

ORDINANCE 2019-04

**AN ORDINANCE OF THE CITY OF AUSTIN, INDIANA
RELATING TO BUSINESS LICENSES**

WHEREAS, the Common Council of the City of Austin desires to establish a business license for any person engaging in business activities within the City of Austin (the “City”); and

WHEREAS, Indiana does not have any specific business license requirement; and

WHEREAS, pursuant to Ind. Code §36-1-3-6, the City desires to establish a business license for the City.

THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF AUSTIN as follows:

Section 1. Purpose: The purpose of this chapter is to provide a means for obtaining public information and compiling statistical information on existing and new business within the City, to regulate and ensure the legal conduct of businesses, and to assist in the effective administration of the health, fire, building, zoning, and other codes of the City.

Section 2. Definitions: In construing the provisions of this chapter, except when otherwise declared, or clearly from the context a different meaning is intended, the following definitions shall be applied:

- A. “Engaging in business:”
1. The term “engaging in business” means commencing, conducting, or continuing in business, and 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.
 - i. 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.
- ii. Owning, renting, leasing, using, or maintaining, an office, place of business, or another establishment in the City.
 - iii. Soliciting Sales.
 - iv. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.
 - v. 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.
 - vi. Installing, constructing, or supervising installation or construction of, real or tangible personal property.
 - vii. Soliciting, negotiating, or approving franchise, license, or other similar agreements.
 - viii. Collecting current or delinquent accounts.
 - ix. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.
 - x. 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.
 - xi. 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.
 - xii. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.
 - xiii. 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.
 - xiv. Investigating, resolving, or otherwise assisting in resolving customer complaints.
 - xv. 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.
 - xvi. 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.
- i. Meeting with suppliers of goods and services as a customer.
 - ii. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.

- iii. 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.
 - iv. Renting tangible or intangible property as a customer when the property is not used in the City.
 - v. Attending, but not participating in a “trade show” or “multiple vendor events”.
 - vi. Conducting advertising through the mail.
 - vii. Soliciting sales by phone from a location outside the City.
5. A seller located outside the City merely delivering good into the City by means of common carrier is not required to register and obtain a business license, if it engages in no other business activities in the City.
- B. “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.
 - C. “Employee” means any person employed at any business location within the City and in addition includes all persons who are self-employed.

Section 3. License – Required:

- A. No person shall engage in business activity in the City without first having obtained a valid license to do so. Application for a license is made by submitting an application to the Clerk-Treasurer. The application shall include payment of the license fee prescribed by this chapter. Every license granted under this chapter shall be posted in a conspicuous place in the place of business of the licensee. Any license issued under this chapter shall be personal and nontransferable. In case business is transacted at two or more separate places by one licensee, a separate license for each place of business shall be required. A change of place of business shall require the filing of a new application with the Business License Service and, upon approval by the City of the new place of business, a new license shall be issued for the new place of business.
- B. Notwithstanding any contrary provision, a business license under this chapter may not be issued to any person using or occupying any real property in violation of the provisions of the City’s Municipal Code, including zoning, building, and fire regulations and all amendments thereto.
- C. Licenses granted under this chapter are nontransferable and may not be transferred to the new owner when a licensed business changes ownership.

Section 4. Exemptions: A business license shall not be required for:

- A. Any activities of a temporary nature, such as contests, circuses, shows, auctions or other business licensed under another ordinance of the city;
- B. Any agency of the United States, the State of Indiana or political subdivision thereof;
- C. Nonprofit associations, clubs, or corporations maintained for the purpose of organized

- sports, charity, public school-related activities, or municipal-related activities, including police or fire department reserve organizations;
- D. Vendors not otherwise engaged in business in the city who rent a booth or space, or are otherwise a participant, at a city-sanctioned or sponsored event;
 - E. Minors doing business or operating a business concern where no other person is employed by the minor, such as babysitting or lawn mowing.
 - F. Individual real estate agents, provided that the brokerage has a business license.
 - G. Any person or business whose annual value of products, gross proceeds of sales, or gross income of the business in the City is equal to or less than \$2,000 and who does not maintain a place of business within the City shall be exempt from the general business license requirements in this chapter. This exemption does not apply to regulatory license requirements or activities that require a specialized permit.

Section 5. Payment of Fees – License Term or Expiration: The fee for the license required by this chapter shall be \$15.00. Each annual license fee herein provided for shall become due and payable on the date established by the Clerk-Treasurer. The annual license fee amount may be prorated to accommodate setting an expiration date for a license that matches the expiration date established for the business by the Clerk-Treasurer.

Section 6. Authority of the City – Violations; Enforcement; and Penalties:

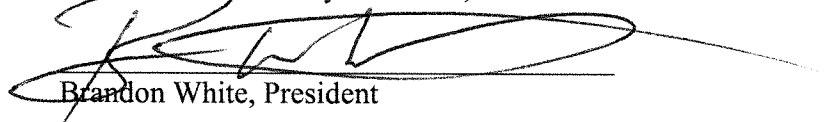
- A. The City shall have the authority to enforce the provisions of this chapter with appropriate action, including but not limited to revocation or nonrenewal of a business license issued under this chapter.
- B. Any person engaged in business as defined in this chapter without having its business license shall be guilty of a violation of this chapter for any day during which such person is so engaged in business.
- C. Violation of this Chapter is subject to a fine of up to \$2,500 for each violation.

Section 7. Severability: If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this ordinance.

Section 8. Effective Date: This Ordinance shall become effective from and after its passage by the Council and after publication as required by law.

PASSED AND ADOPTED by the Common Council of the City of Austin, Indiana on the 10th day of June 2019 by a vote of 5 to 0.

~~Common Council~~ City of Austin, Indiana


Brandon White, President


Attest:


Chris Fugate, Clerk-Treasurer

Presented by me to the Mayor of the City of Austin for his approval or veto pursuant to Indiana Code § 36-4-6-15 and 16, this 10th day of June 2019 at 6:10 p.m.


Chris Fugate, Clerk-Treasurer

This Ordinance having been passed by the legislative body and presented to me is approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16(a)(1), this 10th day of June 2019 at 6:10 p.m.


Dillo Bush, Mayor

Attest:


Chris Fugate, Clerk-Treasurer

PREPARED BY: Joshua Stigdon
Houston, Thompson and Lewis, PC
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Scottsburg, IN 47170