

CITY OF BLACK DIAMOND WASHINGTON

ORDINANCE NO. 11-964

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, AMENDING CHAPTER 2.58, BUSINESS LICENSES, BY REPEALING AND REPLACING IN ITS ENTIRETY CHAPTER 2.58; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Black Diamond desires to amend and update numerous provisions related to the issuance and processing of business licenses:

NOW, THEREFORE, the City Council of the City of Black Diamond, Washington, do ordain as follows:

Section 1. BDMC Chapter 2.58, Business Licenses, Repealed and Replaced. Black Diamond Municipal Code Chapter 2.58, Business Licenses, is hereby amended by Repealing the current Chapter 2.58 and replacing the same in its entirety with a new Chapter 2.58 to read as follows:

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 Change in ownership or death of licensee.
- 2.58.080 Enforcement.
- 2.58.090 Grounds for revocation, suspension, or denial.
- 2.58.100 Appeal of suspension, revocation, or denial.
- 2.58.110 Service of notice.
- 2.58.120 Violations– Penalties.

2.58.010 - Business license required.

No person shall engage in any business in the city without having first obtained from the city, a valid business license to conduct that business. This license shall be in addition to any other licenses or permits required by any other section of the Black Diamond Municipal Code.

2.58.020 - Definitions.

For purposes of this chapter, the following terms, phrases and words shall 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.

- A. "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.
- B. "City" means the City of Black Diamond.
- C. "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.
- D. "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) The following sections set forth examples of activities that constitute engaging in business in the city, and establish safe harbors for certain 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) 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;
- 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 of this definition.
 - (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.
- E. "License" means and includes the word permit.
- F. "Licensee" means the holder of any license issued in accordance with the provisions of this chapter.

- G. "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.
- H. "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.
- I. "Year" means a calendar year.

2.58.025 - Exemptions.

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

- A. Minors engaged in babysitting, delivery of newspapers, lawn mowing, car washing, and similar activities.
- B. Any instrumentality of the United States, State of Washington, or any political subdivision thereof, with respect to the exercise of governmental functions.
- C. 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.
- D. Nonprofit organizations, including but not limited to religious, civic, charitable, benevolent, nonprofit, and cultural or youth organizations.
- E. 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.
- F. 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, as that term is defined in RCW 77.08.010, 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.
- G. Businesses subject to the city's utility tax, Chapter 5.08.

2.58.030 - Eligibility for license.

- A. No person shall be eligible for a City of Black Diamond business license 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 of Black Diamond any unpaid license fees and/or unpaid fines imposed for violations of this chapter.

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 permit center on a form provided by the city. The applicant is required to provide all information requested on said form, and failure to do so shall be grounds for refusing to issue the business license.
- (2) 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. The clerk shall issue a receipt to the applicant for all fees paid.

B. Issuance.

- (1) A business license shall be issued only upon payment of all required license fees, review of the application and approval by the clerk.
- (2) 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.
- (3) An issued license shall be immediately rendered invalid if payment of the required fees is made by a dishonored check, credit card, or any method that results in the city failing to receive proper payment.
- (4) No license issued under this chapter shall be transferable or assignable except as provided in Section 2.58.070.

- C. Term of license. A business license issued pursuant to this chapter shall only be valid during the same calendar year in which it was issued and shall expire as of the 31st of December. Business license renewals must be obtained prior to the thirty-first day of January each year or shall be subject to monetary penalties. See subsection D, below.
- D. Renewal. Upon payment of all applicable fees or charges and verification by the applicant that the information on the renewal license is correct, the city shall renew any business license for the new calendar year, subject to the following conditions:
- (1) If a business renews its license after January 31st, it shall be subject to a monetary penalty in addition to the regular license fee specified in this chapter. No renewal license shall be issued until both the regular license fee and the penalty have been paid in full.
 - (2) 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.
 - (3) A license shall not be renewed if the applicant, or a business within the city which is owned in whole or part by the applicant, owes the city any unpaid license fees and/or unpaid fines imposed for violations of this chapter.
- E. Temporary License. A 30 day license may be issued for businesses not located inside the City limits that are performing short term work, provided:
- (1) The business does not maintain an office or branch in the city and is not engaged in door to door sales or selling goods or services on the streets of the city but is merely performing a service at the request of a City of Black Diamond resident. Such services include, but are not limited to home repairs or the installation of appliances; provided, the person is not in business within the City for a consecutive period that exceeds 30 days; or.
 - (2) Casual or isolated sales made by persons who are not engaged in the ongoing business of selling the type of property involved, provided, the person is not in business within the City for a consecutive period to exceed 30 days.
- A temporary license may be renewed one time upon payment of an additional fee per the adopted fee schedule.
- F. Replacement. A replacement license will be issued by the clerk 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. A replacement fee will be due in accordance with the adopted fee schedule.

2.58.050 - License fees.

- A. Calculation of fee. The fee for a city business license shall be determined according to the formulas below and the current fee schedule adopted by the city.
 - (1) Renewals. For businesses renewing their license, the annual license fee shall be based on the current fee listed in the adopted fee schedule.
 - (2) New businesses. For a new business that has not yet been established the fee shall be determined based on the fee listed in the adopted fee schedule.
 - (3) Businesses located outside city. Any business that is located outside the city but furnishes or performs services within the city, and that is not exempt under Section 2.58.025, shall pay a license fee pursuant to the provisions of this Chapter and based on the adopted fee schedule.
- B. Penalty for late payment. In addition to any other penalties provided for in this chapter, any business which fails to make application for an original business license before commencing business within the City of Black Diamond, or fails to renew an existing license by January 31st, shall be subject to late fee penalties according to the currently adopted fee schedule.
- C. Reinstatement fee. Any license that has been suspended pursuant to this chapter shall not be reinstated until a fee equal to one-half of the annual licensing fee for that business has been paid and the period of suspension has ended.
- D. New business license applications received in the second half of the calendar year will be given a 50% reduction of the license fee.

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 per 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 - Change in ownership or death of licensee.

- A. Change in ownership. A new license shall be required to be obtained within thirty days of the occurrence of any of the following events:
 - (1) A business has been sold or otherwise transferred to an owner whose name does not appear on the existing license;
 - (2) A license has been issued to a business that is a partnership and the members of the partnership change;
 - (3) A sole proprietor incorporates;
 - (4) A corporation dissolves and the business is continued under a new corporation or other type of business entity. In each of these cases, the new owner(s) must submit a new application and pay all fees required.
- 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.

2.58.080 - 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. Any license fee due, but unpaid and delinquent under this chapter, and all penalties thereon, may be assigned to a collection agency as allowed by law or collected in a civil action, which remedy shall be in addition to any and all other existing remedies and penalties provided by the Black Diamond Municipal Code.
- C. The clerk, 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 Section 2.58.110. Unless an appeal is timely filed as provided in Section 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.
- D. It is unlawful for any person whose license has been revoked or suspended to keep the license issued to him in his possession or under his control, and the same

shall be immediately surrendered to the clerk. When revoked, the license shall be canceled, and when suspended, the license shall be retained by the clerk during the period of suspension. A licensee who continues to engage in the business for which the license has been revoked or suspended shall be deemed to be operating without a license and shall be subject to any or all penalties provided herein.

2.58.090 - Grounds for revocation, suspension or denial.

- A. In accordance with Section 2.58.080(C), the clerk 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; or
 - (2) The licensee has violated or failed to comply with any of the provisions of this chapter; or
 - (3) Makes a misrepresentation or fails to disclose a material fact to the city related to any of the obligations set forth in this chapter
 - (4) 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; or
 - 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; or
 - 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; or
 - 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 LID assessments.

2.58.100 - 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 city clerk. 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 city clerk 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 Section 2.58.110. 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 (20) 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 (5) 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 60 days from the close of hearing, may be assigned to a collection agency as allowed by law.

2.58.110 - 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.

2.58.120 - 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.

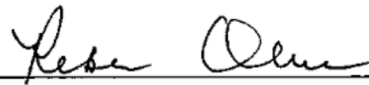
- B. Civil Penalties. Any person who fails to comply with the provisions of this chapter is, in addition to any criminal penalties, subject to a maximum civil penalty of two hundred fifty dollars for each day or portion of the day that the violation continues.
- C. Other Legal Remedies. Nothing in this 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.

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.

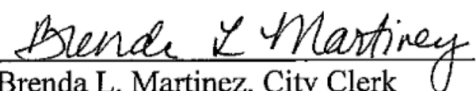
Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING
THEREOF ON THE 18TH DAY OF AUGUST, 2011.**

CITY OF BLACK
DIAMOND


Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:


Brenda L. Martinez, City Clerk

Approved as to form:

Chris D. Bacha,
Kenyon Disend PLLC
City Attorney

Filed with the City Clerk:
Passed by the City Council: 8/18/2011
Ordinance No. 11-964
Date of Publication: 8/26/2011
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