

**ORDINANCE NO. 1394**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO BUSINESS LICENSING; AMENDING CHAPTER 5.01 OF THE GIG HARBOR MUNICIPAL CODE TO ADOPT THE STATE MODEL BUSINESS LICENSE LANGUAGE AS REQUIRED UNDER CHAPTER 35.90 RCW AND FURTHER AMENDING CHAPTER 5.01 TO ESTABLISH ADDITIONAL EXEMPTIONS, TO MAKE CONSISTENT WITH THE PUBLIC RECORDS ACT, AND TO CLARIFY APPEAL FEES; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.**

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WHEREAS, in 2017 the Washington State Legislature passed Engrossed House Bill 2005 requiring all cities with business licenses to administer their business licensing through the State's Business Licensing System ("BLS") and requiring cities to adopt model business license language with a minimum threshold and a definition of "engaging in business", codified at chapter 35.90 of the Revised Code of Washington; and

WHEREAS, the City presently administers its business licensing through the State's BLS; and

WHEREAS, the City has adopted general business license regulations at Chapter 5.01 of the Gig Harbor Municipal Code; and

WHEREAS, the City Council desires to amend Chapter 5.01 of the Gig Harbor Municipal Code to adopt the model business license language for compliance with state law and other minor changes necessitated by such adoption; and

WHEREAS, the 2017 legislation, as codified in RCW 35.90.050, provides that cities utilizing the BLS retain broad authority to provide exemptions for licenses, and the City Council desires to exercise this authority to adopt additional exemptions for business licenses; and

WHEREAS, the City Council further desires to amend Chapter 5.01 of the Gig Harbor Municipal Code for consistency with the Public Records Act and to clarify appeal fees; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. GHMC 5.01.010 Definitions - Amended. Section 5.01.010 of the Gig Harbor Municipal Code is hereby amended as follows:

### 5.01.010 Definitions.

For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein:

A. ~~“Business” includes all activities, occupations, pursuits, service providers, or professions located and/or engaged in within the city with the object of gain, benefit or advantage to the licensee or to another person or class, directly or indirectly, whether part time or full time. Each business location shall be deemed a separate business. Utility companies are defined as businesses.~~ “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 or 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 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 contract or subsequent contracts.

B. "Person" means any individual, firm, partnership, company, corporation, association, receiver, assignee, trust, estate, joint venture, group, joint stock company, business trust, society or any group of individuals acting as a unit.

C. "Business" means a person engaging in business.

~~CD.~~ “Licensee” means any business granted a business license by the city.

~~DE.~~ “Premises” includes all lands, structures and places, and also any personal property which is either affixed to or is otherwise used in connection with any such business conducted on such premises.

~~EF.~~ “City license officer” is the city administrator or his/her designee.

G. “Regulatory business license” means a license, other than a general business license, required for certain types of businesses that the city has determined warrants additional regulation, such as taxicab or other hire vehicle operators, adult entertainment businesses, amusement device operators, peddlers and solicitors.

Section 2. GHMC 5.01.020 Requirements – Amended. Section 5.01.020 of the Gig Harbor Municipal Code is hereby amended as follows:

**5.01.020 Requirements.**

It is unlawful for any person, firm, or corporation to engage in ~~or carry on within the city any~~ business in the city ~~profession, trade or occupation designated in this chapter~~ without first having obtained from the city a license to do so. All licenses issued pursuant to the provisions of this chapter shall be posted in a prominent location at the premises where the license business, profession, trade or occupation is carried on. In addition to the business license other permits or licenses may be required for certain businesses.

Section 3. GHMC 5.01.030 Exemptions – Amended. Section 5.01.030 of the Gig Harbor Municipal Code is hereby amended by adding new subsections (L) through (O) as follows:

**5.01.030 Exemptions.**

A. All businesses operated not-for-profit shall be exempt from paying a business license fee upon application and satisfactory proof to the city license officer of said not-for-profit status;

....

K. Casual or isolated sales or services made by persons who are not engaged in the ongoing business of selling the type of property involved. “Casual or isolated” is defined as not more than four such sales made during any tax year. Examples include garage sales, yard sales, rummage sales, bake sales, and occasional parties for the sale or distribution of goods;

L. Independent sales persons or installers who work as agents, representatives, independent contractors or subcontractors of a company licensed with the City of Gig Harbor;

M. The sole activity of collecting current or delinquent accounts;

N. The sole activity of meeting with customers or potential customers, when no sales or orders are solicited at the meetings;

O. Persons licensed under Chapter 18.85 RCW Real Estate Brokers and Managing Brokers where the broker's firm is licensed and located in the City of Gig Harbor;

P. The sole activity of investigating, resolving, or otherwise assisting in resolving customer complaints;

Q. The sole activity of delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

Section 4. GHMC 5.01.070 General qualifications of licenses – Amended.  
Section 5.01.070 of the Gig Harbor Municipal Code is hereby amended as follows:

**5.01.070 General qualifications of licensees.**

No license shall be issued, nor shall any license be renewed, pursuant to the provisions of this chapter to:

A. An applicant who is not 18 years of age at the time of the application, unless he shall obtain the written consent of said applicant's parent or guardian to make said application, together with a covenant on behalf of said parent or guardian that he or she will be responsible for a guarantee of performance of the minor making application;

B. An applicant who has had a similar license revoked or suspended, pursuant to GHMC 5.01.130, or its predecessor;

C. An applicant who shall not first comply with the general laws of the state;

D. An applicant who seeks such a license in order to practice some illegal act or some act injurious to the public health or safety;

E. Any person who is not qualified under any specific provision of this title for any particular license for which application is made.

Any person, including city officials, may submit complaints or objections to the city license officer regarding the application for any license, and the

city license officer is additionally authorized to request and receive information from all city departments as will tend to aid him in determining whether to issue or deny the license. ~~Such information~~ The identity of the complainant shall be confidential if requested by the complainant unless a hearing is requested on the application, or if the applicant shall request the information in writing. All information, complaints or objections shall be investigated and considered by the city license officer prior to issuing, denying or renewing any license.

Section 5. GHMC 5.01.100 Licenses for businesses located outside city limits – Amended. Section 5.01.100 of the Gig Harbor Municipal Code is hereby amended as follows:

**5.01.100 Licenses for businesses located outside city limits; threshold for fee-free license**

A. Any person or business~~Businesses~~ located outside the city which ~~furnish or perform services~~ engages in business within the city limits, unless included in the exemptions in GHMC 5.01.030, shall ~~hereafter~~ obtain a business license.

B. 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 and who does not maintain a place of business within the city shall submit a business license application to the city license officer, but need not pay a license fee to the city. This threshold does not apply to regulatory license requirements or activities that require a specialized permit.

Section 6. GHMC 5.01.130 Suspension or revocation procedure – Amended. Subsection G of Section 5.01.130 of the Gig Harbor Municipal Code is hereby amended as follows:

**5.01.130 Suspension or revocation procedure.**

A. ...;

....

G. It is unlawful for any person whose license has been revoked or suspended to continue ~~operation of the business enterprise~~ to engage in business in the city, or to keep the license issued to him/her in his/her possession and control, and the same shall immediately be surrendered to the city license officer. When revoked, the license shall be canceled, and when suspended, the city license officer shall retain it during the period of suspension.

Section 7. GHMC 5.01.160 Notice and Order – Amended. Subsection A of Section 5.01.160 of the Gig Harbor Municipal Code is hereby amended as follows:

**5.01.160 Notice and order.**

A. Issuance. The city license officer shall issue a notice and order, directed to the licensee or owner of the premises determined to be in violation of any of the terms and provisions of this chapter. The notice and order shall contain:

1. The street address, when available, and a legal description sufficient for identification of the premises upon which the violation has occurred;
2. A statement that the license officer has found the conduct of the licensee or condition of the premises to be in violation of this chapter, with a brief and concise description of the conditions found to render such licensee or premises in violation;
3. A statement of any action required to be taken to comply with this chapter, as determined by the city license officer. If the license officer has determined to assess a civil penalty, the order shall require that the penalty shall be paid within a time certain from the date of order;
4. A statement of any action taken by the city license officer;
5. Statements advising (a) that the person may appeal from the notice and order to the city hearing examiner, provided that the appeal is made in writing as provided in this chapter, accompanied by the appeal fee and filed with the city license officer within 15 days from the date of service of such notice and order; and (b) the failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.

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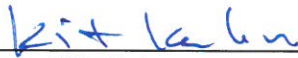
Section 8. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 9. Effective Date. This Ordinance shall take effect and be in full force on January 1, 2019, after passage and publication of an approved summary consisting of the title.




PASSED by the Council and approved by the Mayor of the City of Gig Harbor,  
this 8th day of October, 2018.

CITY OF GIG HARBOR

  
\_\_\_\_\_  
Mayor Kit Kuhn

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Molly M. Towslee, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

  
\_\_\_\_\_  
Angela G. Summerfield

FILED WITH THE CITY CLERK: 09/05/18  
PASSED BY THE CITY COUNCIL: 10/08/18  
PUBLISHED: 10/11/18  
EFFECTIVE DATE: January 1, 2019  
ORDINANCE NO: 1394