

**ORDINANCE NO. 2018-21**

**AN ORDINANCE** of the City of Bainbridge Island, Washington, relating to business licenses and amending Chapters 5.04, 5.12, 5.16, 5.24, 5.28 and 5.40 of the Bainbridge Island Municipal Code (BIMC) to update items in accordance with the State of Washington business license system requirements.

**WHEREAS**, the City of Bainbridge Island requires certain businesses to obtain business licenses; and

**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**, EHB 2005 requires that all cities with business licenses administer their business licensing through the state's business license system (BLS) by 2027 or through the FileLocal system by 2020; and

**WHEREAS**, the City of Bainbridge Island will administer its business licensing through BLS starting in 2018; and

**WHEREAS**, the BLS has requested changes to the BIMC to align with BLS business practices.

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

**Section 1.** Chapter 5.04 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

**5.04.010 Purpose.**

The provisions of this chapter are an exercise of the police and taxation powers of the city to license for revenue purposes and to govern the privilege of engaging in business in the city.

**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.

~~C.D.~~ 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.

#### **5.04.030 License required.**

Every person who engages in business activities within the city ~~shall apply for~~ must obtain from the director a city business license for the privilege of engaging in business within the city for each calendar year or portion thereof. The fee for the business license shall be in the amount established by resolution of the city council. No person shall engage in any business for which a business license is required under this chapter without being so licensed, regardless of the amount of income received, except as otherwise provided in this title.

#### **5.04.040 License – Application and issuance.**

A. Business licenses must be obtained and the fee paid before a business commences operation within the city. The license fee shall be considered delinquent if not paid when due.

~~B. The business license required by this chapter shall expire on December 31<sup>st</sup> of the year for which it is issued the date established by the Business Licensing Service, and must be renewed on or before that expiration date. A new license shall be required for each year and the fee paid on or before the last day of February.~~

~~C. Applications for business licenses shall be made to and issued by the finance director on forms provided by the city, which shall state the residence of the applicant, the nature of each business activity in which the applicant desires to engage, and the place where the applicant proposes to conduct its business must be submitted to the Business Licensing Service through the online license application or on a business license application form provided by BLS and must include all fees due, including the city license fee, the BLS handling fee required by RCW 19.02.075, and all fees for other licenses being requested on the application. The application information will be forwarded to the city for review. If the director finds that the application is complete and correct, that all required fees have been paid, and all laws and requirements have been complied with, the business license shall be issued approved for issuance through BLS.~~

D. The director shall, when appropriate, refer applications to the department of planning and community development, the department of public safety, the Bainbridge Island Fire Department, and other governmental agencies for their review.

~~E. Multiple business activities under common ownership may be conducted under a single license.~~

~~F.E.~~ Neither the filing of an application for a license, or the renewal thereof, nor the payment of any application or renewal fee, shall authorize a person to engage in or conduct a business until such license has been granted or renewed.

#### 5.04.045 State marijuana license required for any marijuana business.

~~A. Businesses that are subject to the requirements of Chapter 314-55 WAC for marijuana businesses shall first obtain a valid business license (UBI Number) issued by the state of Washington under the aforesaid chapter before obtaining a city of Bainbridge Island business license or conducting a marijuana business in the city.~~

~~B.A. Marijuana businesses subject to the requirements of Chapter 314-55 WAC~~  
Applicants applying for a city of Bainbridge Island business license must ~~provide the city a copy of the~~ have obtained a marijuana business license issued by the Washington State Liquor Control Board pursuant to ~~WAC Chapter 314-03555 WAC~~ prior to ~~issuance~~ approval of ~~the~~ city business license. For annual renewals of the city business license for operation of a marijuana business, the business must ~~provide a copy~~ continue to hold a valid marijuana license issued by the Washington State Liquor Control Board pursuant to Chapter 314-55 WAC to receive the city's approval of the business' city business license renewal application.

~~C. In addition to the standard business license fee, an application for a marijuana business license shall be accompanied by a one-hour fee, pursuant to the fees adopted under BIMC 1.28.035, to cover the city's additional relevant costs, including but not limited to coordination with the state, and research regarding required land use and distance separations.~~

~~DB.~~ No person shall be deemed to have any entitlement or vested right to licensing under this chapter by virtue of having received any prior license or permit from the city, including, by way of example, any zoning permit, medical marijuana license, wholesale food manufacturer's license, or any other license. In order to lawfully engage in the business of producing, processing or selling recreational marijuana in the city, a person must qualify for and obtain a license in accordance with this chapter and Chapter 314-55 WAC.

~~EC.~~ Prior to the city's issuance of the business license herein, the applicant shall obtain other required permits related to the operation of the business, including, without limitation, any development approvals or building permits required by this code, the building code and the zoning code and by BIMC 18.09.030.K.

~~FD.~~ Upon receipt of a completed business license application, the city may circulate the application to all departments of the city to determine whether the application is in full compliance with all applicable laws, rules and regulations. By way of illustration and not limitation, these departments may include the city of Bainbridge Island department of community development, the Bainbridge Island fire department, and the Bainbridge Island police department.

~~GE.~~ The city may, prior to issuance of the license, perform an inspection of the proposed licensed premises to determine compliance with any applicable requirements of this section or other provisions of the Bainbridge Island Municipal Code.

**5.04.050 License – Nontransferable.**

The business license issued under this chapter shall be personal and nontransferable and shall at all times be posted in the place of business for which it is issued. Where a licensee’s place of business is changed, the licensee must notify the Business Licensing Service regarding issuance of~~shall return the license to the director and a new license shall be issued~~for the new place of business ~~without charge~~. A change of business location may require submission of a new business license application and payment of the respective fees. The city will be informed of the change of location and will review the new location before issuance of a new license. No licensee shall allow another person to operate a business under, or display, the license, nor shall another person operate under or display the license.

**5.04.055 Standards of conduct.**

Every licensee under this chapter shall:

- A. Permit reasonable inspections of the business premises by governmental authorities for the purpose of enforcing the provisions of this chapter;
- B. Comply with all federal, state, and city statutes, laws, ordinances, and regulations relating to the business premises and the conduct of the business thereon;
- C. Refrain from unfair or deceptive acts or practices, or consumer fraud, in the conduct of the business and avoid maintaining a public nuisance on the business premises;
- D. Refrain from operating the business after expiration of a license or during the period that the license may be suspended or revoked.

**5.04.060 License – Suspension, denial or revocation.**

A. A business license may be suspended, denied, or revoked by the city without notice for any of the following causes:

- 1. The licensee or any of its officers, directors, agents, or employees while acting within the scope of their duties has violated or failed to keep the building, structure, or equipment of the licensed premises in compliance with applicable health, building, fire, or safety laws, ordinances, or regulations;
- 2. The licensee or any of its officers, directors, agents, or employees while acting within the scope of their duties has violated or failed to comply with the standards of conduct specified in this chapter;
- 3. The license was procured by fraud or false representation of fact;
- 4. The licensee or any of its officers, directors, agents, or employees has been convicted of a crime involving the business;
- 5. The license was issued through mistake or inadvertence.

**B.** A business license may be revoked on 20 days' written notice to the licensee where the licensee fails to pay the annual license fee applicable business and occupation tax, together with any penalties due thereon, within six months after the fee or tax is due and owing. ~~The licensee shall have the right to full~~After revocation, reinstatement of the business license requires submitting a new application through the Business Licensing Service, if, within 10 days of such revocation, the licensee pays and also requires payment of all past amounts due and owing.

**C.** Upon suspension, denial or revocation of a license, the director shall, by certified mail, give written notice of such action to the applicant or licensee, including a written report summarizing the complaints, objections, and/or information received and considered by the director and further stating the reason for the action. Notice mailed to the mailing address on the application or most recent renewal shall be deemed received three days after mailing. Appeal of the director's decision shall follow the appeal procedures set forth in this chapter.

#### **5.04.070 License – Multiple locations.**

If business is transacted by one person at two or more separate locations within the city, a separate license shall be obtained and displayed in each location at which business is transacted.

#### **5.04.075 License – Multiple businesses at the same location**

**A.** Multiple business activities under common ownership and conducted at the same physical location may be conducted under a single license.

**B.** Except as provided in subsection A of this section, if more than one business is operated at the same location, each person operating a separate business must obtain and display their own license for their respective business at that location

#### **5.04.080 Exempt activities.**

The following activities shall be exempt from the licensing provisions of this chapter:

**A.** The exercise of governmental functions performed by any instrumentality of the United States, the state of Washington, or any political subdivision thereof;

**B.** Farmers or gardeners selling their own farm products raised and grown exclusively upon lands owned or occupied by them;

**C.** Garage sales conducted on residential premises in compliance with this code;

**D.** The mere delivery of goods or services to the customer or client by businesses where the sale occurred on business premises outside of the city, and was the only event occurring within the city except that the performance of contracting or subcontracting services is not an exempt activity; or

**E.** Any business activity which is owned and operated solely by a person under the age of 18, and which does not generate a gross income of more than \$2,500 per year.

#### **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 ~~renewed on or before the last day of February of each successive year~~ 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, with the city 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 ~~fee~~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.

#### **5.04.190 License – Fee additional to others.**

The license imposed and levied by this chapter shall be in addition to any license fee or tax imposed or levied under any law or other ordinance of the city, except as otherwise expressly provided.

#### **5.04.200 License fee – Collection.**

The license fee imposed by this chapter, and all penalties assessed thereon by the city, shall constitute a debt to the city, and may be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies. Any judgment entered in favor of the city shall include an award to the city of all court and collection costs including attorneys' fees. Amounts delinquent more than 90 days may be assigned to a third party for collection, in which case the amount of any collection charges shall be in addition to all other amounts owed. Amounts due shall not be considered paid until the city has received good funds for the full amount due or has discharged the amount due and not paid.

#### **5.04.210 Over or underpayment of fees.**

In the event that any person makes an overpayment, and within two years of the date of such overpayment makes application to the city for a refund or credit, the person's claim shall be allowed and a refund made by the city upon determination by the director that no other sums are owed by the person to the city. If a person determines that the fees have been underpaid and without notice by any party pays the amount due to the city, the amount underpaid and corrected by the person shall not be subject to a city penalty.

#### **5.04.220 Appeal procedure.**

A person who has had a license suspended, denied, or revoked or who has been aggrieved by the amount of the license fee determined to be due to the city by the director under the provisions of this chapter may appeal to the city council from such determination by filing a written notice of appeal with the city clerk within 20 days from the date on which such person is given notice of the license fee. The city council or a committee of the city council shall, as soon as practicable, fix a time and place for the hearing for such appeal. Notice of the hearing shall be given to the appellant by certified mail at least five days prior to the date of the hearing. The licensee may appear at the hearing and be heard in opposition to such denial, suspension or revocation or to the fee imposed. The decision of the city council or its committee shall be announced at the conclusion of the hearing and shall be final, subject only to a writ of certiorari being filed with the Kitsap County superior court within 14 days following the date of the decision of the city council or a committee of the city council.

#### **5.04.230 License – Confidentiality of applications.**

The applications made to the city pursuant to this chapter are subject to confidentiality governed by RCW 19.02.115, and shall not be made public, and shall not be subject to inspection except as allowed or only that emergency telephone numbers shall not be made public except where required by law.

#### **5.04.240 Duties of the director.**

**A.** The director shall keep full and accurate records of all funds received under the provisions of this chapter. Upon receipt of any license fee or penalties collected under the provisions of this chapter, the director shall deposit the amounts collected into the current expense fund of the city.

**B.** In order to carry out the provisions of this chapter, the director shall have the power to adopt, publish and enforce rules and regulations consistent with this chapter.

#### **5.04.250 Civil penalty.**

~~In the event that any person fails to pay the license fee imposed by this chapter within 15 days of the due date, a civil penalty shall be imposed in the amount of 10 percent of the delinquent license fee plus any previously assessed and unpaid penalties under this chapter. For the purposes of calculating the penalty, each month that the amounts owed under this chapter are due and unpaid shall be considered a separate violation subject to penalty. Civil penalties shall be limited to not more than amount of the full license fee for each year for which a license is required and shall not commence until the business has been notified of the need for a license and failed to get one within thirty days. A fraction of a month shall be deemed a full month. In the event that a penalty has been wrongfully collected, the director shall refund the penalty.~~

#### **5.04.260 Violation – Penalty.**

**A.** It shall be a violation of this chapter:

1. For a person required to obtain a business license under this chapter to fail or refuse to secure the business license or to fail to pay the fee imposed;
2. For a person to make any false representation in connection with application for a business license under this chapter;
3. For a person to evade payment of the fee or any part thereof;
4. For a person to fail to appear and/or refuse to testify in response to a subpoena issued hereto;
5. For a person to testify falsely upon any investigation of the correctness of a return, or upon the heading of any appeal; or
6. For a person to in any manner hinder or delay the city or any of its officers in carrying out the provisions of this chapter.

**B.** It shall be unlawful for any person to conduct business within the city limits when not in compliance with this chapter.

**C.** A person violating any of the provisions of this chapter, upon conviction thereof, shall be punished by a fine of not more than \$500.00 or by imprisonment for not more than six months, or by both such fine and imprisonment. Each such person is guilty of a separate offense for each and every day during the portion of which any violation of any provision of this chapter is committed, continued or permitted by any such person and he is punishable accordingly.

#### **5.04.270 Successor liability.**

**A.** Whenever any person required to be licensed by this chapter quits business, or sells out, exchanges, or otherwise disposes of his/her business or stock of goods, any outstanding license fees or penalty payable to the city shall immediately become due and payable, and such person shall, within 30 days, file the required forms and pay the fees due. Any person who becomes a successor to such person shall become liable for the full amount of the prior owner's license fees and penalties due and owing and shall withhold from the purchase price a sum sufficient to pay any amount due from the seller until such time as the seller shall produce a receipt from the city clerk showing payment in full of any amount due or a certificate that no license fees are due. The payment of the fees by the successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater than the purchase price, the amount of the difference shall become a debt due such successor from the seller. The successor's liability shall be limited to the purchase price or the fair market value of the business if no cash transaction took place.

**B.** No successor shall be liable for any license fees due from the person from whom he/she has acquired a business or stock of goods if he/she gives written notice to the city clerk or director of such acquisition, and no assessment is issued by the director within six months of receipt of such notice against the former operation of the business and a copy of the assessment mailed to the successor.



~~C. Each person's account will remain on an active status and be subject to all license fees and penalties until such time as the director is notified in writing that the person has discontinued business activity within the city.~~

#### **5.04.280 Limitations on license.**

Notwithstanding any provisions to the contrary, a license issued under this chapter shall not be issued to any person who uses or occupies or proposes to use or occupy any real property or otherwise conducts or proposes to conduct any business in violation of the provisions of an ordinance of the city of Bainbridge Island, specifically including the city's zoning laws, or of the laws of the state of Washington. The granting of a business license shall in no way be construed as permission or acquiescence in a prohibited activity or other violation. Because the issuance of a license under this chapter specifically denies the applicant authority to violate any law or regulation, the city shall not be held liable for the actions of any licensed business by virtue of having issued a license to conduct business.

**Section 2.** Section 5.12.010 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

#### **5.12.010 License – Required.**

It is unlawful for any person, firm or corporation to open, carry on, or maintain any business on which premises pool or billiard tables, foosball games and shuffleboards are maintained within the city without first obtaining a license therefor, in accordance with the provisions of this chapter. This license is in addition to any business license that may be required under Chapter 5.04 BIMC.

**Section 3.** Section 5.16.020 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

#### **5.16.020 License – Required.**

No person, firm or corporation shall open up, conduct, manage, operate or maintain a cabaret without having a license to do so issued by the city clerk in accordance with the provisions of this chapter. This license is in addition to any business license that may be required under Chapter 5.04 BIMC.

**Section 4.** Section 5.24.020 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

#### **5.24.020 License – Required.**

It is unlawful for any person, firm or corporation to operate within the city any game of skill without first obtaining a license therefor, in accordance with the provisions of this chapter. This license is in addition to any business license that may be required under chapter 5.04 BIMC.

**Section 5.** Section 5.28.020 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

**5.28.020 License – Required.**

It is unlawful for any person, firm or corporation to operate within the city, any coin-operated music box, commonly known as a jukebox, without first obtaining a license therefor in accordance with the provisions of this chapter. This license is in addition to any business license that may be required under Chapter 5.04 BIMC.

**Section 6.** This ordinance shall take effect and be in force on July 12, 2018.

PASSED by the City Council this 26th day of June, 2018.

APPROVED by the Mayor this 26th day of June, 2018.

  
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Kol Medina, Mayor

ATTEST/AUTHENTICATE:

  
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Christine Brown, City Clerk

FILED WITH THE CITY CLERK	June 8, 2018
PASSED BY THE CITY COUNCIL	June 26, 2018
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