

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF PUYALLUP adding Puyallup Municipal Code Sections 5.04.015 and 5.04.018 and amending or deleting Puyallup Municipal Code Sections 5.04.020, 5.04.050, 5.04.052, 5.04.080, 5.08.020, 5.08.060, 5.08.085, 5.08.100, 5.10.020, 5.10.055, 5.10.060, 5.10.070, 5.32.280, 5.32.285 and 5.32.305.

WHEREAS, the City of Puyallup (City) is required to adopt the model business license ordinance under the Revised Code of Washington (RCW) Chapter 35.90; and

WHEREAS, the model business license ordinance was published on July 1, 2018; and

WHEREAS, the City must adopt the mandatory provisions of the model ordinance by January 1, 2019; and

WHEREAS, the Business Licensing Service requires 75 days' notice before implementing any local business license changes; and

WHEREAS, to provide adequate notice to the Business Licensing Service, the City's code changes must be adopted by October 17, 2018; and

WHEREAS, the City must adopt a mandatory definition of "engaging in business within the city" for purposes of delineating the circumstances under which a general business license is required; and

WHEREAS, the City must establish a uniform minimum licensing threshold under which a person would be relieved of the requirement to obtain a city's general business license. The city retains the authority to create a higher threshold for the requirement to obtain a general business license but must not deviate lower than the level required by the model ordinance; and

WHEREAS, a city may require a person that is under the uniform minimum licensing threshold to obtain a city registration with no fee due to the city; and

WHEREAS, other code revisions are desirable to add clarity or to bring the code current.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PUYALLUP, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Code Amendments. Sections 5.04.015 and 5.04.018 of the Puyallup Municipal Code are added, and sections 5.04.020, 5.04.050, 5.04.052, 5.04.080, 5.08.020, 5.08.060, 5.08.085, 5.08.100, 5.10.020, 5.10.055, 5.10.060, 5.10.070, 5.32.280, 5.32.285 and 5.32.305 are amended or deleted as set out in the attached Exhibit A and hereby made a part of this ordinance.

Section 2. Corrections. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Business License Ordinance

Section 3. Severability. All sections in this ordinance are hereby deemed severable. Any section found invalid or unconstitutional by a court of law with jurisdiction shall not be deemed to invalidate or find unconstitutional other sections in this ordinance.

Section 4. Effective Date. This ordinance shall become effective on January 1, 2019 after publication in the official newspaper of the City of Puyallup.

DATED this ___ day of October 2018.

John Palmer, Mayor

ATTEST:

Mary Winter, City Clerk

APPROVED AS TO FORM:

Joseph N. Beck, City Attorney

PUBLISHED: July ___, 2018 - The Tacoma News Tribune

EXHIBIT A

(Note: Italics where used indicate notes – not to be codified)

Chapter 5.04

BUSINESS LICENSES

Sections:

- 5.04.010 Revenue license power.
- 5.04.015 Engaging in business.
- 5.04.018 Business license threshold.
- 5.04.020 Definitions.
- 5.04.030 Persons subject to fees.
- 5.04.040 Businesses located outside city.
- 5.04.050 Exemptions from all licensing requirements of this chapter.
- 5.04.052 Exemptions from payment of fees under this chapter.
- 5.04.060 Requirements for issuance of license.
- 5.04.062 Investigations and background checks.
- 5.04.065 Nonconforming uses.
- 5.04.067 Inspections – Right of entry.
- 5.04.070 Renewal of license and payment of fees.
- 5.04.071 Marijuana producer, processor, and retailer.
- 5.04.080 Over or underpayment of fees.
- 5.04.090 *Repealed.*
- 5.04.095 Grounds for disqualification of licenses.
- 5.04.097 Application for license – Approval or denial – Appeal.
- 5.04.100 Suspension or revocation – Appeal.
- 5.04.110 Authority of director.
- 5.04.120 Mailing of notices.
- 5.04.130 Disclaimer of city liability.
- 5.04.140 License fee additional to others.
- 5.04.150 Fee constitutes debt.
- 5.04.155 Assignment of licenses.
- 5.04.160 Penalties – Violations.

New Section Added:

5.04.015 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 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

Business License Ordinance

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).

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.

Business License Ordinance

Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

New Section Added:

5.04.018 Business license threshold: (Puyallup must adopt one of the options)

A. 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:

- (1) 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 (or higher threshold as determined by city) 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.

OR

A. Threshold with Fee-free License/Registration-only:

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 (or higher threshold as determined by city) and who does not maintain a place of business within the city, shall submit a business license registration to the Director or designee. The threshold does not apply to regulatory license requirements or activities that require a specialized permit.

5.04.020 Definitions.

In construing the provisions of this chapter, except when otherwise declared apparent or clearly from the context a different meaning is intended, the following definitions shall be applied:

“Business” shall mean and include all activities, occupations, trades, pursuits or professions located and/or engaged in, within the city, with the object of gain, benefit, profit or advantage to the person or business owner, or to another person or class, directly or indirectly, regardless of where their permanent location of business is located. Each business location shall be deemed a separate business.

“Business Licensing Service” or “BLS” means the office within the Washington State Department of Revenue administering the Puyallup city general business licensing process.

“City Clerk” means the Puyallup city clerk or his or her designee.

“Director” means the city manager, or any officer, agent, or employee of the city designated to act on the city manager’s behalf.

“Employee” means any person employed at any business enterprise that performs any part of their duties within the city, except casual laborers not employed in the usual course of business. A sole proprietor is not an “employee.” All officers, agents, dealers, franchisees, etc., of a corporation or business trust, and all but one partner of a partnership (except limited partners), are “employees” within this definition.

~~“Engaging in business” means commencing, conducting or continuing in any business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators hold themselves out to the public as conducting such business.~~

“Nonprofit” means any charitable organization that has been exempted from the payment of taxes to the federal government under Section 501(c)(3) of the Internal Revenue Code.

“Person” means any individual, firm, partnership, company, corporation, association, receiver, consignee, trustee in bankruptcy, trust, estate, joint venture, club, joint stock company, business trust, society, or any group of individuals acting as a unit.

Business License Ordinance

“Person or business owner” includes any person who engages in business or who is required to have a business license hereunder, or who is liable for the collection of any license fee hereunder, or who performs any act for which a license fee is imposed by this chapter.

“Year” means January 1st to December 31st, or other 12-month period as may be applicable.

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5.04.050 Exemptions from all licensing requirements of this chapter.

The business license requirements of this chapter shall not apply to the following:

(1) Any instrumentality of the United States, state of Washington, or any political subdivision thereof, with respect to the exercise of governmental functions;

(2) Temporary stands and temporary fair parking exempted under PMC 5.32.285.

~~(3) Persons engaged in irregular, casual activities such as lemonade stands, babysitting, delivery of newspapers, casual lawn mowing, casual car washing, and other similar activities;~~

5.04.052 Exemptions from payment of fees under this chapter.

The requirement to pay license fees as set forth in this chapter shall not apply to the following, provided all other provisions of this chapter, including without limitation the requirement to obtain and maintain a current business license, shall apply to all businesses covered by this chapter:

(1) Nonprofit organizations, including but not limited to religious, civic, charitable, benevolent, nonprofit, cultural or youth organizations, as defined in PMC 5.04.020;

(2) The activities regulated under PMC 5.32.135 (bill poster, bill or sample distributor) and special events permitted under Chapter 5.34 PMC including contests, circuses, shows, carnivals, auctions, etc.;

(3) Any farmer or gardener who sells, delivers or peddles any fruit, vegetables, berries, butter, eggs, fish, milk, poultry, meats or any farm produce or edibles raised, caught, produced or manufactured by such person in any place in this state;

(4) All persons engaged in parking vehicles with a lot capacity of not more than 15 cars;

(5) Family day care homes for children and mini day care homes for children as the same are defined under PMC 20.15.005;

~~(6) Persons engaged in irregular, casual activities such as babysitting, delivery of newspapers, casual lawn mowing, casual car washing, and other similar activities;~~

(7) Persons engaged in commerce using an internet website, hobbyists, and crafters who engage in sales that do not involve home visits;

(8) Businesses meeting all of the following criteria:

(a) Having no employees performing work other than delivery within the city;

(b) Having no sales people soliciting sales within the city;

(c) Having no installers or contractors working within the city;

(d) Having no offices, warehouses or other physical location(s) within the city;

(e) Having no inventory located within the city; ~~and~~

(9) Small or part-time businesses, professions, or trades located in the city with total annual gross receipts for all business locations less than \$ \$12,000. Beginning January 1, 2019, this threshold shall be increased annually

Business License Ordinance

~~by the rate of inflation as measured by the most recent CPI-U Seattle-Tacoma-Bellevue first half year index, or other succeeding measure.~~

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5.04.080 Over or underpayment of fees.

The initial license application fee shall be non-refundable. If, upon investigation of any application and/or receipts, the director finds that the fee paid on any license or license renewal is more than the amount required of the applicant, the director shall return the overpaid amount. If the director finds that the fee paid is less than required, the director shall mail a statement to the applicant showing the balance due, who shall within seven days pay the amount shown thereon.

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Business License Ordinance

Chapter 5.08

BUSINESS AND OCCUPATION TAXES

Sections:

- 5.08.010 Power to license for revenue.
- 5.08.020 ~~License required—Application.~~ **Repealed.**
- 5.08.030 Tax designated.
- 5.08.035 *Repealed.*
- 5.08.040 Computation deductions.
- 5.08.050 Due date and reporting period.
- 5.08.060 Records of revenue.
- 5.08.070 Failure to pay.
- 5.08.080 Over or under payment.
- 5.08.085 ~~Taxes due prior to effective date.~~ **Repealed.**
- 5.08.090 Violation – Penalty.
- 5.08.100 Authority of clerk.

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~~5.08.020— License required— Application.~~

~~After January 1, 1958, no person, firm or corporation shall engage in or carry on any business, occupation, act or privilege for which a tax is imposed by PMC 5.08.030 without first having obtained, and being the holder of, a license so to do, to be known as an occupation license. Each such person, firm or corporation shall promptly apply to the city clerk for such license upon such forms as the clerk shall prepare and provide, giving such information as the clerk shall deem reasonably necessary to enable him to administer and enforce this chapter; and, upon acceptance of such application by the clerk, he shall thereupon issue such license to the applicant. Such occupation license shall be personal and nontransferable and shall be valid as long as the licensee continues in said business and complies with this chapter. (Ord. 1299 § 2, 1957).~~

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5.08.060 Records of revenue.

Each taxpayer shall keep records reflecting the amount of his gross operating revenues, and such records shall be open at all reasonable times to the inspection of the director ~~city clerk, or his duly authorized subordinates,~~ for verification of the tax returns or for the fixing of the tax of a taxpayer who fails to make such returns.

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~~5.08.085— Taxes due prior to effective date.~~

~~The provisions of PMC 5.08.070 shall apply to taxes which were due 30 or fewer days prior to the effective date of the ordinance codified in this chapter. Taxes which were due more than 30 days prior to the effective date of the ordinance codified in this chapter shall be subject to the following penalties in lieu of any and all other penalties: There shall be added to such tax a penalty of 10 percent of the amount of such tax, such penalty to be deemed to have accrued on the date 30 days after the due date of the tax; and if the tax is not paid within 30 days of the effective date of the ordinance codified in this chapter, there shall be added an additional penalty of five percent of the amount of the tax; and if the tax is not paid within 60 days of the effective date of the ordinance codified in this chapter, there shall be added an additional penalty of five percent of the amount of the tax; and if the tax is not paid within 60 days of the effective date of the ordinance codified in this chapter, then the total amount of the tax and penalties enumerated above shall accrue interest at the rate of 12 percent per year, such interest to be calculated beginning on the date 60 days after the effective date of the ordinance codified in this chapter. (Ord. 1825 § 3, 1980).~~

5.08.090 Violation – Penalty.

Any said person, firm or corporation subject to this chapter who fails or refuses to apply for an occupation license or to make said tax returns or to pay said tax when due, or who makes any false statement or representation in or in

Business License Ordinance

connection ~~with any such application for an occupation license~~ on such tax return, or otherwise violates or refuses or fails to comply with this chapter, shall be guilty of a misdemeanor and, upon conviction thereof shall be punished as provided in PMC 1.01.110.

5.08.100 Authority of director ~~clerk~~.

The director ~~city clerk~~ is authorized to adopt, publish and enforce, from time to time, such rules and regulations for the proper administration of this chapter as shall be necessary, and it shall be a violation of this chapter to violate or to fail to comply with any such rule or regulation lawfully promulgated hereunder.

Chapter 5.10

BUSINESS AND OCCUPATION TAXES – TELEPHONE BUSINESS

Sections:

- 5.10.010 Power to license for revenue.
- 5.10.020 ~~License required—Application. Repealed.~~
- 5.10.025 Definitions.
- 5.10.030 Tax designated.
- 5.10.040 Exemptions and deductions.
- 5.10.050 Allocation of income – Cellular telephone service.
- 5.10.055 Authority of administrator.
- 5.10.060 Rate change.
- 5.10.070 Due date.

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~~5.10.020— License required— Application.~~

~~After January 1, 1995, no person, firm or corporation shall engage in or carry on any business, occupation, act or privilege for which a tax is imposed by PMC 5.10.030 without first having obtained, and being the holder of, a license [as required under Chapter 5.04 PMC.] so to do, to be known as an occupation license. Each such person, firm or corporation shall promptly apply to the city clerk for such license upon such forms as the clerk shall prepare and provide, giving such information as the clerk shall deem reasonably necessary to enable the clerk to administer and enforce this chapter; and, upon acceptance of such application by the clerk, the clerk shall thereupon issue such license to the applicant. Such occupation license shall be personal and nontransferable and shall be valid as long as the licensee continues in said business and complies with this chapter. (Ord. 2416 § 2, 1994).~~

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5.10.055 Authority of director administrator.

The director ~~city manager or his/her designee~~ is authorized to represent the city in negotiations with other cities for the proper allocation of taxes due under PMC 5.10.050.

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Chapter 5.32

PEDDLERS, BILL POSTERS, AUCTIONEERS, JUNK DEALERS AND TEMPORARY STANDS

Sections:

Peddlers

- 5.32.010 *Repealed.*
- 5.32.020 *Repealed.*
- 5.32.030 *Repealed.*
- 5.32.040 *Repealed.*
- 5.32.050 *Repealed.*
- 5.32.060 *Repealed.*
- 5.32.070 *Repealed.*
- 5.32.080 *Repealed.*
- 5.32.090 *Repealed.*
- 5.32.100 *Repealed.*

Bill Posting and Distribution

- 5.32.135 Bill poster, bill or sample distributor.

Auctioneers

- 5.32.140 *Repealed.*
- 5.32.150 *Repealed.*
- 5.32.160 *Repealed.*

Pawnbrokers and Secondhand Dealers

- 5.32.170 Definitions.
- 5.32.180 Record book.
- 5.32.190 Inspection of records and goods.
- 5.32.200 Report to chief of police.
- 5.32.210 Sale within 30 days restricted.
- 5.32.220 Adopts RCW 19.60.060 – Rates of interest, fees.
- 5.32.230 Owner entitled to costs of recovery of stolen goods.
- 5.32.240 Penalty for violations.

Temporary Stands and Temporary Fair Parking

- 5.32.280 Temporary stand and Temporary Fair Parking defined.
- 5.32.285 License required.
- 5.32.295 Temporary firework stands.
- 5.32.300 Minimum standards for temporary stands.
- 5.32.305 License fees – Issuance – Exemptions.
- 5.32.310 *Repealed.*
- 5.32.315 Penalty for violations.

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Temporary Stands and Temporary Fair Parking

5.32.280 Temporary stand and Temporary Fair Parking defined.

“Temporary stand,” as used in this code, means any booth, tent, storeroom, street stand, temporary and/or open lunch counter, sandwich counter or soft drink and/or food portable containers, or other temporary place for the sale of food, confections, toys, jewelry, groceries, dry goods, drinks of all kind, goods, wares, merchandise or services, operated from doorways, building recesses, alleyways, vacant lots, street or sidewalk easements, public streets or sidewalks or any other place facing to, adjacent to or near the public streets or highways of the city.

“Temporary Fair Parking,” as used in this code, means the provision or operation of parking lots for a fee on private property limited to the annual run of the Washington State Fair or the Spring Fair.

Business License Ordinance

5.32.285 License required.

No person shall erect, maintain, operate or occupy any temporary stand or any temporary fair parking lot within the corporate limits of the city without first having obtained a temporary stand or temporary fair parking license therefor as provided in PMC 5.32.280 through 5.32.315. Having obtained such a license, the person shall be exempt from obtaining a business license as provided for in Chapter 5.04 PMC relating to business licenses and regulation; provided, however, all temporary stands which are to be operated adjacent to the fair as permitted by PMC 20.70.010 during the annual run of the Western Washington Fair must apply for a permit no later than the last day of business in August of each year. All other temporary stands within the boundaries of the city must apply for a temporary stand license no less than five business days prior to the first day of operation. The failure to apply for such license by such dates will waive any privilege to operate a temporary stand; provided, that the application deadline may be waived whenever the city manager finds that timely application was beyond the control of the license applicant by reason of severe circumstances. Any person seeking such waiver must file a written request with the city clerk setting forth the reasons for not having timely filed. In addition, the applicant shall deposit a refundable \$100.00 late fee with the city clerk. The city manager shall, as soon as practicable, consider the request for waiver. If the waiver is denied ~~granted~~, the license applicant shall forfeit the \$100.00 late fee to the city. If the waiver is ~~granted~~ denied, the city clerk shall refund the deposit to the applicant. The decision of the city manager shall be final. No sales activities or services offered, other than those outlined in the application for temporary stand license, shall be conducted within the confines of the temporary stand once the license has been approved. The license is nontransferable and shall be posted in a conspicuous location at the place of business.

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5.32.305 License fees – Issuance – Exemptions.

(1) A \$25.00 processing fee shall be imposed upon temporary stand license applications for those constructed stands which, in the sound discretion of the fire chief or his/her duly authorized representative, require an inspection for safety compliance; provided further, that said processing fee shall be imposed for each event at which the constructed temporary stand is in operation. In addition, a temporary stand license fee is fixed at the sum of \$10.00 per day, with a maximum operation period of 30 days per year as provided for in PMC 20.70.010 and 20.70.012. PMC 5.32.280 through 5.32.310 shall not apply to stands or booths within the grounds of the fair zone as provided in Chapter 20.37 PMC; and provided further, that the temporary stand license fee provided for in this section shall not be charged for the licensing of any temporary stands erected or operated in the city by any charitable, religious, or nonprofit organization or corporation which has received tax-exempt status under I.R.C. paragraph 501 (c) (3), 26 U.S.C.A. 501 (c) (3), as adopted or amended, and which has filed with the city of Puyallup clerk's office a copy of the tax exemption granted by the Internal Revenue Service.

(2) All seasonal produce stands, as permitted under PMC 20.70.016, shall be subject to the \$25.00 processing fee as established under subsection (1) of this section, but shall not be subject to the daily fee as established under subsection (1).

(3). The license fee for Temporary Fair Parking is fixed at \$37.50 per year.

(4) Any applicant receiving a temporary stands or temporary fair parking license and paying the fees required therefor, as provided in this section, shall be exempt from applying for and/or paying for a business license as required under Chapter 5.04 PMC.

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