

ORDINANCE NO. 18-1111

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, REPEALING AND REPLACING CHAPTER 2.58 OF THE BLACK DIAMOND MUNICIPAL CODE RELATED TO BUSINESS LICENSES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

**WHEREAS**, Engrossed House Bill 2005, passed in 2017 and codified in Chapter 35.90 Revised Code of Washington ("RCW"), requires a city imposing a general business license requirement to adopt certain provisions; and

**WHEREAS**, the City Council desires to repeal and replace Chapter 2.58 Black Diamond Municipal Code to comply with the new statutory requirements set forth in Chapter 35.90 RCW;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1. Chapter 2.58 BDMC, Repealed and Replaced.** Chapter 2.58 of the Black Diamond Municipal Code is hereby repealed in its entirety as currently codified and replaced to read as set forth in the attached Exhibit A.

**Section 2. Severability.** Should any section, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.


**Section 3. Effective Date.** This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND AT A REGULAR MEETING THEREOF ON THE 6<sup>TH</sup> DAY OF DECEMBER, 2018.**

CITY OF BLACK DIAMOND

  
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Carol Benson, Mayor

Attest:

  
Brenda L. Martinez, City Clerk

Approved as to form:

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David Linehan, City Attorney

Filed with the City Clerk: 12/7/2018  
Passed by the City Council: 12/6/2018  
Ordinance No. 18-1111  
Date of Publication: 12/11/2018  
Effective Date: 12/6/2018 12/16

# **EXHIBIT A**

## **Chapter 2.58 BUSINESS LICENSES**

### **Sections:**

- 2.58.010 Business license required.
- 2.58.020 Definitions.
- 2.58.025 Exemptions.
- 2.58.030 Eligibility for license.
- 2.58.040 Application procedure—Issuance—Term of license—Renewal—Replacement.
- 2.58.050 License fees.
- 2.58.060 Separate license required for each business location—Display of license.
- 2.58.070 Home occupation business.
- 2.58.080 Change in ownership or death of licensee.
- 2.58.090 Enforcement.
- 2.58.100 Grounds for revocation, suspension or denial.
- 2.58.110 Appeal of suspension, revocation or denial.
- 2.58.120 Service of appeal.
- 2.58.130 Violations—Penalties.

### **2.58.010 Business license required.**

A. Businesses located in the City Limits. It is unlawful for any person to conduct, operate, practice, or engage in any business with premises located in whole or in part within the City of Black Diamond without having first registered with and obtained a City Business License from the State of Washington Department of Revenue. If more than one business is conducted on a single premises, a separate registration and license shall be required for each separate business conducted, operated, engaged in or practiced. If a business is conducted from more than one premises in the city, a separate registration and license shall be required for each premises within the city.

B. Business located outside the City Limits. It is unlawful for any person to conduct, operate, practice, or engage in any business in the City of Black Diamond without first having registered with and obtained a City Business License from the State of Washington Department of Revenue.

### **2.58.020 Definitions.**

For purposes of this chapter, the following terms, phrases and words have the meanings specified in this section. Words used in the singular include the plural, and words used in the plural include the singular. Words used in the masculine gender include the feminine, and words used in the feminine gender include the masculine.

"Business" means all activities, occupations, pursuits or professions located and/or engaged in within the city, with the object of gain, benefit or advantage to the person engaging in the same, or to any other person or class, directly or indirectly. Each business location shall be deemed a separate business. It also includes, but is not limited to, general contractors, subcontractors, home occupations, rentals, mobile home parks and businesses temporarily conducted within the city, including but not limited to traveling salespersons.

"Business Licensing Service" means the Washington State Department of Revenue Business Licensing Service.

"City" means the City of Black Diamond.

"Clerk" means, for the purposes of this chapter, such city employees or agents as the mayor shall designate to administer this chapter, or any designee thereof.

"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.

"Engaging in business" means:

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 activities so that a person who meets the criteria may engage in de minimis 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) 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 laws;
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 for purposes of trade or commerce, or in furtherance of a for-profit commercial enterprise;
  - b. Owning, renting, leasing, using, or maintaining, an office, place of business, or other for-profit 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; and
- 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 under this chapter, and shall not meet the definition of "engaging in business" defined above:

- 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 member of a board of directors or attendee engaging in business, such as a member of a board of directors who attends the 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; and
- 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 under this chapter, provided that it engages in no other business activities in the city. Such activities do not include those in subsection (4) of this definition; and

6. The city expressly intends that "engaging in business" includes 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.

"License" means and includes the word permit.

"Licensee" means the holder of any license issued in accordance with the provisions of this chapter.

"Person" means any individual, partnership, firm, company, society, association, club or other group or organization acting by themselves or by a servant, agent or employee.

"Premises" means all lands, structures and places, and also any personal property which is either fixed to or is otherwise used in connection with any such business conducted on such premises.

"Year" means a calendar year.

### **2.58.025 Exemptions.**

To the extent set forth in this section, the following persons and businesses are exempt from either the registration, license and/or license fee requirements as outlined in this chapter:

A. 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 is exempt from the general business license requirements in this chapter. The exemption does not apply to regulatory license requirements or activities that require a specialized permit;

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 event organizers or vendors operating at any authorized special event so long as each vendor is registered with the event coordinator and has a valid state business license;

E. Nonprofit organizations, including but not limited to religious, civic, charitable, benevolent, nonprofit, and cultural or youth organizations are required to obtain a city business license but are exempt from paying the city's licensing fees;

F. Any farmer, gardener, or other person who sells, delivers or peddles any fruits, vegetables, berries or any farm produce or edibles raised, gathered, or produced by such person within the state;

G. Any individual in possession of a valid direct retail endorsement, as established in RCW 77.65.510, to sell, deliver, or peddle any legally harvested retail-eligible species, , that is caught, harvested, or collected under rule of the department of fish and wildlife by such a person at a "temporary food service establishment", as that term is defined in RCW 69.06.045;

H. Businesses subject to the city's utility tax as set forth in Chapter 5.08 BDMC; and

I. Businesses exempt from local business licensing requirements under state or federal law.

### **2.58.030 Eligibility for license.**

A. No person shall be eligible for a city business license, and no business license shall be issued or renewed, if any of the following conditions apply:

1. The applicant is under the age of eighteen;
2. The type of business to be conducted under the license is prohibited by zoning or other regulations from being conducted at the location indicated on the license application;
3. The applicant knowingly provided false or materially misleading information on the business license application or during the application process;
4. The applicant is not eligible under any other statute, law, ordinance, or regulation to be licensed to conduct the type of business for which the city license would be issued;
5. At the time of making the application, the applicant's eligibility for the type of license sought is revoked or suspended pursuant to this chapter;
6. The applicant, or a business within the city which is owned in whole or part by the applicant, owes to the city any unpaid license fees and/or unpaid fines imposed for violations of this chapter;
7. The business activities, or proposed business activities, to be licensed violate or are not in compliance with state, federal or local laws;
8. The business activities, or proposed business activities, to be licensed are injurious to the public health or safety; or
9. The business activities, or proposed business activities, to be licensed constitute a public nuisance.

#### **2.58.040 Application procedure—Issuance—Term of license—Renewal—Replacement.**

A. Application.

1. Every person required to obtain a license under the provisions of this chapter shall submit an application for such license to the Business Licensing Service. The applicant is required to provide all information requested on said business licensing form, and failure to do so shall be grounds for refusing to issue the business license. Applications for business licenses shall be processed as Type 1 actions pursuant to BDMC 18.08.040.
2. If an applicant is a partnership, the application must be made by one of the partners; if a corporation, by one of the officers thereof; and if a foreign corporation, partnership or nonresident individual, by the resident agent or local manager of the corporation, partnership or individual.



## B. Issuance.

1. The city's director of community development, upon receipt of a complete application from the Business Licensing Service, including required fees, shall cause an investigation and review of the application to be made by the proper city officials, and shall either issue or refuse to issue the license within thirty days of the date of filing the application.
2. If an application is refused, the reason for refusal shall be set forth in writing to the applicant. The applicant may appeal such refusal consistent with BDMC 2.58.100.
3. No license issued under this chapter is transferable or assignable except as provided in BDMC 2.58.080(B).

C. Term of License. A business license required to be obtained pursuant to this chapter shall be issued or renewed for a twelve-month period commencing as of the date of application filing and shall expire on the last date of the twelfth month thereafter.

D. Renewal. Renewals shall be handled by the Business Licensing Service in coordination with the city. Renewal shall require payment of all license fees due for that renewal. Upon payment of all applicable fees or charges and verification by the applicant that the information on the renewal license is correct, the business license shall be renewed for the new twelve-month period, subject to the following conditions:

1. Failure to renew a license on or before the expiration date established by the Business Licensing Service may result in the charge of a delinquent renewal penalty as authorized in RCW 19.02.085;
2. Failure to renew a license on or before the 120 days after the expiration date established by the Business Licensing Service may result in cancellation of the license and may require the filing of a new application, payment of all appropriate fees, and reapproval by the city in order to continue conducting business in the city; and
3. A license shall not be renewed if, at the time of submitting the application, the license sought to be renewed is revoked or suspended pursuant to this chapter.

## **2.58.050 License fees.**

A. Application and renewal fees for a city business license shall be based on the current fee schedule adopted by the city. The renewal fee may be prorated to accommodate the license term established under BDMC 2.58.040. The city's license fees are in addition to any other license or handling fee collected by the Business Licensing Service. The license fees established by this section do not apply to the exempt persons or entities in BDMC 2.58.025.

### **2.58.060 Separate license required for each business location— Display of license.**

A. Unless otherwise specifically provided herein, no license issued under this chapter shall entitle the license holder to maintain or conduct the business for which the license was issued at any other place or location than that stated in such license. If the place of business is changed from one location to another, the licensee shall return the license to the clerk, and a new license shall be issued for the new place of business, for a fee pursuant to the adopted fee schedule.

B. A separate license is required for each branch establishment or location in the city where business is conducted or engaged in, as if such branch establishment or location were a separate business; provided, no separate license fee shall be imposed to obtain the license for such branch establishment or location.

C. A person engaging in two or more businesses at the same location shall be required to obtain separate licenses for each business.

D. All licenses issued pursuant to this chapter shall at all times be posted in a conspicuous place at the location of the business; provided, when the licensee has no established place of business and goes from place to place, then such license must be carried on the person of such licensee while actually engaged in the licensed business.

### **2.58.070 Home occupation business.**

A. A business owner intending to conduct business from a residence located within the city must sign an acknowledgement of compliance with the Home Occupation Standards set forth in BDMC Chapter 18.54. The acknowledgement must be filed directly with the city on a form provided by the city, separate from the Washington State Business License Application submitted to the Business License Service, and must be received by the city before the business license application can be approved.

### **2.58.080 Change in ownership or death of licensee.**

A. Change in Ownership. Upon sale or transfer of any business licensed by 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 shall apply for a new business license pursuant to the procedures established by this chapter.

B. Death of Licensee. Should a license holder become deceased before expiration of the license, his or her duly appointed administrator or executor may continue to engage in business under the existing license until the license expires.

### **2.58.090 Enforcement.**

A. It is unlawful for any person, either directly or indirectly, to conduct any business for which a license is required without a license being first procured and kept in effect at all such times as required by this chapter.

B. The director of community development, or his or her designee, shall have the power and authority to suspend or revoke any license issued under the provisions of this chapter. Notice of such revocation or suspension shall be in writing and shall inform the licensee of the grounds for said suspension or revocation, the length of the suspension or revocation, and the date such suspension or revocation shall begin and end. The notice shall also inform the licensee of the right to appeal, the deadline for filing such an appeal, and that failure to file a timely appeal shall waive all appeal rights. Notice shall be served upon the licensee by one of the methods described in BDMC 2.58.110. Unless an appeal is timely filed as provided in BDMC 2.58.100, the suspension or revocation of a business license shall take effect on the eleventh day after receipt of a notice of suspension or revocation, provided that a refusal to issue a license is effective immediately.

### **2.58.100 Grounds for revocation, suspension or denial.**

A. In accordance with BDMC 2.58.090(B), the director of community development may revoke, suspend, or deny any business license issued under the provisions of this chapter on any one or more of the following grounds:

1. The license was procured by fraud or by false representation of fact;
2. The licensee has violated or failed to comply with any of the provisions of this chapter;
3. Applicant or licensee makes a misrepresentation or fails to disclose a material fact to the city related to any of the obligations set forth in this chapter; or
4. The licensee, or licensee's employees or agents, have engaged in, have permitted or have acquiesced in unlawful drug activity on the business premises. For purposes of this section, the term "permitted" shall mean, in addition to its ordinary meaning, that licensee has actual or constructive knowledge of the circumstances which would foreseeably lead to the unlawful drug activity. "Unlawful drug activity" means, manufacturing, delivering, selling, storing, or giving away any controlled substance, as defined in the Washington Uniform Controlled Substances Act (RCW CH. 69.50) or the Federal Controlled Substances Act (21 U.S.C. § 801 et seq.), in violation of state, federal or local law.
5. The licensee's continued conduct of the business for which the license was issued will result in a substantial threat to the public health, safety or welfare by reason of any of the following:

- a. The licensee, his employees or agents acting within the scope of their employment have been convicted of a crime which bears a direct relationship to the conduct of the business for which the license has been issued;
- b. The licensee, or his agents or employees while acting within the scope of their employment, have, in the conduct of the business for which the license has been issued, violated a law or ordinance relating to the public health, welfare or safety after receiving warning from the city;
- c. The conduct of the business for which the license was issued has resulted in the creation of a public nuisance, as defined by the Black Diamond Municipal Code or by state law;
- d. Is in violation of a zoning regulation of the city; or
- e. Is indebted or obligated to the city for past due fees or taxes, excluding special assessments such as local improvement district assessments.

## **2.58.110 Appeal of suspension, revocation or denial.**

### **A. Request for Appeal—Scheduling of Hearing.**

1. A licensee wishing to appeal a notice of suspension, revocation, or denial must file a written request to appeal along with an appeal filing fee with the community development department. Such requests must be received by the city or be postmarked no later than fourteen days after the date the notice of suspension or revocation was mailed to the licensee. Telephone, facsimile, or email requests shall not satisfy the requirements of this section. Failure to follow the appeal procedures in this section shall preclude the licensee's right to appeal. In addition to the appeal fee, the appellant shall be responsible for hearing examiner costs associated with the appeal. The request to appeal must be in writing, include the required appeal fee, and must contain the following:

- a. The name and address of the appellant;
- b. A statement identifying the determination of the clerk from which the appeal is taken;
- c. A statement setting forth the grounds upon which the appeal is taken and identifying specific errors the clerk is alleged to have made in making the determination; and
- d. A statement identifying the requested relief from the determination being appealed.

2. The director of community development shall set a date for a hearing before the city hearing examiner, which date shall be at least fourteen but not more than thirty days from the date the appeal is filed, provided, the hearing date may

be rescheduled and additional time allowed upon request of a party or the hearing examiner for good cause shown or upon mutual agreement of the licensee and the city. At least ten days before said hearing, the city clerk shall cause licensee to be served with notice of the hearing as provided in BDMC 2.58.120. The notice shall set forth the date, time and place of the hearing.

B. Failure to Appear—Default Judgment. Failure of licensee to appear for the scheduled hearing after notice of the hearing has been served upon licensee in the manner provided for in this chapter shall result in a default judgment being entered by hearing examiner in favor of the city, affirming the original suspension or revocation action taken by the clerk and declaring the license revoked or suspended. All costs of the hearing not previously collected shall be assessed by hearing examiner against licensee as part of the default decision.

C. Hearing Procedure—Decision.

1. Except as specifically supplemented by this chapter, the hearing shall be conducted according to Chapter 2.30 of the Black Diamond Municipal Code.

2. Within ten days of the conclusion of the hearing, the hearing examiner shall enter written findings of fact and conclusions of law and shall affirm, modify or reverse the suspension, revocation, or denial of the license. The decision of the hearing examiner may impose any reasonable terms as a requirement for continuance of the license. A copy of the hearing examiner's decision shall be mailed to the clerk and the appellant.

D. License in Effect Pending Hearing Decision. When a suspension or revocation has been properly appealed, the license shall remain in effect pending the hearing examiner's decision. Any interest and/or penalties, however, shall continue to accrue on all unpaid amounts, notwithstanding the fact that an appeal has been filed.

E. Burden of Proof. The appellant shall have the burden of proving by a preponderance of the evidence that the determination of the clerk is erroneous.

F. A writ of review regarding the decision of the hearing examiner may be sought from King County superior court by the appellant or by the city. A proper request for a writ of review must be filed with the superior court within twenty calendar days following the date that the decision of the hearing examiner was mailed to the parties. Review by the superior court shall be on, and shall be limited to, the record on appeal created before the hearing examiner. Filing with the court does not automatically stay the effect of the city's decision.

G. License must be surrendered upon decision to suspend or revoke. If the hearing examiner's decision is to suspend or revoke the license, the licensee shall immediately surrender the license to the clerk on the next business day following receipt of the notice of the hearing examiner's or within five days of the date the decision is mailed to the appellant, whichever occurs first.

H. The licensee will be required to pay any costs related to the preparation for and the conducting of a public hearing. Any public hearing fee due, but unpaid within sixty days from the close of hearing, may be assigned to a collection agency as allowed by law.

### **2.58.120 Service of notice.**

Any notices required by this chapter shall be served upon a party by personal service or sent by both regular first class mail and certified mail, return receipt requested, to the address of the licensee or applicant as shown on the last business license, or if no such license or address is available, as shown in the other records of the city, or if no such address is shown, to such address as the clerk is able to ascertain by reasonable effort, or by posting at the location of the business if service by registered mail and two attempts at personal service have failed. Upon a showing by the city that notice has been attempted as provided for in this section, failure of the licensee or applicant to receive such notice shall not release the licensee or applicant from any fees or penalties that result, nor shall such failure extend any time limit set by the provisions of this chapter.

### **2.58.130 Violations—Penalties.**

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 two hundred fifty dollars 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.