

ORDINANCE NO. 666

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO GENERAL BUSINESS LICENSING, DESCRIBING THE PROCESS FOR BUSINESS LICENSING APPLICATION, REVIEW, APPROVAL, AND APPEALS, SETTING FEES FOR INITIAL APPLICATION AND RENEWAL, DEFINING VIOLATIONS AND PROVIDING PENALTIES; AMENDING GIG HARBOR MUNICIPAL CODE TITLE 5 TO ADD A CHAPTER 5.01; AND REPEALING GHMC SECTIONS 3.16.030; 3.16.031; 3.16.040; AND 3.16.080; AND REPEALING GHMC SECTION 5.12 - MERCHANT PATROLMEN PURSUANT TO RCW 18.170.140.

WHEREAS, the City of Gig Harbor has inadequate guidelines for the regulation and licensing of business and occupations, and

WHEREAS, it is necessary to establish these guidelines for the purpose of insuring adherence to municipal regulations, and

WHEREAS, in order to insure uniformity in licensing, and to be more administratively efficient, these guidelines will appear in whole under Title 5 Business and Occupation Licenses and Regulations rather than under Title 3 Chapter 3.16 Business and Occupation Tax; and

WHEREAS, the State has preempted the licensing of Security Guards and Merchant Patrolmen pursuant to RCW 18.170.140, it is necessary to repeal Chapter 5.12 of the Gig Harbor Municipal Code;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO ORDAIN AS

FOLLOWS:

Section 1. Chapter 5.01 of the Gig Harbor Municipal Code is hereby amended to read as follows:

Chapter 5.01

PURPOSE AND POLICY

Sections:

- 5.01.010 Definitions.
- 5.01.020 Requirements.
- 5.01.030 Exemptions.
- 5.01.040 Transferability.
- 5.01.050 Disclaimer.
- 5.01.060 Prohibited Use.
- 5.01.070 General qualifications.
- 5.01.080 Application procedure.
- 5.01.090 Renewal.
- 5.01.100 Businesses outside city limits.
- 5.01.120 Approval or denial.
- 5.01.130 Suspension or Revocation.
- 5.01.140 Exercise of power.
- 5.01.150 Inspections - Right of Entry.
- 5.01.160 Notice and Order.
- 5.01.170 Civil Penalty.
- 5.01.180 Criminal Penalties.
- 5.01.190 Additional Relief.

5.01.010 Definitions. For the purposes of this Chapter, the following terms, phrases, words,

and their derivations shall have the meanings given herein.

- A) "Business" included all activities, occupations, pursuits or professions located and/or engaged in within the city with the object of gain, benefit or advantage to the licensee or to another person or class, directly or indirectly, whether part-time or full-time. Each business location shall be deemed a separate business. Utility companies are defined as businesses.
- B) "Person" means any individual, firm, partnership, company, corporation, association, receiver, assignee, trust, estate, joint venture, group, joint stock company, business trust, society or any group of individuals acting as a unit.
- C) "Licensee" means any business granted a business license by the city.
- D) "Premises" includes all lands, structures and places, and also any personal property which is either affixed to or is otherwise used in connection with any such business conducted on such premises.
- E) "City license officer" is the City Administrator or his/her designee.

5.01.020 Requirements. It is unlawful for any person, firm, or corporation to engage in or carry on within the city any business, profession, trade or occupation designated in this chapter without first having obtained from the city a license to do so. All licenses issued pursuant to the provisions of this ordinance shall be posted in a prominent location at the premises where the license business, profession, trade or occupation is carried on. In addition to the business license other permits or licenses may be required for certain businesses.

5.01.030 Exemptions. All businesses operated not-for-profit shall be exempt from paying a business license fee upon application and satisfactory proof to the City license officer of said not-for-profit status.

5.01.040 Licenses not transferable. No license issued under the provisions of this chapter shall be transferable or assignable. When a business changes ownership, or upon substantial change in the type of business operated, a new business license shall be required.

5.01.050 Disclaimer of city liability. Issuance of a license pursuant to this chapter does not constitute the creation of a duty by the city to indemnify the licensee for any wrongful acts against the public, or to guarantee the quality of goods, services or expertise of a licensee. The issuance of a license does not shift responsibility from the licensee to the city for proper training, conduct or equipment of the licensee or his agents, employees or representatives, even if specific regulations require standards of training, conduct or inspection.

5.01.060 Prohibited use. A license hereunder shall not be issued to any person who uses or occupies or proposes to use or occupy any real property or otherwise conducts or proposes to conduct any business in violation of the provisions of any ordinance of the City of Gig Harbor or of the statutes of the State of Washington. The granting of a business license shall in no way be construed as permission or acquiescence in a prohibited activity or other violation of the law.

5.01.070 General qualifications of licensees. No license shall be issued, nor shall any license be renewed, pursuant to the provisions of this chapter to:

- A) An applicant who is not 18 years of age at the time of the application, unless he shall obtain the written consent of said applicant's parent or guardian to make said application, together with a covenant on behalf of said parent or guardian that he or she will be responsible for a guarantee of performance of the minor making application;
- B) An applicant who has had a similar license revoked or suspended, pursuant to Section 5.01.130, or its predecessor;

- C) An applicant who shall not first comply with the general laws of the state;
- D) An applicant who seeks such a license in order to practice some illegal act or some act injurious to the public health or safety;
- E) Any person who is not qualified under any specific provision of this title for any particular license for which application is made.

Any person, including city officials, may submit complaints or objections to the City license officer regarding the application for any license, and the city license officer is additionally authorized to request and receive information from all city departments as will tend to aid him in determining whether to issue or deny the license. Such information shall be confidential unless a hearing is requested on the application, or if the applicant shall request the information in writing. All information, complaints or objections shall be investigated and considered by the City license officer prior to issuing, denying or renewing any license.

5.01.080 Application Procedure.

- A) The City license officer is authorized to prepare a schedule of fees for general business licenses issued, and when approved by the city council by resolution, such schedule shall govern the amount of the license fee.
- B) Application for a business license shall be made at the office of the City license officer on a form to be furnished for that purpose and shall be accompanied by the proper fee. Each such application shall be signed by the person, or other authorized representative of the firm or corporation to be licensed. If the application is denied, the fee shall be returned to the applicant.
- C) No license shall be issued until the application has been fully completed and all applicable ordinances have been fully complied with. In addition, any business requiring

a state or federal license shall obtain said licenses and provide the city with proof of their issuance prior to the issuance of a city business license or any renewal thereof

- D) Business licenses shall be granted annually, and due July 1st. If a new business application is made within six (6) months of the date fixed for expiration, the fee shall be one-half the annual fee.

5.01.090 Renewal. Applications for renewal of business licenses must be completed and returned to the City license officer, together with the renewal fee, prior to July 1st of each year. The City license officer shall send a renewal notice to each licensee at the last address provided to the city. Failure of the licensee to receive any such form shall not excuse the licensee from making application for and securing the required renewal license, or from payment of the license fee when and as due hereunder. A business license shall expire on July 1st of the year following issuance, if not renewed as described herein. A penalty of \$5.00 per month, which shall not be prorated, shall be assessed on any delinquent license renewal which has not been paid on or before August 1st of any year.

5.01.100 Licenses for businesses located outside City limits. Businesses located outside the city which furnish or perform services within the city limits, and which conduct business during more than thirty (30) calendar days within a calendar year, shall hereafter apply and pay for a business license.

5.01.120 License approval or denial. The City license officer shall collect all business license fees and shall issue business licenses to all persons who submit an application, pay the fee and are qualified under the requirements of this chapter and shall:

- A) Submit all applications to the planning department, building division, fire marshal, public works department, utility department and police department for their endorsements as to compliance by applicant with all city regulations which they have the duty of enforcing.

- B) Upon approval of the application, the license shall be issued and delivered to the applicant.
- C) No business license shall issue if any of the conditions listed in Section 5.01.130(A)(1) through (6) exist or apply to the license applicant or premises proposed to be licensed.
- D) The City license officer shall notify the applicant in writing by certified mail of the denial of the application and the grounds therefore. Within 10 calendar days after receipt of the city's notification of application denial, the applicant may request an appeal and hearing before the hearing examiner, by filing a written notice of appeal and paying the hearing examiner filing fee. The City Licensing Officer shall notify the applicant by mail of the time and place of the hearing. If request for hearing is not received within the time specified, the license officer's decision shall be final.
- E) If an application for a business license is denied and the applicant has filed a timely appeal of such denial, the applicant shall not conduct any business for which a business license was denied, during the pendency of the appeal.

5.01.130 Suspension or Revocation procedure.

- A) In addition to the other penalties provided herein or by law, any business license issued under the provisions of this chapter may be revoked or suspended, should any or all of the following conditions apply:
 - 1. The license was procured by fraud, false representation, or material omission of fact; or
 - 2. The licensee or any of its employees, officers, agents or servants, while acting within the scope of their employment, violates or fails to comply with any of

the provisions of this chapter; or

3. The licensee's continued conduct of the business for which the license was issued has or will result in a danger to the public health, safety or welfare, or the violation of any federal or state law or any ordinance or regulation of the city; or
4. The licensee, or any of its employees, officers, agents or servants has been convicted in any court of violating any federal, state or city criminal statute or ordinance upon the business premises stated in the license; or
5. The place of business does not conform to city ordinance; or
6. The license is being used for a purpose different from that for which it was issued.

B) If the City license officer has reasonable cause to believe that any of the conditions listed in subsection A(1) through A(6) above have occurred or exist with respect to any existing business license, licensee or licensed premises, the City license officer shall send a notice to the licensee of a hearing to be held before the City Council, for the purpose of determining whether these conditions have occurred, and whether a revocation or suspension hearing is warranted under the circumstances. Such notice shall state the conditions listed in subsection A(1) through A(6) that the City license officer has reason to believe exist or have occurred, and shall also contain the date and time of the City Council hearing at which the issue will be considered. Notices to the licensee of the hearing shall be given by certified mail at least fourteen days prior to the date of the hearing. At the hearing, the licensee shall have an opportunity to present evidence and testify in opposition to any evidence or information submitted or presented by the City license officer.

C) If the Council decides at the pre-determination hearing described in subsection B above that the conditions listed in subsection A(1) through A(6) have occurred or exist with respect to a licensee, its employees, officers, agents or premises, the Council may direct the City license officer to send notice to the licensee of a hearing to be held on

the issue whether the business licensee of the licensee or licensed premises shall be revoked or suspended. Said notice shall state the intention of the city to revoke or suspend said license, the reason for such suspension or revocation, and the date and time of the meeting of the city council at which such will be considered. The licensee shall have the right to appear at said meeting to present evidence and testify in opposition to such revocation or suspension. Such notice shall be given by certified mail to the licensee at least fourteen days prior to the date of said hearing.

- D) If the Council decides at the pre-determination hearing described in subsection B above that the conditions listed in A(1) through A(6) above have occurred or exist with respect to a licensee, its employees, officers, agents or premises, the Council may, as an alternative to setting a date for a revocation or suspension hearing, request that the City license officer address the conditions through the enforcement procedures set forth in Section 5.01.150 through 5.01.190 of this chapter.
- E) Upon revocation of any license as provided in this chapter, no portion of the license fee shall be returned to the licensee.
- F) The city council's decision on such business license shall represent the final action by the city, unless an appeal is made to the Superior Court of Pierce County, within 10 working days of such decision.
- G) It is unlawful for any person whose license has been revoked or suspended to continue operation of the business enterprise, or to keep the license issued to him/her in his/her possession and control, and the same shall immediately be surrendered to the City license officer. When revoked, the license shall be canceled, and when suspended, the City license officer shall retain it during the period of suspension.

5.01.140 Exercise of Power. This ordinance shall be deemed an exercise of the power of the city to license for revenue and regulation, and nothing in this ordinance shall be construed

to repeal or affect any other ordinance of the city which purports to regulate some business or activity pursuant to the general police power of the city, notwithstanding the fact that such ordinance may or might contain provisions relating to the licensing of such activity.

5.01.150 Inspections - Right of Entry.

- A) The City license officer is authorized to make such inspections and take such action as may be required to enforce the provisions of this ordinance.
- B) Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the City license officer has reasonable cause to believe that a licensee is operating in violation of this ordinance, the license officer may enter the licensee's place of business at all reasonable times to inspect the same or perform any duty imposed on the license officer by this ordinance, provided that:
 - 1. If the place of business is occupied, the license officer shall first present proper credentials and demand entry; and
 - 2. If the place of business is unoccupied, the license officer shall first make a reasonable effort to locate the licensee or other persons having charge or control of the place of business and demand entry; and
 - 3. If entry is refused, the license officer shall have recourse to the remedies provided by law to secure entry.

5.01.160 Notice and Order.

- A) Issuance. The City license officer shall issue a notice and order, directed to the licensee or owner of the premises determined to be in violation of any of the terms

and provisions of this ordinance. The notice and order shall contain:

1. The street address, when available, and a legal description sufficient for identification of the premises upon which the violation has occurred;
2. A statement that the license officer has found the conduct of the licensee or condition of the premises to be in violation of this ordinance, with a brief and concise description of the conditions found to render such licensee or premises in violation;
3. A statement of any action required to be taken to comply with this ordinance, as determined by the City license officer. If the license officer has determined to assess a civil penalty, the order shall require that the penalty shall be paid within a time certain from the date of order;
4. A statement of any action taken by the City license officer;
5. Statements advising (a) that the person may appeal from the notice and order to the City Hearing Examiner, provided that the appeal is made in writing as provided in this ordinance and filed with the City license officer within fifteen (15) days from the date of service of such notice and order; and (b) the failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.

B) Method of Service. The notice and order shall be served upon the licensee either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to such licensee at his/her address as it appears on the most recently issued business license. The failure of any person to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be provided shall be effective on

the date of mailing.

- C) Appeals. Appeals of any notice and order and any penalty imposed hereunder may be brought by any person entitled to service of the notice and order within fifteen (15) calendar days after service of the notice and order. Such requests for an appeal and hearing shall be filed with the City license officer, and be accompanied by the hearing examiner filing fee.

The City license officer shall notify the applicant by mail of the time and place of the hearing before the Hearing Examiner.

5.01.170 Civil Penalty.

- A) In addition to or as an alternative to any other penalty provided herein or by law, civil penalties shall be assessed against any licensee or person who violates any provision of this ordinance as follows:
1. Operation of Business Without a License. The penalty for operation of a business without a license shall be assessed by the city license officer in an amount not to exceed five hundred dollars (\$500.00). This penalty shall not apply to business enterprises failing to pay the license renewal fee as set forth in subsection 2 below.
 2. Operation of Business After License Expiration. Failure to pay the license fee within thirty (30) days after the date of expiration shall subject the licensee to the penalty set forth in section 5.01.090 to reinstate the license, which shall be assessed in addition to the required license fee.
 3. Violations of the Business Licenses Ordinance. The penalty for violations of this ordinance shall be assessed by the city license officer in an amount not to exceed five hundred dollars (\$500.00).

- B) The City license officer may vary the amount of the penalty to be assessed in subsections A(1) and A(3) above, upon consideration of the appropriateness of the penalty to the size of the business of the violator; the gravity of the violation; the number of the past and present violations committed and the good faith of the violator in attempting to achieve compliance after notification of the violation.

5.01.180 Criminal Penalties. Any person violating or failing to comply with any of the provisions of this business license ordinance and who has had a civil penalty entered against him or her pursuant to Section 5.01.170 within the past five years, shall be subject to criminal prosecution and upon conviction of a subsequent violation, shall be fined in a sum not exceeding one thousand dollars or by imprisonment for a period not to exceed ninety days. Each day of noncompliance with any of the provisions of this ordinance shall constitute a separate offense.

5.01.190 Additional Relief. The City license officer may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of this ordinance when civil or criminal penalties are inadequate to effect compliance.

Section 2. Gig Harbor Municipal Code sections 3.16.030, 3.16.031, 3.16.040 and 3.16.080 are hereby repealed.

Section 3. Chapter 5.12 of Gig Harbor Municipal Code has been repealed in its entirety.

Section 4 - Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this ordinance.

Section 5 - Effective Date. This ordinance shall take effect and shall be in full force and effect five (5) days after its passage, approval and publication as required by law.

PASSED by the Council of the City of Gig Harbor, this 14th day of March, 1994.

APPROVED:

Gretchen A. Wilbert, Mayor

ATTEST:

MARK E. HOPPEN

City Administrator/Clerk

Filed with City Clerk: 2/2/94

Passed by City Council: 3/15/94

Date Published: 3/30/94

Date Effective: 4/4/94