

ORDINANCE NO. 07-848

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY WASHINGTON, AMENDING SECTIONS 2.58.020, 2.58.050, 2.58.070, AND 2.58.120 OF THE BLACK DIAMOND MUNICIPAL CODE AND ADDING A NEW SECTION 2.58.025, PROVIDING EXEMPTIONS AND MODIFYING THE FEE AND PENALTY STRUCTURE FOR BUSINESS LICENSES

WHEREAS, the City Council desires to provide certain exemptions to the City's business license requirements and modify the fee and penalty structure; now therefore,

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, ORDAINS AS FOLLOWS:

SECTION 1: Section 2.58.020 of the Black Diamond Municipal Code is hereby amended by the addition of a new definition to read as follows:

"Employee" means anyone employed by a person engaged in business within the city regardless of the amount of wage paid or the number of hours worked. It shall include the owner or owners of the business if they perform any work within the city.

SECTION 2: The definition of "Engage in Business in Section 2.58.020 of the Black Diamond Municipal Code is hereby amended to read 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 minimus business activities in the city without having to register and obtain a business license under this chapter. 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 under this chapter:

- 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;
- 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 under this chapter:

- 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;
- 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; and
- h. Delivering goods in the City by a Common carrier with no offices located within the City limits.

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 under this chapter, provided that it engages in no other business activities in the city. Such activities do not include those in subsection 4.

6. 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 3. A new Section 2.58.025 of the Black Diamond Municipal Code is hereby added to read as follows:

2.58.025 Exemptions

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

A. Casual or isolated sales made by persons who are not engaged in the ongoing business of selling the type of property involved, providing that not more than four such sales events are made during any tax year.

B. Minors engaged in babysitting, delivery of newspapers, lawn mowing, car washing, and similar activities.

C. Any instrumentality of the United States, state of Washington, or any political subdivision thereof, with respect to the exercise of governmental functions.

D. All special events sponsored by the City, but not to include participating commercial vendors.

E. Nonprofit organizations, including but not limited to religious, civic, charitable, benevolent, nonprofit, cultural or youth organizations.

F. Businesses subject to the City's utility tax, BLMC Chapter 5.08.

SECTION 4: Section 2.58.050 of the Black Diamond Municipal Code is hereby amended to read as follows:

2.58.050 Procedure for issuance of license.

A. Every person required to procure a license under the provisions of this chapter shall submit an application for such license to the city administrator on a form provided by the city. The applicant shall be required to provide all information requested on said form, and failure to do so shall be grounds for refusing to issue the business license.

B. Every license issued shall contain the year of issue, the name and location of the business and any other information the city shall deem necessary.

C. No business may be commenced within the city without the issuance and possession of a valid business license as herein provided. A business license issued pursuant to this chapter shall be valid for the year in which it was issued only. Business license renewals must be acquired prior to the thirty-first day of January each year. A business which renews its business license after January 31st, shall be subject to a penalty in addition to the regular license fee in the amount specified in section 2.58.070. No renewal license shall be issued until the regular license fee and the penalty have both been paid in full.

D. An application for a business license shall be accompanied by the full amount of the fee chargeable for said license, and said fee shall be nonrefundable.

E. The city administrator shall issue a receipt to the applicant for all fees paid.

F. A duplicate license shall be issued by the city administrator to replace any license previously issued which has been lost, stolen, defaced or destroyed without willful conduct on the part of the licensee, upon the filing by the licensee of an affidavit attesting to that fact and the payment of a twenty-dollar fee to the city administrator.

G. No license issued under the provisions of this chapter shall be transferable or assignable.

SECTION 5: Section 2.58.070 of the Black Diamond Municipal Code is hereby amended to read as follows:

2.58.070 License Fees

A. The annual license fee shall be determined by the greatest number of employees of the business, employed between January 1st and December 31st of the preceding year in which the license is payable. The number of employees shall be determined by the employer's highest numerical count and most recent employer's unemployment compensation quarterly report filed with the Washington State Employment Security Department. A new business that has not yet established or reported employee information to the state shall determine their initial license fee by the maximum number of employees to be employed during that calendar year.

B. License Fee Schedule – Classification. The license fee shall be based on the number of employees in accordance with the schedule set forth below. (Note: the owner shall be included when determining the number of employees).

Employees	Initial Fee	Renewal Fee
0-50	\$70.00	\$60.00
51-100	\$130.00	\$120.00
101 of more	\$210.00	\$200.00

C. Late Payment. In addition to any other penalties provided in this chapter, any business which fails to make application for an original business license, or fails to renew an existing license by January 31st shall be subject to the following penalties based on the number of days delinquent:

<u>Days Delinquent</u>	<u>Penalty</u>
1-30 days	\$10.00
31-60 days	\$20.00
61-90 days	\$30.00
91 days or more	misdemeanor

D. Businesses located outside city. As to businesses located outside the city and furnishing or performing services within the city, the license fee herein shall be measured by the number of employees of such business to perform any part of their duties within the city.

SECTION 6: Section 2.58.120 of the Black Diamond Municipal Code is hereby amended to read as follows:

2.58.120 Penalties and Legal Remedies.

A. Any person who operates a business in the City of Black Diamond without a valid business license shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine in any sum not exceeding one thousand dollars or by imprisonment in jail for a period not exceeding ninety days, or both such fine and imprisonment.

B. Civil Penalties. Any person who fails to comply with the provisions of this chapter is, in addition to any criminal penalties, subject to a maximum civil penalty of \$250.00 for each day or portion of the day that the violation continues.

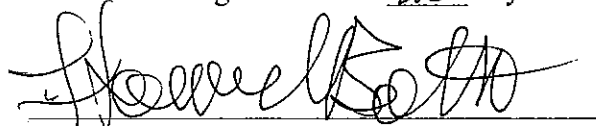
C. Other Legal Remedies. Nothing in this chapter limits the right of the City to pursue other lawful, criminal, civil or equitable remedies to abate, discontinue, correct or discourage unlawful acts under or in violation of this chapter

SECTION 7. This Ordinance shall be in full force and effect five days after its passage, approval, posting and publication as provided by law. A summary of this Ordinance may be published in lieu of publishing the Ordinance in its entirety.

SECTION 8. If any provision of this Ordinance is determined to be invalid or unenforceable for any reason, the remaining provisions of this Ordinance shall remain in force and effect.

Introduced the 20 day of December, 2007.

Passed by a majority of the City Council at a meeting held on the 20 day of December, 2007.



Mayor Howard Botts

Attest:

Brenda L. Streepy
Brenda Streepy, City Clerk

APPROVED AS TO FORM:

Loren D. Combs, City Attorney

Published: _____

Posted: _____

Effective Date: _____