

## ORDINANCE No. 338

### AN ORDINANCE OF THE TOWN OF HAMILTON, WASHINGTON, ESTABLISHING BUSINESS LICENSE REQUIREMENTS.

**WHEREAS**, the Town Council has determined that it is a necessary exercise of the duties and authorities delegated to it by the Washington State constitution and the laws of the State of Washington to establish regulations designed to maintain current information with respect to engaging in business, trade, service, commercial and professional activities carried on within the Town; and

**WHEREAS**, the Town Council has determined that the maintenance of information with respect to current business, trade, service, commercial and professional activities engaged within the Town can best be accomplished through the establishment of a program for the licensing and registration of such activities;

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF HAMILTON, WASHINGTON, DOES **REPEAL ORDINANCES 255 AND 259 AND ORDAIN AS FOLLOWS:**

**Section 1. Purpose.** This chapter is intended to provide information concerning new and existing businesses in the town, to insure the legal conduct of businesses, to provide revenue, and to assist in the effective administration of town ordinances relating to health, fire and building codes, zoning, subdivision, shorelines and similar matters. The provisions of this chapter shall be deemed an exercise of the power of the Town of Hamilton to license for regulation and revenue pursuant to RCW 35.27.370(9) and RCW 35.90.080.

**Section 2. Definitions.** For the purposes of this chapter the terms set out in this section shall have the meanings defined as follows:

1. "Business" includes all activities, sale of goods, occupations, trades, pursuits, or professions engaged in within the town with the object of gain, benefit or advantage, directly or indirectly, to any person, including home occupations, as defined by Hamilton Zoning Ordinance Section 10.45.080 as amended from time to time. Each business location shall be deemed a separate business.
2. "Engage in Business"
  - (A) "Engaging in business" or "engage in business activities" means commencing, conducting or continuing in business, and also the exercise of corporate or franchise power as well as liquidating a business when the liquidators thereof hold themselves up to the public as conducting business.
  - (B) This section sets forth examples of activities so that a person who meets the criteria may engage in the minimum business activities in the town without having to pay a business license fee. The activities listed in the section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection (a). If an activity is not listed, whether it constitutes engaging in business in the town shall be determined by considering all the facts and circumstances and applicable law.
  - (C) Without being all inclusive, any one of the following activities conducted within the town by a person or its employee, agent representative, independent contractor, broker or another acting on

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its behalf constitutes engaging in business and requires a person to register and obtain a business license.

- (1) Owning, renting, leasing using or maintaining, an office, place of business, or other establishment in the town.
- (2) Soliciting sales.
- (3) Making repairs or providing maintenance or service or tangible personal property, including warranty work and property maintenance.
- (4) 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.
- (5) Installing, constructing, or supervising installation or construction of, real or tangible personal property.
- (6) Soliciting, negotiating, or approving franchise, license or similar agreements.
- (7) Collecting current or delinquent accounts.
- (8) Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.
- (9) Providing disinfecting and pest control services, employment and labor pool services, home nursing care, and janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services, including the listing of homes and managing real property.
- (10) 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.
- (11) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.
- (12) Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the town, acting on its behalf, or for customers or potential customers.
- (13) Investigating, resolving or otherwise assisting in the resolving of customer complaints.
- (14) 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.
- (15) Delivering goods in vehicles, owned, rented, leased, used or maintained by the person or another acting on its behalf.

(D) 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 town but the following, it need not register and obtain a business license.

- (1) Meeting with suppliers of goods and services as a customer.
- (2) Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.
- (3) 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

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board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.

(4) Renting tangible or intangible property as a customer when the property is not used in the town.

(5) Attending, but not participating in a "trade show" or "multiple vendor events". Persons participating at a trade show shall review the Town's trade show or multiple vendor event ordinances.

(6) Conducting advertising through the mail.

(7) Soliciting sales by phone from a location outside of the Town.

(E) A seller located outside the Town merely delivering goods into the Town by means of a common carrier is not required to register and obtain a business license, provided that it engages in no other business activities in the Town. Such activities do not include those in subsection (4).

(F) The town expressly intends that engaging in business includes any activity sufficient to establish nexus for purposes of applying the license fee under the law and 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 constituting the original nexus generating contact or subsequent contacts.

3. "Person" used interchangeably, means any individual, receiver, assignees, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, corporation, association, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise.
4. "Premises" means all lands, structures and places, and also any personal property which is either affixed to or is otherwise used in connection with such business conducted on such premises inclusive of business located in homes owned by them and not acquired for resale;
5. "Permanent building" means a building, as defined by the International Building Code. 5,
6. "Year" or license year" means the period of time from January 1st to and including the succeeding December 31st.

**Section 3. Persons and/or businesses exempt from payment.** The town clerk/treasurer is hereby empowered to determine whether or not entertainment, exhibitions, or yard sales held under the auspices of for the benefit of any local charitable organization, fraternal organization, society, or church located within the town limits of the town of Hamilton shall be exempt from the licensing requirement as well as the following:

1. Minors conducting a business on premises owned or controlled by their parent or guardian provided no other person is employed by the minor
2. Fraternal benefit associations or societies as defined in RCW 48.36A.010;
3. Nonprofit religious organizations
4. Any person who is exempt from payment of such fees by the laws of the United States or the state;

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5. Nonprofit associations, clubs, or corporations maintained for the purpose of organized sports, charity, educational activities (including police and fire department reserve organizations);
6. Deliverers of newspaper periodicals;
7. Public and private schools of education;
8. Farmer/gardeners selling their own unprocessed farm products raised or grown exclusively upon lands owned or occupied by them;
9. Public utility companies;
10. Consignee products being sold in an established, licensed retail business;

**Section 4. License - Imposition and collection required.** ON or after the effective date of this ordinance, there is levied upon and shall be collected from and paid as hereinafter provided, by every person, on account and for the privilege of engaging in business activities within the town, an annual license fee per calendar year or any portion thereof;

- (1) Threshold exemption. To the extent set forth in this section, the following persons and businesses shall be exempt from the registration, license and/or license fee requirements as outlined in this chapter. For purposes of the license by this chapter, any person or business whose annual value of products, gross proceeds of sales, or gross income of the business in the town is equal to or less than \$2,000 and who does not maintain a place of business within the town, shall submit a business license registration to the town clerk or designee. The threshold does not apply to regulatory license requirements or activities that require a specialized permit.

**Section 5. License - Joint businesses – Separate locations- Posting required Non transferable– Policy following moving or sale.**

- (1) A person engaged in two or more businesses at the same location shall not be required to obtain or purchase separate licenses for conducting each of such businesses; provided, however, when eligible, one license shall be issued specifying the joint businesses at this location.
- (2) Said license shall be personal and non-transferable. In case business is transacted at two or more separate places by one person within the town, a separate license for each place in which business is transacted with the public shall be required and said person shall pay for each place of business the appropriate fee. Each license which is issued, where a place of business of the taxpayer is changed, the taxpayer shall return the license to the town clerk/treasurer and new license shall be issued of the new place of business, licensed under the ordinance, said license may be transferred to the new owner; provided, that the town clerk/treasurer is given notice of said transfer within five days of the date of said transfer. There shall be a transfer fee set by the town council by resolution annually to be paid prior to the issuance of the transfer.
- (3) No person to whom a license has been issued pursuant to this chapter shall suffer or allow any other person for whom a separate license is required to operate under or display such license, nor shall any such other person operate under or display such license.

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- (4) A written rental agreement or lease with legal owner of premises upon which the business operator of a home occupation conducts business is required when the business operator is not the property owner.

**Sections 6. License – Expiration date – Renewal - Posting.** The business license referred to herein shall expire at the end of each calendar year for which it is issued and a new license shall be required for each following calendar year. All licenses shall be renewable on January 1<sup>st</sup> of each year. The office the clerk/treasurer shall send a notice of renewal to each license holder on or before December 15<sup>th</sup> of each year providing notification of the requirement to renew the license for the following year. All renewal licenses not paid by January 31<sup>st</sup> shall bear a late fee as set by annual resolution. Each license shall be conspicuously posted in the place of business for which it is issued. A license carried on the person meets this requirement if the place of business is mobile. A person whose application has been denied may correct any deficiency and reapply within 90 days without payment of an additional license fee

**Section 7. License - Application.** Application for a business license shall be made to the town clerk/treasurer upon forms furnished by the office. The information provided by the applicant shall include, at a minimum:

1. The name under which the business is to be conducted;
2. The physical and mailing address of the business;
3. The full name of the applicant;
4. The applicant's physical and mailing addresses;
5. The phone number of the applicant;
6. The phone number of the business;
7. The nature of the business to be conducted;
8. Washington State Tax Identification Number or Unified Business Identifier;
9. Any other information required by the town clerk/treasurer or as stated or requested on said form.

**Section 8. License - Issuance.** The town clerk shall review each application and town records to determine that the application is complete and the application fee has been paid. Upon making such a determination, the clerk shall issue a license, which shall be serially numbered, shall specify the type and location of the business, and shall set forth the name of the person engaging in the business.

1. Issuance of a business license shall not constitute an assurance or representation that the business, or its location, complies with other town ordinances or regulations or with any applicable state or federal laws. All licensees shall remain fully responsible to assure that their business meets the International Building Code as amended from time to time, which is permanently set upon a foundation and serviced by power, water and sewer utilities.
2. Any place of business located within the town may be subject to inspection by the town building and/or fire department officials prior to issuance or renewal of a business license. Failure to permit an inspection or to comply with a valid correction notice shall result in a denial of a license to do business within the town.

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3. The office of the town clerk/treasurer shall investigate the accuracy of the information contained in the application. If said application is correct, the office of the clerk/treasurer shall issue a license.
4. Any person claiming exemption under this section may be required to supply information or legal citation in support of such exemption. No exception will be granted if requested supporting data is not supplied.

**Section 9. License-Requirement.** Unless otherwise provided in this chapter, no person shall engage in any business with the Town, without first having secured a license to do so.

**Section 10. License-Outdoor Regulations.** The following requirements shall apply to all outdoor business operations:

1. A receptacle of adequate size shall be provided on the premises for the deposit of waste and refuse;
2. All aspects of the business operation shall be conducted and maintained in a manner which does not create or contribute to the risk of fire on or about the premises; and
3. The activities of the business shall not in any way impair or impede the flow of pedestrian and/or vehicle traffic in the area.

**Section 11. License-Fees Established.** The following fees are established for business licenses:

1. The business license fee for a vendor or peddler shall be \$25.00 per year.
2. The business license fee for a home occupation shall be \$25.00 per year.
3. The business license fee for a Commercial use such as retail sales and service, eating and drinking establishment, vehicle repair or similar activity shall be \$50.00 per year.
4. The business license fee for an Industrial use such as towing, manufacturing, processing, mining or similar activity shall be \$75.00 per year.

**Section 12. Revocation.** Licenses issued under the provisions of this chapter may be revoked by action of the town council, after notice and hearing, for any of the following causes.

1. Fraud, misrepresentation or false statements in the application for License.
2. Operation of the business at a location other than specified on the License; provided, however, that a licensee may change the business location on the license by presenting the certificate to the town clerk with a request for such a change. No fee shall be charged for such a change:
3. Operation of a business which is substantially different than specified on the license provided, however, that a licensee may change the business operation on the license by presenting the certificate to the town clerk with a request for such change. No fee shall be charged for such a change.

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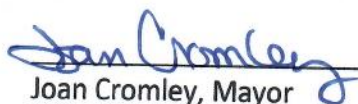
### Section 13. Penalties.

1. In addition to the suspension or revocation of the license, any violation of this ordinance shall be a civil penalty and may be punishable by a fine of up to \$100.00 per day for any such violation.
2. In addition to the remedies and penalties provided in this chapter, and as distinct and separate remedies, the Town may sue in any court of competent jurisdiction to obtain a judgment and enforce collection thereof by execution for any license fee due under this chapter, or the Town may seek an injunction prohibiting a person from engaging in any unlicensed business. In any action or suit authorized by this section, the Town, if it prevails, shall be entitled to recover a reasonable attorney's fee to be set by the court along with its costs and disbursements.

**Section 14. Appeal to Town Council.** Any person whose application has been denied may appeal to the town council. Such appeal shall be in writing, shall state in full the basis for appeal and shall be submitted through the town clerk within 15 days after date of notice of denial. The clerk shall fix a date for hearing before the council which shall be not later than the second regular meeting of the council after receipt of the appeal. Council action shall be final unless appealed within 30 days to the county superior court.

**Section 15. Effective Date.** This ordinance shall take effect five (5) days after its passage, and approval and publication by law.

**PASSED AND APPROVED this 11<sup>th</sup> day of December 2018.**

  
Joan Cromley, Mayor

Attest:

  
Beth Easterday, Clerk-Treasurer