

ORDINANCE NO. 2843

AN ORDINANCE OF THE CITY OF ISSAQUAH, WASHINGTON, AMENDING CHAPTER 5.02 OF THE ISSAQUAH MUNICIPAL CODE RELATED TO BUSINESS LICENSES TO ADD A DEFINITION FOR “ENGAGING IN BUSINESS,” CHANGE THE THRESHOLD FOR REQUIRING A BUSINESS LICENSE, AND ADD A NEW SECTION FOR THE LICENSING REQUIREMENT FOR BUSINESSES CONTRACTING WITH THE CITY; AMENDING CHAPTER 5.04 TO AMEND THE DEFINITION OF “ENGAGING IN BUSINESS;” PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE OF JANUARY 1, 2019.

WHEREAS, the 2017 State Legislature passed Engrossed House Bill (EHB) 2005, now codified as Chapter 35.90 RCW, requiring Washington cities and towns with business licenses to create a model business license ordinance with a minimum threshold and a definition of “engaging in business”; and

WHEREAS, City staff recently reviewed the business licensing process and procedures set forth in Section 5.02 of the Issaquah Municipal Code; and

WHEREAS, the City Council reasonably believes that adoption of this Ordinance is furtherance of the health, safety, and welfare of the citizens of Issaquah; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF ISSAQUAH, WASHINGTON, DO
ORDAIN AS FOLLOWS:

Section 1. New Definition. IMC Section 5.02.010, Definitions, is hereby amended by adding a definition for “engaging in business” as follows:

5.02.010 Definitions.

Except as otherwise expressly declared or clearly apparent from the context in which used, the following definitions shall be applied in construing the provisions of this chapter:

A. "Person" means 1 or more natural persons of either sex, corporations, partnerships, associations or other entities capable of having an action at law brought against such entity, but shall not include employees of persons licensed pursuant to this chapter.

B. "Business" includes all services and activities engaged in with the object of pecuniary gain, benefit or advantage to the person, or to another person or class, directly or indirectly, whether part-time or full-time, except those businesses subject to the City's utilities tax, Chapter 5.32 IMC. For the purposes of this chapter, the owner of any apartment building or buildings containing an aggregate of 10 or more rental units located on a single or contiguous lots and the owner of any business or commercial building containing any rental units shall be considered to be engaged in a "business."

C. "Engaging in business"

(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 minimus 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. Business License Threshold. IMC 5.02.020, Business license required

– Waiver, is hereby amended to change the minimum threshold as follows:

5.02.020 Business license required – Waiver.

A. It is unlawful for any person to conduct, operate, engage in or practice any business in the City without having first obtained a business license from the City. If more than 1 business is conducted on a single premise, a separate license shall be required for each separate business conducted, operated, engaged in or practiced.

~~B. Courtesy License – Fee Waiver. The Building Official, or his/her designee, may waive the license fee requirement for those businesses grossing less than \$3,000 per year upon receipt of a petition fully setting forth the facts. Business licenses shall be valid until December 31st of the year for which they are issued and all renewals thereafter shall be for a period of 1 year commencing January 1st of the year for which the license is issued and terminating and expiring December 31st.~~

B. Business Threshold. All persons who engage in business within the City but do not maintain a physical place of business within the City shall be required to obtain a business license. For persons described in the preceding sentence whose annual value of products sold, gross proceeds of sales, or gross business income derived from engaging in business within the City does not exceed \$3,000, the license shall be issued without payment of a license fee. All person who engage in business within the City and who have a physical place of business within the City shall be required to obtain a business licenses and to pay the license fees established by the City without regard to the threshold established by this section.

C. Courtesy License – Nonprofit Fee Waiver – Nonprofit Organizations. Business activities carried on by nonprofit organizations shall be considered to be a “business”; however, no license fee shall be charged for the license with submittal of documentation of federal tax exemption under Section 501(c)(3), (4) or (10). Business licenses shall be valid until December 31st of the year for which they are issued and all renewals thereafter shall be for a period of 1 year commencing January 1st of the year for which the license is issued and terminating and expiring December 31st.

Section 3. Business License Threshold. IMC 5.02.025, Exemptions, is hereby amended as follows:

5.02.025 Exemptions

A. Participants ~~of~~in a City-sanctioned event (sponsored or permitted, including special events) ~~who~~ whose value of products sold, gross proceeds of sales, or gross business income from the event is less than \$3,000 in a year may be issued a no fee business license. Those participants grossing more than \$3,000 annually must obtain a city business license.

B. Businesses with only a post office box and no physical business location within the City of Issaquah and which do not do any business within the City of Issaquah are exempt from the requirement to obtain a business license.

C. Farmers who sell agricultural, horticultural or farm products which they have actually grown, harvested, or produced are exempt from the requirement to obtain a business license; provided, that this exemption does not apply to sale of firewood.

Section 4. New Section. A new section is added to IMC 5.02 to incorporate the requirement for businesses contracting with the City being removed from the definition of “engaging in business.” The new section is to read as follows:

5.02.140 License required for businesses contracting with the City.

A license is required for businesses accepting or executing a contract with the City, irrespective of whether goods or services are delivered within or without the City, or whether the person's office or place of business is within or without the City.

Section 5. Amended Definition. The definition for "engaging in business" in IMC

Section 5.04.040, Definitions, is hereby amended as follows:

Engaging in Business.

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 register and obtain a business license or pay City business and occupation taxes. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection 1 of this definition. 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, and 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.

~~q. Accepting or executing a contract with the City, irrespective of whether goods or services are delivered within or without the City, or whether the person's office or place of business is within or without the City.~~

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 and pay tax:

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 of this definition.

The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the tax 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 6. Filing. This ordinance will be submitted to the Business License Service of the Department of Revenue by Oct. 17, 2018.

Section 7. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 8. Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City and shall take effect and be in full force January 1, 2019.

Passed by the City Council of the City of Issaquah, the 17th day of September,
2018.

Approved by the Mayor of the City of Issaquah, the 17th day of September, 2018.



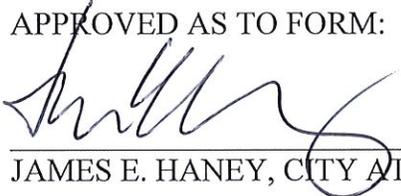
MARY LOU PAULY, MAYOR

ATTEST/AUTHENTICATED:



CHRISTINE L. EGGERS, CITY CLERK

APPROVED AS TO FORM:



JAMES E. HANEY, CITY ATTORNEY

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