



Agenda Bill

City Council Special & Regular Meetings - 03 Dec 2018

Department

Administrative Services, Finance

Staff Contact

Cathy Schrock, Administrative Services Director
(206) 248-5504

Agenda Bill Title

Discussion and Potential Adoption of Ordinance No. 696 to Modify BMC 3.11 and Ordinance No. 702 to Modify BMC 5.05 to Update with New Model Language as Required by the State Legislature.

Summary

During the 2017 legislative session, EHB 2005 (RCS 35.90) passed requiring specific actions by cities with business licenses and local B&O taxes. The first action deadline is approaching. The bill required cities to form a workgroup to create a model business license with a licensing threshold by July of 2018 for adoption by all business license cities by January 1, 2019. The workgroup completed its assignment and created a mandatory definition of “engaging in business” and a minimum threshold exemption to establish when out-of-town or transient businesses are required to be licensed. Cities are required to update their municipal code with the model language before January 1, 2019. If action is not taken by this deadline, cities will not be able to collect business and occupation taxes until their code has been revised.

Ordinance No. 696 modifies the City’s current definition of “engaging in business” in BMC Chapter 3.11 Business and Occupation Tax to bring the code into compliance with the model language. This update requires only minimal changes to the existing code.

Ordinance No. 702 modifies BMC Chapter 5.05.092 Business Licenses Exemptions - Fee Waiver by making changes to the fee waiver language to bring it into compliance with the model. The new language will now exempt the business license fee *for 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.* Any person or business that falls under this category will still be required to register for a no-fee business license.

Staff has determined that these changes will have a minimal impact on the overall collection of business license fee revenue.

Options

1. Adopt Ordinance No. 696, Amending Chapter 3.11 of the Burien Municipal Code and Ordinance No. 702, Amending Chapter 5.05 of the Burien Municipal Code.
2. Do not Adopt Ordinance No. 696 and Ordinance No. 702.

Advisory Board Recommendation

Administrative Recommendation

Staff recommends adoption of Ordinance Nos. 696 and 702, to bring the city into compliance with the state required model language.

Suggested Motion

Motion to Adopt Ordinance No. 696 and Ordinance No. 702, to amend Chapters 3.11 and 5.05 of the Burien Municipal Code.

Fiscal Impact

FUND: GENERAL FUND
COST OF PROPOSAL:
AMOUNT BUDGETED:
ADDITIONAL REQUIRED:

Attachments

[Ordinance No. 696](#)

[Ordinance No. 702](#)

[Model Business Language](#)

[modellicenseimplementwhitepaper1018](#)

CITY OF BURIEN, WASHINGTON

ORDINANCE NO. 696

AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, AMENDING SECTION 3.11.030 OF THE BURIEN MUNICIPAL CODE TO UPDATE WITH NEW MANDATORY MODEL LANGUAGE

WHEREAS, the Washington State Legislature passed EHB 2005 (RCS 35.90) requiring that cities form a workgroup to create a model business license with a licensing threshold; and

WHEREAS, EHB 2005 also requires all cities to adopt the model language by December 31, 2018; and

WHEREAS, cities that do not adopt the model language by January 1, 2019 will not be able to continue to collect business and occupation taxes, and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, DOES ORDAIN AS FOLLOWS:

Section 1. Section 3.11.030 of Chapter 3.11 of the Burien Municipal Code BMC) is hereby amended to read as follows:

Engaging in Business.

- (a) 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.
- (b) This ~~definition- 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 ~~register and obtain pay~~ a business license ~~fee~~ or pay city business and occupation taxes. The activities listed in this definition are illustrative only and are not intended to narrow the definition of “engaging in business” in subsection (a) 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 law.

- (c) 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:
- (i) 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.
 - (ii) Owning, renting, leasing, using, or maintaining an office, place of business or other establishment in the city.
 - (iii) Soliciting sales.
 - (iv) Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.
 - (v) 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.
 - (vi) Installing, constructing or supervising installation or construction of real or tangible personal property.
 - (vii) Soliciting, negotiating or approving franchise, license or other similar agreements.
 - (viii) Collecting current or delinquent accounts.
 - (ix) Picking up and transporting tangible personal property, solid waste, construction debris or excavated materials.
 - (x) 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.
 - (xi) 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.
 - (xii) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

- (xiii) 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.
- (xiv) Investigating, resolving or otherwise assisting in resolving customer complaints.
- (xv) 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.
- (xvi) Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.
- (xvii) ~~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.~~

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 publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, AT A REGULAR MEETING THEREOF THIS ____ DAY OF _____, 2017.

CITY OF BURIEN

Jimmy Matta, Mayor

ATTEST/AUTHENTICATED:

Monica Lusk, City Clerk

Approved as to form:

Lisa Marshall, City Attorney

Filed with the City Clerk:

Passed by the City Council:

Ordinance No.:

Date of Publication:

CITY OF BURIEN, WASHINGTON

ORDINANCE NO. 702

AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, AMENDING SECTION 5.05.092 OF THE BURIEN MUNICIPAL CODE TO UPDATE WITH NEW MANDATORY MODEL LANGUAGE

WHEREAS, the Washington State Legislature passed EHB 2005 (RCS 35.90) requiring that cities form a workgroup to create a model business license with a licensing threshold; and

WHEREAS, EHB 2005 also requires all cities to adopt the model language by December 31, 2018; and

WHEREAS, cities that do not adopt the model language by January 1, 2019 will not be able to continue to collect business and occupation taxes, and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, DOES ORDAIN AS FOLLOWS:

Section 1. Section 5.05.092 of Chapter 5.05 of the Burien Municipal Code BMC) is hereby amended to read as follows:

5.05.092 Exemptions – Fee waiver.

The licensing provisions of this chapter shall apply to the following persons and organizations; however, the business license fees shall be waived for:

(1) Any person or organization engaged in a not-for-profit (i.e., nonprofit) enterprise, either regularly or temporarily, when it is without private profit, for a public, charitable, funding-raising, educational, literary, fraternal, or religious purpose when such persons sufficiently demonstrate their not-for-profit status through Internal Revenue Service documentation or other means acceptable to the city manager or designee; and

(2) ~~Any person whose gross business income is derived from service activity in the city generating gross income of less than \$1,000 per month and who does not maintain a permanent place of business within the city. Any such person shall provide the city with an affidavit at the beginning of each license year, confirming the income for the prior license year.~~

~~A copy of the person's Internal Revenue Service Schedule C, Profit or Loss from Business, or other applicable federal income tax forms may be requested and required as verification of gross income. [Ord. 538 § 1 (Exh. A), 2010]~~ 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 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 registration to the Director or designee. The threshold does not apply to regulatory license requirements or activities that require a specialized permit.

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 publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, AT A REGULAR MEETING THEREOF THIS ____ DAY OF _____, 2017.

CITY OF BURIEN

Jimmy Matta, Mayor

ATTEST/AUTHENTICATED:

Monica Lusk, City Clerk

Approved as to form:

Lisa Marshall, City Attorney

Filed with the City Clerk:

Passed by the City Council:

Ordinance No.:

Date of Publication:

Model Business License Threshold Final Version

June 2018

Model business license threshold options: (cities would adopt one of the options)

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:

- (1) 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 (or higher threshold as determined by city) and who does not maintain a place of business within the city 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.

2. Threshold with Fee-free License/Registration-only Option:

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 city is equal to or less than \$2,000 (or higher threshold as determined by city) and who does not maintain a place of business within the city, shall submit a business license registration to the Director or designee. The threshold does not apply to regulatory license requirements or activities that require a specialized permit.

[City would list this fee-free license in its business license rates section as \$0 or no fee.]

Engaging in business model definition:

"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 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 subsection (1). 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.

(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.

(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.

(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.

(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 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.

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

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 contact or subsequent contacts.



Final city business license model threshold

Business license and city B&O tax simplification

In the 2017 session, **EHB 2005** (RCW 35.90) passed requiring three actions by cities with business licenses and local B&O taxes. The law:

1. Requires cities with business licenses to establish a workgroup to create a model business license with a licensing threshold by July 2018 for adoption by all business license cities by January 1, 2019 (October 17, 2018 for BLS partner cities);
2. Requires all cities with business license to administer their business license through the state's Business Licensing System (BLS) by 2022 or FileLocal by 2020; and
3. Establishes a task force on local B&O tax service apportionment under RCW 35.102.130 to report to the Legislature by October 31, 2018.

Final model ordinance for local business licenses – minimum threshold

Cities were required to develop a model ordinance for business licensing by July 1, 2018. The ordinance includes a mandatory definition of “engaging in business” and a minimum threshold (or occasional sale) exemption to establish when out-of-town or transient businesses are required to be licensed. All business license cities must adopt it by the end of the year ([RCW 35.90.080](#)).

What is in the model?

The [model threshold](#) has two pieces: a model threshold and a definition of “engaging in business.”

1. The model business license threshold language would:
 - Apply a minimum threshold of \$2,000 per year in the city for businesses that do not have a location in the city;
 - Continue to require a license for businesses located in the city without regard to the threshold (unless the city chooses to exempt these businesses – see in-city business question below);
 - Allow cities the option to require registration with no fee for businesses under the threshold; and
 - Only apply to general business licenses, not regulatory licenses or local taxes.
2. The definition of “engaging in business” includes examples of what constitutes business activities in cities that would subject a business to license requirements, as well as those activities that would not. The model language is adapted from the definition that the 45 cities with local B&O taxes have already adopted for the definition of “engaging in business” in the B&O tax model ordinance.

What are the deadlines for all cities with business licenses to adopt the model?

Cities with a business license must adopt the model by January 1, 2019. However, cities that currently partner with the state's Business Licensing Service (BLS) for business licensing administration have a deadline of October 17, 2018, because they must provide BLS 75-day notice of any changes to their business licenses (including this mandatory change).

Where can I learn more about implementing the threshold?

AWC hosted a webinar to tell you everything you need to know to comply with the mandatory model threshold in August.

[Prepare to streamline your business license](#)

AWC also held a presentation on this topic at its [Annual Conference](#) in June and presented at the WFOA Annual Conference in September.

What happens if we don't enact the threshold by the deadline?

RCW 35.90.090 provides that a city cannot enforce its business license after January 1, 2019, until it has adopted the mandatory threshold.

RCW 35.90.090: “A city that has not complied with the requirements of this section by January 1, 2019, may not enforce its general business licensing requirements on any person until the date that the mandatory provisions of the model ordinance take effect within the city.”

What if my city wants a higher threshold?

Cities can choose to enact a higher threshold. The \$2,000 threshold level per city per year for out-of-city businesses is the minimum level that every city must enact.

What if my city wants to have a threshold that applies to in-city businesses in addition to the out-of-city business threshold?

The \$2,000 threshold level per city per year for out-of-city businesses is mandatory minimum threshold language that every city business license city must adopt, but the law does not impact the city's authority to have exemptions or other thresholds. Cities can choose to enact a separate threshold provision that applies to in-city businesses.

How will my city track compliance with the threshold?

The law does not change the city's authority to enforce business licenses, and the city will continue to use its current enforcement processes to track business license compliance.

Who should my city notify when the model is adopted?

BLS partner cities (by October 17): Send a completed Change Request Form to [BLS](#) notifying them which threshold option your city adopted, with a link to the adopted ordinance.

- [Option 1 form](#) for threshold exemption
- [Option 2 form](#) for no-fee license/registration

All other cities: Email [AWC](#) for our report to the Legislature due January 1, 2019.

How will businesses find out about the changes?

Consider providing information on changes to your business license by adding information to your license renewal letter, sending a letter to your potentially impacted businesses, updating information on your city's website, or presenting to your local chamber.

[Sample letter](#) cities can use to inform business licensees of the changes.

How was the business license threshold developed?

Section 8 of **EHB 2005** required cities to work through the Association of Washington Cities (AWC) to develop a model business license threshold by July 1, 2018 with a focus on determining a threshold for when a license should be required for out-of-city businesses. The bill also required input from the business community.

AWC convened a task force of city business license officials to begin drafting a model license threshold in August 2017. The group met monthly in person or via conference call to research city business license systems and existing options for establishing a model threshold and to review feedback on the proposed model from cities and the business community. AWC sent a survey to cities last fall on preferences for approaching the model threshold and sent a draft for review to cities in March 2018. In April-June 2018, AWC sent drafts of the model to the business community for comment, and the task force met in person with business community representatives.

In response to business community concerns about the level of the threshold, the committee proposed doubling its initial proposed level to \$2,000 per year in the city for businesses without a location in the city. The committee agreed to review the threshold level in four years when the model B&O tax model ordinance will also be due for review and more information on impacts of the license threshold is known. In late June, the committee finalized the model language.

Business license model threshold implementation timeline

July 2017 – EHB 2005 takes effect

August 2017 – First meeting of city workgroup

July 1, 2018 – Deadline for city work group to develop model ordinance with minimum threshold to get a license

August 8, 2018 – AWC webinar on implementing model threshold

October 17, 2018 – Deadline for current BLS partner cities to adopt model minimum threshold and notify DOR of changes to business license for threshold adoption

(Cities on BLS plan but not yet onboarded would have later deadline of January 1, 2019)

January 1, 2019 – Deadline for all other cities to adopt model minimum threshold

How many cities does this impact?

More than 230 cities issue local business licenses.

Where can I find more information on the Business Licensing Service or FileLocal?

Business licensing service: citypartners.dor.wa.gov

FileLocal: filelocal.org

What about the provision of EHB 2005 and the scope of work for the B&O service apportionment task force?

The two-factor formula for B&O tax service apportionment was required by RCW 35.102.130, effective in 2008. The two factors, payroll and service income, have complicated multi-part tests to determine how much of business service revenues should be apportioned to a city.

EHB 2005 created a seven-member task force to make recommendations to simplify two-factor service apportionment by October 2018 with the following members:

- One Department of Revenue, non-voting chair
- Three cities with local B&O taxes
- Three business representatives

The task force has been meeting monthly since August 2017, and the deadline submit a report to the Legislature is October 31, 2018. The city representatives are:

- Chris Bothwell, Lake Forest Park
- Joseph Cunha, Seattle
- Danielle Larson, Tacoma

How did this legislation come about?

During the 2016 legislative session, lawmakers passed [HB 2959](#), establishing a task force to evaluate options to continue local business tax and licensing simplification. On December 30, 2016, the task force released its final report on local tax and licensing simplification with four main recommendations. The task force did not recommend that all cities with a business license be required to participate in the state's Business Licensing Service, nor did it recommend any centralized collection of city B&O tax at the state level. However, some of the items recommended represented a significant compromise on the part of cities.

Where can I find more information on the 2016 task force?

The report included four recommendations related to licensing, establishing a business license threshold, recommending a task force on service income apportionment, and providing for data sharing between DOR and FileLocal. Read the [full report](#).

Contact

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