

ORDINANCE NO. 2018-02

AN ORDINANCE AMENDING ORDINANCE NUMBER 2008-01 OF THE TOWN OF EVA, ALABAMA REGARDING BUSINESS LICENSES FOR PERSONS DELIVERING GOODS WITHIN THE MUNICIPAL LIMITS OR THE POLICE JURISDICTION

WHEREAS, the Alabama Legislature has adopted Act No. 2017-415, which amended the laws relating to municipal delivery licenses; and

WHEREAS, the Town Council of the Town of Eva Alabama finds that to comply with said Act No. 2017-415 it will be necessary to amend Ordinance No. 2008-01, which is the Town's Business License Ordinance.

NOW, THEREFORE, be it ORDAINED by the Town Council of the Town of Eva, Alabama, as follows:

AMENDMENT NO. 2 To Town of Eva, Alabama Ordinance Number 2008-01

Section 1. Section 21 of Ordinance Number 2008-01 of the Town of Eva, Alabama is hereby amended by deletion of the entire language of said section and substitution of the following, so that hereafter said Section 21 shall read, in its entirety, as follows:

"Section 21. Delivery License

a. In lieu of any other type of license, a taxpayer may at its option purchase for \$100.00 plus the issuance fee, a delivery license for the privilege of delivering its merchandise in the municipality or the police jurisdiction if the taxpayer meets all of the following criteria:

1. Other than deliveries, the taxpayer has no other physical presence within the municipality or the police jurisdiction;

2. The taxpayer conducts no other business in the municipality or the police jurisdiction other than delivering merchandise and performing the requisite set-up and installation of said merchandise;

3. Such delivery and set-up and installation is performed by the taxpayer's employees or agents, concerns the taxpayer's own merchandise in that municipality or its police jurisdiction, and is done by means of delivery vehicles owned, leased or contracted by the taxpayer;

4. The gross receipts derived from the sale and any requisite set-up or installation of all merchandise so delivered shall not exceed seventy-five thousand dollars (\$75,000.00) during the license year;

5. Any set-up or installation shall relate only to (i) that required by the contract between the taxpayer and the customer or as may be required by state or local law, and (ii) the merchandise to delivered.

6. If at any time during the current license year the taxpayer fails to meet any of the above stated criteria, then within 45 days after any of said criteria have been violated or exceeded, the taxpayer shall purchase a business delivery license or other appropriate license from the municipality and will be subject to a penalty of \$10.00.

b. Mere delivery of the taxpayer's merchandise by common carrier shall not allow the municipality to assess a business license tax against the taxpayer, but the gross receipts derived from any sale and delivery accomplished by means of a common carrier shall be counted against the seventy-five thousand (\$75,000.00) limitation described in the preceding section if the taxpayer also during the same license year sells and delivers into the taxing jurisdiction using a delivery vehicle other than a common carrier.

c. A common carrier, contract carrier, or similar delivery service making deliveries on behalf of others shall not be entitled to purchase a delivery license.

d. The delivery license shall be calculated in arrears, based on the related gross receipts during the preceding license year.

e. The purchase of a delivery license or the exemption from the purchase of a delivery license pursuant to subsection (f) shall not, in and of itself, establish nexus between the taxpayer and the municipality for purposes of the taxes levied by or under the authority of Title 40 of the *Code of Alabama* or other provisions of law, nor does the purchase of a delivery license conclusively determine that nexus does not exist between the taxpayer and the municipality.

f. A taxpayer that otherwise meets the criteria for the purchase of a delivery license is not required to purchase a delivery license or a regular business license if (i) the taxpayer's gross receipts that are derived from within the municipality or its police jurisdiction do not exceed \$10,000.00; and (ii) the taxpayer has no other physical presence within the municipality during the year."

Section 2. This Ordinance shall be effective immediately upon its adoption and publication according to law.

Section 3. The sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by a court of competent jurisdiction, then such ruling shall not affect any other paragraph and sections, since the same would have been enacted by the Town Council Eva without the incorporation of any such unconstitutional phrase, clause, sentence, paragraph or section.

ADOPTED and **APPROVED** this the _____ day of _____, 2017.

APPROVED BY:

Gary L. Livingston, Mayor

ATTEST:

(Seal)

Judy Fortenberry, Town Clerk