

11/14/22

11/21/22

ORDINANCE NO. M-4390

AN ORDINANCE of the City of Vancouver relating to the business and occupation license tax; amending Vancouver Municipal Code (VMC) Section 5.04.075 to reduce the gross income exemption threshold; amending VMC Section 5.04.090 to adjust the methodology for calculating the base business license fees; amending VMC Section 5.04.095 to adjust the methodology for calculating business license surcharge fees; providing for severability; and setting an effective date.

WHEREAS, the City of Vancouver levies business license fee and surcharge to fund Police, Transportation and other critical services;

WHEREAS, the business license fee and the surcharge has not been adjusted to account for inflation since the early 2000s; 2007, 2014 and 2016.

WHEREAS, the City wishes to raise additional revenue to fund critical Transportation, Parks, Police and public infrastructure related to economic development of strategic areas that have approved subarea plans and a potential of attracting companies to incorporated area to create new jobs;

WHEREAS, the City Council wishes to explore the potential of an incentive for existing small business that have sustained long term investment in Vancouver, and directs the City Manager to prepare a range of policy options to return for Council consideration in 2023.

WHEREAS, the City has done a stakeholder outreach and incorporated feedback into the current proposal;

WHEREAS, with proper notice to the public, the Vancouver City Council conducted a first reading of the proposed ordinance on November 14, 2022, and a public hearing concerning the ordinance and proposed code changes on November 21, 2022.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

**Section 1. Findings.** The City Council hereby adopts and incorporates by reference the above recitals as findings in support of this Ordinance.

**Section 2. Amendment.** Vancouver Municipal Code Section 5.04.075 as adopted by Ordinance M-3774 §5 and last amended by Ordinance M-4192 §3 is hereby amended as follows:

**5.04.075 Exemptions – Review by director.**

A. The following persons and organizations shall be exempt from paying the base business license fee and the business license fee surcharge; provided, that they seek and obtain review and approval of same from the director of financial and management services or his or her designate and are issued a determination of exemption, as set forth in this chapter:

1. *Gross Receipts Threshold.* A person who generates annual gross receipts from engaging in business within the city that are equal to or less than twelve two thousand dollars. ~~of annual gross receipts from engaging in business within the city.~~
2. *Governmental Entities.* A governmental entity engaging the exercise of governmental functions.
3. A nonprofit organization created for fund-raising activities only, that meets all of the following criteria:

- a. An organization exempt from tax under Section 501(c) (3), (4), or (10) of the Federal Internal Revenue Code (26 U.S.C. Section 501(c) (3), (4), or (10)); and
- b. The members, stockholders, officers, directors, or trustees of the organization who do not receive any part of the organization's gross income, except as payment for services rendered; and
- c. The compensation received by any person for services rendered to the organization does not exceed an amount reasonable under the circumstances; and
- d. The activities of the organization do not include a substantial amount of political activity, including but not limited to influencing legislation and participation in any campaign on behalf of any candidate for political office; and
- e. The activities of the organization solely include "fund-raising activities," including soliciting or accepting contributions of money or other property or activities involving the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited, for the purpose of furthering the goals of the nonprofit organization.

4. *Casual or Isolated Sales.* A person who engages only in casual and isolated sales, which means a sale made by a person who is not engaged in the business of selling the type of property involved. Persons who hold themselves out to the public as making sales at retail or wholesale are deemed to be engaged in business, and sales made by them of the type of property which they hold themselves out as selling are not casual or isolated sales even though such sales are not made frequently.

5. 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 ~~twelve~~ two thousand dollars, 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.

B. The following persons and organizations shall be exempt from paying the business license fee surcharge only; provided, that they seek and obtain review and approval of same from the director of financial and management services or his or her designate and are issued a determination of exemption:

1. Nonprofits and certain organizations exempt from federal income tax including but not limited to:

- a. *Religious.* A nonprofit business operated exclusively as a place of worship.
- b. *Civic, Service and Social Organizations.* Civic groups, service clubs, and social organizations that are not engaged in any profession, trade, calling, or occupation, but are organized to provide civic, service, or social activities.
- c. *Certain Organizations Exempt from Federal Income Tax.* An organization that files with the city a copy of its current IRS 501(c)(3) exemption certificate issued by the Internal Revenue Service and which does not generate revenues from retail sales or services.

2. *State or Federal Preemption.* A person whose business activities are exempt from business licensing due to preemption by state or federal law.

3. *Medicaid-Funded Nursing and Boarding Homes.* Nursing homes licensed under Chapter [18.51](#) RCW and boarding homes licensed under Chapter [18.20](#) RCW which provide care under contract with the Department of Social and Health Services to persons who are Medicaid recipients.

4. *Gross Receipts Threshold.* A person who generates gross receipts from engaging in business within the City revenue that are greater than two thousand dollars (\$2,000) and equal to or less than fifty thousand dollars (\$50,000).

**Section 3. Amendment.** Vancouver Municipal Code Section 5.04.090 as adopted by Ordinance M-203 §9 and last amended by Ordinance M-4091 § 2 is hereby amended as follows:

Except as provided in this chapter, no person shall engage in any business or activity in the city without having first obtained and being the holder of a valid and subsisting license so to do, to be known as a business license, issued under the provisions of this chapter, as hereinafter provided, and without paying the license fee or tax imposed by this chapter, if any; provided, that those persons exempted by VMC 5.04.075(A) shall not be required to pay a license fee. Payment of the license fee shall accompany the application for the license. Such license shall expire on the last day of the month which is one calendar year from the day it was issued. The license may be prorated to match existing expiration dates. A new license and fee shall be required for each year. Application for the license shall be made to and issued by the city manager or his designee on forms provided by him.

The license shall be personal and nontransferable.

There shall be a separate business license for each separate location at which business is transacted.

For business licenses issued or renewed on or after ~~January~~ April 1, 2019 2023, the annual base business license fee shall be: ~~a flat fee of two hundred dollars for each separate location at which business is transacted.~~

1. For any person or business engaging in business within the city whose annual value of products, gross proceeds of sales, or gross income of the business in the city is equal to or less than two thousand dollars, no base business license fee or surcharge is owed, pursuant to VMC 5.04.075(A)(1),(5).

2. For any person or business engaging in business within the city whose annual value of products, gross proceeds of sales, or gross income of the business in the city is greater than two thousand dollars and equal to or less than fifty thousand dollars, the annual base business license fee shall be fifty dollars for each separate location at which business is transacted. The annual base business license fee provided for by this subsection shall be increased annually by \$1.00 through year 2030. The annual base business license fee provided for in this subsection shall be increased annually pursuant to the methodology set forth in VMC 3.08.100 beginning on January 1, 2031.

3. For any person or business engaging in business within the city whose annual value of products, gross proceeds of sales, or gross income of the business in the city is greater than fifty thousand dollars, the annual base business license fee shall be a flat fee of three hundred dollars for each separate location at which business is transacted. The annual base business license fee provided for in this section shall increase annually in accordance with table 3 (A) below. The annual base business license fee provided for by this subsection shall be increased annually pursuant to the methodology set forth in VMC 3.08.100 beginning on January 1, 2031

4. Table 3 (A): Annual increases in the annual base business license fee for each separate location at which business is transacted:

	Annual License Fee
<u>2023</u>	<u>\$300</u>
<u>2024</u>	<u>\$315</u>
<u>2025</u>	<u>\$331</u>
<u>2026</u>	<u>\$347</u>

<u>2027</u>	<u>\$365</u>
<u>2028</u>	<u>\$383</u>
<u>2029</u>	<u>\$402</u>
<u>2030</u>	<u>\$422</u>

Each license shall be numbered, shall show the name, place and character of business of the taxpayer, such other information as the city manager or his designee deems necessary, and shall at all times be conspicuously posted in the place of business for which it is issued. Where a place of business of the taxpayer is changed, the taxpayer shall return such license to the city manager or his designee, and a new license shall be issued for the new place of business free of charge.

A business license application must be filed with the State Department of Revenue Business Licensing Service to apply for a city business license. Special licenses may be issued by the city of Vancouver finance department. A business license does not authorize illegal activities.

No person to whom a license has been issued pursuant to this chapter shall allow any person for whom a separate license is required to operate under or to display his license, nor shall such other person operate under or display such license.

**Section 4. Amendment.** Vancouver Municipal Code Section 5.04.095 as adopted by Ordinance M-3774 §2 and last amended by Ordinance M-4192 §4 is hereby amended as follows:

**5.04.095 Business license fee surcharge – Calculation.**

A. In addition to the annual base business license fee set forth in VMC 5.04.090, there shall be a business license fee surcharge calculated as set forth in this section. The business license surcharge fee shall apply to business licenses issued or renewed after expiration on or after January 1, 2007.

B. Effective April 1, 2023, the business license fee surcharge shall be calculated on the basis of one hundred five dollars per employee calculated pursuant to Subsection G, provided that the surcharge will increase annually on January 1<sup>st</sup> pursuant to the following schedule:

	<b><u>Per Employee as Calculated in Subsection G</u></b>
<u>2023</u>	<u>\$105</u>
<u>2024</u>	<u>\$125</u>
<u>2025</u>	<u>\$145</u>
<u>2026</u>	<u>\$165</u>

<u>2027</u>	<u>\$185</u>
<u>2028</u>	<u>\$205</u>
<u>2029</u>	<u>\$225</u>
<u>2030</u>	<u>\$245</u>

Effective January 1, 2031, the business license fee surcharge provided for by this subsection shall be increased annually pursuant to the methodology set forth in VMC 3.08.100.

~~1. Effective January 1, 2019, the business license fee surcharge set forth in subsection B above shall be applied up to a maximum of seven hundred ninety-nine FTE employees per taxpayer until January 1, 2020; and~~

~~2. Effective January 1, 2020, the business license fee surcharge set forth in subsections B and (B)(1) of this section shall be applied to all FTE employees of the taxpayer.~~

~~3.~~ 1. The revenue from the business license surcharge set forth in subsection B of this section shall be distributed as follows:

~~a. Seventy dollars of the surcharge assessed on the first four hundred employees of the taxpayer shall be distributed for transportation funding. The remaining twenty dollars of the surcharge shall be distributed for police funding;~~

~~b. Ninety dollars of the surcharge assessed on the employees over four hundred of the taxpayer shall be distributed to fund police staffing and associated services consistent with the recommendations from the community resource team presented to the council on December 12, 2016.~~

a) Eighteen percent (18%) of every dollar shall be dedicated to public safety and wellbeing; and

b) Eighteen percent (18%) of every dollar shall be dedicated to parks major maintenance and capital; and

c) Forty percent (40%) of every dollar shall be dedicated to new capacity building street improvements; and

d) Twenty-four (24%) percent of every dollar shall be dedicated to public infrastructure improvements to facilitate economic development in city limits.

C. *Definition of "Employee."* For the purposes of the per employee business license fee surcharge, the term "employee" means and includes each of the following persons who are not required by the city to have a separate city of Vancouver business license:

1. Any person who is on the business' payroll, and includes all full-time, part-time, and temporary employees or workers; and
2. Self-employed persons, sole proprietors, owners, managers, and partners; and
3. Any other person who performs work, services or labor at the business, except:
  - a. An independent contractor who has a separate city of Vancouver business license;
  - b. An employee of a temporary employment agency; provided, that such temporary employment agency has a separate city of Vancouver business license and pays the per employee business license fee surcharge based on its own employees.

D. A person with some business activities or functions that are exempt from the basic business license fee and some that are not exempt shall pay the ~~per~~ employee business license surcharge based on the number of ~~its employees~~ of employee hours worked, that are related in to the functions or activities that are not exempt.

E. In the event that the taxpayer has a physical location within the city, the ~~per~~ employee business license fee surcharge shall be assessed based upon a rebuttable presumption that all of the taxpayer's employees are working within the city of Vancouver.

F. In the event that the taxpayer has no physical location within the city, the applicable ~~per~~ employee portion of the business license fee surcharge shall be based upon the number of employee hours worked within the city calculated based on the total number of ~~full-time employee work hours (FTE) employees worked~~ within the city, pursuant to subsection G of this section, or, alternatively, based on the total number of hours worked by employees within the city divided by two thousand eighty. The minimum applicable ~~per employee portion of the~~ business license fee surcharge for such taxpayer shall be the amount for one employee.

G. *Calculating the Number of Employees.* In determining the amount of the ~~per~~ employee business license fee surcharge to be paid for the upcoming license year, the number of employees shall be the total of the following:

1. Based upon the number of worker hours ~~or units~~ reportable by the business to the Washington Department of Labor and Industries (L&I) in the last four quarterly reports of the business:
  - a. The total number of hours worked by all employees, including legal holidays and vacation time, divided by one thousand six hundred sixty-four hours.~~a. Each employee who worked more than two thousand eighty one thousand five hundred sixty hours during the previous four quarters (including paid time off) shall be counted as one full time employee (FTE).~~



~~b. For individual employees who worked less than two thousand eighty hours during the previous four quarters the total number of hours worked by all such employees during the previous four quarters shall be added together and divided by two thousand eighty. A fraction of 0.5 or over shall be rounded up.~~

2. For persons who are defined as employees for business license fee surcharge purposes, but for whom the business is not required to report hours to L&I, including but not limited to sole proprietors, owners, managers or partners:

a. The total number of hours worked by all employees, including legal holidays and vacation time, divided by one thousand six hundred sixty-four hours.

~~b. — Each such person shall be counted as one full time employee for surcharge purposes if such person devotes more than two thousand eighty hours during the previous four quarters to the business; and~~

3. The number of employees calculated pursuant to this subsection may exceed the number of people performing work.

4. The director of financial and management services may require the business to submit copies of its L&I reports. The businesses that did not file the report may be required to file an affidavit with the city reporting hours worked or the equivalent number of employees.

H. *New Businesses.* The ~~per~~ employee business license fee surcharge for a business that did not submit reports for each of the last four quarters to L&I shall be based on the estimated number of employees of that business. The business shall provide its estimate of the average number of employees for the upcoming four quarters. The city will determine the number of employees that will be used in calculating the amount of the ~~per~~ employee business license fee surcharge. If, during the license year, the city determines that the actual number of employees is more than twenty percent different than estimated, then the amount of the ~~per~~ employee business license surcharge will be recalculated for the new business. If the revised ~~per~~ employee business license fee surcharge is higher, the business shall pay the difference within thirty days after notification. If the revised surcharge is lower, then the difference will be refunded.

I. *Overreporting Number of Employees.* A licensee may request that the city refund a portion of the ~~per~~ employee business license fee surcharge overpaid on the basis that the business ~~miscounted~~ miscalculated the number of employees by more than twenty percent, resulting in

payment of an excess surcharge. The request must be in writing and the city must receive the request and all supporting documentation no later than sixty days after the end of the licensee's business license year in which the error was made. If the city is satisfied that the licensee paid an excess surcharge, then the city will refund the excess surcharge paid by the licensee for the immediately preceding license year.

J. *Underreporting of Employees.* If the city determines that the number of employees was underreported by more than twenty percent at the time of application or renewal, the business shall pay the balance of the applicable ~~per~~ employee business license fee surcharge together with a penalty of twenty percent of such balance due. The business shall also reimburse the city for any accounting, legal, or administrative expenses incurred by the city in determining the underreporting or in collecting the additional amounts. The director of financial and management services shall mail written notice of the amount to be paid and the business shall pay said amount to the city within thirty days.

K. *Waiver of Employee Surcharge.* To promote business development, the city manager may grant a waiver of the business license fee surcharge provided for herein for businesses which meet the following requirements:

1. The business license fee surcharge may be waived ~~as specified in Table 1~~ for an initial five-year period from the date of the company's move or the date of expansion of an existing business if a business relocates 200 or more full-time employees that are earning at least 125% of the median individual income to the incorporated area of Vancouver. For purposes of this subsection ~~Table 1~~, median individual income shall be the median individual income in the Portland-Vancouver Metropolitan Statistical Area. The business owner shall commit, through a development agreement approved by city council, to locate a minimum number of new employees in conformance with the business license fee surcharge incentive, ~~in Table 1~~. The development agreement shall provide that, in the event employment declines below the numbers specified ~~in Table 1~~, the fee waiver shall be reimbursed to the city.

**Table 1. Business License Fee Surcharge Incentive**

<b>Tier</b>	<b>Median Salary of All Business Employees</b>	<b>Number of New Full-Time Equivalent Employees</b>	<b>Annual Waiver</b>
1	200% of Median Individual Income	200—249	<p>Surcharge Waiver, \$10,000—\$12,450</p> <p>Effective January 1, 2016: Surcharge Waiver, \$12,000—\$14,940</p> <p>Effective May 1, 2017: Surcharge Waiver, \$14,000—\$17,430</p> <p>Effective January 1, 2018: Surcharge Waiver, \$16,000—\$19,920</p> <p>Effective January 1, 2019: Surcharge Waiver, \$18,000—\$22,410</p>
2	175% of Median Individual Income	250—299	<p>Surcharge Waiver, \$12,500—\$14,950</p> <p>Effective January 1, 2016: Surcharge Waiver, \$15,000—\$17,940</p> <p>Effective May 1, 2017: Surcharge Waiver, \$17,500—\$20,930</p> <p>Effective January 1, 2018: Surcharge Waiver, \$20,000—\$23,920</p> <p>Effective January 1, 2019: Surcharge Waiver, \$22,500—\$26,910</p>
3	175% of Median Individual Income	300—399	<p>Surcharge Waiver, \$15,000—\$19,950</p> <p>Effective January 1, 2016: Surcharge Waiver: \$18,000—\$23,940</p>

**Table 1. Business License Fee Surcharge Incentive**

<b>Tier</b>	<b>Median Salary of All Business Employees</b>	<b>Number of New Full-Time Equivalent Employees</b>	<b>Annual Waiver</b>
			<p>Effective May 1, 2017: Surcharge Waiver, \$21,000—\$27,930</p> <p>Effective January 1, 2018: Surcharge Waiver: \$24,000—\$31,920</p> <p>Effective January 1, 2019: Surcharge Waiver, \$27,000—\$35,910</p>
4	150% of Median Individual Income	400—499	<p>Surcharge Waiver, \$20,000 capped</p> <p>Effective January 1, 2016: Surcharge Waiver: \$24,000 capped</p> <p>Effective May 1, 2017: Surcharge Waiver: \$28,000 capped</p> <p>Effective January 1, 2018: Surcharge Waiver: \$32,000 capped</p> <p>Effective January 1, 2019: Surcharge Waiver: \$36,000 capped</p>
5	150% of Median Individual Income	500—599	<p>Surcharge Waiver, \$20,000 capped</p> <p>Effective January 1, 2016: Surcharge Waiver: \$24,000 capped</p> <p>Effective May 1, 2017: Surcharge Waiver, \$28,000 capped</p> <p>Effective January 1, 2018: Surcharge Waiver \$32,000 capped</p>

**Table 1. Business License Fee Surcharge Incentive**

<b>Tier</b>	<b>Median Salary of All Business Employees</b>	<b>Number of New Full-Time Equivalent Employees</b>	<b>Annual Waiver</b>
			Effective January 1, 2019: Surcharge Waiver: \$36,000 capped
6	125% of Median Individual Income	600+	Surcharge Waiver, \$20,000 capped Effective January 1, 2016: Surcharge Waiver: \$24,000 capped Effective May 1, 2017: Surcharge Waiver: \$28,000 capped Effective January 1, 2018: Surcharge Waiver \$32,000 capped Effective January 1, 2019: Surcharge Waiver: \$36,000 capped

2. For any business specified in subsection K (1) of this section that retains the initial additional employment provided for therein and adds twenty percent or greater of additional new employee-filled positions during the first five year period, of which seventy five percent must meet the income levels specified in subsection (K)(1) of this section, the business license surcharge shall be waived for a second five year period; and

3. For any business specified in subsection (K)(2) of this section that retains the initial additional employment provided for in such subsection and adds twenty percent or greater of additional new employee-filled positions during the second five year period, of which seventy five percent must meet the income levels specified in subsection (K)(1) of this section, the business license surcharge shall be waived for a third five year period.

Each business that meets this waiver will be required to apply for, or annually renew their existing business license with the State of Washington Business Licensing Service (BLS), pay their business license fee plus pay for one FTE employee surcharge fee at the then-current rate. Separately, the business must provide an annual report to the city of Vancouver with backup documentation demonstrating how the business met the requirements of the surcharge waiver. If

the business meets the waiver requirements, the ~~fifty-dollar~~ surcharge fee paid at the time of initial application or annual renewal will be refunded.

**Section 5. Severability.** If any clause, sentence, paragraph, section, or part of this ordinance or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any parts thereof to any other person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable.

**Section 4. Effective Date.** This ordinance shall become effective as of April 1, 2023.

Read first time: November 14, 2022

Ayes: Councilmembers Harless, Perez, Fox, Stober, Mayor McEnerny-Ogle

Nays: Councilmember Hansen

Absent: Councilmember Paulsen

Read second time: November 21, 2022

PASSED by the following vote:

Ayes: Councilmembers Harless, Perez, Paulsen, Stober, Mayor McEnerny-Ogle

Nays: Councilmembers Fox, Hansen

Absent: None

SIGNED this 21st day of November, 2022.

DocuSigned by:

*Anne McEnerny-Ogle*

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Anne McEnerny-Ogle, Mayor

Attest:

DocuSigned by:

*Natasha Ramras*

BCF6734E40E94AE...

Natasha Ramras, City Clerk

Approved as to form:

DocuSigned by:

*Jonathan Young*

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Jonathan Young, City Attorney

## SUMMARY

### ORDINANCE NO. M-4390

AN ORDINANCE of the City of Vancouver relating to the business and occupation license tax; amending Vancouver Municipal Code (VMC) Section 5.04.075 to reduce the gross income exemption threshold; amending VMC Section 5.04.090 to adjust the methodology for calculating the base business license fees; amending VMC Section 5.04.095 to adjust the methodology for calculating business license surcharge fees; providing for severability; and setting an effective date.