

**ORDINANCE NO. 2018-977**

**AN ORDINANCE OF THE CITY OF DEER PARK, WASHINGTON, AMENDING CHAPTER 5.02 OF THE DEER PARK MUNICIPAL CODE TO ADOPT THE STATE MODEL BUSINESS LICENSE LANGUAGE AS REQUIRED UNDER CHAPTER 35.90 RCW; CONTAINING A SEVERABILITY PROVISION; AND SETTING AN EFFECTIVE DATE.**

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**WHEREAS**, in 2017 the Washington State Legislature passed Engrossed House Bill 2005 requiring all cities with business licenses to administer their business licensing through the State’s Business Licensing System (“BLS”) and requiring cities to adopt model business license language with a minimum threshold and a definition of “engaging in business”, codified at chapter 35.90 of the Revised Code of Washington; and

**WHEREAS**, the City of Deer Park (“City”) presently administers its business licensing through the State’s BLS; and

**WHEREAS**, the City has adopted general business license regulations at Chapter 5.02 of the Deer Park Municipal Code (“DPMC”); and

**WHEREAS**, the City Council desires to amend various sections in Chapter 5.02 DPMC to adopt the model business license language for compliance with state law and other minor changes necessitated by such adoption; and

**WHEREAS**, City staff recommends adoption of this Ordinance and the Mayor and City Council have reviewed this Ordinance and determined that the provisions in this Ordinance are

in the best interests of the public health, safety and welfare of the citizens of the City of Deer Park; NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF DEER PARK, WASHINGTON DO ORDAIN AS FOLLOWS:**

**Section 1.** Section 5.02.010 of the Deer Park Municipal Code is hereby amended to read as follows:

**5.02.010 Authority**

The provisions of this chapter are an exercise of the power of the city council to require any person or entity engaging in business to be registered and obtain a license.

**Section 2.** Subsection 5.02.020(E) of the Deer Park Municipal Code is hereby amended to read as follows:

E. "Engage in business" or "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.

1. This section sets forth examples of activities that constitute engaging in business in the city, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimus business activities in the city without having to 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 5.04.020(E). If an activity is not listed, whether it constitutes engaging in business in the city shall be determined by considering all the facts and circumstances and applicable law.

2. 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 as further set forth in 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 or 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.

3. 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.

(a) Meeting with suppliers of goods and services as a customer.

(b) Meeting 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 board of director member or attendee engaging in business such as a member of a board of directors who attends a 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.

(g) Soliciting sales by phone from a location outside the city.

4. 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, provided that it engages in no other business activities in the city. Such activities do not include those in subsection (3).

The city 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 contract or subsequent contracts.

F. “Person” means any individual, company, partnership, receiver, assignee, trustee in bankruptcy, trust, estate, firm, joint venture, club, corporation, association, society or any individual or group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise.

**Section 3.** Section 5.02.030 of the Deer Park Municipal Code is hereby amended to read as follows:

**5.02.030 Registration – Required.**

Unless exempted under section 5.02.060 DPMC, no person may engage in business in the city without first having registered the business and acquired a business license as provided in this chapter. The registration must be renewed annually by the expiration date established by the Business Licensing Service.

**Section 4.** Section 5.02.060 of the Deer Park Municipal Code is hereby amended to

read as follows:

**5.02.060 Exemptions.**

A. The following entities and activities are exempt from the provisions of this chapter:

1. The city of Deer Park, Washington;
2. The state of Washington or any agency thereof;
3. The United States Government or any agency thereof;
4. Deliverers of newspapers and periodicals;
5. Deliverers to and persons soliciting orders from retail establishments for the delivery and sale of goods, wares and merchandise to retailers for resale unless located within the city;
6. Persons soliciting orders to be filled by shipment of goods in interstate commerce;
7. Any person or organization conducting a nonprofit enterprise when the enterprise is operated without private profit, for a public, charitable, educational, literary, fraternal or religious purpose; provided, that no such enterprise shall be operated that is detrimental to the public peace, health, or welfare, or that violates or is not in compliance with city, state, or federal laws or regulations;
8. The casual sale of items of personal property where the person conducting such sale is not regularly engaged in the business of selling items of personal property (for example, garage sales, service agency bake sales);
9. Temporary merchants, mobile vending units, and peddlers operating pursuant to the provisions of Chapter 5.36 DPMC;

B. 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 shall submit a

business license application to the city license officer, but need not pay a license fee to the city. This threshold does not apply to regulatory license requirements or activities that require a specialized permit.

**Section 5.** If any section, sentence, clause, or phrase of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

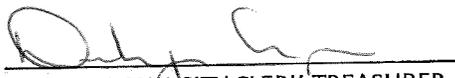
**Section 6.** The City Clerk is hereby authorized to publish a summary of this Ordinance consisting of its title in a newspaper of general circulation in the City.

**Section 7.** This Ordinance shall be in full force and effect on January 1, 2019.

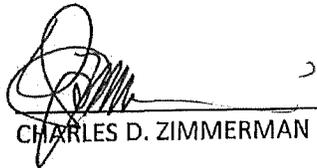
APPROVED:

  
MAYOR TIMOTHY VERZAL

ATTEST/AUTHENTICATED:

  
DEBY CRAGUN-CITY CLERK-TREASURER

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

BY:   
CHARLES D. ZIMMERMAN

FILED WITH THE CITY CLERK	:	<u>09-13-2018</u>
PASSED BY THE CITY COUNCIL	:	<u>10-03-2018</u>
PUBLISHED	:	<u>10-05-2018</u>
EFFECTIVE DATE	:	<u>10-12-2018</u>
ORDINANCE NO.	:	<u>2018-977</u>

SUMMARY OF ORDINANCE NO. 2018-977

of the City of Deer Park, Washington

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On the 3<sup>rd</sup> day of October, 2018, the City Council of the City of Deer Park, Washington, passed Ordinance No. 2018-977. A summary of the content of said ordinance, consisting of the title, provides as follows:

**AN ORDINANCE OF THE CITY OF DEER PARK, WASHINGTON, AMENDING CHAPTER 5.02 OF THE DEER PARK MUNICIPAL CODE TO ADOPT THE STATE MODEL BUSINESS LICENSE LANGUAGE AS REQUIRED UNDER CHAPTER 35.90 RCW; CONTAINING A SEVERABILITY PROVISION; AND SETTING AN EFFECTIVE DATE.**

The full text of this Ordinance will be mailed upon request.

DATED this 4<sup>th</sup> day of October, 2018.

  
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CITY CLERK-TREASURER, DEBY CRAGUN