

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Discussion of Ordinance No. 692 – Small Business License Waiver
DEPARTMENT:	Parks Department
PRESENTED BY:	Mary Reidy, Recreation Superintendent
ACTION:	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing <input checked="" type="checkbox"/> Discussion

PROBLEM/ISSUE STATEMENT:

The intent of proposed Ordinance No. 692 is to streamline the process for small businesses to participate in City and non-profit sponsored community building activities and functions. This ordinance will add two exemptions to the Shoreline Municipal Code (SMC) Section 5.05.040, one for small businesses with limited annual retail sales in the City and one for City contracted instructors with nominal annual revenue.

The first exemption applies to individuals and/or businesses who conduct limited retail sales as part of a City-sponsored event or a recognized 501(c)(3) non-profit organization-sponsored event no more than six (6) days per calendar year and who generate no more than \$5,000 in gross receipts per calendar year within the City. Included in this category may be food vendors at Celebrate Shoreline and vendors at the Shoreline Holiday Crafts Market.

The second exemption will apply to individuals and/or businesses who provide recreational instruction services as part of a City-sponsored event or a recognized 501(c)(3) non-profit organization-sponsored event and who generate no more than \$5,000 in gross receipts per calendar year within the City. Examples might be an instructor who teaches watercolor painting a few times per year or one who is contracted to teach a few cooking classes. This means vendors at City sponsored events, as well as City contracted instructors who operate on a limited basis within the City of Shoreline, will be exempt from the City business license requirement.

The standard fee for a business license is \$40.00 per year. While nominal, this fee may be prohibitive to some individuals and firms seeking to do limited business in Shoreline at City-sponsored or non-profit sponsored events. This ordinance will allow small business operators interested in facilitating 'place making' activities and events in our community to operate in compliance with the SMC without additional financial burden.

RESOURCE/FINANCIAL IMPACT:

Nominal, if any, resource or financial impact is anticipated. The City has not historically been monitoring licenses from individuals and small business that would benefit from this exemption. Therefore, staff does not expect any financial impact.

RECOMMENDATION

No action is required at this time as this item is for discussion purposes only. However, staff recommends that Council adopt Ordinance No. 692 when it is brought back to Council for approval on December 8, 214.

Approved By: City Manager ***DT*** City Attorney ***MK***

DISCUSSION

The intent of proposed Ordinance No. 692 is to streamline the process for small businesses to participate in City and non-profit sponsored community building activities and functions. This ordinance will add two exemptions to the SMC 5.05.040, one for small businesses with limited annual retail sales in the City and one for City contracted instructors with nominal annual revenue.

The first exemption applies to individuals and/or businesses who conduct limited retail sales as part of a City-sponsored event or a recognized 501(c)(3) non-profit organization-sponsored event no more than six (6) days per year and who generate no more than \$5,000 in gross receipts per calendar year within the City. Included in this category may be food vendors at Celebrate Shoreline and vendors at the Holiday Crafts Market.

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The standard fee for a business license is \$40.00 per year. While nominal, this fee may be prohibitive to some individuals and firms seeking to do limited business in Shoreline at City-sponsored or non-profit sponsored events. This ordinance will allow small business operators interested in facilitating 'place making' activities and events in our community to operate in compliance with SMC without additional financial burden.

To date the City has not required a contracted consultant earning less than \$12,000 per year to obtain a City of Shoreline business license. However, SMC 5.05.030 provides no such limitation. Under the terms of SMC 5.05.030, all contracted consultants who are required to register with the Department of Revenue must obtain a Shoreline business license. Per the State of Washington, all businesses must register with the Department of Revenue if they (1) collect a sales tax, or (2) have gross income of \$12,000/year, or (3) are required to pay taxes or fees to the Department of Revenue. Therefore, any individual or firm doing business in Shoreline collecting sales tax or paying taxes or fees to the Department of Revenue must secure a Shoreline business license. This applies to all small businesses such as craft and art show vendors, as well as contracted instructors who teach classes nominally each year for the City.

SMC 5.05.040 provides limited exceptions to this requirement. Current exceptions are:

- A) The performance of governmental or proprietary functions by any instrumentality of the United States, the state of Washington, or any political subdivision thereof.

- B) Businesses or activities for which a regulatory business license or franchise is required by any other chapter or section of the Shoreline Municipal Code as now or hereafter enacted or amended.
- C) The delivery of goods by vehicle to a customer or client by a business where the sale occurred on a business premises outside of the city and the only event occurring within the city is a delivery. (Ord. 543 , 1, 2009)

With adoption of proposed Ordinance No. 692, the following language will be added:

- D) Individuals and/or businesses who conduct limited retail sales as part of a city-sponsored event or a recognized 501(c)(3) non-profit organization-sponsored event no more than six (6) days per year and who generate no more than \$5,000.00 in gross receipts per calendar year within the City.
- E) Individuals and/or businesses who provide recreation instructional services as part of a city-sponsored event or a recognized 501(c)(3) non-profit organization-sponsored event and who generate no more than \$5,000.00 in gross receipts per calendar year within the City.

SMC Chapter 5.05 was enacted on June 22, 2009. This staff report and the staff reports leading up to the adoption of this code section are available at the following links:

May 4, 2009 -

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/Council/Staffreports/2009/stafreport050409-6c.pdf>

June 15, 2009 –

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2009/staffreport061509-6b.pdf>

June 22, 2009 -

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/Council/Staffreports/2009/stafreport062209-9b.pdf>

Variations and colloquy occurring during the adoption process did consider exemptions for individuals and small business. However, in the end, the City Council elected not to enact a small business exemption or to place any income minimums within SMC 5.05.

As drafted, SMC 5.05.030, *Business License Required*, states:

It is unlawful for any person, firm or corporation which is required to register with the State Department of Revenue to engage in any business, occupation or pursuit in the city without first having obtained a business license therefore as provided in this chapter. The business license provided for in this chapter shall be posted in a conspicuous location at the place of the business. Such business license is nontransferable.

RCW 82.32.030 states, in relevant part:

... if any person engages in any business or performs any act upon which a tax is imposed by the preceding chapters, he or she must, under such rules as the department prescribes, apply for and obtain from the department a registration certificate ...

Registration is not required only if all of the following conditions are met:

- Value of products, gross proceeds of sales, or gross income of the business taxable under 82.04 (B&O Tax) is less than \$12,000/year;
- Gross income of the business from all activities taxable under 82.16 (Public Utility Tax) is less than \$12,000/year;
- Not required to collect or pay to the Dept. of Revenue any other tax or fee;
AND
- Not otherwise required to obtain a license subject to master application procedure in 19.02.

All conditions must be satisfied before the person is exempt. While many small businesses could assert they don't gross \$12,000/year, the statute is clear that if a business is required to collect/pay tax then it is required to register. WAC 458-20, the Washington State Department of Revenue's rules, reiterate the four items allowing for exemption and that all of the conditions must be met (see WAC 458-20-101(2)(a)).

For craft and community show vendors, the trigger under RCW 82.32.030(2) would be the collection of retail sales tax. RCW 82.02 imposes a retail sales tax on any sale that meets the definition of retail sale in RCW 82.04.050. Retail sale is very broad and covers every sale of tangible personal property irrespective of the nature of the business. Thus, items found at arts/crafts shows or festivals would fall under this category unless they are selling something that is exempt from sales tax.

The only exemption in RCW 82.02 relates to "casual or isolated sales" which are exempt from both B&O tax and retail sales tax. However, a casual or isolated sale is defined as a sale made by a person who is not engaged in the business of selling the type of property involved (RCW 82.02.040). Examples of this exemption are garage sales or selling a used car or furniture on Craigslist, and not somebody who is making a craft or purchasing wholesale items for sale at a craft/community shows within the region.

There is no charge for the Department of Revenue to issue a tax registration; there is a \$19 fee for filing the business application via the combined system which the City currently uses. Currently, a City business license is \$40 per year. So, if a small business must register with the State, the financial impact to the business is initially about \$60 in fees with an annual renewal with the City of \$40.

RESOURCE/FINANCIAL IMPACT

Nominal, if any, resource or financial impact is anticipated. The City has not historically been monitoring licenses from individuals and small business that would benefit from this exemption. Therefore, staff does not expect any financial impact.

RECOMMENDATION

No action is required at this time as this item is for discussion purposes only. However, staff recommends that Council adopt Ordinance No. 692 when it is brought back to Council for approval on December 8, 214.

ATTACHMENTS

Attachment A: Proposed Ordinance No. 692

ORDINANCE NO. 692

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON
AMENDING SHORELINE MUNICIPAL CODE, CHAPTER 5.05
BUSINESS LICENSES, TO ALLOW FOR A LIMITED EXCEPTION TO
LICENSING REQUIREMENTS FOR SMALL BUSINESS AT CITY-
SPONSORED OR NON-PROFIT SPONSORED EVENTS.**

WHEREAS, the City of Shoreline is a non-charter optional municipal code city as provided in Title 35A RCW, incorporated under the laws of the state of Washington (hereinafter referred to as “City”); and

WHEREAS, the City provides for community programs, such as recreational classes, for which the City contracts with individuals or small business to provide; and

WHEREAS, the City along with non-profit organizations routinely sponsor shows, festivals, or other similar types of events (hereinafter referred to as the “Events”) within the City limits which provide an opportunity for small businesses to sell goods and/or services at retail to those attending or provide for recreation instruction as part of the City’s programs; and

WHEREAS, Shoreline Municipal Code (SMC), Chapter 5.05, requires any person, firm, or corporation which is required to register with the Washington State Department of Revenue to engage in any business, occupation, or pursuit in the City to obtain a business license; and

WHEREAS, the City has set forth an appropriate fee in SMC 3.01.200 for a business license and SMC 5.05.040 provides for limited exceptions to this fee but does not address small business of the types providing recreational services and/or retail sales; and

WHEREAS, to require businesses seeking to contract with the City for recreational services or to participate in Events, most of which are small businesses, to secure a city business license and pay the associated fee would provide an economic burden on those businesses; and

WHEREAS, allowing for an exemption of the city business license fee would encourage place-making by allowing small businesses to participate and engage with the community without the burden of the license fee; and

WHEREAS, the economic burden imposed on these small businesses by requiring them to pay a city business license fee could result in a decision by these businesses not to contract with the City or to participate in Events, with the loss of small business participation adversely impacting recreational services and the Events, potentially resulting in their cancellation; and

WHEREAS, the loss of these types of services and Events would be adverse to the best interests of the citizens of Shoreline and the community they have built; and

WHEREAS, the City Council has determined it to be in the best interests of the citizens of Shoreline and the community to ensure these types of Events continued and that a diverse variety of businesses are encouraged to participated, including small business;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Amendment to Shoreline Municipal Code. Shoreline Municipal Code, Title 5, Section 5.05 shall be amended as follows providing for an exemption from business license regulations:

SMC 5.05.040 – Exception – Applicability of Provisions

This chapter shall not be applicable to:

A. The performance of governmental or proprietary functions by any instrumentality of the United States, the state of Washington, or any political subdivision thereof.

B. Businesses or activities for which a regulatory business license or franchise is required by any other chapter or section of the Shoreline Municipal Code as now or hereafter enacted or amended.

C. The delivery of goods by vehicle to a customer or client by a business where the sale occurred on a business premises outside of the city and the only event occurring within the city is a delivery.

D. Individuals and/or businesses who conduct limited retail sales as part of a city-sponsored event or a recognized 501(c)(3) non-profit organization-sponsored event no more than six (6) days per year and who generate no more than \$5,000.00 in gross receipts per calendar year within the City.

E. Individuals and/or businesses who provide recreation instructional services as part of a city-sponsored event or a recognized 501(c)(3) non-profit organization-sponsored event and who generate no more than \$5,000.00 in gross receipts per calendar year within the City.

Section 2. Severability. If any section, sentence, clause, or phrase of this ordinance should 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 3. Publication and Effective Date. A summary of this Ordinance consisting of the title shall be published in the official newspaper. This Ordinance shall take effect five days after publication.

PASSED BY THE CITY COUNCIL ON DECEMBER 8, 2014.

Mayor Shari Winstead

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik-Smith
City Clerk

Margaret King
City Attorney

Date of Publication: , 2014
Effective Date: , 2014