

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. _____

AN ORDINANCE AMENDING BELLEVUE CITY CODE SECTION (BCC) 4.09.030L, AS PREVIOUSLY AMENDED, MAKING MINOR CHANGES TO THE DEFINITION OF “ENGAGING IN BUSINESS” AS REQUIRED BY STATE LEGISLATION CREATING A MODEL MUNICIPAL BUSINESS LICENSE ORDINANCE.

WHEREAS, in 2017 the Washington State Legislature passed EHB 2005 (RCW 35.90) requiring that cities with business licenses and local business and occupation (B&O) taxes adopt a new B&O model municipal business license ordinance that includes, among other things, minor changes to the definition of “engaging in business” in BCC 4.09.030L;

WHEREAS, all business license cities must adopt the model business ordinance by January 1, 2019; and failure to meet this deadline will result in the city being unable to enforce its business license registration requirements;

WHEREAS, the City Council reasonably believes that the adoption of this Ordinance is in furtherance of the health, safety and welfare of the citizens of and those doing business within the City.

NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Bellevue City Code Section 4.09.030L is hereby amended to read as follows:

L. Engaging in ~~B~~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 minimis business activities in the city without having to ~~register and obtain~~ pay a business license ~~or pay city business and occupation taxes~~ fee. The activities listed in this section are illustrative only and are not intended to narrow the definition of “engaging in business” in subsection ~~(L)(1) of this section~~. 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.

~~q. 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.~~

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 and pay tax:

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 ~~exception~~ **provision** does not apply to any board of director, member or ~~other person~~ **attendee** engaging in business through participation as a director or **such as a member in an official meeting of a governing board 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 ~~temporary special events~~ **trade show or multiple vendor event** ordinances.

~~f. Mere delivery of goods via common carrier~~ **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)~~ **(4)** of this section.

The city expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the ~~tax~~ **license fee** under the law and the constitutions of the United States and the ~~s~~**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.

Section 2. This Ordinance shall take effect and be in force thirty days after its passage and legal publication.

Section 3. The changes made by this ordinance shall be enforced effective January 1, 2019

Passed by the City Council this _____ day of _____, 2018
and signed in authentication of its passage this _____ day of _____,
2018.

(SEAL)

John Chelminiak, Mayor

Approved as to form:

Nicholas Melissinos, Interim City Attorney

Siona D. Windsor, Assistant City Attorney

Attest:

Charmaine Arredondo, City Clerk

Published _____