licensee's

compliance with the city sales tax requirements, including remittance and payment of all delinquent sales taxes, sales tax returns, interest and penalties.

5.04.160 License – Suspension or Revocation – Notice.

- A. The city manager, or designee, may not suspend or revoke a business license without first providing the licensee at least thirty (30) days written notice of the intent to suspend or revoke the business license and an opportunity for a hearing on the suspension or revocation, except as provided in 5.04.150(B).
- B. The notice required under this section shall be as follows:
 - 1. Notice of the proposed revocation or suspension shall be made in writing and mailed via certified mail, return receipt requested, to the last known address of the licensee.
 - 2. Notice of the proposed revocation or suspension shall contain the name and address of the licensee, the name of the business for which the license was issued, and describe the reason for the revocation or suspension with citation to the relevant code provision, if applicable, and the name, address and telephone number of the city representative to contact concerning the proposed revocation or suspension.
 - 3. The notice of suspension or revocation shall also contain a statement advising licensee of his right to request a hearing to challenge the proposed suspension or revocation pursuant to subsections C and D of this section.
- C. The licensee has a right to a hearing on the proposed revocation or suspension by requesting a hearing in writing to the city representative identified in the notice of suspension or revocation not more than thirty days after the date of the notice of proposed revocation or suspension. Within ten days of receipt of a written request for a hearing, the city manager, or his designee shall schedule a hearing on the proposed suspension or revocation pursuant to section 5.04.170 of this chapter.
- D. Failure to request a hearing within thirty days of receipt of a notice of suspension or revocation constitutes a waiver of any further rights to appeal under this chapter and the decision of the city manager shall become final thirty days after the date of notice given pursuant to subsection B of this section.

5.04.170 License – Suspension or Revocation – Hearing.

- A. A hearing requested pursuant to section 5.04.150 of this chapter shall be held before the city manager, or designee. This hearing shall be recorded, conducted in an informal manner, and shall not be bound by the formal rules of evidence
- B. The purpose of the hearing shall be to determine whether good cause exists for suspending or revoking a license issued under this chapter. Good cause exists when it is determined that the licensee is in violation of the requirements of this chapter or any other requirement of this code.
- C. The licensee has the right to appear, present evidence, and examine and/or cross-examine witnesses for the purpose of establishing that licensee is not in violation of the requirements of this chapter. The city manager, or designee, has the right to cross-examine any witnesses presented by the licensee.
- D. Failure of the licensee to appear at the time set for a hearing requested under this section, except for good cause shown, shall result in a waiver of any further appeal rights and the decision of the city manager becomes final.
- E. Within ten days following the conclusion of the hearing, the city manager, or designee, shall issue a written decision whether to suspend or revoke the license which contains written

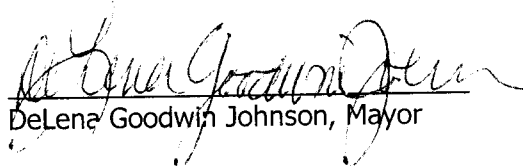
findings in support of the decision based upon the evidence presented at the hearing. A written decision to suspend or revoke a business license issued pursuant to this chapter shall advise the licensee of his or her right to appeal the decision pursuant to section 5.04.180 of this chapter. A copy of the decision shall be provided to the licensee via certified mail, return-receipt requested, and shall take effect immediately upon its issuance.

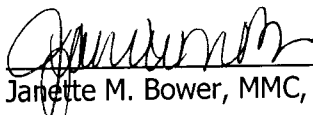
5.04.180 Appeals to Superior Court.

- A. A licensee may appeal a decision made pursuant to section 5.04.170 of this chapter not later than thirty days following the date of written notice of the decision from the city manager. Failure to appeal a decision made pursuant to 5.04.170 within thirty days of the date of notice constitutes a waiver of his or her appeal rights and the city manager's decision becomes final.
- B. Appeals from the written decision of the hearing officer shall be made to the superior court for the state of Alaska, in Palmer, Alaska. The hearing before the superior court shall be treated as an administrative appeal heard solely on the record and shall be governed by Part VI of the Alaska Court Rules of Appellate Procedure (Superior Court As an Appellate Court), as amended.
- C. A licensee bringing an appeal under this section shall be responsible for the costs to prepare a transcript and record of the hearing conducted in accordance with section 5.04.170 of this chapter. Upon receipt of a notice of appeal, the director of administration shall estimate the cost of preparing the transcript of the hearing and compiling the record on appeal. The licensee shall deposit the estimated costs for preparation of the transcript and record with the director in advance of preparation of the transcript and record. The director shall refund any excess deposit or charge to the business owner for costs exceeding the deposit.

Section 4. Effective Date. Ordinance No. 10-017 shall take effect upon adoption of the Palmer City Council.

Passed and approved this 11th day of January, 2011.


DeLena Goodwin Johnson, Mayor


Janette M. Bower, MMC, City Clerk