

Filed
2/15/11

CITY OF HOMER
HOMER, ALASKA

Hogan

ORDINANCE 11-01(S)

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, ENACTING HOMER CITY CODE CHAPTER 8.02, BUSINESS LICENSES, REGARDING THE REQUIREMENT OF A LICENSE TO ENGAGE IN BUSINESS IN THE CITY; AND ENACTING HOMER CODE 9.16.015, DETERMINING WHEN A SALE, RENTAL OR SERVICE OCCURS IN THE CITY.

THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code Chapter 8.02, Business Licenses, is enacted to read as follows:

Chapter 8.02

BUSINESS LICENSES

- 8.02.010 License required.
- 8.02.020 Application—Fee.
- 8.02.030 **Display of license.** ~~Review of application.~~
- 8.02.040 **Regulations.** ~~Information on business license—Changes in information—Display of license.~~
- 8.02.050 **Violations—Remedies.** ~~Transfer of business.~~
- 8.02.060 ~~Suspension or revocation of business license.~~
- 8.02.070 ~~Regulations.~~
- 8.02.080 ~~Violations—Remedies.~~

8.02.010 License required. a. No person may engage in business in the city without a current business license issued by the city under this chapter. A person engages in business in the city if the person engages in a sale, rental or service in the city under HCC 9.16.015 that is not exempt from sales taxation under Kenai Peninsula Borough Code Chapter 5.18.

b. A business license is issued for a calendar year, and expires on December 31 of the calendar year for which it was issued. The city will issue one business license for all locations at which the licensee engages in business in the city.

8.02.020 Application—Fee. a. An application for a business license is submitted to the finance director on a form approved by the finance director, and shall be accompanied by the fee required under subsection b of this section. The application shall include the following information, and any additional information that the finance director may reasonably require:

- 1. The name of the applicant.

[Bold and underlined added. Deleted language stricken through.

- 45 2. Any other name under which the applicant will engage in business in the
46 city.
47 3. The applicant's mailing address, telephone number and email address.
48 4. The street address and legal description of each location in the city where
49 the applicant will engage in business.
50 5. If the applicant is not a natural person, the applicant's type of
51 organization, and the jurisdiction under whose laws the applicant was organized.
52 **6. The applicant's Kenai Peninsula Borough sales tax registration**
53 **number.**
54

55 b. The fee for a business license is ten dollars (\$10.00). The fee is not prorated if the
56 business license is issued after the calendar year commences. The city shall waive the fee if the
57 applicant held a business license for the entire preceding calendar year, and had no sales tax
58 payment delinquencies in that calendar year.
59

60 8.02.030 **Display of License. The licensee shall display prominently the original**
61 **business license at the licensee's principal business location in the city, and a copy of the**
62 **business license at each other business location of the licensee in the city. If the licensee has**
63 **no regular business location in the city, the licensee shall display the business license upon**
64 **request of the finance director or the finance director's designee.** ~~Review of application. a.~~
65 ~~The finance director shall issue a business license to an applicant upon finding that the~~
66 ~~application includes all required information, the applicant has paid any required application fee,~~
67 ~~and the applicant has satisfied the requirements of subsections b and c of this section.~~

68 ~~b. The finance director shall refer a business license application for review by the~~
69 ~~finance department to determine whether the applicant is delinquent in paying to the city any tax~~
70 ~~or assessment, or any fee or charge for city services. The finance department shall notify the~~
71 ~~applicant in writing of any delinquency that it finds. In response to the notice, the applicant shall~~
72 ~~either:~~

73 ~~1. Provide evidence satisfactory to the finance director that the delinquent~~
74 ~~amount has been paid; or~~

75 ~~2. Provide a plan for paying the delinquent amount satisfactory to the finance~~
76 ~~director, with security satisfactory to the finance director for the payment of the delinquent~~
77 ~~amount.~~

78 ~~c. The finance director shall refer a business license application for review by the~~
79 ~~city planner to determine whether any structure, or use of land or a structure, where the applicant~~
80 ~~will engage in business does not conform to HCC Title 21, or the terms and conditions of any~~
81 ~~rezoning, planning commission approval, or administrative approval granted under HCC Title~~
82 ~~21. The city planner shall notify the applicant in writing of any such nonconformity. In response~~
83 ~~to the notice, the applicant shall either:~~

84 ~~1. Provide evidence satisfactory to the city planner that the nonconformity~~
85 ~~has been corrected;~~

[Bold and underlined added. Deleted language stricken through.]

86 2. — Obtain a final decision recognizing the nonconformity as a lawful
87 nonconforming use or structure under HCC Chapter 21.61; or

88 3. — Provide a plan for correction of the nonconformity satisfactory to the city
89 planner, with security satisfactory to the city planner for the performance of the plan.

90 d. — The finance director may investigate the financial condition and credit history of a
91 business license applicant, and if the finance director finds that the financial condition or credit
92 history of the applicant indicates a substantial risk that the applicant will not make full and
93 timely payment of sales tax as required under HCC Chapter 9.16, the finance director may
94 require the applicant to post a bond or other security for such full and timely payment.

95
96 8.02.040 **Regulations. The finance director may promulgate regulations and adopt**
97 **forms to implement, interpret or make specific the provisions of this chapter.** Information
98 on business license Changes in information Display of license. a. A business license shall
99 state the information concerning the licensee that the finance director may reasonably require.

100 b. — A licensee shall notify the finance director promptly in writing of any change in
101 the required information on the business license. In response to the notice, and upon the
102 surrender of the prior business license, the finance director shall issue a new business license
103 for the same calendar year bearing the current required information. There shall be no charge for
104 the issuance of a new business license under this subsection.

105 c. — The licensee shall display prominently the original business license at the
106 licensee's principal business location in the city, and a copy of the business license at each other
107 business location of the licensee in the city. If the licensee has no regular business location in the
108 city, the licensee shall display the business license upon the request of the finance director or the
109 finance director's designee.

110
111 8.02.050 **Violations-Remedies. a. No person may:**

112 1. **Engage in business in the city without a current business license**
113 **required by this chapter.**

114 2. **Knowingly submit false information in a document filed with the city**
115 **under this chapter.**

116 **b. A person who is convicted of violating a provision of this subsection shall be**
117 **subject to a fine of not more than three hundred dollars (\$300.00) plus any surcharge**
118 **required to be imposed by AS 29.25.074, imprisonment for not more than ninety (90) days,**
119 **or both such fine and imprisonment.**

120 **c. The city may bring a civil action to:**

121 1. **Enjoin a violation of this chapter. On application for injunctive relief**
122 **and a finding of a violation or threatened violation, the superior court shall enjoin**
123 **the violation.**

124 2. **Recover a civil penalty of three hundred dollars (\$300.00) for each**
125 **violation of this chapter.**

126 **d. Each act or omission in violation of this chapter, and each day in which the**
127 **act or omission occurs, is a separate violation of this chapter.**

[Bold and underlined added. Deleted language stricken through.]

128 **e. All remedies for violations of this chapter are cumulative and are in addition**
129 **to any others existing at law or in equity.**

130 ~~Transfer of business. a. A business license expires upon the effective date of a transfer of~~
131 ~~the business. Not later than fifteen (15) days after the effective date of the transfer, the licensee~~
132 ~~shall provide written notice to the finance director of the transfer, including the name, address,~~
133 ~~form of organization and jurisdiction of organization of the transferee, and surrender the~~
134 ~~licensee's business license to the finance director.~~

135 b. ~~In subsection a of this section, the term "transfer" includes any of the following:~~

136 1. ~~A change in voting control or in more than fifty (50) percent of the~~
137 ~~ownership interest in a licensee that is a corporation, limited liability company or partnership;~~

138 2. ~~A sale of substantially all of the assets used in the business of the licensee;~~
139 ~~and~~

140 3. ~~The initiation of a lease, management agreement or other arrangement~~
141 ~~under which another person becomes entitled to the licensee's gross receipts from sales, rentals~~
142 ~~or services.~~

143
144 ~~8.02.060 Suspension or revocation of business license. a. The finance director may~~
145 ~~suspend or revoke a business license when the finance director determines that the licensee is~~
146 ~~delinquent in paying sales tax under HCC Chapter 9.16, or the licensee has failed to comply with~~
147 ~~the requirements of HCC 8.02.040 or 8.02.050.~~

148 b. ~~The finance director shall not suspend or revoke a business license without first~~
149 ~~providing notice and an opportunity for a hearing on the suspension or revocation under this~~
150 ~~subsection.~~

151 1. ~~At least fifteen (15) days before suspending or revoking a business license,~~
152 ~~the finance director shall mail notice of the suspension or revocation by certified mail,~~
153 ~~return receipt requested, to the last known address of the licensee.~~

154 2. ~~The notice of proposed suspension or revocation shall identify the licensee~~
155 ~~and describe the sales tax payment delinquency or other cause for the suspension or~~
156 ~~revocation, state that unless a hearing is requested, the finance director will suspend or~~
157 ~~revoke the licensee's business license under this section upon the expiration of fifteen~~
158 ~~(15) days from the date of the notice, state that the right to a hearing will be waived if not~~
159 ~~timely requested, and the name, address and telephone number of the finance director or~~
160 ~~other city representative to be contacted concerning the proposed suspension or~~
161 ~~revocation.~~

162 3. ~~The licensee may obtain a hearing on the proposed suspension or~~
163 ~~revocation by requesting the hearing in writing at the office of the finance director not~~
164 ~~more than fifteen (15) days after the date of the notice of proposed suspension or~~
165 ~~revocation.~~

166 c. ~~Upon written request by the licensee, a hearing officer designated by the finance~~
167 ~~director shall conduct a hearing on the proposed suspension or revocation within seven days after~~
168 ~~the request for hearing. The sole issue before the hearing officer shall be whether one or more of~~
169 ~~the grounds stated in subsection a of this section for suspending or revoking the business license~~

[Bold and underlined added. Deleted language stricken through.]

170 ~~has occurred and is continuing. The hearing officer shall conduct the hearing in an informal~~
171 ~~manner and shall not be bound by the technical rules of evidence. The licensee may appear,~~
172 ~~present evidence, and cross examine witnesses. The hearing shall be recorded. Within seven~~
173 ~~days after the conclusion of the hearing, the hearing officer shall prepare a written decision~~
174 ~~whether to suspend or revoke the business license, and provide a copy of the decision to the~~
175 ~~licensee.~~

176 ~~d. — A hearing officer's decision suspending or revoking a business license shall~~
177 ~~include an order that the licensee immediately cease and desist from engaging in business in the~~
178 ~~city unless and until the business license is reinstated or reissued.~~

179 ~~e. — Any person aggrieved by the hearing officer's decision under subsection c of this~~
180 ~~section to suspend or revoke a business license may appeal the decision to the superior court~~
181 ~~within thirty (30) days after the date the decision was mailed or delivered to the parties. Unless~~
182 ~~the court orders otherwise, a decision to suspend or revoke a business license takes effect~~
183 ~~immediately upon its issuance.~~

184
185 ~~8.02.070 Regulations. The finance director may promulgate regulations and adopt forms~~
186 ~~to implement, interpret or make specific the provisions of this chapter.~~

187
188 ~~8.02.085 Violations Remedies. a. No person may:~~

189 ~~1. — Engage in business in the city without a current business license required~~
190 ~~by this chapter.~~

191 ~~2. — Knowingly submit false information in a document filed with the city~~
192 ~~under this chapter.~~

193 ~~b. — A person who is convicted of violating a provision of this subsection shall be~~
194 ~~subject to a fine of not more than three hundred dollars (\$300.00) plus any surcharge required to~~
195 ~~be imposed by AS 29.25.074, imprisonment for not more than ninety (90) days, or both such fine~~
196 ~~and imprisonment.~~

197 ~~e. — The city may bring a civil action to:~~

198 ~~1. — Enjoin a violation of this chapter. On application for injunctive relief and a~~
199 ~~finding of a violation or threatened violation, the superior court shall enjoin the violation.~~

200 ~~2. — Recover a civil penalty of three hundred dollars (\$300.00) for each~~
201 ~~violation of this chapter.~~

202 ~~d. — Each act or omission in violation of this chapter, and each day in which the act or~~
203 ~~omission occurs, is a separate violation of this chapter.~~

204 ~~e. — All remedies for violations of this chapter are cumulative and are in addition to~~
205 ~~any others existing at law or in equity.~~

206
207 ~~Section 2. Homer City Code 9.16.015, Sale, rental or service within the city, is enacted~~
208 ~~to read as follows:~~

209
210 ~~9.16.015 Sale, rental or service within the city. The following rules determine whether a~~
211 ~~sale, rental or service occurs within the city:~~

[Bold and underlined added. Deleted language stricken through.]

- 212 a. A sale or rental occurs within the city if delivery occurs in the city, and the seller
213 either:
214 1. Maintains a place of business, or an agent or employee, in the city; or
215 2. Regularly or repeatedly promotes sales or rentals in the city by means such
216 as advertising, promotional events or solicitation of sales.
217 b. A service occurs within the city if:
218 1. All or a substantial part of the service is rendered in the city; or
219 2. The seller maintains a place of business, or an agent or employee, in the
220 city, the service benefits a person or property in the city, and either the order for the
221 service is received or solicited in the city, or payment for the service is received in the
222 city.
223 c. A rental of real property occurs in the city if the real property is located in the
224 city.
225 d. A service involving the construction, repair, renovation, improvement, sale or
226 rental of real property is made in the city if the real property is located in the city.
227

228 Section 3. This Ordinance is of a permanent and general character and shall be included
229 in the City Code.

230
231 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this _____ day of
232 _____ 2011.

233
234 CITY OF HOMER

235
236
237
238 _____
239 JAMES C. HORNADAY, MAYOR

240 ATTEST:

241
242 _____
243 JO JOHNSON, CMC, CITY CLERK
244
245

246 YES:

247 NO:

248 ABSTAIN:

249 ABSENT:
250
251
252
253

Bold and underlined added. Deleted language stricken through.

254 First Reading:
255 Public Hearing:
256 Second Reading:
257 Effective Date:

258
259

260 Reviewed and approved as to form:

261
262

263 _____
264 Walt Wrede, City Manager

Thomas F. Klinkner, City Attorney

265
266 Date: _____

Date: _____