

ORDINANCE NO. 2018-35

AN ORDINANCE of the City of Bainbridge Island, Washington, relating to business licenses and amending Chapter 5.04 of the Bainbridge Island Municipal Code (BIMC) to adopt mandatory provisions required under Chapter 35.90 RCW.

WHEREAS, Engrossed House Bill (EHB) 2005 was passed by the Washington State Legislature with an effective date of July 23, 2017; and

WHEREAS, EHB 2005 is intended to simplify the administration of municipal general business licenses for the applicants and improve the business climate; and

WHEREAS, the sections of EHB 2005 related to business licenses were codified as Chapter 35.90 RCW; and

WHEREAS, RCW 35.90.080 directed the Association of Washington Cities (AWC) to develop a model ordinance on general business license requirements by July 1, 2018; and

WHEREAS, RCW 35.90.080 and RCW 35.90.090 require all cities that impose a general business license requirement to adopt certain mandatory provisions of AWC's model ordinance by January 1, 2019; and

WHEREAS, the City of Bainbridge Island, through Chapter 5.04 BIMC, imposes a general business license requirement on certain businesses; and

WHEREAS, the City of Bainbridge Island administers its business licensing through Washington State's Business Licensing Service; and

WHEREAS, due to the requirements of RCW 35.90.070, the City must adopt the mandatory provisions of AWC's model ordinance by October 17, 2018, in order for them to be in effect on January 1, 2019.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 5.04.020 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

5.04.020 Definitions and presumption.

- A. This chapter incorporates by reference all definitions set forth in Chapter 82.04 RCW, hereafter amended, except where a conflicting definition is stated in this chapter.
- B. "Director" means the director of finance and administrative services for the city.
- C. "Business Licensing Service" or "BLS" is the office within the Washington State Department of Revenue providing business licensing services to the city.

D. Engaging in business is defined as follows: Businesses or persons soliciting business within the city or using either a business telephone number or business address within the city shall be presumed to be engaged in business within the city.

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 minimis 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.

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

Section 2. Section 5.04.090 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

5.04.090 Payment of license fees.

A. There shall be a license fee imposed for the privilege of doing business as set by resolution of the city council.

B. Payment of the fee imposed by this chapter shall be due on or before the commencement of business and for renewal of the license on or before the expiration date of the license.

C. On or before the due date, every person required to pay a license fee or a tax as set forth by this chapter shall file a license renewal with the Business Licensing Service, or, for taxes, a written return with the city upon such form and including such information as the director shall require, together with the payment of the amount of the tax.

D. Nonprofit activities carried on by religious, charitable, educational, benevolent, fraternal, or social organizations which have been determined by the Internal Revenue Service of the United States to be exempt from the payment of income tax shall be exempt from the license fee.

E. 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 shall be exempt from the license fee.

Section 3. In accordance with RCW 35.90.070, this ordinance shall take effect and be in force on January 1, 2019.

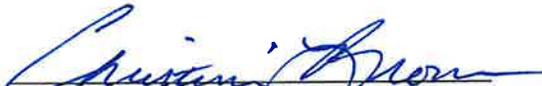
PASSED by the City Council this 25th day of September, 2018.

APPROVED by the Mayor this 25th day of September, 2018.



Kol Medina, Mayor

ATTEST/AUTHENTICATE:



Christine Brown, City Clerk

FILED WITH THE CITY CLERK
PASSED BY THE CITY COUNCIL
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO:

September 7, 2018
September 25, 2018
September 28, 2018
January 1, 2019
2018-35