

TOWN OF FRIDAY HARBOR  
ORDINANCE NO. 1661

An ordinance repealing and replacing Chapter 5.04 of the Friday Harbor Municipal Code to implement the requirements of EHB 2005 (2017) regarding business licenses and related regulations.

WHEREAS, the State of Washington operates a cooperative Business Licensing Service on behalf of local governments in the state as a centralized business license registration and fee collection service for local governments; and

WHEREAS, the Washington State Legislature passed Engrossed House Bill (EHB) 2005, now codified as Chapter 35.90 RCW; and

WHEREAS, Chapter 35.90 RCW provides that any jurisdiction that requires a general business license of any person engaging in business activities must partner with the Washington State Department of Revenue (the "Department") to have such license issued and renewed through the Department's business licensing service; and

WHEREAS, Chapter 35.90 RCW provides that any jurisdiction that requires a general business license of any person engaging in business activities within that jurisdiction to adopt model ordinance language developed by the Association of Washington Cities; and

WHEREAS, said model ordinance includes language to establish a uniform definition of "engaging in business" throughout the cities and towns in Washington State; and

WHEREAS, said model ordinance includes language to establish licensing fee exemptions ("minimum threshold") for certain businesses that do not maintain a place of business or physical presence within the jurisdiction; and

WHEREAS, the Town's current regulations for business licensing as set forth in Chapter 5.04 FHMC will not conform to new requirements after January 1, 2019 and include classifications of certain types of businesses that are no longer relevant for the business licensing program;

WHEREAS, the Town has received guidance from a representative of the Department regarding potential amendments to Chapter 5.04 FHMC, which relates to business licenses and regulations; and

WHEREAS, the Town Council desires to amend Chapter 5.04 FHMC to conform with guidance from the Department and to comply with the legal requirements in Chapter 35.90 RCW.

NOW THEREFORE, be it ordained by the Council of the Town of Friday Harbor, as follows:

SECTION 1. Chapter 5.04 of the Friday Harbor Municipal Code is hereby repealed in its entirety and replaced with the following:

**Chapter 5.04  
BUSINESS LICENSES GENERALLY**

**Sections:**

- 5.04.010 Purpose.
- 5.04.020 Definitions.
- 5.04.030 License requirement.
- 5.04.040 Shoreline location.
- 5.04.050 Outdoor regulations.
- 5.04.060 Basic license fee.
- 5.04.070 Exemptions.
- 5.04.080 Application – Issuance – Denial or revocation.
- 5.04.090 Time for application.
- 5.04.095 Operating without a license.
- 5.04.100 Miscellaneous provisions.
- 5.04.110 Appeal to town council.
- 5.04.120 Violation and enforcement.

**5.04.010 Purpose.**

This chapter is intended to provide information concerning new and existing businesses in the town, to ensure 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 to license for regulation and revenue pursuant to RCW 35.27.370(9).

**5.04.020 Definitions.**

For the purposes of this chapter the terms set out in this section shall have the meanings indicated.

A. "Business" includes all activities, sale of goods, occupations, trades, pursuits, or professions engaged in within the town, in any form whatsoever, whether or not an office/physical location for the business is located within the town, with the object of gain, benefit or advantage, directly or indirectly, to any person, including home occupations, as defined by FHMC 17.08.350 as amended from time to time. This includes business occurring over the water or staged within the public right-of-way. Each business location shall be deemed a separate business.

B. "Engaging in business" or "engage 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 hold themselves out to the public as conducting such a 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.

C. "Event" includes all events within the town of Friday Harbor that include retail sales and are conducted in the public right-of-way with the approval of the town.

D. "Over the water" means business or engaging in business or staging for business over the water under the jurisdiction of the town as defined by Chapter 19.04 FHMC, Shoreline Master Program.

E. "Permanent building" means a building, as defined by the International Building Code, adopted by reference in FHMC 15.04.010 as amended from time to time, which is permanently set upon a foundation and serviced by power, water and sewer utilities.

F. "Person" means an individual, company, corporation, association, receiver, assignee, trustee in bankruptcy, trust, estate, joint venture, club, joint stock company, business trust, society, or group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

G. "Staging" means the process of activity planning, organizing, motivating, and controlling resources within the town. This includes motorized, nonmotorized and over-the-water tour activities.

H. "Business Licensing Service" or "BLS" means the office within the Washington State Department of Revenue providing business licensing services to the town.

#### 5.04.030 License requirement.

Unless otherwise provided in this chapter, no person shall engage in any business within the town, without first having secured a license to do so by submitting an application to the Business Licensing Service and being approved by the town, as provided in this chapter.

Any person engaged in business within the town for a limited period of time may obtain directly from the town a temporary business license valid for a period of 30 days.

#### 5.04.040 Shoreline location.

Except where specifically authorized by issuance of a substantial development permit, no person shall transact business of any sort from a location not entirely within the footprint of a permanent building, or be located on any premises which are wholly or partially within the shorelines of the town, as the term is defined in RCW 90.58.030(2)(d).

#### 5.04.050 Outdoor regulations.

The following requirements shall apply to all outdoor business operations:

A. A receptacle of adequate size shall be provided on the premises for the deposit of waste and refuse;

B. 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

C. Except where specifically authorized by issuance of an event permit, the activities of the business shall not in any way impair or impede the flow of pedestrian and/or vehicle traffic in the area.

**5.04.060 Basic license fee.**

The basic fees for annual and temporary business licenses shall be as follows subject to the following adjustment(s):

A. The basic fee for an annual license shall be \$50.00, provided the license term and respective fee amount may be prorated as necessary to synchronize the license expiration with the expiration of the business license account administered by the Business Licensing Service.

B. The fee for a temporary business license obtained directly from the town shall be \$15.00 per issuance.

**5.04.070 Exemptions.**

A. The provisions of this chapter shall not apply to:

1. The United States or any instrumentality thereof and the state or any municipal subdivision thereof;
2. Occasional or infrequent sale by individuals of used personal property owned by them and not acquired for resale;
3. Minors conducting a business on premises owned or controlled by their parent or guardian, provided no other person is employed by the minor;
4. Fraternal benefit associations or societies as defined in RCW 48.36A.010;
5. Nonprofit religious organizations;
6. Any person who is exempt from payment of such fees by the laws of the United States or the state;
7. Nonprofit associations, clubs, or corporations maintained for the purpose of organized sports, charity, and educational activities, including police and fire department reserve organizations;
8. Deliverers of newspaper periodicals;
9. Public and private schools of education;
10. Farmers/gardeners selling their own unprocessed farm products raised or grown exclusively upon lands owned or occupied by them;
11. Public utility companies;

12. Suppliers or vendors who do not have a place of business in the town that are engaged solely in wholesale selling to licensed retailers;

13. Rentals of real property by property owners that are not transient accommodations as defined in FHMC 17.08.620;

14. Consignee products being sold in or by a licensed retail business.

15. A business located outside the town, with a third party mailing address 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.

B. To the extent set forth in this section, the following persons and businesses shall be exempt from the license 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 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.

C. Any person claiming exemption under this section may be required to supply information or legal citation in support of such exemption. No exemption will be granted if requested supporting data is not supplied.

#### **5.04.080 Application – Issuance – Denial or revocation.**

A. Application. An application for a business license must be submitted to the Business Licensing Service, and must include all required information for the licenses requested as well as all fees due for all licenses, as well as the handling fee required by RCW 19.02.075.

B. Issuance.

1. The town clerk shall review the information from each application and town records to determine that the application is complete and that the application fee has been paid. Upon making such a determination, the financial office shall approve issuance of a license through the Business Licensing Service.

2. 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 operations and/or location meet all other application laws and requirements.

C. Denial. Any application which fails to meet the requirements of subsection B of this section shall be denied within seven days after receipt and the applicant advised in writing, giving the reason therefor. Denial shall be subject to appeal by the applicant to the town council as provided in this chapter.

D. 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. Notice of such revocation shall be mailed certified to the business, and on and after the date thereof any such person who continues to engage in business shall be deemed to be operating without a license and shall be subject to any or all penalties herein provided.

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 location of the business by notifying the Business Licensing Service and complying with the requirements to make such a change. A change of location may require submitting a new application and reapproval by the town, as provided in this chapter, before commencing business at the new location.

3. Operation of a business which is substantially different than originally indicated on the initial application; provided, however, that a licensee may change the business operation by notifying the Business Licensing Service and complying with the requirements to make such a change. A change in the nature of business conducted may require submitting a new application and reapproval by the town, as provided in this chapter, prior to commencing the new business operation.

E. Renewals. The Business Licensing Service will notify a business of the need to renew prior to the license expiration date.

#### **5.04.090 Time for application.**

A. Application for business licenses required by this chapter shall be made as follows:

1. For new businesses, a complete application shall be made sufficiently before the planned date for commencing business to allow the town to review the application;

2. Renewals shall be applied for by the expiration date established by the Business Licensing Service.

B. If the license is not renewed by the expiration of the business license the renewal will incur the late renewal penalty required by RCW 19.02.085. Failure to renew the license within 120 days after expiration will result in cancellation of the license and will require reapplication and approval by the town, as provided in this chapter, in order to continue conducting business in the city. Conducting business in the town without a valid license to do so makes the business subject to all other provisions of this title as an unlicensed business.

#### **5.04.095 Operating without a license.**

A. Any person who engages in or carries on a business without having obtained or renewed a business license when required to do so shall be guilty of a violation of this chapter for each day during which the business is so engaged in or carried on.



B. Any person who fails or refuses to pay a fee required under this chapter, or any part thereof, on or before the date due shall be deemed to be operating a business without having obtained a license to do so.

#### **5.04.100 Miscellaneous provisions.**

A. Licenses shall be personal and nontransferable, and shall be valid until the expiration date established by the Business Licensing Service. Notwithstanding the provisions of FHMC 5.04.090, any person who fails to renew their license by the expiration date may be deemed to be operating without a license.

B. If business is conducted at two or more locations by the same person, a separate license for each place of business shall be required.

C. Where a place of business is changed and the person conducting the business remains the same, the licensee may change the business location as provided in FHMC 5.04.080 D. 2.

D. 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.

E. A person whose application has been denied may correct any deficiency and reapply for a license as provided in this chapter.

F. A coordinating event entity must have or obtain a town of Friday Harbor business license when an event is held on town public roads or ways.

#### **5.04.110 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 the 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 San Juan County superior court.

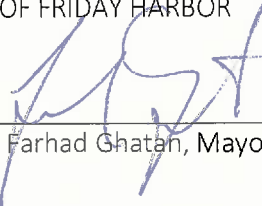
#### **5.04.120 Violation and enforcement.**

In addition to the town's right to collect fee(s) imposed and seek such other legal or equitable relief deemed by the town administrator as proper, violation of this chapter is declared a Class 4 civil infraction, as defined and addressed in Chapter 1.18 FHMC, with each day a violation exists subject to treatment as a separate violation."

SECTION 2. This ordinance shall become effective following publication in accordance with State law.

ADOPTED this 17th day of January 2019.

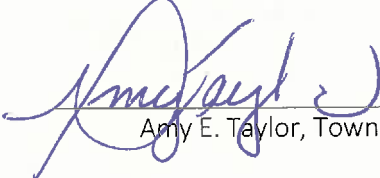
TOWN OF FRIDAY HARBOR



Farhad Ghatan, Mayor

SEAL of the  
Town of Friday Harbor

ATTEST:



Amy E. Taylor, Town Clerk