

# TOWN OF WOODWAY

## ORDINANCE 18-597

AN ORDINANCE OF THE TOWN OF WOODWAY AMENDING THE TOWN'S BUSINESS LICENSE AND HOME OCCUPATION REGULATIONS; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE AND AUTHORIZING SUMMARY PUBLICATION BY ORDINANCE TITLE ONLY.

WHEREAS, the 2017 State Legislature passed Engrossed House Bill (EHB) 2005, now codified as Chapter 35.90 RCW, requiring Washington Cities and Towns with business licenses to create a model business license ordinance with a minimum threshold and a definition of "engaging in business"; and

WHEREAS, the Town staff recently reviewed the business licensing and home occupation process and procedures set forth in Woodway Municipal Code (WMC) chapters 4.01 and 4.02; and

WHEREAS, the Town Council reasonably believes that adoption of this Ordinance is in furtherance of the health, safety, and welfare of citizens of the Town;

WHEREAS, amendments are required to WMC Chapters 4.01 and 4.02 to fulfill the Town's obligations under RCW Chapter 35.90.

NOW, THEREFORE, the Town Council of the Town of Woodway does hereby ordain as follows:

Section 1. Woodway Municipal Code Chapters 4.01 and 4.02 shall be repealed in their entirety and WMC Chapter 4.01 shall be restated as set forth in Exhibit A.

Section 2. The Town Clerk-Treasurer is authorized to make any necessary corrections to this resolution and its exhibits, including but not limited to, the correction of scrivener's/clerical errors, references, resolution numbering, section/subsection numbers and any reference thereto.

Section 3. If any part or portion of this Ordinance is declared invalid for any such reason, such declaration of invalidity shall not affect any remaining portion. A summary of this Ordinance consisting of the title shall be published in the official newspaper. This Ordinance shall take effect at 12:01 am Pacific Time on January 1, 2019.

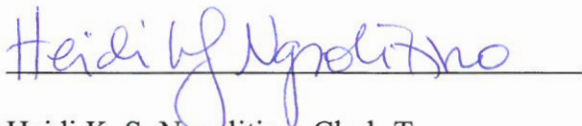
PASSED this 27<sup>th</sup> day of November 2018 by the Town Council of the Town of Woodway.

TOWN OF WOODWAY

Handwritten signature of Carla A. Nichols in black ink, written over a horizontal line.

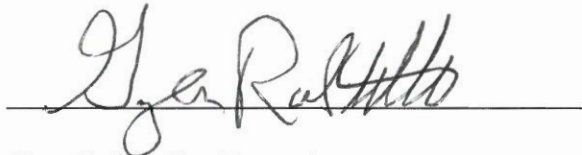
Carla A. Nichols, Mayor

ATTEST:

Handwritten signature of Heidi K. S. Napolitano in blue ink, written over a horizontal line.

Heidi K. S. Napolitano, Clerk-Treasurer

APPROVED AS TO FORM:

Handwritten signature of Greg Rubstello in black ink, written over a horizontal line.

Greg Rubstello, Town Attorney

Date Passed by the Town Council: 11.27.2018

Date Published: 11.30.2018

Effective Date: 1.1.2019

# ORDINANCE 18-597 | EXHIBIT A

## CHAPTER 4.01: BUSINESS LICENSING

### Sections:

- 4.01.010 Definition.
- 4.01.020 Business license required.
- 4.01.030 Exemptions
- 4.01.040 Term of license and renewal.
- 4.01.050 General regulations.
- 4.01.060 Home Occupations
- 4.01.070 Penalty for late application.
- 4.01.080 Reasons for denial of license or revocation of existing license.
- 4.01.090 Penalties.

### **4.01.010 DEFINITION.**

- A. "Casual or Isolated Sales" means a sale made by a person who is not engaged in the business of selling the type of property involved. Persons who hold themselves out to the public as making sales at retail or wholesale are deemed to be engaged in business, and sales made by them of the type of property which they hold themselves out as selling are not casual or isolated sales even though such sales are not made frequently.
- B. "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 Town, 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 Town 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. 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.
  - 3. 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 its behalf constitutes engaging in business and requires a person to register and obtain a business license.
    - 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 Town.
    - b. Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the Town.
    - 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 Town, 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.

The Town expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the license fee 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.

- B. "Home occupation" means engaging in business on residential property in the Town of Woodway incidental or secondary to the residential use of such property.
- C. Single-Unit and Combination Trucks. "Single-unit trucks" are trucks in which the cargo area and the power unit are connected on a common frame and cannot be separated. They include two-, three-, and four-axle trucks and generally have GVWs in the ten thousand pound to forty thousand pound range. "Combination trucks" consist of a power unit or tractor and one or more trailers with GVWs up to eighty thousand pounds (reference "Traffic Engineering Handbook").

**4.01.020 BUSINESS LICENSE REQUIRED.**

- A. No person shall conduct or engage in any business within the Town during any year without first obtaining a business license and paying the fee established by the fee schedule unless exempted elsewhere in this chapter. Application shall be made on the prescribed forms of the Clerk-Treasurer's Office.
- B. If the business has a physical location within any of the Town's residential zoning districts, that business must also comply with the regulations in WMC Chapter 4.01.060. If the 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, the business license fee shall be waived.

**4.01.030 EXEMPTIONS.**

To the extent set forth in this section, the following persons, businesses, and activities shall be exempt from 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 Town is equal to or less than \$2,000 and who does not maintain a place of business within the Town shall be 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. 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.

- C. 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 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 the Town.
- D. Any person engaged in the sale of one's own residence.
- E. Owning, renting, leasing, maintaining, or having the right to use, or using residential property as your personal residence.
- F. Any broker, managing broker, or designated broker licensed under RCW Chapter 18.85; provided however, that a real estate firm as defined by RCW Chapter 18.85 with gross income exceeding the amount in subsection (A) from activities within the Town, shall be required to obtain a business license under this chapter.
- G. Employees. The requirement for a separate business license shall not apply to a person in respect to the person's employment in the capacity as an employee, as distinguished from, for example, that of an independent contractor. For purposes of this section, it shall be presumed that a person is not an employee of a business unless that business makes contributions to the state Employment Security Department on behalf of such person. The fact that the business makes industrial insurance contributions on behalf of such worker will not rebut this presumption.
- H. A seller located outside the Town merely delivering goods into the Town by means of 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 C.
- I. Any person, business, or firm engaged solely in the removal of hazardous trees, provided that it engages in no other business activities in the Town.
- J. Employing a household employee or being a customer of a domestic worker (e.g., babysitters, nannies, health aides, or maids).
- K. Minors engaged in babysitting, delivery of newspapers, lawn mowing, car washing, and similar activities.
- L. Any instrumentality of the United States, state of Washington, or any political subdivision thereof, with respect to the exercise of governmental functions.
- M. All special events sponsored by the Town, but not to include participating commercial vendors.

**4.01.040 TERM OF LICENSE AND RENEWAL.**

- A. Each business license shall be effective for the calendar year in which issued. All business licenses shall be renewed on or before December thirty-first of each year if business is to be continued within the Town the next calendar year.
- B. Application for renewal shall be made on forms prescribed by the Clerk-Treasurer's Office. Every business license shall be personal to the licensee and shall not be assignable or transferable to any person.

**4.01.050 GENERAL REGULATIONS.**

All revenue derived from business within the Town of Woodway shall be coded to Woodway's state sales tax number 3118.



#### **4.01.060 HOME OCCUPATIONS**

- A. The purpose of this section is to limit and control those activities associated with home occupations that could conflict with the residential character of Woodway while allowing residents to conduct businesses on their residential property that do not disturb the peace and tranquility of the community. It is the intent of this section that only home occupations that are customarily incidental and secondary to the use of a dwelling or a residence shall be allowed.
- B. All home occupations shall meet all the following licensing criteria:
  - 1. Area Used. The home occupation shall be conducted entirely within an enclosed building on the residential property that meets the requirements of all applicable Woodway ordinances, except for a home occupation involving the use of tennis courts, stables, swimming pools for the purpose of conducting lessons, or permitted uses that necessarily are conducted outdoors, such as farming. The display or storage of goods outside of a building or in a window is strictly prohibited. No business signs are permitted.
  - 2. Traffic. The home occupation shall not generate more than ten one-way vehicle trips per day.
  - 3. Equipment Use. Mechanical equipment can be used if it is compatible with a residential environment and does not violate any Town, state or federal public nuisance law.
  - 4. Mobile Equipment. A single-unit truck or combination truck may not be stored within the Town unless it is under contract for use by the Town or kept on property licensed for a home occupation and stored out of public view and is in compliance with Town legal weight limits.
  - 5. General Regulations. No repair or servicing of any commercial vehicle will be permitted unless out of the public view. Furthermore, no repair or servicing of any noncommercial vehicle, boat, or equipment that is not the property of the property owner shall be permitted. Emission of dust, odor, smoke, noise, light, heat, glare, vibration, or other emission shall not exceed that which is allowed by Town ordinance or federal or state standard for a residential environment.
  - 6. Parking. Any required parking shall be located on the residential property of the license holder and shall be limited to that which is usual and customary for a single-family dwelling. No home occupation-related parking shall be permitted on any street or right-of-way.
  - 7. Health and Safety. The home occupation shall not create a condition that injures or endangers the comfort or disturbs the peace and tranquility of the neighborhood or poses a threat to the public health and safety. The residential property shall not be littered, unkept, or other-wise poorly maintained as it relates to the home occupation activity.
- C. Unlicensed home occupations are hereby declared to be a nuisance subject to abatement, penalty, or other action as provided in WMC Chapter 6.08.

#### **4.01.070 PENALTY FOR LATE APPLICATION.**

Any applicant or licensee who shall fail to make application for an original business license, or for renewal of an existing business license, shall be subject to a penalty, computed as follows:

- A. Delinquent from fifteen to thirty days, a penalty of ten percent of the prescribed fee or five dollars, whichever is greater.
- B. Delinquent from thirty-one to ninety days, a penalty of fifty percent of the prescribed fee or ten dollars, whichever is greater.
- C. Delinquent from ninety-one days or more, a penalty of one hundred percent of the prescribed fee.

#### **4.01.080 REASONS FOR DENIAL OF LICENSE OR REVOCATION OF EXISTING LICENSE.**

A license application may be denied or an existing license may be revoked due to any of the following reasons:

- A. If an applicant or licensee, including his employees or agents, has been convicted of a crime that relates directly to the specific business for which the license is sought.
- B. If an applicant or licensee has suffered a civil judgment based upon fraud, misrepresentation, or violation of the Washington Consumer Protection Act.
- C. If reasonable grounds exist to believe that the applicant or licensee is dishonest, or may present a danger to the public health, safety, or welfare.

D. If the license was procured by fraud or misrepresentation of fact.

E. If the business would be in violation of any state or federal law.

**4.01.090 PENALTIES.**

Any person who violates any portion of this chapter, except as provided in Sections 4.02.070(A) and (B), shall be subject to a civil penalty in an amount not to exceed two hundred fifty dollars per violation to be directly assessed by the Mayor or the Mayor's designee. The Mayor, or the Mayor's designee, in a reasonable manner, may vary the amount of the penalty assessed in consideration of the size of and nature of business, the gravity of the violations committed, and the good faith of the violator in attempting to achieve compliance after notification of the violation.