

CITY OF BINGEN, WASHINGTON

ORDINANCE NO. 2019-01-692

AN ORDINANCE AMENDING BINGEN MUNICIPAL CODE 5.04, BUSINESS LICENSES

WHEREAS, the Washington legislature adopted EHB2005 which requires cities change their business license regulations; and

WHEREAS, model business license language has been released for use by cities and towns; and

WHEREAS, the Bingen City Council believes amendments to Bingen Municipal Code 5.04 are necessary to meet state requirements; and

NOW THEREFORE, the City Council of the City of Bingen do ordain as follows:

Section 1. Bingen Municipal Code 5.04 is amended to read as follows:

Chapter 5.04, Business Licenses

Sections:

- 5.04.010 Purpose.
- 5.04.020 Definitions.
- 5.04.030 Business license required.
- 5.04.040 Businesses located outside city limits.
- 5.04.050 Exemptions.
- 5.04.060 Application – Procedure.
- 5.04.070 Application – Form.
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- 5.04.090 Fee – Late payment – Reissuance.
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- 5.04.110 Change of ownership – Reapplication.
- 5.04.120 Issuance.
- 5.04.130 Posting required.
- 5.04.140 Transient merchants, peddlers, and solicitors.
- 5.04.150 Special events – Master license.
- 5.04.160 Prohibitions upon issuance.

5.04.170 Revocation or suspension – Grounds.

5.04.180 Appeal.

5.04.190 Violation – Penalty.

5.04.010 Purpose.

The purpose of this chapter is to regulate and insure the legal conduct of businesses, assist in the effective administration of health, fire, building, zoning and other codes of the city, to impose fees for revenue purposes, and to provide a means for obtaining public information and compiling statistical information on existing and new businesses in the city.

5.04.020 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. “Business” means and 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. Any enterprise that meets the general definition of “business” shall be considered a separate and distinct business subject to the requirements of this chapter; provided, that a component or incident part of a separate business shall not itself be considered a separate business. For the purposes of this chapter, nonprofit organizations shall also be included under the term “business.” For purposes of this chapter, the owner of one or more business or residential rental units located within the city shall be considered to be engaged in a “business.”
- B. “Engaged in business” means every act within the city engaged in for the purpose of business including, but not limited to commencing, conducting or continuing in business or carrying on of any form of activity for gain, profit or advantage, whether direct or indirect. Businesses or people providing services to people or property within the city, operating from premises located within the city, soliciting business within the city, or using either a telephone number of

business address within the city shall be presumed to be engaged in business within the city.

- C. “Peddler” means any person with no fixed place of business who goes from house to house, from place to place or from state to state, carrying or transporting goods, wares or merchandise and offering or exposing the same for sale, or making sales and deliveries to purchasers.
- D. “Person” means one 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.
- E. “Registered solicitor” means and includes any person or business who has obtained a valid license as provided in this chapter.
- G. “Solicitor” means any person who goes from house to house, from place to place, or from state to state, soliciting, taking or attempting to take orders for any goods, wares or merchandise, including books, periodicals, magazines or personal property of any nature whatsoever, including any services for future delivery.
- H. “Special event” means any event or activity which is organized primarily for the purpose of promoting cultural, artistic or entertainment endeavors, including, but not limited to, arts and crafts fairs, cultural exhibitions, vocal or instrumental concerts, shows, festivals and camps, and is open to members of the public. Special events are not limited to those events conducted on public streets or in public buildings but may include events occurring entirely on private property.
- I. “Temporary business” means any business other than a solicitor, peddler or transient merchant that engages in business activity within the city for a period of not more than three consecutive days.
- J. “Transient merchant” means any person, firm or corporation who engages temporarily in the business of selling and delivering goods, wares or

merchandise within the city, and who, in furtherance of such purposes, hires, leases, uses or occupies any building, structure or vacant lot, motor vehicle, or trailer.

5.04.030 Business license required.

It is unlawful for any person to conduct, operate, engage in or practice any business in the City of Bingen without first having obtained a business license from the city.

- A. If more than one business is conducting on a single premises, a separate license shall be required for each separate business conducted, operated, engaged in or practiced.
- B. If business is transacted at two or more places by a person within the city, a separate license shall be required for each place at which business is transacted.
- C. Different activities, occupations, trades, professions or pursuits (collectively, “undertakings”), although carried on at a single physical location, shall be deemed separate businesses, each requiring a separate business license. In determining whether separate business licenses shall be required for such undertakings in accordance with this subsection, the city may consider any relevant factors including without limitation:
 - 1. Whether the undertakings have differing names;
 - 2. Whether the undertakings have separate signage or other advertisement; and
 - 3. Whether the undertakings have different owners.

5.04.040 Businesses located outside city limits.

Unless otherwise exempt, this chapter covers and applies to any business located outside the city that engages in any business activity inside the city limits of the City of Bingen.

5.04.050 Exemptions.

A. The provisions of this chapter shall not apply to:

1. Delivery persons, and the delivery of goods by vehicle to a customer or client by a business where the sale occurred on a business premise outside of the city and the only event occurring within the city is delivery.
2. Any minor engaging in a de minimis entrepreneurial venture with permission of the property owner, including but not limited to such trade and activities as running a lemonade stand.
3. The United States or any instrumentality thereof and the state of Washington or any political subdivision thereof.
4. Any farmer, gardener or other person to sell, deliver or peddle any fruits, vegetables, berries, eggs or any farm produce or edibles raised, gathered, produced or manufactured by such person pursuant to RCW 36.71.090.
5. Yard and garage sales conducted on residential premises in compliance with Bingen Municipal Code 5.02.
6. Taxi, limousine, airporter, or other similar services where the business operates from premises located outside the city.
7. Sales of goods or services by mail, telephone, internet, or similar means where the seller operates from premises outside the city and the only event occurring within the city is receipt of such goods and services.
8. Provision of internet or wireless phone services where the provider operates from premises located outside the city and the only event occurring within the city is receipt of such services.

9. Persons engaged to act as agents, officials or representatives of the city.

B. The license fee portion of this chapter shall not apply to:

1. Not-for-profit activities and fundraising sales carried on by religious, charitable, educational, benevolent, fraternal or social organizations which are registered with the state of Washington Secretary of State as a nonprofit corporation.

~~2. **Persons engaged to act as agents, officials or representatives of the city.**~~

2. **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.**

C. In addition to the other exemptions set forth in this section, the requirements of this chapter shall not apply to any activity or person to the extent that such application (1) would be clearly preempted by state or federal law, or (2) would violate the state or federal constitutional rights of a person.

D. Any person claiming an exemption from the requirements of this chapter shall bear the burden of demonstrating the person's entitlement to such exemption by providing appropriate documentation and/or legal authority to the city.

E. Exemption under this Section does not apply to regulatory license requirements or activities that require a specialized permit.

5.04.060 Application – Procedure.

A. No new business license shall be issued except upon written application made to the mayor or designee. Such application shall be signed by the person who intends to conduct, operate or engage in the business for which the license is to

be issued, and shall state the nature and address of the business or proposed business of the applicant and such other information as may be required by the mayor or designee.

- B. If the applicant is a partnership, the application must be made and signed by one of the partners; if a corporation, by one of the officers thereof; if a foreign corporation, partnership, or nonresidential individual, by the resident agent or local manager of the corporation, partnership or individual.
- C. The mayor or designee shall approve or deny the license. The appropriate official shall indicate on the license application whether the proposed business meets all current zoning and building code requirements. If any city department recommends denial of the license, that department must submit its recommendation in writing to the mayor or designee. If an application is denied by the mayor or designee, the reason for denial shall be stated.
- D. Neither the filing of an application for a license nor the payment of the fee shall authorize a person to engage in or conduct a business until such license has been granted.

5.04.070 Application – Form.

The business license application shall contain the provision that additional permits may be necessary before the owner can commence business.

5.04.080 Renewal.

- A. Annual licenses to be issued pursuant to the provisions of this chapter shall be renewed by January 31st of each subsequent year.
- B. Neither the filing of an application for renewal nor the payment of a renewal fee shall, of itself, authorize a person to engage in or conduct a business.
- C. The mayor or designee shall send out renewal notices each year. If the information regarding the business has not changed from the original application or a later update, the renewal notice shall be returned to the mayor or designee

with the renewal fee as set forth in Section 5.04.060(A). If any information regarding the business has changed, such change(s) shall be submitted with the renewal notice and renewal fee.

5.04.090 Fee – Late Payment – Reissuance.

A. The fee for the original license required by this chapter shall be forty dollars (\$40.00). The fee for annual renewal of the **business** license shall be forty dollars (\$40.00).

- 1. Any person or business meeting the exemption requirements of Section 5.04.050(B) shall submit an application for a business license to the City Clerk or his designee but shall not be charged a fee for the original business license.**
- 2. Any person or business meeting the exemption requirements of Section 5.04.050(B) shall not be charged a fee for the annual renewal of a business license, provided that the person or business continues to meet the requirements for exemption.**
- 3. Any person or business issued a business license under the exemption of Section 5.04.050(B)(2) and at any time during that year exceeding the threshold for exemption under that Section, no longer qualifies as exempt and shall be charged a fee of forty dollars (\$40.00) for that year.**

B. All businesses required to obtain annual licenses under this chapter shall obtain the same and pay all fees required on or before January 31st of each respective year. Any business who fails to obtain and pay the license fees prior to February 1st shall, in addition to any other penalties provided in this chapter, be assessed a sum of ten dollars (\$10.00) per month such late application and/or payment is overdue until paid.

- C. Any business relocating to another address in the city shall pay no fee to have a new business license reissued to reflect the new address.

5.04.100 Term.

All annual business licenses issued pursuant to the provisions of this chapter shall be valid ~~under~~ until December 31st of the year for which they are issued, and all renewals therefore shall be for a period of one year commencing January 1st of the year for which the license issued and terminating and expiring December 31st of that year.

5.04.110 Change of ownership – Reapplication.

Upon the sale or transfer of any business licensed pursuant to this chapter, the license issued to the prior owner or transferor shall automatically expire on the date of such sale or transfer and the new owner intending to continue such business in the City of Bingen shall apply for and obtain a new business license pursuant to the procedures established by this chapter prior to engaging in, conducting or operating the business.

5.04.120 Issuance.

Each license shall be numbered and shall show the name and place of business of the licensee and shall provide for only such information as deemed necessary to administer the provisions of this chapter.

5.04.130 Posting required.

Each person required to obtain a business license under this chapter shall at all times post such business license in a conspicuous place at the place of business for which it is issued.

5.04.140 Transient merchants, peddlers and solicitors.

- A. License required. It is unlawful and a nuisance for any person to engage in commercial or business solicitation and/or canvassing, calling at residences without the previous consent of the occupant for purposes of soliciting orders, sales, subscriptions or business commercial information without first obtaining a business license with the city. The applicant shall provide a written signed application stating:

1. The name, address, telephone number, e-mail address and contact person for the principal applicant;
 2. The nature of the products or services involved, the names of the manufacturers, if any;
 3. The proposed method of operation in the city;
 4. List of persons who will solicit or canvass in the city, including each person's name, address, telephone number, and e-mail address; a general description of each person; and
 5. Any other information required by the city.
- B. Identification. Each peddler, solicitor, or transient merchant shall not conduct business within the city limits without possessing a valid copy of their business license at all times.
- C. Hours of Operation. Peddlers, solicitors, or transient merchants shall not operate within the city limits between the hours of 8:00 p.m. and 8:00 a.m. unless engaged in a prearranged appointment with an intended customer.
- D. No Soliciting Signs Compliance. No peddler, solicitor or transient merchant shall contact any residence that is ~~post4d~~ **posted** by signage that such contacts are not desired by the residents.
- E. Use of Streets, Parks or Rights-of-Way. No peddler, solicitor or transient merchant shall have any exclusive right to any location in the public streets, parks or public rights-of-way, nor be permitted a stationary location, nor be permitted to operate in any congested area where operations may impede or inconvenience the public. For the purpose of this section, the judgment of any officer of the Bingen-White Salmon Police Department, Klickitat County Sheriff's Office, and/or Washington State Patrol, exercised in good faith, shall be conclusive as to whether the area is congested or the public impeded or inconvenienced.

- F. Exemption. Charitable, religious, nonprofit organizations, any political campaign on behalf (or in opposition to) any candidate for public office or other similar civic, charitable, or nonprofit organizations shall be exempt from all provisions of this section except the section pertaining to compliance with “No soliciting” signage.

5.04.160150 Special event – Master license.

- A. A master license shall be required for all special events held within the city limits of Bingen which must utilize multiple dealers or vendors. Requirements of the special event master license are as follows:
1. The promoter, sponsor or other person, firm, company, corporation or legal entity of whatsoever nature or kind organizing, managing, operating or conducting any convention, show or sale, circus, parade, carnival games/rides, street fairs, sidewalk sales or other promotional activity or special event within the city shall obtain a special event master license to cover all dealers/vendors involved in the activity/special event.
 2. Dealers/vendors participating in a convention, show, sale or other promotional activity or special event shall be covered under the special event master license and shall not be required to have separate licenses for the event.
 3. The city reserves the right to charge any sponsor of a special event direct costs incurred by the city as a result of the event. Such costs may include, but are not limited to, the cost of barricading streets, police officers to direct or block pedestrian or vehicular traffic, plan reviews, or other public safety involvement such as standby aid cars, fire protection services or cleanup.

4. The sponsor of the special event shall provide the mayor or designee with a list of all participating dealers/vendors at least ten days prior to the event. The list shall include the vendor's name, business name (if appropriate), mailing address, telephone number and state sales tax number. A map or layout of booths and booth numbers and the business in that booth shall also be provided, if appropriate. Only those dealers/vendors listed on the application or its amendments are approved under the special event master license.
5. No license shall be issued to any person, firm, company or corporation to run, operate, conduct or manage any show, exhibition, game or other special event within the city which is in violation of any provision of the Bingen Municipal Code, Klickitat County Code and/or Revised Code of Washington.
6. Any person, firm, company or corporation receiving a special event master license pursuant to this chapter shall be required to provide a certificate of insurance with a minimum liability coverage of five hundred thousand dollars (\$500,000) combined single limit bodily injury and property damage, including products liability if food and/or beverage vending is part of the special event or public activity. Greater or lesser coverage may be required based upon an objective assessment of risk to the public health, safety and welfare of the special event. The certificate of insurance shall name the city as an additional insured if the license is for a special event held on city property or utilizing city employees.
7. The following special events shall be exempt from the requirements to obtain a special event master license under this chapter:

- a) dances or other social events conducted by schools or churches;
- b) temporary sales conducted by businesses, such as holiday sales, grand opening/closing business sales or anniversary sales;
- c) one-day bazaars or arts and craft shows sponsored by churches, lodges or other nonprofit social groups;
- d) yard sales and garage sales as regulated under Bingen Municipal Code 5.02;
- e) organized amateur sporting events such as little league baseball, amateur soccer, and day camps using the city's park;
- f) charitable, religious or nonprofit organizations on premises under their control; and
- g) Other similar events and activities which do not directly affect or use city services.

B. All applications for a special event master license shall be accompanied by a nonrefundable application fee of twenty-five dollars (\$25.00); provided, that the application fee may be waived if, in the opinion of the mayor or designee, the imposition of such fee will create an undue hardship for the applicant.

5.04.160 Prohibitions upon issuance.

Notwithstanding any other provisions of this chapter, a license hereunder may not be issued to or held by 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 any provision of the Bingen Municipal Code, Klickitat County Code, Revised Code of Washington or any other applicable law or regulation. The granting of a business license shall not authorize any person to engage in any activity prohibited by federal, state or local law or regulation.

5.04.170 Revocation or suspension – Grounds.

The mayor or designee may, at any time, suspend or revoke any license issued under the provisions of this chapter whenever the licensee, or any officer, employee or partner thereof:

- A. Has violated any city, county, state and/or law, statute and/or regulation upon the business premises stated in the license or in connection with the business stated in the license, whether or not the licensee, or officer or partner thereof, has been convicted in any court of competent jurisdiction of such violation;
- B. Is or has conducted, engaged in or operated the business stated d in the license upon the premises, which do not conform to the Bingen Municipal Code;
- C. Has maintained or permitted the business stated d in the license to be conducted, engaged in or operated in such a manner as to constitute a public nuisance; or
- D. Has made any material false statement or representation in connection with obtaining the license.

5.04.180 Appeal.

- A. Whenever the mayor or designee determines that there is cause for suspending, denying or revoking any license issued pursuant to this chapter, the mayor or designee shall notify the person holding the license by registered or certified mail, return receipt requested, of the determination. Notice mailed to the address on the license shall be deemed received three days after mailing. The notice shall specify the grounds for suspension, denial or revocation.
- B. The licensee or applicant may appeal the decision of mayor or designee to deny, suspend or revoke a business license by filing a written notice of appeal to the city council within ten (10) calendar days of the mayor or designee's decision.
- C. Upon timely receipt of the notice of appeal, the mayor or designee shall set a date for hearing the appeal. The mayor or designee shall mail notice of the date of the hearing to the licensee at least twenty (20) calendar days prior to the hearing date.

- D. The appeals hearing shall be de novo, as the city council may affirm, reverse, or modify the mayor or designee's decision.
- E. The decision of the city council shall be final. Any person desiring to appeal must file an appropriate action in Klickitat County Superior Court within fourteen (14) calendar days of the city council's decision.
- F. Following revocation, no business license shall be issued for a period of twelve (12) months to the person or business entity whose license was revoked, or to any business entity owned or controlled by such person or entity.

5.01.190 Violation – Penalty.

- A. Any person, as defined in this chapter, and the officers, directors, managing agents, or partners of any corporation, firm, partnership or other organization or business violating or failing to comply with any of the provisions of this chapter shall have committed a civil infraction and, upon a determination by the judge of West Klickitat County District Court that such infraction has been committed, shall pay a civil monetary penalty to the city of a sum not to exceed two hundred dollars (\$200.00). In addition, each and every day during any portion of which a violation of any provision of this chapter is committed, continued or permitted constitutes a separate infraction. Penalties collected pursuant to this section shall be deposited in the city's general fund to be used for general purposes of the city.
- B. In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a public nuisance and all remedies given by law for the prevision and abatement of nuisances shall apply thereto.
- C. Any person deemed to have committed a civil infraction under subsection A of this section who shall fail to come into compliance, or remain in compliance, with the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a term not exceeding ninety (90) days in jail or

by a fine in an amount not more than one thousand dollars (\$1,000.00) or by both such jail and fine. Each day that such condition or violation continues shall be regarded as a new and separate offense and shall be punishable accordingly.

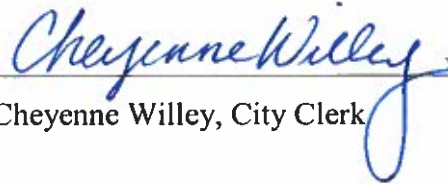
PASSED BY THE CITY COUNCIL OF THE CITY OF BINGEN, and effective five (5) days after the first date of posting or publication.

DATED this 5th day of February, 2019.

ATTEST:

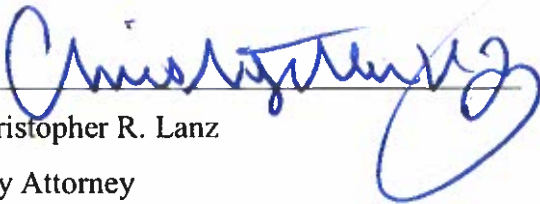


Mayor Betty J. Barnes



Cheyenne Willey, City Clerk

Approved as to form only:



Christopher R. Lanz
City Attorney