

## Chapter 5.36 - UTILITIES AND FRANCHISES

**Sections:**

## 5.36.010 - Definitions.

For the purposes of this chapter, except when otherwise plainly declared or clearly apparent from the context the following definitions shall apply:

- A. "Person" includes individuals, firms, co-partnerships, private and municipal corporations, public utility districts, and other associations of persons whether acting by themselves or by servants, agents or employees.
- B. "Gross income" means the value proceeding or accruing from the sale of tangible property or service and receipts, including all sums earned or charges whether received or not, by reason of the investment of capital in the business engaged in, including rentals, royalties, fees or other emoluments, however designated (excluding receipts or proceeds from the use or sale of real property or an interest therein, and proceeds from the sale of notes, bonds, mortgages, or other evidence of indebtedness or stocks and the like) and without any deduction on account of the property sold, the costs of the materials used, labor costs, interest or discount paid, or any expenses whatsoever, and without any deduction on account of losses.
- C. "Taxpayer" includes any person, firm or private and municipal corporation liable to pay the tax under this chapter.

(Ord. 2301 § 2 (part), 1993)

(Ord. No. 2928, § 2, 7-21-2014)

## 5.36.020 - Fee payment—Required.

No person, association, firm or corporation shall engage in or carry on any business, occupation, pursuit or privilege for which a tax is imposed by this chapter without first having made payment of the tax imposed in this chapter.

(Ord. 2301 § 2 (part), 1993)

## 5.36.030 - Term—Late penalty.

- A. All licenses shall be for the calendar year and shall expire at the end of the year.
- B. The license fee or tax imposed in this chapter shall be due on the last day of each and every month and shall be paid on or before the twenty-fifth day of the following month and if not so paid a penalty of ten percent shall be added for such delinquency.

(Ord. 2301 § 2 (part), 1993)

## 5.36.040 - Fees—In general.

In compliance with utility tax limitation provisions of Section 2, 3 and 4 of Engrossed Senate Bill No. 4972, Chapter 49, Laws of 1982, First Extraordinary Session, effective April 20, 1982, there is levied upon, and there shall be collected from, every person, firm or corporation engaged in carrying on the following businesses for hire or for sale of a commodity or a service within or partly within the corporate limits of the city, a tax for the privilege of so doing business as hereinafter defined, to wit.

(Ord. 2301 § 2 (part), 1993)

#### 5.36.080 - Fees—Natural gas.

There is levied a tax on the sale, delivery, distribution or furnishing of natural gas for domestic, business or industrial consumption and for the privilege of carrying on said business, such tax to be equal to six percent of the total gross income from such business in the city; provided, however, that there shall not be any tax levied for installation charges of gas energy units. The current four percent tax will be increased to six percent by phasing in as follows:

	Total Utility Tax (%)
June 1, 2004	4.67
January 1, 2005	5.34
January 1, 2006	6.00

(Ord. 2659, 2004: Ord. 2301 § 2 (part), 1993)

#### 5.36.140 - Deductions.

In computing tax, there shall be deducted from gross operating revenues the following items:

- A. The amount of credit losses and uncollectibles actually sustained by the taxpayer;
- B. Amounts derived from transactions in interstate or foreign commerce;
- C. [Reserved.]

(Ord. 2301 § 2 (part), 1993)

(Ord. No. 2834, § 1, 8-16-2010)

#### 5.36.150 - Application procedure.

Each person conducting any of the businesses mentioned in Sections 5.36.050 through 5.36.130 shall, within ten days after this chapter takes effect and immediately thereafter on or before January 1st of each ensuing year, make a written statement to the city clerk-treasurer stating his or her name, address and the kind of business to be conducted and estimating as nearly as possible the gross amount of business and a statement that he or she will pay such fee or tax in accordance with this chapter at the time specified in this chapter. The statement shall be signed by the person making it or by the local manager or agent; the signor shall swear or affirm to the truthfulness of the statement pursuant to RCW Chapter 5.28 or the statement shall be notarized.

(Ord. 2301 § 2 (part), 1993)

#### 5.36.160 - Records—Required.

It is the duty of each taxpayer to keep accurate book accounts of all moneys received which shall at all times be open to inspection by the city clerk-treasurer.

(Ord. 2301 § 2 (part), 1993)

5.36.170 - Delinquent tax shall become property lien.

Any tax imposed and not paid when due shall become a lien upon any of the property of such person.

(Ord. 2301 § 2 (part), 1993)

5.36.180 - Collection by suit.

The city may collect a tax by suit, and in such event the person failing to pay shall, in addition to the costs and disbursements of such suit and penalties, pay a reasonable attorney's fee to be assessed by the court.

(Ord. 2301 § 2 (part), 1993)

5.36.190 - Disposition of collections.

All fees or taxes collected under this chapter shall be paid to the city clerk-treasurer and placed in the general fund of the city.

(Ord. 2301 § 2 (part), 1993)

5.36.200 - Penalty—Violation.

Any person violating or failing to comply with any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars or by imprisonment for a term not to exceed ninety days, or by both such fine and imprisonment.

(Ord. 2301 § 2 (part), 1993)

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## Chapter 6.06 OCCUPATION TAX AND LICENSE

Sections:

- [6.06.010](#) Exercise of revenue powers.
- [6.06.020](#) Definitions.
- [6.06.030](#) Occupation license – Required.
- [6.06.040](#) License tax year.
- [6.06.050](#) Occupations subject to tax – Amounts.
- [6.06.060](#) Deductions and exemptions.
- [6.06.070](#) Filing and payment.
- [6.06.080](#) Payment by fiscal year.
- [6.06.090](#) Sale or transfer of business – Liability of transferee.
- [6.06.100](#) Bookkeeping required – Confidentiality of returns.
- [6.06.110](#) Failure to file or report accurately subpoena power – Investigation.
- [6.06.120](#) Overpayments and underpayments.
- [6.06.130](#) Failure to apply for license – Failure to file or pay tax.
- [6.06.140](#) Appeals to council.
- [6.06.150](#) Finance director authorized to promulgate rules.
- [6.06.160](#) False returns – Evasion – Obstruction.

### **6.06.010 Exercise of revenue powers.**

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The provisions of this chapter shall be deemed an exercise of the power of the city to license for revenue. [Code 1980 at § 15.04.010].

### **6.06.020 Definitions.**

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In construing the provisions of this chapter, save when otherwise plainly or clearly apparent from the context, the following definitions shall be applied:

“Cellular telephone service” is a two-way voice and data telephone/telecommunications system based in whole or substantially in part on wireless radio communications and which is not subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service. The definition of “cellular mobile service” includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology which accomplishes a purpose similar to cellular mobile service.

“Competitive telephone service” means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus which is of a type which can be provided by persons that are not subject to regulation as telephone companies under RCW Title [80](#) and for which a separate charge is made. Transmission of communication through cellular telephones is classified as “telephone business” rather than “competitive telephone service.”

“Gross income” means the value proceeding or accruing from the sale of tangible property or service, and receipts, including all sums earned or charged, whether received or not, by reason of the investment of capital in the business engaged in, including rentals, royalties, fees or other emoluments, however designated, excluding receipts or proceeds from the use or sale of real property or any interest therein, and proceeds from the sale of notes, bonds, mortgages, or other evidences of indebtedness, or stocks and the like, and without any deductions on account of the cost of the property sold, the cost of materials used, labor costs, interest or discount paid, or any expense whatsoever, and without any deduction on account of losses.

“Tax year” or “taxable year” means the calendar year commencing January 1st and ending on the last day of December or, in lieu thereof, the taxpayer’s fiscal year when permission is obtained from the finance director to use the same as the tax period.

“Taxpayer” means any person liable to the license fee or tax imposed by this chapter.

“Telephone business” means the business of providing access to a local telephone network, local telephone network switching service, toll service, cellular telephone service, or coin telephone services, or providing telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. It includes cooperative or farmer line telephone companies or associations operating an exchange. “Telephone business” does not include the providing of competitive telephone service, the providing of cable television service, nor the providing of broadcast services by radio or television stations. [Ord. [10611](#) § 1, 1995; Ord. 9040 § 2, 1981; Code 1980 at § 15.04.020].

#### **6.06.030 Occupation license – Required.**

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A. No person shall engage in or carry on any business, occupation, pursuit, or privilege for which a license fee or tax is imposed by this chapter without having first obtained, and being the holder of, a valid and subsisting license so to do, to be known as an occupation license. Such license is in addition to the general business registration required by Chapter [6.05](#) BMC.

B. Any person engaging in or carrying on more than one such business, occupation, pursuit, or privilege shall pay the license tax so imposed upon each of the same.

C. Any taxpayer who engages in or carries on any business subject to tax under this chapter without having his occupation license so to do, shall be guilty of a violation of this chapter for each day during which the business is so engaged in or carried on, and any taxpayer who fails or refuses to pay the license fee or tax on any part thereof on or before the due date shall be deemed to be operating without having his license so to do. [Ord. [2012-10-047](#) § 6. Code 1980 at § 15.04.030].

#### **6.06.040 License tax year.**

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A. All occupation licenses shall be for the tax year for which issued and shall expire at the end of such tax year.

B. Such occupation license and the fee or tax therefor imposed by this chapter shall be for the year commencing January 1st and ending on the last day of December of each year; provided, however, that if the taxpayer in transacting his business keeps the books reflecting the same for a fiscal year not based on the calendar year, he may, with the assent of the finance director, obtain his license for the period of his current fiscal year which shares his tax year, and pay the fee or tax computed upon his gross income made during his fiscal year (next preceding his tax year) covering his accounting period as shown by the method of keeping the books of the business. [Code 1980 at § 15.04.040].

### **6.06.050 Occupations subject to tax – Amounts.**

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There are levied and shall be collected annual license fees or occupation taxes against the persons on account of the business activities, and in the amounts to be determined by the application of the rates against gross income, as follows:

A. Telephone Business. Upon every person engaged in or carrying on a telephone business, there shall be levied a tax equal to the following percentages:

1. 7.614 percent in 1987;
2. 7.345 percent in 1988;
3. 7.076 percent in 1989;
4. 6.807 percent in 1990;
5. 6.538 percent in 1991;
6. 6.269 percent in 1992;
7. 6.000 percent in 1993 and each year thereafter of the total gross operating revenues, derived from the operation of such businesses within the city; provided, however, that the minimum fee shall not be less than \$100.00 per tax year. Gross operating revenue for this purpose shall not include charges which are passed on to the subscribers by a telephone company pursuant to tariffs required by the regulatory order to compensate for the cost to the company of the tax imposed by this chapter.

B. Telegraph Business. Upon every person engaged in or carrying on the telegraph business, a fee or tax equal to three and one-half percent of the total gross income from such business in the city during this fiscal year next preceding the tax year for which the license is required; provided, however, that the minimum fee or tax shall not be less than \$100.00 per tax year.

C. Gas Suppliers.

1. Upon every person engaged in or carrying on the business of selling or furnishing gas for hire, a fee or tax equal to the following percentages:
  - a. 6.6 percent in 1985;
  - b. 6.5 percent in 1986;

- c. 6.4 percent in 1987;
- d. 6.3 percent in 1988;
- e. 6.2 percent in 1989;
- f. 6.1 percent in 1990;
- g. 6.0 percent in 1991 and each year thereafter of the total gross income from such business conducted within the city with a minimum fee or tax of \$100.00 per tax year; provided, however, that a fee or tax of one percent shall apply to that portion of gross income derived from a single use site in excess of \$250,000 per month. Suppliers claiming the reduced rate for volume sales to single users shall supplement monthly returns required by BMC [6.06.070](#)(B) as required by the finance director.

2. a. In accordance with applicable state law, the tax of this subsection (C) of this section shall apply to every person for the privilege of using natural gas or manufactured gas in the city as a consumer. The rate of tax herein shall be applied to the value of the article used by the taxpayer for domestic, business, or industrial consumption.

b. The "value of the article used" shall have the meaning set forth in RCW [82.12.010](#)(1) (as from time to time amended), and shall not include any amounts that are paid for the hire or use of a natural gas business in transporting the gas which are subject to and do pay the tax imposed by subsection (C)(1) of this section.

c. There shall be a credit against the tax levied under subsection (C)(1) of this section in an amount equal to any tax paid by:

i. The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to this section by another state with respect to the gas for which a credit is sought; or

ii. The person consuming the gas upon which a use tax similar to the tax imposed by this subsection was paid to another state with respect to the gas for which a credit is sought.

d. The use tax hereby imposed shall be paid by the consumer. The administration and collection of the tax hereby imposed shall be by the Washington State Department of Revenue pursuant to RCW [82.14.050](#).

D. Upon every person engaged in or carrying on the business of selling or furnishing electric light and power, a fee or tax equal to the following percentages:

- 1. 6.6 percent in 1985;
- 2. 6.5 percent in 1986;
- 3. 6.4 percent in 1987;
- 4. 6.3 percent in 1988;

5. 6.2 percent in 1989;

6. 6.1 percent in 1990;

7. 6.0 percent in 1991 and thereafter of the total gross income from such business in the city; provided, however, that the minimum fee or tax shall not be less than \$100.00 per tax year; and provided further, that this tax shall not apply to persons or entities selling electric power to a utility otherwise taxed under this subsection (D) which ultimately resells power to consumers.

E. Water Suppliers. Upon every person, including any water department, engaged in or carrying on the business of selling or furnishing water for domestic or commercial purposes, a fee or tax equal to 18.25 percent of the total gross income from such activity, such tax to be paid covering each month's business activity and to be paid within 30 days following the conclusion of the next preceding month. Such tax shall be applicable to the extraterritorial revenues of such businesses if their principal place of business is situated within the corporate limits of Bellingham and if the system which generates the extraterritorial revenue is interconnected with a portion of the system located within the city and at least 75 percent of the total system (by value) is located within the city of Bellingham. If the water utility collects a fee to acquire and preserve land within the Lake Whatcom watershed to protect the water quality of Lake Whatcom, the fees collected for that program shall only be subject to a fee or tax equal to 11.5 percent.

F. Upon every person engaged in or carrying on the business of community antenna TV, also known as cable TV, there is provided a fee or tax to be levied and collected as provided herein, equal to six percent of the total gross income from such business from any source whatsoever, commencing on the first day of January, 1983.

G. Sewer Collection and Treatment. Upon every person, including any sewer utility, engaged in or carrying on the business of collecting and creating sewerage waste within the city, a fee or tax equal to 11.5 percent of the total gross income from such activities, such tax to be paid covering each month's business activities, and to be paid within 30 days following the conclusion of such month.

H. Municipal Golf Course. Upon every person or organization, including any parks and recreation department, engaged in or carrying on the business of a municipal golf course, a fee or tax equal to four percent of the total gross green fee and trail fee income from such activity. The tax herein shall be paid on account of each month's business activity and shall be paid within 30 days of the end of such month.

I. Cellular Telephone Business.

1. With regard to cellular telephone businesses, which are taxes in accordance with subsection (A) of this section, a deduction from gross income shall be allowed, only to those companies which keep their regular books of account on an accrual basis, for cash discounts, credit losses actually sustained, or to reverse a billing or charge that had been made as a result of third-party fraud or other crime not properly a debt of a customer to be phased in as follows: 20 percent for those occurring in 1995, 40 percent for those occurring



in 1996, 60 percent for those occurring in 1997, 80 percent for those occurring in 1998, and a complete deduction for those occurring in 1999 and thereafter.

2. With regard to allocation among taxing jurisdictions based on service address:

a. Service Address. Payments by a customer for the telephone service from telephones without a fixed location shall be allocated among taxing jurisdictions to the location of the customer's principal service address during the period for which the tax applies.

b. Presumption. There is a presumption that the service address a customer supplies to the taxpayer is current and accurate, unless the taxpayer has actual knowledge to the contrary.

c. Roaming Phones. When the service is provided while a subscriber is roaming outside the subscriber's normal cellular network area, the gross income shall be assigned consistent with the taxpayer's accounting system to the location of the originating cell site of the call, or to the location of the main cellular switching office that switched the call.

d. Dispute Resolution. If there is a dispute between or among the city and other city or cities as to the service address of a customer who is receiving cellular telephone services and the dispute is not resolved by negotiation among the parties, then the dispute shall be resolved by the city and the other city or cities by submitting the issue for settlement to the Association of Washington Cities (AWC). Once taxes on the disputed revenues have been paid to one of the contesting cities, the cellular telephone company shall have no further liability with respect to additional taxes, penalties, or interest on the disputed revenues so long as it promptly changes its billing records for future revenues to comport with the settlement facilitated by AWC.

J. Storm and Surface Water. The city's storm and surface water utility shall pay a tax equal to 11.5 percent of the total gross income from the utility, such tax to be paid covering each month's business and to be paid within 30 days following the conclusion of such month. [Ord. [2010-12-081](#); Ord. [2002-12-101](#); Ord. [2001-02-009](#); Ord. [2000-11-070](#); Ord. [2000-05-022](#); Ord. [1998-05-024](#); Ord. 10800 § 1, 1996; Ord. 10611 § 2, 1995; Ord. 10503, 1994; Ord. 10412, 1993; Ord. 10277 § 1, 1992; Ord. 10170, 1991; Ord. 10164 § 1, 1991; Ord. 9760 § 1, 1988; Ord. 9616, 1986; Ord. 9537, 1986; Ord. 9376 §§ 1 – 3, 1984; Ord. 9366 § 1, 1984; Ord. 9268 § 1, 1983; Ord. 9260 §§ 1 – 3, 1983; Ord. 9214 § 1, 1983; Ord. 9154 §§ 1 – 3, 1982; Ord. 9122 § 1, 1982; Ord. 9040 § 3, 1981; Ord. 8988 § 1, 1981; Ord. 8954 § 1, 1981; Ord. 8921 § 1, 1980; Ord. 8886 § 2, 1980; Ord. 8630 § 1, 1977; Ord. 8629 § 1, 1977; Code 1980 at §§ [15.04.050](#), 15.04.060].

### **6.06.060 Deductions and exemptions.**

A. There shall be excepted and deducted from the total gross income upon which the license fee or tax is computed so much thereof as is derived from transactions in interstate or foreign commerce, or on any amount paid by a taxpayer to the United States, the state of Washington, or the city as excise taxes levied or imposed upon the sale or distribution of property or services.

B. Nothing in this chapter shall be construed as requiring a license, or the payment of a license fee or tax, or the doing of any act which would constitute an unlawful burden or interference in violation of the Constitution or laws of the United States, or which would not be consistent with the Constitution or laws of the state of Washington.

C. Any person subject to the payment of a license fee or tax under the provisions of any city ordinance, other than this chapter, on account of engaging in any activity for which he is liable to tax under this chapter, may deduct the amount of such fee or tax from the amount of fee or tax imposed by this chapter on account of such activity, and may further deduct therefrom any money paid to the city, pursuant to provisions in any franchise or contract conferring privileges in connection with the business of such person, but such person shall, nevertheless, in the manner provided for under this chapter, apply for and procure an occupation license. [Ord. 9533, 1986; Code 1980 at § 15.04.070].

#### **6.06.070 Filing and payment.**

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A. On or before February 15th of each tax year, every taxpayer shall apply to the finance director for an occupation license upon blanks or forms of return to be prepared and provided by him requesting such information as may be necessary to enable him to arrive at the lawful amount of the fee or tax. The taxpayer shall, in a legible manner, write in such blank or form of return the information required and shall sign the same and by affidavit at the foot thereof shall swear or affirm that the information therein given is full and true and that he knows the same to be so.

B. Notwithstanding any other provisions of this chapter, the taxpayer shall file monthly returns of the gross income arising on and after the first day of April, said returns and the remittances covering the same to be filed with the finance director not later than 30 days after the termination of the preceding month.

C. Every such application or return shall be accompanied by a remittance by bank draft, certified check, cashier's check or money order, payable to the city finance director, or in cash in the amount of the tax or fee required by the provisions of this chapter.

D. If the applicant is a partnership, the application or return must be made by one of the partners; if a corporation, by one of the officers thereof; if a foreign corporation, copartnership or nonresident individual, by the resident agent or local manager of said corporation, copartnership or individual.

E. The finance director shall impose, and there shall be immediately due and payable, a late charge of one percent per month, applied against the tax amount then due, for failure to timely file returns or make remittance as required herein. [Ord. 9760 §§ 2 – 4, 1988; Code 1980 at § 15.04.080].

#### **6.06.080 Payment by fiscal year.**

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If the fiscal year of any taxpayer, as reflected by the books of his business, is not based upon the calendar year, with the assent of the finance director first obtained, such taxpayer may apply for occupation license, make returns, and pay his license fee or tax on or before 45 days after the close of his fiscal year, as shown by the method of keeping the books of the business, in the

same manner as provided in BMC [6.06.070](#)(B), except as changed in this chapter. [Code 1980 at § 15.04.090].

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#### **6.06.090 Sale or transfer of business – Liability of transferee.**

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Upon the sale or transfer during any tax year of a business on account of which a fee or tax is required by this chapter, the purchaser or transferee shall, if the fee or tax has not been paid in full for said year, be responsible for its payment for that portion of said year during which he carries on such business. [Code 1980 at § 15.04.100].

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#### **6.06.100 Bookkeeping required – Confidentiality of returns.**

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A. It shall be the duty of each taxpayer taxed upon his gross income to keep and enter in a proper book or set of books or records an account which shall accurately reflect the amount of his gross income, which account shall always be open to the inspection of the finance director or his duly authorized agent, and from which said officer or agent may verify the return made by the taxpayer.

B. The applications, statements, or returns made to the finance director, pursuant to this chapter, shall not be made public, nor shall they be subject to the inspection of any person except the mayor, the city attorney, the finance director or his authorized agent, and members of the city council. [Code 1980 at § 15.04.110].

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#### **6.06.110 Failure to file or report accurately subpoena power – Investigation.**

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If any taxpayer fails to apply for license or make his return, or if the finance director is dissatisfied as to the correctness of the statements made in the application or return of any taxpayer, said officer or his authorized agent may enter the premises of such taxpayer at any reasonable time for the purpose of inspecting his books or records of account to ascertain the amount of the fee or tax or to determine the correctness of such statement, as the case may be, and examine any person under oath administered by said officer, or his agent, touching the matters inquired into, or said officer or his authorized agent may fix a time and place for an investigation of the correctness of the return and may issue a subpoena to the taxpayer or any other person to attend upon such investigation and there testify, under oath administered by said officer or his agent, in regard to the matters inquired into and may, by subpoena, require him or any person to bring with him such books, records, and papers as may be necessary. [Code 1980 at § 15.04.120].

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#### **6.06.120 Overpayments and underpayments.**

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If the finance director, upon investigation or upon checking returns, finds that the fee or tax paid on any of them is more than the amount required of the taxpayer, he shall refund the amount overpaid by a warrant upon the general fund. If the finance director finds that the fee or tax paid is less than required, he shall send a statement to the taxpayer showing the balance due, who shall within three days pay the amount shown thereon. [Code 1980 at § 15.04.130].

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#### **6.06.130 Failure to apply for license – Failure to file or pay tax.**

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If any taxpayer fails to apply for license, or make his return, or to pay the fee or tax therefor, or any part thereof, within three days after the same shall have become due, the finance director shall ascertain the amount of the fee or tax or installment thereof due and shall notify such taxpayer thereof, who shall be liable therefor in any suit or action by the city for the collection thereof. The finance director shall also notify the city attorney in writing of the name of such delinquent taxpayer and the amount due from him and said officer shall, with the assistance of the finance director, collect the same by any appropriate means or by suit or action in the name of the city. [Code 1980 at § 15.04.140].

#### **6.06.140 Appeals to council.**

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A. Any taxpayer aggrieved by the amount of the fee or tax found by the finance director to be required under the provisions of this chapter may appeal to the hearing examiner from such finding by filing a written notice of appeal with the hearing examiner within five days from the time such taxpayer was given notice of such amount. The hearing examiner shall schedule a hearing and cause a notice of the time and place thereof to be delivered or mailed to the appellant. At such hearing the taxpayer shall be entitled to be heard and to introduce evidence in his own behalf. The hearing examiner shall thereupon ascertain the correct amount of the fee or tax in an order supported by findings of fact and conclusions of law and shall immediately notify the appellant thereof, which amount, together with costs of the appeal if appellant is unsuccessful therein, must be paid within three days after such notice is given.

B. The hearing examiner may, by subpoena, require the attendance thereat of any person, and may also require him to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated and produce the books and records required, if any, and shall testify truthfully under oath administered by the hearing examiner as to any matter required of him pertinent to the appeal; and it is unlawful for him to fail or refuse so to do. [Ord. [2002-10-069](#) § 7; Code 1980 at § 15.04.150].

#### **6.06.150 Finance director authorized to promulgate rules.**

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The finance director shall have the power, and it is his duty, from time to time, to adopt, publish, and enforce rules and regulations not inconsistent with this chapter or with law for the purpose of carrying out the provisions thereof; and it is unlawful to violate or fail to comply with any such rule or regulation. [Code 1980 at § 15.04.160].

#### **6.06.160 False returns – Evasion – Obstruction.**

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It is unlawful for any person liable to tax under this chapter to fail or refuse to make application or return for a license or to pay the fee or tax or installment thereof when due or for any person to make any false or fraudulent application; or in connection with, any such application or return; or to aid or abet another in any attempt to evade payment of the fee or tax, or any part thereof; or for any person to fail to appear and/or testify in response to subpoena issued pursuant hereto, or to testify falsely upon any investigation of the correctness of a return; or, upon the hearing of any appeal, or in any manner, to hinder or delay the city or any of its officers in carrying out the provisions of this chapter. [Code 1980 at § 15.04.170].

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**The Bellingham Municipal Code is current through Ordinance 2016-05-015, passed May 16, 2016, and Resolution 2016-15, passed May 16, 2016.**

Disclaimer: The City Clerk Representative has the official version of the Bellingham Municipal Code. Users should contact the City Clerk Representative for ordinances passed subsequent to the ordinance cited above.

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**Chapter 3.19**  
**UTILITY OCCUPATION TAX**

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### **3.19.190 Appeals to council.**

#### **3.19.010 Exercise of license revenue power.**

The provisions of this chapter shall be deemed an exercise of the power of the city to license for revenue. (Ord. 1791 § 1, 1986)

#### **3.19.020 Definitions.**

In construing the provision of this chapter, save when otherwise plainly declared or clearly apparent from the context, the following definitions shall be applied:

A. "Gross income" means the value proceeding or accruing from the sale of tangible property or service, and receipts (including all sums earned or charged, whether received or not) by reason of the investment of capital in the business engaged in, including rentals, royalties, fees or other emoluments, however designated (excluding receipts or proceeds from the use or sale of real property or any interest therein, and proceeds from the sale of notes, bonds mortgages, or other evidences of indebtedness, or stocks and the like) and without any deduction on account of losses.

B. "Person" or "persons" means persons of either sex, firms, corporations copartnerships and other associations of natural persons whether acting by themselves or by servants, agents or employees.

C. "Tax year" or "taxable year" means the year commencing January 1st and ending on December 31st of the same year, or in lieu thereof, the taxpayer's fiscal year when permission is obtained from the city treasurer to use the same as the tax year.

D. "Telephone business" means the business of providing access to a local telephone network, local telephone network switching service, toll service, cellular telephone service, coin telephone services, or providing telephonic, video, data, or similar communication, or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. It includes cooperative or farmer line telephone companies or associations operating an exchange. "Telephone business" does not include the providing of competitive telephone service, the providing of cable television service, nor the providing of broadcast services by radio or television stations.

E. "Cellular telephone service" is a two-way voice and data telephone/telecommunications system based in whole or substantially in part on wireless radio communications and which is not subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service. The definition of cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology which accomplishes a purpose similar to cellular mobile service.

F. "Competitive telephone service" means the providing by any person of telecommunications

equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which may be provided by persons not subject to regulation as telephone companies under RCW Title 80, and for which a separate charge is made. Transmission of communication through cellular telephones is classified as “telephone business” rather than “competitive telephone service.”

G. “Customer” means the person, firm, corporation, business or other such entity which partakes of, utilizes, or subscribes for the services of a licensed utility.

H. “Taxpayer” means a utility required to have a license under the provisions of this chapter. (Ord. 2244 § 1, 1996; Ord. 1791 § 1, 1986)

### **3.19.030 Occupation license required.**

No person, firm or corporation shall engage in or carry on any business, occupation, pursuit or privilege for which a license fee or tax is imposed by this chapter without first having obtained, and being the holder of, a valid and subsisting license to do so, to be known as an “occupation license.” Each person, firm or corporation shall promptly apply to the city clerk for a license upon the appropriate form provided by the city clerk, giving such information as reasonably necessary for the administration and enforcement of this chapter; and upon acceptance, the city clerk shall thereupon issue such a license to the applicant. An occupation license shall be personal and nontransferable. (Ord. 2244 § 2, 1996; Ord. 1791 § 1, 1986)

### **3.19.035 Occupation license posted.**

All licenses issued pursuant to the provisions of this chapter shall be kept posted by the licensee in a conspicuous place in his principal place of business located in the city. No person to whom a license has been issued shall suffer or allow any other persons chargeable with a separate license to operate under or display his license, nor shall such other person operate under or display such license. (Ord. 1791 § 1, 1986)

### **3.19.040 Occupations subject to tax – Amount.**

There is levied upon and shall be collected from persons, including the city, on account of certain business activities engaged in or carried on, license fees or occupation taxes in the amount to be determined by the application of rates given against income as follows:

A. Upon every person engaged in or carrying on the business of selling or furnishing, transmitting, operating or conducting the following utilities, a fee or tax equal to six percent of the total gross income derived from such business in the city during the period for which the license fee or tax is due:

1. Electric energy;
2. Natural gas for domestic, business or industrial consumption;



3. Television by cable other than the existing company;
4. Garbage or solid waste refuse collection system for domestic, business or industrial use;
5. Telephone service, including but not limited to cellular and mobile telephone service, excluding revenues from interstate toll.

B. Upon every person engaged in or carrying on the business of selling or furnishing, transmitting, operating or conducting the following utilities, a fee or tax equal to nine percent of the total gross income derived from such business in the city during the period for which the license fee or tax is due:

1. Water system for domestic, business or industrial consumption;
2. Sewage system for domestic, business or industrial use;
3. Storm water for domestic, business or industrial purpose.

C. Upon every person engaged in or carrying on the business of selling or furnishing, transmitting, operating or conducting the following utility, a fee or tax equal to one percent of the total gross income derived from such business in the city during the period for which the license fee or tax is due:

1. The existing cable television company for domestic, business or industrial consumption.

For the purposes of this section, "gross income" shall not include charges that are passed on to the subscribers by a telephone company pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this section, nor competitive telephone service which is of a type which can be provided by persons that are not subject to regulation as telephone companies under RCW Title 80 and for which a separate charge is made. (Ord. 2777 § 1, 2010; Ord. 2598 § 1, 2005; Ord. 2547 § 1, 2003; Ord. 2540 § 1, 2002; Ord. 2462 § 1, 2000; Ord. 2244 § 3, 1996; Ord. 1791 § 1, 1986)

### **3.19.045 Exemptions and deductions – Telephone service.**

A. In computing the annual tax there shall be deducted from the gross operating revenues the following items:

1. That portion of the gross income derived from charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services or for access to, or charges for, interstate services.
2. Charges by a taxpayer engaging in a telephone business to a telecommunications company, as defined in RCW 80.04.010, for telephone service that the purchaser buys for the

purpose of resale.

3. Adjustments made to a billing or to a customer account or to a telecommunications company accrual account in order to reverse a billing or charge that had been made as a result of third-party fraud or other crime and was not properly a debt of a customer.

B. A deduction from gross income shall be allowed to telephone service providers which keep their regular books of account on an accrual basis for credit losses actually sustained by a taxpayer as a result of cellular telephone service business which shall be phased in as follows: 40 percent of the credit losses occurring in 1996; 60 percent of the credit losses occurring in 1997; 80 percent of the credit losses occurring in 1998; and a complete deduction for the credit losses occurring in 1999 and thereafter. (Ord. 2244 § 4, 1996)

### **3.19.050 License tax year.**

All utility occupation licenses and the fee for the tax therefor shall be for the year for which issued and shall expire at the end of the tax year. (Ord. 1791 § 1, 1986)

### **3.19.055 Allocation of income – Cellular telephone service.**

A. Service Address. Payments by a customer for the telephone service from telephones without a fixed location shall be allocated among taxing jurisdictions to the location of the customer's principal service address during the period for which the tax applies.

B. Presumption. There is a presumption that the service address a customer supplies to the taxpayer is current and accurate, unless the taxpayer has actual knowledge to the contrary.

C. Roaming Phones. When the service is provided while a customer is roaming outside the customer's normal cellular network area, the gross income shall be assigned consistent with the taxpayer's accounting system to the location of the originating cell site of the call, or to the location of the main cellular switching office that switched the call.

D. Dispute Resolution. If there is a dispute between or among the city and another city or cities as to the service address of a customer who is receiving cellular telephone services and the dispute is not resolved by negotiation among the parties, then the dispute shall be resolved by the city and the other city or cities by submitting the issue for settlement to the Association of Washington Cities (AMC). Once taxes on the disputed revenues have been paid to one of the contesting cities, the cellular telephone service company shall have no further liability with respect to additional taxes, penalties, or interest on the disputed revenues so long as it promptly changes its billing records for future revenues to comport with the settlement facilitated by AWC.

E. The city manager or designee is authorized to represent the city in negotiations with other cities for the proper allocation of taxes due under this chapter. (Ord. 2244 § 5, 1996)

### **3.19.060 Remittance required quarterly.**

Commencing with January 1st of the tax year, each three-month period constitutes a quarterly period, at which on or before the last day of the month following the end of such quarterly period the license fee or tax for said quarterly period is due. (Ord. 2384 § 1, 1998; Ord. 1791 § 1, 1986)

**3.19.070 Remittance authorization for public funds.**

The remittance due by city operated utility occupations subject to this tax shall be paid by means of a transfer of funds from the water or sewer operating fund and the solid waste operating fund to the general or current expense fund of the city, and the city treasurer is authorized and directed to make such transfer as set forth above. (Ord. 1791 § 1, 1986)

**3.19.080 Remittance upon sale or transfer of business.**

Upon the sale or transfer during any tax of a business on account of which a fee or tax is hereby required, the purchaser or transferee shall, if the fee or tax has not been paid in full for said year by the seller, be responsible for the entire outstanding payment owing and remit said liability to the city prior to receiving a new utility occupation license. (Ord. 1791 § 1, 1986)

**3.19.090 Taxpayer records.**

Each taxpayer shall keep accurate records reflecting the amount of gross income on services and disclosing all information necessary to determine the taxpayer's tax liability hereunder during each tax base period. Such records shall be kept and maintained for a period of not less than three years. All books, records, and other items required to be kept under this section shall be subject to and immediately made available for inspection and audit at any time, with or without notice, at the place where such records are kept, by the city treasurer or his designee, for the purpose of enforcing the provisions of this taxing chapter. (Ord. 1791 § 1, 1986)

**3.19.100 Applications and returns confidential.**

The applications, statements or returns made to the city pursuant to this chapter shall not be made public, nor shall they be subject to inspection of any person except the mayor, city attorney, city treasurer or his designate, and members of the city council; provided the foregoing shall not be construed to prohibit the city treasurer from making known or revealing facts contained in any return, or disclosed in any examination for official purposes. (Ord. 1791 § 1, 1986)

**3.19.110 City finance director to make rules.**

The city finance director shall have the power, and it shall be his or her duty, from time to time to adopt, publish and enforce rules and regulations not inconsistent with this chapter or with the law for the purpose of carrying out the provision thereof, and it shall be unlawful to violate or fail to comply with any such rules or regulations. (Ord. 2244 § 6, 1996; Ord. 1791 § 1, 1986)

**3.19.120 Failure to make return or pay full tax.**

If any taxpayer payer fails, neglects or refuses to apply for a license, or make his return, or pay the tax in full as required herein, the city treasurer is authorized to determine the amount of the tax payable and by mail to notify such taxpayer of the amount so determined. The amount so affixed

shall thereupon be the tax and be immediately due and payable. Failure to comply with the provisions contained in the delinquent penalty sections of the chapter. (Ord. 1791 § 1, 1986)

**3.19.130 Overpayment or underpayment of tax.**

If, upon application by a taxpayer for a refund or for an audit of his records, or upon any examination of the returns of any taxpayer, it is determined by the city treasurer that within three years immediately proceeding the above that an error has occurred, then:

A. If a tax or other fee has been paid in excess of that properly due, the total excess paid over all amounts due to the city within a period of three years shall be credited to the taxpayer's account or shall be paid directly to the taxpayer at the city's option.

B. If a tax or other fee has been paid which is less than that properly due, or no tax or fee has been paid, the city treasurer shall mail a statement to the taxpayer showing the balance due, including the tax amount and penalty assessments and fees, and it shall be a separate, additional violation of this chapter, both civil and criminal, if the taxpayer fails to make such payment in full within 10 calendar days of mailing, or fails to appeal said payment per the provisions of this chapter. (Ord. 1791 § 1, 1986)

**3.19.140 Delinquent payment – Penalty.**

For each quarterly or monthly period payment due under the provisions of this chapter, if such payment is not made by the persons subject to the tax by the due date thereof, there shall be added a penalty as follows:

A. If payment in full is received within 30 days from the due date, 10 percent of the accrued tax;

B. If payment in full is received between 31 and 60 days from the due date, 20 percent of the accrued tax;

C. If payment in full is received beyond 60 days from the due date, 30 percent of the accrued tax. (Ord. 1791 § 1, 1986)

**3.19.150 Taxes, penalties and fees constitute debt to municipality.**

Any tax due and unpaid under this chapter, and all penalties or fees unpaid, shall constitute a debt to the city, and may be collected by court proceedings the same as any other debt in like amount which shall be in addition to all other existing remedies. On any civil action the city shall recover reasonable attorneys' fees and audit costs, if the city is the prevailing party. (Ord. 1791 § 1, 1986)

**3.19.160 Limitation on right to recovery.**

The right of recovery by the city from the taxpayer for any tax provided hereunder shall be barred after the expiration of three calendar years from the date said tax became due. Their right of recovery against the city because of overpayment of tax by any taxpayer shall be barred after the expiration of three calendar years from the date such payment is made. (Ord. 1791 § 1, 1986)

**3.19.170 False returns.**

It is unlawful for any person subject to this chapter to fail or refuse to make application or return for a license or to pay the fee or tax or installment thereof when due, or for any person to make any false or fraudulent application or return or any false statement or representation in, or in connection with any such application or return, or to aid or abet another in any attempt to evade payment of the fee or tax, or any part thereof, or to fail to appear at or testify falsely upon any investigation of the correctness of a return or upon the hearing of any appeal of in any manner to hinder or delay the city or any of its officials in carrying out the provisions of this chapter. (Ord. 1791 § 1, 1986)

**3.19.180 Noncompliance – Penalty.**

Any person subject to this chapter, who fails or refuses to apply for a utility occupation license or to make tax returns or to pay the tax or penalties when due, or who makes any false statement or representation in or in connection with any such application, or who otherwise violates or refuses to comply with the provisions of this chapter, shall be deemed guilty of a misdemeanor, and each such person is guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued or permitted, and upon any conviction of any such violation, such person shall be punished by a fine not to exceed \$1,000 for each day or portion thereof which such person is found guilty of noncompliance with the provisions of this chapter. (Ord. 1791 § 1, 1986)

**3.19.190 Appeals to council.**

Any taxpayer aggrieved by the amount of the fee or tax found by the city treasurer to be required under the provisions of this chapter may appeal to the city council from such finding by filing a written notice of appeal with the city treasurer within seven days from the time such taxpayer was given notice of such amount. The city treasurer shall, as soon as practicable, fix a time and place for the hearing of such appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the appellant. At such hearing the taxpayer shall be entitled to be heard to introduce evidence on his own behalf. The city council shall thereupon ascertain the correct amount of the fee or tax by resolution, and the city treasurer shall immediately notify the appellant thereof, which amount, together with the costs of appeal, if such applicant is unsuccessful therein, must be paid within five days after such notice is given. The mayor may, by subpoena, require the attendance thereat of any person, and may also require him to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place stated, produce the records required, if any, and shall testify truthfully under oath administered by the mayor as to any matter required of him pertinent to the appeal, and it is unlawful for him to fail or refuse to do so. (Ord. 1791 § 1, 1986)

**Chapter 3.50  
UTILITY TAXES**

Sections:

**[3.50.010 EXERCISE OF REVENUE LICENSE POWER.](#)**

**[3.50.020 BUSINESS LICENSE - REQUIRED.](#)**

**[3.50.030 ADMINISTRATIVE PROVISIONS.](#)**

**[3.50.040 DEFINITIONS.](#)**

**[3.50.050 PERSONS SUBJECT TO TAX - AMOUNT.](#)**

**[3.50.060 DEDUCTIONS.](#)**

**[3.50.070 TAX - WHEN DUE.](#)**

**[3.50.080 RULES AND REGULATIONS.](#)**

**[3.50.090 SEVERABILITY.](#)**

**3.50.010 EXERCISE OF REVENUE LICENSE POWER.**

The provisions of this chapter shall be deemed an exercise of the power of the City to license and/or tax for revenue. The provisions of this chapter are subject to periodic statutory or administrative rule changes or judicial interpretations of the ordinances or rules. The responsibility rests with the licensee or taxpayer to reconfirm tax computation procedures and remain in compliance with the City Code. (Ord. 4895 §2, 2004; Ord. 4844, Added, 01/03/2003)

**3.50.020 BUSINESS LICENSE - REQUIRED.**

It is unlawful for any person to engage in business in the City without having first obtained a business license pursuant to Chapter 5.02 BMC. (Ord. 4895 §2, 2004; Ord. 4844, Added, 01/03/2003)

**3.50.030 ADMINISTRATIVE PROVISIONS.**

The provisions contained in Chapter 3.86 BMC shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein. (Ord. 4895 §2, 2004; Ord. 4844, Added, 01/03/2003)

**3.50.040 DEFINITIONS.**

For the purposes of this chapter, the definitions contained in Chapter 3.48 BMC shall apply equally to the provisions of this chapter as applicable unless the term is defined otherwise in this chapter. In addition, the following definitions will apply:

**"Cellular telephone service"** is a voice or data telephone/telecommunications system based in whole or substantial part on wireless radio communications, whether or not the communications are subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service. Cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology which accomplishes the same purpose as cellular mobile service.

**"Competitive telephone service"** means the providing by any person of telephone telecommunications equipment or apparatus, or service related to that equipment or apparatus such as a repair and maintenance service, if the equipment or apparatus is of a type which can be provided by persons who are not subject to regulation as telephone companies under RCW Title 80, and for which a separate charge is made.

**"Gross income"** means the value proceeding or accruing by reason of the business activity engaged in and operations incidental thereto, and includes gross proceeds of sales, compensation for the rendition of services and other emoluments, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

**"Gross income from timber sales"** means "stumpage value of timber" as defined in Chapter 84.33 RCW minus the costs of production including, but not limited to, logging and trucking costs, fees and excise taxes.

**"Page service"** means service provided by means of an electronic device that has the ability to send or receive voice or digital messages transmitted through the local telephone network, via satellite or any other form of voice or data transmission.

**"Reporting period"** means a one (1) month period beginning the first day of each calendar month (monthly).

**"Solid waste collection service"** means receiving solid waste from any facility or location within the City for transfer, processing, treatment, storage, or disposal, including, but not limited to, all collection services, public or private dumps or landfills, transfer stations, and other similar operations.

**"Solid waste,"** for purposes of this chapter, means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use, infectious, hazardous, or toxic wastes, and recyclable or reusable materials collected, in whole or part, for recycling or salvage.

**"Telephone business"** means the providing by any person of access to a local telephone network,

local telephone network switching service, toll service, cellular or mobile telephone service, coin telephone service, page service, or the providing of telephonic, video, data, or similar communication, or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. The term includes cooperative or farmer line telephone companies or associations operating exchanges. The term also includes the provision of transmission to and from the site of an internet provider via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system.

"Telephone business" does not include the providing of competitive telephone service, or providing of cable television service, or other providing of broadcast services by radio or television stations. (Ord. 4895 §2, 2004; Ord. 4844, Added, 01/03/2003)

### **3.50.050 PERSONS SUBJECT TO TAX - AMOUNT.**

In addition to other taxes or fees that may be imposed or levied by the City, there is hereby levied upon all persons (including the City) engaging in business within the City a fee or tax to be collected as follows:

- (a) Gas. Upon every person engaging in the business of transmitting, distributing or the selling of manufactured or natural gas, a fee or tax equal to six (6) percent of the total gross income from such business conducted within the City.
- (b) Water. Upon every person engaging in the business of providing water utility service, a fee or tax equal to fifteen and one-half (15.5) percent of the total gross income from such business conducted within the City. The total gross income from the business of providing water utility service includes the "gross income from timber sales" of the utility as that term is defined in this chapter.
- (c) Wastewater. Upon every person engaging in the business of providing wastewater utility service, a fee or tax equal to twenty (20) percent of the total gross income from such business conducted within the City.
- (d) Stormwater. Upon every person engaging in the business of providing stormwater utility service, a fee or tax equal to twenty (20) percent of the total gross income from such business conducted within the City.
- (e) Cable. Upon every person engaging in the business of transmitting television signals by means of a cable distribution system commonly known as television cable service, a fee or tax equal to seven (7) percent of the total gross income from such business conducted within the City.
- (f) Solid Waste. Upon every person engaging in the business of providing solid waste collection service, a fee or tax equal to nine and one-half (9.5) percent of the total gross income from such business conducted within the City.
- (g) Electricity. Upon every person engaging in the business of producing, transmitting, distributing



or selling electricity, a fee or tax equal to six (6) percent of the total gross income from such business conducted within the City.

(h) Telephone. Upon every person engaged in carrying on a telephone business for hire or for sale of a commodity or a service within or partly within the corporate limits of the City, a tax for the privilege of so doing business equal to six (6) percent of the total gross income rendered within the City.

(1) Deductions. In computing the telephone tax, there shall be deducted from the gross operating revenues the following items:

(i) Amounts derived from transactions in interstate or foreign commerce or from any business which the City is prohibited from taxing under the Constitutions of the United States or the State of Washington.

(ii) Amounts derived from that portion of network telephone service, as defined in RCW 82.04.065, which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services or charges for network telephone service that is purchased for the purpose of resale.

(iii) Adjustments made to a billing or to a customer account or to a telecommunications company accrual account in order to reverse a billing or charge that had been made as a result of third-party fraud or other crime and was not properly a debt of a customer.

(iv) A complete deduction from gross income shall be allowed for credit losses, only to cellular telephone service companies which keep their regular books of account on an accrual basis, for cash discounts and credit losses actually sustained by a taxpayer as a result of telephone service business.

(2) Allocation of Income - Cellular Telephone Service.

(i) Service Address. Payments by a customer for the telephone service from telephones without a fixed location shall be allocated among taxing jurisdictions to the location of the customer's principal service address during the period for which the tax applies.

(ii) Roaming Phones. When the service is provided while a subscriber is roaming outside the subscriber's normal cellular network area, the gross income shall be assigned consistent with the taxpayer's accounting system to the location of the originating cell site of the call, or to the location of the main cellular switching office that switched the call.

(Ord. 5289 §2, 2015: Ord. 5170 §1, 2011: Ord. 5096 §1, 2009: Ord. 5078 §1, 2009: Ord.

5065 §1, 2008; Ord. 4988 §4, 2006; Ord. 4918 §1, 2004; Ord. 4895 §2, 2004; Ord. 4882 §1, 2003; Ord. 4844, Added, 01/03/2003)

### **3.50.060 DEDUCTIONS.**

- (a) There may be deducted from the total gross income, upon which the license fee or tax is computed, revenues derived from business which the City is prohibited from taxing under the Constitutions or laws of the State of Washington or the United States or the Charter of the City.
- (b) There may be deducted from the total gross income, upon which the license fee or tax is computed, the amount of State excise taxes, pursuant to Chapter 82.18 RCW, imposed directly upon persons using the service of a solid waste collection business and collected for payment to the State by the solid waste collection business.
- (c) There may be deducted from the total gross income, upon which the license fee or tax is imposed under BMC [3.50.050](#), revenues derived from providing the service of collecting recyclable materials, as follows:

- (1) Commercial Recycling. Revenues derived from the service of collecting commercial recyclable materials. This exemption is limited to materials actually resold and computed in proportion to weight, as follows:
- (i) Any weight added by processing or treatment after collection is subtracted from the weight as sold to obtain the allowable weight as sold; and
- (ii) Revenues are multiplied by a fraction, the numerator of which is the allowable weight as sold and the denominator of which is the weight as collected.
- (2) This deduction does not apply to any energy recovery or fuel-use process, nor in any case where materials collected have not been sold for commercial reuse within one hundred (100) days from the date of collection. This period may be extended when a taxpayer shows to the Department's satisfaction that market conditions necessitate a longer period for sale. (Ord. 4895 §2, 2004; Ord. 4844, Added, 01/03/2003)

### **3.50.070 TAX - WHEN DUE.**

The tax imposed by this chapter shall be due and payable in monthly installments. (Ord. 4895 §2, 2004)

### **3.50.080 RULES AND REGULATIONS.**

The Director may establish administrative rules and regulations as deemed appropriate, consistent with this chapter for the purpose of enforcing and carrying out its provisions. (Ord. 4895 §2, 2004; Ord. 4844, Added, 01/03/2003. Formerly 3.50.070)

### **3.50.090 SEVERABILITY.**

If any provision or section of this chapter shall be held void or unconstitutional, all other parts, provisions, and sections of this chapter not expressly so held to be void or unconstitutional shall continue in full force and effect. (Ord. 4895 §2, 2004; Ord. 4844, Added, 01/03/2003. Formerly 3.50.080)

## Chapter 4.32 UTILITY TAX

### Sections:

- [4.32.010](#) Utility tax.
- [4.32.020](#) Use and accountability of tax proceeds.
- [4.32.030](#) Definitions.
- [4.32.040](#) Occupations subject to tax – Amount.
- [4.32.050](#) Tax year.
- [4.32.060](#) Exceptions and deductions.
- [4.32.070](#) Monthly installments.
- [4.32.080](#) Taxpayer's records.
- [4.32.090](#) Failure to make returns or to pay the tax in full.
- [4.32.100](#) Penalty for delinquent payment.
- [4.32.110](#) Overpayment of tax.
- [4.32.120](#) Noncompliance – Penalty.
- [4.32.130](#) Appeal.
- [4.32.140](#) Treasurer to make rules.
- [4.32.150](#) Severability.

#### **4.32.010 Utility tax.**

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The tax provided for in this chapter shall be known as the “utility tax,” and is levied upon the privilege of conducting an electric energy, natural or manufactured gas, telephone, or cellular telephone business within the city of East Wenatchee effective February 1, 2009. (Ord. 08-13 § 1, 2008)

#### **4.32.020 Use and accountability of tax proceeds.**

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The treasurer shall deposit all revenues collected pursuant to this chapter into the general fund. The city shall use these revenues to fund city services or capital requirements as the city council shall direct through its annual budget process. (Ord. 08-13 § 1, 2008)

#### **4.32.030 Definitions.**

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As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

A. “Cellular telephone service” means any two-way voice and data telephone or similar communications system based in whole or in substantial part on wireless radio communications, including cellular mobile service, and which is not subject to regulation by the Washington State Utilities and Transportation Commission. Cellular mobile service includes other wireless radio communications services including specialized mobile radio, personal communications services, and

any other evolving wireless radio communications technology that accomplishes a purpose substantially similar to cellular mobile service. Cellular telephone service is included within the definition of “telephone business” for the purposes of this chapter.

B. “Competitive telephone service” means the providing by any person of telecommunications equipment or apparatus, directory advertising and lease of telephone street directories, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which may be provided by persons not subject to regulation as telephone companies under RCW Title 80, and for which a separate charge is made. Transmission of communication through cellular telephones is classified as “telephone business” rather than “competitive telephone service.”

C. “Treasurer” means the treasurer of the city of East Wenatchee, Washington, or his or her designee.

D. “Gross income” means the value proceeding or accruing from the performance of the particular business involved, including gross proceeds of sales, compensation for the rendition of services, and receipts (including all sums earned or charged, whether received or not) by reason of investment in the business engaged in (excluding rentals, receipts or proceeds from the use or sale of real property or any interest therein, and proceeds from the sale of notes, bonds, mortgages or other evidences of indebtedness, or stocks and the like), all without any deduction on account of the cost of property sold, the cost of materials used, labor costs, taxes, interest or discount paid, delivery costs or any expenses whatsoever, and without any deduction on account of losses.

E. “Pager service” means service provided by means of an electronic device which has the ability to send or receive voice or digital messages transmitted through the local telephone network, via satellite or any other form of voice or data transmission. Pager service is included within the definition of “telephone business” for the purposes of this chapter.

F. “Person” means any person, firm, corporation, association, or entity of any type engaged in a business subject to taxation under this chapter.

G. “Telephone business” means the business of providing access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, or providing telephonic, video, data, pager or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. The term includes cooperative or farmer line telephone companies or associations operating an exchange. “Telephone business” does not include the providing of competitive telephone service or cable television service, or other providing of broadcast services by radio or television stations. (Ord. 08-13 § 1, 2008)

**4.32.040 Occupations subject to tax – Amount.**

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There is levied upon and shall be collected from a person because of certain business activities engaged in or carried on in the city of East Wenatchee, taxes in the amount to be determined by the application of rates given against gross income as follows:

- A. Upon a person engaged in or carrying on the business of selling, furnishing, or transmitting electric energy, a tax equal to six percent of the total gross income from such business in the city during the period for which the tax is due;
- B. Upon a person engaged in or carrying on the business of selling, furnishing, or transmitting gas, whether natural or manufactured, a tax equal to six percent of the total gross income from such business in the city during the period for which the tax is due;
- C. Upon a person engaged in or carrying on any telephone business a tax equal to six percent of the total gross income, including income from intra-state long distance toll service, from such business in the city during the period for which the tax is due; and
- D. Upon a person engaged in or carrying on the business of selling, furnishing or transmitting cellular telephone service, a tax equal to six percent of the total gross income from such business in the city during the period for which the tax is due. (Ord. 08-13 § 1, 2008)

**4.32.050 Tax year.**

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For purposes of this utility tax, the tax year shall commence February 1, 2009, and end December 31, 2009. Thereafter, the tax year shall commence on January 1st and end on December 31st of each year. (Ord. 08-13 § 1, 2008)

**4.32.060 Exceptions and deductions.**

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There is excepted and deducted from the total gross income upon which the tax is computed:

- A. That part of the total gross income derived from business which the city is prohibited from taxing under the Constitution or laws of the United States and the Constitution or laws of the state of Washington.
- B. Income derived from that portion of network telephone service, as defined in RCW 82.04.065, which represents charges to another telecommunications company, as defined in RCW 80.04.010 for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services; or for access to, or charges for, interstate services; or charges for network telephone service that is purchased for the purpose of resale.
- C. Adjustments made to a billing or customer account in order to reverse a billing or charge that was not properly a debt of the customer.

D. Cash discounts allowed and actually granted to customers of the taxpayer during the tax year.

E. Uncollectible debts written off the taxpayer's books during the tax year. If subsequently collected, the income shall be reported for the period in which collected. (Ord. 08-13 § 1, 2008)

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**4.32.070 Monthly installments.**

The tax imposed by EWMC [4.32.040](#) shall be due and payable in monthly installments. Remittance shall be made on or before the last day of the month following the end of the monthly period in which the tax is accrued. Annual returns for smaller entities may be allowed upon written approval from the treasurer. On or before said due date, the taxpayer shall file with the treasurer a written return upon such form and setting forth such information as the treasurer shall reasonably require relating to the accurate computation and collection of this tax, together with the payment of the amount. (Ord. 08-13 § 1, 2008)

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**4.32.080 Taxpayer's records.**

Each taxpayer shall keep records reflecting the amount of the taxpayer's gross income on sales and services within the city, and such records shall be open at all reasonable times for the inspection of the treasurer, or his or her designee, to verify information provided on any utility tax return, or to determine whether such return is required to be filed. (Ord. 08-13 § 1, 2008)

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**4.32.090 Failure to make returns or to pay the tax in full.**

If a taxpayer fails, neglects, or refuses to make his return as and when required by this chapter, the treasurer is authorized to determine the amount of the tax payable under provisions of EWMC [4.32.040](#), and to notify such taxpayer of the amount so determined. The amount so fixed shall be the tax and shall be immediately due and payable, together with penalty and interest. Delinquent taxes, including any penalties, are subject to an interest charge of 12 percent per year on the unpaid balance from the date any such taxes became due as provided in EWMC [4.32.070](#). (Ord. 08-13 § 1, 2008)

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**4.32.100 Penalty for delinquent payment.**

If a person subject to this tax fails to pay any tax required by this chapter within 15 days after the due date thereof, there shall be added to such tax a penalty of 10 percent of the amount of such tax. Any tax due under this chapter that is unpaid and all penalties thereon shall constitute a debt to the city and may be collected by court proceedings, which remedy shall be in addition to all other remedies. (Ord. 08-13 § 1, 2008)

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**4.32.110 Overpayment of tax.**

Money paid to the city through error, or otherwise not in payment of the tax imposed by this chapter, or in excess of such tax, shall, upon discovery, be credited against any tax due or to become due from such taxpayer hereunder; provided, however, that overpayments extending beyond one year

prior to notification of the city shall not be refunded. If such taxpayer has ceased doing business in the city, any such overpayment shall be refunded to the taxpayer. (Ord. 08-13 § 1, 2008)

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**4.32.120 Noncompliance – Penalty.**

A. No person subject to this chapter shall fail or refuse to file tax returns or to pay tax when due, nor shall any person make a false statement or representation in, or in connection with, any such tax return, or otherwise violate or refuse to comply with this chapter or with any rule promulgated pursuant to EWMC [4.32.140](#).

B. In addition to the interest and delinquent filing penalties set forth above, the city council declares that failure to comply with this chapter is a civil infraction, subject to a fine of up to \$250.00 for each day that a violation continues. (Ord. 08-13 § 1, 2008)

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**4.32.130 Appeal.**

A taxpayer aggrieved by the amount of the tax, penalties, interest, or civil infraction fine determined to be due by the treasurer or his designee, under the provisions of this chapter, may appeal such determination to the mayor or his or her designee. (Ord. 08-13 § 1, 2008)

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**4.32.140 Treasurer to make rules.**

The treasurer shall have the power to adopt and enforce rules and regulations consistent with this chapter or with the law for the purposes of carrying out the provisions thereof. (Ord. 08-13 § 1, 2008)

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**4.32.150 Severability.**

Should any section, paragraph, sentence, clause or phrase of this chapter, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this chapter 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 chapter or its application to other persons or circumstances. (Ord. 08-13 § 1, 2008)



## Chapter 5.05 UTILITY TAX

Sections:

[5.05.010 Purpose.](#)

[5.05.020 Exercise of revenue license power.](#)

[5.05.030 Administrative provisions.](#)

[5.05.120 Imposition of the tax—Tax levied.](#)

[5.05.130 Severability.](#)

### **5.05.010 Purpose.**

The provisions of this chapter shall be deemed an exercise of the power of the city, as provided in Chapter 35A.11 RCW, to license and/or tax for revenue, the privilege of engaging in utility business in the city. For the purpose of this chapter, the terms “license” and “tax” shall be synonymous. (Ord. 3556 § 1, 2004)

### **5.05.020 Exercise of revenue license power.**

The provisions of this chapter shall be deemed an exercise of the power of the city to license for revenue. The provisions of this chapter are subject to periodic statutory or administrative rule changes or judicial interpretations of the ordinances or rules. The responsibility rests with the licensee or taxpayer to reconfirm tax computation procedures and remain in compliance with the city code. (Ord. 3556 § 1, 2004)

### **5.05.030 Administrative provisions.**

The administrative provisions contained in Chapter 5.02, including but not limited to the registration provisions of Sections 5.02.050 through 5.02.110, shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein. (Ord. 3743 § 1, 2011; Ord. 3556 § 1, 2004)

### **5.05.120 Imposition of the tax—Tax levied.**

Upon every person engaging within the city in any one or more of the businesses hereinafter mentioned, as to such person the license fee shall be equal to the gross operating revenue of the business multiplied by the rate set forth after the business, as follows:

- A. The business of selling and furnishing natural gas: six percent of the total gross revenue.
- B. The business of selling or furnishing or distributing electricity within the city, exclusive of the revenue derived from the sale of electricity for the purpose of resale: six percent of the total gross

revenue.

C. Upon any telephone business there shall be levied a tax equal to six percent of the total gross operating revenues derived from within the city. Gross operating revenues for this purpose shall not include charges which are passed on to the subscribers by a telephone company pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this chapter.

1. "Telephone business" means the business of providing access to a local telephone network, local telephone network switching service, toll service, cellular telephone services or coin telephone services, or providing telephonic, video, data or similar communications or transmission for hire via a local telephone network, toll line or channel, cable, microwave or similar communications or transmission system.

The term shall also include the ownership, operation, maintenance or commercial use of an antenna by a wireless communications service provider as defined in Section 17.88.020J of this code.

It includes cooperative or farmer line telephone companies or associations operating an exchange. "Telephone business" does not include the providing of competitive telephone service, or the providing of cable television service.

2. "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, directory advertising and lease of telephone street directories, or service, other than toll service, related to that equipment or apparatus such as repair or maintenance service if the equipment is of a type which can be provided by persons that are not subject to regulation as telephone companies under RCW Title 80 and for which a separate charge is made.

D. The business of selling and furnishing coaxial cable and fiber optic cable subscriber systems for television and other signal distribution: eight percent of the total gross revenue. For the purpose of this subsection, "gross revenue" and "total gross revenue" shall be defined as the terms are defined in the current franchise agreement for such services, it being authorized by Ordinance No. 15-3861.

E. The business of selling or furnishing water for hire, twenty percent of the total gross revenue.

F. The business of selling or furnishing sanitary sewer service, twenty percent of the total gross revenue.

G. The business of selling or furnishing garbage or refuse service, twenty percent of the total gross revenue. (Ord. 3864 § 1, 2015; Ord. 3836\* § 1, 2014; Ord. 3801 § 1, 2013; Ord. 3780 § 1, 2012; Ord. 3645 § 2, 2007; Ord. 3556 § 1, 2004)

\*Code reviser's note: Section 2 of Ordinance 3836 provides in regard to its amendments to subsections E, F and G of this section, "The tax rate of twenty percent (20%) shall be in effect from the effective date of this ordinance through and until December 31, 2016. On January 1, 2017, the tax rate imposed under KMC [5.05.120](#) shall revert back to eighteen percent (18%), and this ordinance shall sunset."

**5.05.130 Severability.**

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances shall not be affected. (Ord. 3556 § 1, 2004)

## CHAPTER 3.70

### UTILITIES OCCUPATION TAX

#### SECTION:

- 3.70.010: Definitions
- 3.70.020: Tax – Computation
- 3.70.030: Tax – Payment
- 3.70.040: Exceptions – Deductions
- 3.70.045: Allocation of Income – Cellular Telephone Service
- 3.70.050: Business License Required
- 3.70.060: Tax – Payment – Records
- 3.70.070: Transfer of Business – Responsibility
- 3.70.080: Time Limitation on Corrections, Adjustments, and Refunds
- 3.70.095: Administrative Appeal
- 3.70.100: Delinquent Payment
- 3.70.105: Interest and Penalty
- 3.70.110: Compliance Required – False Statements Unlawful
- 3.70.120: Tax Additional to Other Fees
- 3.70.130: Unpaid Fee Deemed Debt to City
- 3.70.140: City Payment of Tax – Exception

**3.70.010: Definitions:** In construing the provisions of this Chapter, save when otherwise plainly declared or clearly apparent from the context, the following definitions shall be applied:

(1) “Cable Service” means: (a) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and b) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

(2) “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include: (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; or (b) any facilities of any electric utility used solely for operating its electric utility system.

(3) “Cellular Telephone Service” is a two-way voice and data telephone/telecommunications system based in whole or substantially in part on wireless radio communications and which is not subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service. The definition of “cellular mobile service” includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology which accomplishes a purpose similar to cellular mobile service. Transmission of communication through cellular telephones is classified as “telephone business” rather than “competitive telephone service.”

(4) “Gross income” means the value proceeding or accruing from the sale of tangible property or service, and receipts (including all sums earned or charged whether received or not), by reason of the investment of capital in the business engaged in, including rentals, royalties, fees or other emoluments, however designated, derived from business

activities conducted within the City limits (excluding receipts or proceeds from the use or sale of real property or any interest therein and proceeds from the sale of notes, bonds, mortgages, or other evidence of indebtedness or stocks and the like) and without any deduction on account of the cost of the property sold, and the cost of materials used, labor costs, interest, or any expenses whatsoever; provided, however, that only the gross income attributable to those taxable services or commodities as are specifically set forth in Section 3.70.020 shall be subject to the tax provided herein, and any taxpayer deriving income from the sale of any other tangible property or services and receipts not so specifically set forth in Section 3.70.020 may exclude said income from “gross income” as defined in this subsection. Gross income of any public utility district subject to this tax shall be the total gross revenues from sales of electricity and power inside the City by the public utility district, exclusive of any revenues derived from the sale of electricity for the purpose of resale.

(5) “Telephone Business” means the business of providing access to a local telephone network, local telephone network switching service, toll service, cellular telephone services, coin telephone services, telephonic, video, data, or similar communication, or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. The term includes cooperative or farmer line telephone companies or associations operating exchanges.

(6) “Video Programming” means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

(7) “Voluntary Payment” means a payment made to the City of Kennewick without written protest setting forth the reasons the payment is made in protest. (Ord. 5531 Sec. 1, 2013; Ord. 3588 Sec. 1, 1994; Ord. 3501 Sec. 1, 1994; Ord. 3322 Sec. 1 (part) 1991; Ord. 2825 Sec. 1, 1984; Ord. 2650 Sec. 1 (part), 1982; Ord. 1272 Sec. 2 1964)

### **3.70.020: Tax – Computation:**

(1) On and after the first day of January, 1969, for the purpose of raising revenue, there is levied upon and shall be collected from and paid as hereinafter provided by every person on account of and for the privilege of engaging in business activities, an occupation tax, sometimes referred to in this Chapter as “tax,” against the gross income of businesses as defined in this Chapter for each calendar month.

(2) The tax herein provided shall be computed at the rate of eight and one-half percent (8.5%) of gross income derived from each of the following occupations or business activities conducted within the City limits. Those persons subject to the payment of the tax herein at said rate are as follows:

- (a) All persons engaged in or carrying on the business of selling or furnishing electric light and power;
- (b) All persons engaged in or carrying on the business of selling or furnishing natural gas; and
- (c) All persons engaged in or carrying on the business of selling or furnishing steam energy.

(3) The tax herein provided shall be computed at the rate of eight and one-half percent (8.5%) of gross income derived from each of the following occupations or business activities conducted within the City limits. Those persons subject to the payment of the tax herein at said rate are as follows: All persons engaged in or carrying on a telegraph or telephone business, excluding competitive telephone service and that portion of network telephone service, as defined in RCW 82.04.065 which represents charges to another telecommunications company, as defined in RCW 80.04.010 for connecting fees, switching

charges or carrier access charges relating to intrastate toll telephone services or for access to or charges for intrastate services, to the fullest extent authorized by law.

(4) The tax herein provided shall be computed at the rate of seven percent (7%) of gross income derived from each of the following occupations or business activities conducted within the City limits. Those persons subject to the payment of the tax herein at said rate are as follows:

(a) All persons engaged in the business of constructing, operating and maintaining a cable system or selling cable service in the City; and

(b) All persons engaged in or carrying on the business of collecting, handling or processing solid waste as defined by KMC 9.04.010.

(5) The tax herein provided shall be computed at the rate of fifteen and one-half percent (15.5%) of gross income derived from each of the following occupations or business activities conducted within or outside the City limits. Those persons subject to the payment of the tax herein at said rate are as follows: All persons engaged in or carrying on the business of selling or supplying domestic water or providing sanitary sewer services.

(6) Any person engaged in or carrying on more than one such business, occupation, pursuit or privilege shall pay the tax so imposed for each respective business, trade or privilege. Any taxpayer who is engaged in, or carries on, any business subject to the tax hereunder, and who fails or refuses to pay the tax or any part thereof on or before the due date shall be operating in violation of this Chapter.

(7) The tax herein provided shall be computed at the rate of one percent (1%) of gross income derived from each of the following occupations or business activities conducted within the City limits. Those persons subject to the payment of tax herein at said rate are as follows:

(a) All persons engaged in or carrying on the business of providing emergency medical and ambulance service to be operated as a public utility of the City of Kennewick.

(b) All persons engaged in or carrying on the business of constructing, operating and maintaining a storm drainage system and related facilities as a public utility of the City of Kennewick. (Ord. 5400 Sec. 1, 2012: Ord. 5260 Sec. 2, 2009: Ord. 5245 Sec. 2, 2009: Ord. 5211 Sec. 2, 2008: Ord. 3746 Sec. 1, 1997: Ord. 3612 Sec. 1, 1995: Ord. 3588 Sec. 1, 1995: Ord. 3501 Sec. 2, 1994: Ord. 3322 Sec. 1 (part), 1991: Ord. 3303 Sec. 1, 1991: Ord. 3019 Sec. 1, 1986: Ord. 2710 Sec. 1, 1982: Ord. 2638 Sec. 1, 1981: Ord. 2303 Sec. 1, 1979: Ord. 1896 Sec. 1, 1975: Ord. 1421 Sec. 1, 1968: Ord. 1272 Sec. 3, 1964)

### **3.70.030: Tax – Payment:**

(1) The tax imposed by this Chapter, except the annual license fee required to accompany the application for the license, shall be due and payable in monthly installments, and remittance shall be made on or before the thirtieth day of the next month. The remittance shall be made as hereinafter provided and shall be accompanied by a return on a form to be provided and prescribed by the Treasurer. To the return the taxpayer shall be required to swear or affirm that the information therein given is full and true and that the taxpayer knows the same to be so.

(2) Whenever a taxpayer commences to engage in business during any monthly period, his first return and tax shall be based upon and cover the portion of the monthly period during which he engaged in business. (Ord. 3322 Sec. 1 (part), 1991: Ord. 3303 Sec. 2, 1991: Ord. 2650 Sec. 1 (part), 1982: Ord. 1272 Sec. 5, 1964)

### **3.70.040: Exceptions – Deductions:**

(1) There shall be excepted and deducted from the total gross income upon which the tax is computed so much thereof as is derived from transactions in interstate or foreign commerce, or from business done for the government of the United States, its officers or agents.

(2) There shall be excepted and deducted from the total gross income upon which the tax is computed, all bad debts and credit losses actually sustained by the taxpayer for services incurred, rendered or charged for during the tax year. Debts shall be deemed bad and uncollectible when the same have been written off the books of the taxpayer. In the event debts are subsequently collected, said income shall be reported in the return for the month in which the debts are collected and at the rate prevailing in the tax year when collected.

(3) There shall be excepted and deducted from the total gross income upon which the tax is computed, all cash discounts allowed and actually granted to customers of the taxpayer during the tax year.

(4) There shall be exempted and deducted from total gross income upon which the taxes computed for the engaging in or carrying on of the business of selling or furnishing electric light or power, all gross income based upon agricultural irrigation of five (5) acres or more by a single utility customer.

(5) Nothing in this Chapter shall be construed as requiring a license, or the payment of a tax, or the doing of any act, which would constitute an unlawful burden or interference in violation of the Constitution or laws of the United States or which would not be consistent with the Constitution or laws of the State. (Ord. 5059 Sec. 1, 2004: Ord 3588 Sec. 1, 1994: Ord. 3415 Sec. 1, 1993: Ord. 3322 Sec. 1 (part) 1991: Ord. 1272 Sec. 6, 1964)

### **3.70.045: Allocation of Income – Cellular Telephone Service:**

(1) Payments by a customer for the telephone service from telephones without a fixed location shall be allocated among taxing jurisdictions to the location of the customer's principal service address during the period for which the tax applies.

(2) There is a presumption that the service address a customer supplies to the taxpayer is current and accurate, unless the taxpayer has actual knowledge to the contrary.

(3) When the service is provided while a subscriber is roaming outside the subscriber's normal cellular network area, the gross income shall be assigned consistent with the taxpayer's accounting system to the location of the originating cell site of the call, or to the location of the main cellular switching office that switched the call.

(4) If there is a dispute among one or more other cities, and/or the taxpayer, as to the service address of a customer who is receiving cellular telephone services and the dispute is not resolved by negotiation among the parties, then the dispute shall be resolved by the City and the other city or cities by submitting the issue for settlement to the Association of Washington Cities (AWC). Once taxes on the disputed revenues have been paid to one of the contesting cities, the cellular telephone service company shall have no further liability with respect to additional taxes, penalties, or interest on the disputed revenues so long as it promptly changes its billing records for future revenues to comport with the settlement facilitated by AWC. (Ord 3588 Sec. 2, 1994)

**3.70.050: Business License Required:** No person shall engage in any business or activity in the City for which a tax is imposed by this Chapter without first having obtained and being the holder of a valid and existing business license and such other licenses as may be required in accord with Title 6 of this Code. (Ord. 3322 Sec. 1 (part), 1991: Ord. 2650 Sec. 1 (part), 1982: Ord. 1294 Sec. 1, 1965: Ord. 1272 Sec. 7, 1964)

**3.70.060: Tax – Payment – Records:** The tax payable hereunder shall at the time of the return being required to be filed hereunder, be paid to the City Treasurer by bank draft, certified check, cashier’s check, personal check or money order or in cash. If payment is made by draft or check, the tax or fee shall not be deemed paid until the check or draft is honored in the usual course of business; nor shall the acceptance of any sum by the Treasurer be an acquittance or discharge of the tax or fee due unless the amount of payment is in full, and the actual amount due.

It shall be the duty of every person liable for the payment of any fee or tax imposed by this Chapter to keep and preserve for the period of five (5) years such books and records as will accurately reflect the amount of his “gross income” as defined herein and from which can be determined the amount of any fee or tax for which he may be liable under the provisions of this Chapter and all books as provided therein shall be open for examination at all reasonable times by the Treasurer or his duly authorized agent. (Ord. 3322 Sec. 1 (part), 1991: Ord. 1272 Sec. 8, 1964)

**3.70.070: Transfer of Business – Responsibility:** Upon the sale or transfer during a monthly period of a business or account of which a tax is required, the purchaser or transferee shall, if the tax has not been paid in full for said monthly period, be responsible for the payment of the tax for that portion of the monthly period during which he carries on such business. (Ord. 3322 Sec. 1 (part), 1991: Ord. 3303 Sec. 4, 1991: Ord. 1272 Sec. 9, 1964)

**3.70.080: Time Limitation on Corrections, Adjustments, and Refunds:** Except as provided for herein, in all cases of the voluntary payment of any tax imposed by this Chapter, resulting in an overpayment of the true amount due, whether or not the result of mistake of law, mistake of fact, inadvertence or error, such payments may be adjusted or corrected only within one year (365 days) of payment. The correction, adjustment or refund of all or any portion of such payment is barred one year (365 days) following payment to the City. (Ord. 5531 Sec. 2, 2013)

**3.70.095: Administrative Appeal:** Any person seeking correction, adjustment, refund or reimbursement for any payment of any tax imposed by this Chapter, shall, prior to any judicial action, present to the City Treasurer, a written protest stating the basis upon which such correction, adjustment or refund is requested. The City Treasurer shall make a written determination on the protest within sixty (60) days of the date of its filing with the City Clerk. All taxes must be remitted prior to the filing of an appeal. (Ord. 5531 Sec. 3, 2013)

**3.70.100: Delinquent Payment:** If any taxpayer fails, neglects or refuses to make his return as and when required herein, the Treasurer is authorized to determine the amount of tax payable and by mail to notify such taxpayer of the amount as so determined. The amount so fixed shall thereupon become the tax and be immediately due and payable. (Ord. 3322 Sec. 1 (part) 1991: Ord. 1272 Sec. 12, 1964)

**3.70.105: Interest and Penalty:**

(1) Should a person fail to pay the tax due in the time prescribed, he shall become liable for interest on the tax due at the rate of one percent per month or fraction thereof.



(2) Should a person fail to pay the tax due within thirty days after it is due, he shall become liable for a penalty of ten percent of the amount of the tax due, in addition to the interest provided for in 3.70.105(1). (Ord. 5531 Sec. 4, 2013)

**3.70.110: Compliance Required – False Statements Unlawful:** It is unlawful for any person liable for a tax hereunder to fail or refuse to make the returns when required or to pay the fee or tax when due, or for any person to make any false or fraudulent application or return, or any false statement or return or any false statement or representation in, or in connection with, any such application or return, or to aid or abet another in an attempt to evade payment of the fee or tax, or any part thereof, or for any person to fail to appear or testify in response to subpoena issued pursuant hereto, or to testify falsely upon any investigation of the correctness of a return, or upon the hearing of any appeal, or in any manner to hinder or delay the City or any of its officers in carrying out the provisions of this Chapter. (Ord. 3322 Sec. 1 (part) 1991: Ord. 1272 Sec. 13, 1964)

**3.70.120: Tax Additional to Other Fees:** The tax herein levied shall be additional to any license or tax imposed or levied under any law or any other ordinance of the City. (Ord. 3322 Sec. 1 (part) 1991: Ord. 1272 Sec. 14, 1964)

**3.70.130: Unpaid Fee Deemed Debt to City:** Any tax due and unpaid under this Chapter, and all penalties thereon, shall constitute a debt to the City and may be collected by court proceedings in the same manner as any other debt in like amount which remedy shall be in addition to all other existing remedies. (Ord. 3322 Sec. 1 (part) 1991: Ord. 1272 Sec. 15, 1964)

**3.70.140: City Payment of Tax – Exception:** Whenever the City, through any department or division, engages in any business activity which, if engaged in by any person, would under this Chapter require the payment of a tax by such person, the City department or division engaging in such business activity shall, as to such business activity at the same time and in the same manner as persons are required hereunder, make returns and from the funds of such department or division pay the taxes imposed hereunder. Each of said departments or divisions of the City shall transfer or pass on to its consumers the tax herein provided. (Ord. 3322 Sec. 1 (part), 1991: Ord. 1272 Sec. 16, 1964)

**CHAPTER 3.30  
UTILITY OCCUPATIONAL TAX**

Sections:

- 3.30.010 Exercise of Taxing Authority
- 3.30.020 Definitions
- 3.30.050 Occupations Subject to Tax - Amount
- 3.30.055 Street Overlay, Repair, and Reconstruction Fund
- 3.30.060 Exceptions and Deduction
- 3.30.070 Payment of Tax
- 3.30.080 Sale or Transfer of Business
- 3.30.090 Taxpayer to Keep Books and Records - Returns Confidential
- 3.30.100 Cost of Audit
- 3.30.110 Overpayment or Underpayment of Tax
- 3.30.120 Remedy for Nonpayment of Tax
- 3.30.130 Appeals to City Council
- 3.30.150 False Returns
- 3.30.160 Notification of Annexation
- 3.30.180 Rules
- 3.30.190 Penalty

3.30.010 Exercise of Taxing Authority: Provisions of this chapter shall be deemed an exercise of the authority of the city to tax for revenue. (Ord. 2160, 4/27/04)

3.30.020 Definitions: In construing the provisions of this chapter, save when otherwise plainly declared or clearly apparent from the context, the following definitions shall be applied:

- A. Competitive Telephone Service means the providing by any person of telephone equipment, apparatus, or service, other than toll service, which is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.
- B. Gross Operating Income means the value proceeding or accruing from the sale of tangible property or service, installation fees, and receipts by reason of the investment of capital in the business engaged in, including rentals, royalties, fees or other emoluments, however, designated (excluding receipts or proceeds from the use or sale of notes, bonds, mortgages, or other evidences of indebtedness, or stock and the like) and without any deduction on account of the cost of the property sold, the cost of materials used, labor costs, interest or discount paid or any expense whatsoever.
- C. Person or Persons means persons of either sex, firms, co-partnerships, corporations and other associations of natural persons, whether acting by themselves or by servants, agents or employees.
- D. Taxpayer means any person liable for the license fee or tax imposed by this chapter.
- E. Tax Year or Taxable Year means the year commencing January first and ending on the last day of December of the same year, or in lieu thereof, the taxpayer's fiscal year when permission is obtained from the Finance Director to use the same as the tax period.
- F. Telephone means every primary station and shall exclude extensions.
- G. Telephone Business means the business of providing access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, or providing telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line, or channel, or similar communication or transmission system. It includes cooperative or farmer line telephone companies or associations operating an exchange. The term does not include the providing of competitive telephone service, nor the providing of cable television service. (Ord. 2489, 7/28/09; Ord. 1044, 1981)

3.30.050 Occupations Subject to Tax - Amount: There is hereby levied upon, and there shall be collected from, every person engaged in carrying on the following businesses for hire or for the sale of a commodity, or service within or partly within the corporate limits of the city the tax for the privilege of so doing business as herein after defined, as follows:

- A. Upon every person engaged in or carrying on the business of selling, furnishing, delivering, or distributing any telephone service for residential, commercial, or industrial use a tax equal to 6% of the first one hundred thousand dollars (\$100,000) of total annual gross operating revenue of sales of telephone service to each customer within the limits of the city.

Gross operating income for this purpose shall not include charges which are passed on to the subscribers by a telephone company pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this chapter.

- B. Upon every person engaged in or carrying on the business of selling, furnishing, delivering, or distributing electric light and power or electrical energy service for residential, commercial, or industrial use a tax equal to six percent (6%) of the first one hundred thousand dollars (\$100,000) of annual total gross operating revenue from distributing electric light and power or electrical energy to each customer within the limits of the city.
- C. Upon every person engaged in or carrying on the business of selling or furnishing water service for residential, commercial, or industrial use a tax equal to ten percent (10%) of the first one hundred and fifty thousand dollars (\$150,000) of total annual gross operating revenue for selling or furnishing water service to each customer within the limits of the city.
- D. Upon every person engaged in or carrying on the business of selling or furnishing sewer service for residential, commercial, or industrial use a tax equal to eight percent (8%) of the first one hundred and fifty thousand dollars (\$150,000) of total annual gross operating revenue for selling or furnishing sewer service to each customer within the limits of the city.
- E. Upon every person engaged in or carrying on the business of selling or furnishing stormwater management service for residential, commercial, or industrial use within the City there shall be levied a tax equal to eight percent (8%) of the total annual gross operation revenue.
- F. Upon every person engaged in or carrying on the business of selling or furnishing of natural, manufactured, or mixed gas service for residential, commercial, or industrial use a tax equal to six percent (6%) of the first one hundred thousand dollars (\$100,000) of total annual gross operating revenue from selling or furnishing natural, manufactured, or mixed gas service to each customer within the limits of the city.
- G. Upon every person engaged in or carrying on the business of selling or furnishing garbage facilities and/or service for domestic or industrial use within the city there shall be levied a tax equal to eight percent (8%) of the total annual gross operating revenue.
- H. Upon every person engaged in or carrying on the business of furnishing a cable subscription system for television signal distribution within the city there shall be levied a tax equal to three percent (3%) of the total annual gross operating revenue. It is not the intent of this section to classify the business as a public utility.
- I. Upon every person engaged in or carrying on the business of furnishing competitive telephone service, including but not limited to, cellular telephone service within the city there shall be levied a tax equal to eight percent (8%) of the total annual gross operating revenue.
- J. Total annual gross operating revenue shall be calculated on a calendar year basis beginning January 1 of any year and ending on December 31 of the same year. (Ord. 2572, 7/27/10; Ord. 2554, 3/23/10; Ord. 2059, 5/14/02; Ord. 1930, 4/25/00; Ord. 1878, 11/9/99; Ord. 1860, 7/13/99; Ord. 1852, 4/13/99; Ord. 1520, 1992; Ord. 1216, 1986; Ord. 1089, 1983; Ord. 1044, 1981)

3.30.055 Street Overlay, Repair, and Reconstruction Fund: Of the utility occupational tax levied in Section 3.30.050 (C), (D), (E), and (G), three percent (3%) shall be deposited in the City's "Street Repair and Reconstruction Fund" to be used solely for the repair and reconstruction of the streets in the City. Furthermore, of the utility occupational tax levied in Section 3.30.050 (A), (B), and (F), one percent (1%) shall be deposited in the "Street Repair and Reconstruction Fund" to be used solely for the same purposes. (Ord. 2654, 9/25/12; Ord. 2554, 3/23/10; Ord. 1357, 1989; Ord. 1230, 1986; Ord. 1089, 1983; Ord. 1044, 1981)

3.30.060 Exceptions and Deductions: In computing said tax, there shall be deducted from said gross operating income the following items:

- A. The amount of credit losses and uncollectibles actually sustained by the taxpayer;
- B. Amounts derived from interstate or foreign commerce or from any business which the city is prohibited from taxing under the Constitutions of the United States or the State of Washington;
- C. Amounts derived by the taxpayer from the City of Moses Lake.

Any person subject to payments of a license fee or tax under the provisions of any ordinance of the city, other than this chapter, on account of engaging in any activity for which he is liable to tax under this chapter, may deduct the amount of such fee or tax imposed by this chapter on account of such activity except when the taxes imposed in this chapter are paid by the customer, but such person shall nevertheless, in the manner provided for in this chapter, apply for and procure an Occupation License. (Ord. 1044, 1981)

3.30.070 Payment of Tax: The tax imposed by this chapter shall be due and payable in quarterly installments and remittance shall be made on or before the 30th day of the month next succeeding the end of the quarterly period for which the tax accrued unless the prior year's annual tax is two hundred dollars (\$200) or less, then payment may be made on the same basis as the fourth quarter. Such quarterly periods are as follows:

- 1st quarter - January, February, March
- 2nd quarter - April, May, June
- 3rd quarter - July, August, September
- 4th quarter - October, November, December

The first payment made hereunder shall be made by April 30, 1982 for the three month period ending March 1982. On or before said due date the taxpayer shall file with the Finance Director a written return, upon such form and setting forth such information as the Finance Director shall reasonably require, together with the payment of the amount of the tax. (Ord. 1959, 8/8/00; Ord. 1044, 1981)

3.30.080 Sale or Transfer of Business: Upon the sale or transfer during any tax year of a business on account of which a fee or tax is required, the purchaser or transferee shall, if the fee or tax has not been paid in full for the year, be responsible for its payment for that portion of the year during which he carried on such business. (Ord. 1044, 1981)

3.30.090 Taxpayer to Keep Books and Records - Returns Confidential: It shall be the duty of each taxpayer taxed upon his gross income to keep and enter in a proper book or set of books or records an account which shall accurately reflect the amount of his gross income which account shall always be open to the inspection of the Finance Director or his duly authorized agent, and from which the officer or his agent may verify the return made by the taxpayer. The applications, statements or returns made to the Finance Director pursuant to this chapter shall not be made public nor shall they be subject to the inspection of any person except the City Manger, the City Attorney, the Finance Director or his authorized agent, and members of the City Council. (Ord. 2489, 7/28/09; Ord. 1044, 1981)

CITY OF MOSES LAKE MUNICIPAL CODE  
CHAPTER 3.30 - UTILITY OCCUPATIONAL TAX

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- 3.30.100 Cost of Audit: Upon the failure or refusal of the taxpayer to furnish the information called for by the Finance Director or if the books and records of the taxpayer are complicated, or do not readily disclose the information required for making a complete or satisfactory return without the assistance of a skilled accountant, then the Finance Director may in his discretion employ a skilled accountant, and such clerical assistance as is necessary, to make an audit of the books and records of the taxpayer and such expenses shall be collected from the taxpayer in the manner provided for the collection of the license or tax. (Ord. 2489, 7/28/09; Ord. 1044, 1981)
- 3.30.110 Overpayment or Underpayment of Tax: If the Finance Director upon investigation or upon checking returns finds that the fee or tax paid is more than the amount required of the taxpayer, he shall, upon request of the taxpayer, refund the amount overpaid by warrant upon the General Fund, or credit the amount against any tax due or to become due from such taxpayer hereunder. If the Finance Director finds that the fee or tax paid is less than required, he shall send a statement to the taxpayer showing the balance due, who shall within ten (10) days of the receipt of the statement pay the amount shown thereon. (Ord. 2489, 7/28/09; Ord. 1044, 1981)
- 3.30.120 Remedy for Nonpayment of Tax: If any taxpayer fails to apply for a license or make his return, or to pay the fee or tax therefore, or the cost of any audit required by the Finance Director or any part thereof by the due date referred to in Section 3.30.070, the Finance Director shall ascertain the amount of the fee or tax or installment thereof and/or cost of audit due, and shall add to such amount interest which shall be assessed at twelve percent (12%) per annum figured on a daily basis and a penalty of fifteen percent (15%) of the total amount past due, and shall notify such taxpayer therefore, who shall be liable therefore in any suit or action by the city for collection thereof. The penalty which is assessed shall not be considered as interest. The Finance Director shall also notify the City Attorney in writing of the name of such delinquent taxpayer and the amount due from him and the City Attorney shall with the assistance of the Finance Director collect the same by any appropriate means or by any suit or action in the name of the City of Moses Lake. (Ord. 2489, 7/28/09; Ord. 1089, 1983; Ord. 1044, 1981)
- 3.30.130 Appeals to City Council: All taxpayers aggrieved by the amount of the fee or tax found by the Finance Director to be required under the provisions of this chapter may appeal to the City Council from such finding by filing a written notice of appeal with the Finance Director within five (5) days from the time such taxpayer was given notice of such amount. The Finance Director shall, as soon as practicable, fix a time and place for the hearing of such appeal, which time shall be not later than the next scheduled regular City Council meeting more than six (6) days after the filing of the notice of appeal, and he shall cause a notice of the time and place thereof to be delivered or mailed to the appellant. At such hearing, the taxpayer shall be entitled to be heard and to introduce evidence in his own behalf. The City Council shall thereupon ascertain the correct amount of the fee or tax by resolution and the Finance Director shall immediately notify the appellant thereof, which amount, together with costs of appeal, if appellant is unsuccessful therein, must be paid within three (3) days after such notice is given. (Ord. 2489, 7/28/09; Ord. 1044, 1981)
- 3.30.150 False Returns: It is unlawful for any person liable to tax under this chapter to fail or refuse to make application for return for license or to pay the fee or tax or installment thereof when due, or for any person to make any false or fraudulent application or return or any false statement or representation, in, or in connection with, any such application or return, or to aid or abet another in any attempt to evade payment of the fee or tax, or any part thereof, or for any person to fail to appear, and/or testify in response to subpoena issued pursuant hereto, or to testify falsely upon an investigation of the correctness of a return, or upon the hearing of any appeal, or in any manner to hinder or delay the city or any of its officers or auditors in carrying out the provisions of this ordinance. (Ord. 1044, 1981)
- 3.30.160 Notification of Annexation: Whenever the boundaries of said city are extended by annexation, all persons subject to this chapter shall be provided copies of all annexation ordinances by the city. (Ord. 1044, 1981)

- 3.30.180 Rules: The Finance Director is hereby authorized to adopt, publish, and enforce, from time to time, such rules and regulations for the proper administration of this chapter as shall be necessary, and it shall be a violation of this chapter to violate or fail to comply with any such rule or regulation lawfully promulgated hereunder. (Ord. 2489, 7/28/09; Ord. 1044, 1981)
- 3.30.190 Penalty: Any person who violates any of the provisions of this chapter shall be punishable as defined in Chapter 1.08 of the Moses Lake Municipal Code by a penalty of up to one thousand dollars (\$1,000) together with all penalties and assessments imposed by law for each violation. (Ord. 1645, 1994; Ord. 1044, 1981)

**ORDINANCE NO. 012-17**

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON,  
AMENDING THE GROSS EARNINGS – EXCISE TAX PROVISIONS OF  
CHAPTER 5.68 (“NATURAL GAS FRANCHISE”) OF THE PORT  
ORCHARD MUNICIPAL CODE; PROVIDING FOR SEVERABILITY;  
AND SETTING AN EFFECTIVE DATE.**

**WHEREAS**, on June 24, 2014, the City Council adopted Ordinance No. 010-14 granting Cascade Natural Gas Corporation (“CNG”) a franchise to provide for the distribution and sale of natural gas in the City of Port Orchard, as codified in chapter 5.68 of the Port Orchard Municipal Code (“POMC”); and

**WHEREAS**, POMC 5.68.120 provides that the franchise rights granted are conditioned upon the monthly payment by CNG to the city of an excise tax consisting of two percent (2%) of its gross earnings from the sale of natural gas in the city, as compensation and as consideration for the use of the public right-of-way; and

**WHEREAS**, pursuant to POMC 5.68.120, the city has the right, upon adequate notice to CNG, to increase the excise tax CNG pays on its gross earnings up to the maximum amount allowed by law; and

**WHEREAS**, administrative costs accrue to the city for permitting, license, and franchise, to inspect plans and construction, and the preparation of detailed statements that assure the city maintains safe, healthy, productive, and aesthetically and culturally pleasing surroundings without environment degradation, and public works, clerk, legal, and finance have responsibilities resulting in expenses associated with the administration of the franchise agreement; and

**WHEREAS**, the City Treasurer has provided adequate written notice to CNG of the city’s intent to increase this excise tax; and

**WHEREAS**, pursuant to RCW 35.21.870, the maximum amount that the city may impose on the privilege of conducting a natural gas business as an excise tax, without the prior approval of a majority of the voters of the city, is six percent (6%) of CNG’s gross earnings; and

**WHEREAS**, pursuant to RCW 35.21.865, a change in this excise tax rate may not take effect before the expiration of sixty (60) days following the enactment of the ordinance establishing the change; now, therefore,

**THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DO ORDAIN AS  
FOLLOWS:**

**SECTION 1.** Port Orchard Municipal Code Section 5.68.120 is hereby amended to read as follows:

**5.68.120 Gross earnings – Excise tax.**

The right and privileges hereby granted are upon condition that the CNG, its successors or assigns, shall pay, as compensation and as a consideration for the use of the streets, avenues, alleys, and public grounds of the city, for the purposes herein designated, the full sum and amount of six percent (6%) of its gross earnings from the sale of gas in the city, monthly into the treasury of the city for the use and benefit of the city. CNG's payment of the compensation shall be made on or before the last day of each month following the month in which the tax accrued from the granting of this franchise. And for the purpose of ascertaining the gross earnings upon which payment shall be made, as aforesaid, an accurate account of such earnings shall be kept by CNG, and an abstract and account thereof furnished by it to the city treasurer of the city on or before the last day of each month following the month in which the tax accrued, the truth of which abstract shall be verified by affidavit of CNG. For the purpose of verification of such statements, the books of CNG shall be at all times opened for the inspection of such officer, person or persons as may be appointed for that purpose by the city. And for the purpose of securing to the city the payment of the aforesaid per centum, the city shall have a lien for the payment of the said per centum and the same shall be charged against all of the property, estate and effects of the said company whatsoever, real, personal or mixed, and may be enforced by the city by civil action. But nothing contained herein shall be held to impair the rights of the city in enforcing the terms and conditions of this franchise. The city reserves the right, upon adequate notice to CNG, to increase the excise tax CNG pays on its gross earnings from the sale of gas in the city up to the maximum amount allowed by law. (Ord. 010-14 § 12).

**SECTION 2. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful 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.** This Ordinance shall be published by an approved summary consisting of the title.

**SECTION 4. Effective Date.** This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law. The rate change will take effect sixty days thereafter.



PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the Clerk in authentication of such passage this 11<sup>th</sup> day of April 2017.



Robert Putaansuu, Mayor



ATTEST:



Brandy Rinearson, CMC, City Clerk

SPONSOR:



John Clauson, Councilmember

APPROVED AS TO FORM:



Sharon Cates, City Attorney

PUBLISHED: April 21, 2017

EFFECTIVE DATE: April 26, 2017

**NOTICE OF CITY OF PORT ORCHARD  
ORDINANCE**

The following is a summary of an Ordinance approved by the Port Orchard City Council at their regular Council meeting held April 11, 2017.

**ORDINANCE NO. 012-17**

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON,  
AMENDING THE GROSS EARNINGS – EXCISE TAX PROVISIONS OF  
CHAPTER 5.68 (“NATURAL GAS FRANCHISE”) OF THE PORT  
ORCHARD MUNICIPAL CODE; PROVIDING FOR SEVERABILITY;  
AND SETTING AN EFFECTIVE DATE.**

Copies of Ordinance No. 012-17 are available for review at the office of the City Clerk of the City of Port Orchard. Upon written request a statement of the full text of the Ordinance will be mailed to any interested person without charge. Thirty days after publication, copies of Ordinance No. 012-17 will be provided at a nominal charge.

City of Port Orchard

Brandy Rinearson  
City Clerk

Published: Friday, April 21, 2017

**Chapter 3.74**  
**LICENSE FEE AND OCCUPATION TAX**

## Sections:

- [3.74.010](#) Definitions.
- [3.74.020](#) Occupation subject to tax—Amount.
- [3.74.030](#) Exceptions and deductions.
- [3.74.040](#) Monthly payment of tax.
- [3.74.050](#) Commencement of business during tax year.
- [3.74.060](#) Sale or transfer of business.
- [3.74.070](#) Taxpayer to keep books and records—Returns confidential.
- [3.74.080](#) Finance director to investigate returns.
- [3.74.090](#) Cost of audit.
- [3.74.100](#) Underpayment of tax, and interest.
- [3.74.105](#) Overpayment of tax.
- [3.74.120](#) Appeals to the city council.
- [3.74.130](#) False returns, etc.
- [3.74.140](#) Violation—Penalty.
- [3.74.900](#) Severability.

**3.74.010 Definitions.**

In construing the provisions of this chapter, except when otherwise plainly declared or clearly apparent from the context, the following definitions shall be applied:

- A. “Cable television service” means the business of delivery or distribution of cable television picture or signal.
- B. “Telephone business” means the business of providing access to a local telephone network, local telephone network switching service, toll service, coin telephone services, telephonic, video, data, pagers, or similar communication, or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. The term includes cooperative or farmer line telephone companies or associations operating exchanges. “Telephone business” does not include the providing of competitive telephone service, or providing of cable television service, or other providing of broadcast services by radio or television stations.
- C. “Competitive telephone service” means the providing by any person of telecommunications equipment or apparatus, directory advertising and lease of telephone street directories, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which may be provided by persons not subject to regulation as telephone companies under RCW Title 80, and for which a separate charge is made. Transmission of

communication through cellular telephones is classified as “telephone business” rather than “competitive telephone service.”

D. “Cellular telephone service” is a two-way voice and data telephone/telecommunications system based in whole or substantial part on wireless radio communications and which is not subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service. Cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology which accomplishes the same purpose as cellular mobile service. Cellular telephone service is included within the definition of “telephone business” for the purposes of the chapter.

E. “Gross income” means the value proceeding or accruing from the sale of tangible property or services, and receipts (including all sums earned or charged, whether received or not) by reason of the investment of capital in the business engaged in, including rentals, royalties, fees or other emoluments, however designated (excluding receipts or proceeds from the use or sale of real property or any interest therein and proceeds from the sale of notes, bonds, mortgages, or other evidences of indebtedness, or stock or the like) and without any deduction on account of the property sold, the cost of materials used, labor costs, interest or discount paid or any expense whatsoever, without any deduction on account of losses.

F. “Person or persons” means all persons, firms, partnerships, corporations, limited liability companies, and all other associations of natural persons whether acting by themselves or by servants, agents or employees.

G. “Solid waste” shall mean all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial waste, swill, sewage sludge, demolition and construction wastes, and abandoned vehicles or parts thereof, discarded commodities, wood waste, dangerous waste, and problem waste. This includes all public, private, industrial, commercial or agricultural operations.

H. “Taxpayer” means any person liable for the license fee and occupation tax imposed by this chapter.

I. “Tax year” or “taxable year” means the year commencing January 1st and ending on the last day of December of the same year, or, in lieu thereof, the taxpayer’s fiscal year when permission is obtained from the city clerk-finance director to use the same as the tax period. (Ord. 2807 § 1, 2013: Ord. 2719 § 1, 2011: Ord. 2392 § 1, 2003: Ord. 1629 § 1, 1993).

#### **3.74.020 Occupation subject to tax—Amount.**

There are levied upon and shall be collected from persons on account of the business activities

annual license fees and occupation taxes, in the amounts to be determined by the application of the rates against gross income, as follows:

- A. Upon every person engaged in or carrying on a telephone business, a license fee and occupation tax, equal to six percent of the total gross income including revenues from intrastate toll, derived from the operation of such businesses within the city, due hereunder, which shall be paid monthly on or before the twentieth day of each month following the close of each calendar month. Gross income for this purpose shall not include charges which are passed on to the subscribers by a telephone company pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this chapter;
- B. Upon every person engaged in or carrying on the business of selling or furnishing natural gas, a license fee and occupation tax, equal to six percent of the total gross income from such business in the city, due hereunder, which shall be paid monthly on or before the twentieth day of each month following the close of each calendar month; provided, that there shall not be any tax levied for installation charges;
- C. Upon every person including, but not limited to, public utility districts engaged in or carrying on the business of selling or furnishing electric light and power or electrical energy, a license fee and occupation tax, equal to six percent of the total gross income from such business in the city, due hereunder, which shall be paid monthly on or before the twentieth day of each month following the close of each calendar month; provided, that there shall not be any tax levied for installation charges;
- D. Upon every person engaged in the carrying on of the business of distributing and selling of water, a license fee and occupation tax, equal to twenty point six percent of the total gross income from such business conducted in the city, due hereunder, which shall be paid monthly on or before the twentieth day of each month following the close of each calendar month; provided, that there shall not be any tax levied for installation charges;
- E. Upon every person engaged in the carrying on of the business of conducting a sewage disposal business, a license fee and occupation tax, equal to twenty two point one percent of the total gross income from such business conducted in the city, due hereunder, which shall be paid monthly on or before the twentieth day of each month following the close of each calendar month; provided, that there shall not be any tax levied for installation charges;
- F. Upon every person engaged in carrying on the business of delivery or distribution of cable television picture or signals, a license fee and occupation tax, equal to six percent of the total gross income from such business conducted in the city, due hereunder, which shall be paid monthly on or before the twentieth day of each month following the close of each calendar month; provided, that there shall not be any tax levied for installation charges;

G. Upon every person engaged in or carrying on the business of a cellular telephone service, a license fee and occupation tax equal to six percent of the total gross income derived from conducting such business within the city of Prosser, as indicated by billings and/or charges to Prosser customers, due hereunder, which shall be paid monthly on or before the twentieth day of each month following the close of each calendar month; provided, that there shall not be any tax levied for installation charges.

1. **Service Address.** Payments by a customer for the telephone service from telephones without a fixed location shall be allocated among jurisdictions to the location of the customer's principal service address during the period for which the tax applies, regardless of the location of the facilities used to provide the service. The customer's "principal service address" is, with respect to each telephone: (a) the customer's plant, store, office, or other facility where the telephone is normally assigned for use in conjunction with the customer's business activity; or (b) the customer's place of residence if the telephone is for personal use.
2. **Presumption.** There is a presumption that the service address shown on the telephone service company's records is current and accurate, unless the taxpayer has knowledge to the contrary and conveys such knowledge to the city and the telephone service company.
3. **Roaming Phones.** When service is provided while a subscriber is roaming outside the subscriber's normal cellular network area, the gross income shall be assigned consistent with the taxpayer's accounting system to the location of the originating cell site of the call, or to the location of the main cellular switching office that switched the call.
4. **Dispute Resolution for Cities Regarding Cellular Service.** If there is a dispute between or among the city of Prosser and another city or cities as to the service address of a customer who is receiving cellular telephone services and the dispute is not resolved by negotiation among the parties, then the dispute shall be resolved by the city and the city or cities submitting the issue for settlement to the Association of Washington Cities (AWC). Once taxes on the disputed revenues have been paid to one of the contesting cities, the cellular telephone service company shall have no further liability with respect to additional taxes, penalties or interest on the disputed revenues so long as it promptly changes its billing records for future revenues to comport with the settlement facilitated by AWC.

H. Upon every person who both bills Prosser customers for collecting, handling, or processing solid waste and is engaged in or carrying on the business of collecting, handling or processing solid waste, either directly or through a subcontractor, a license fee and occupation tax equal to five percent of the total gross income derived from conducting such business within the city of Prosser, as indicated by billings and/or charges to Prosser customers, due hereunder, which shall be paid monthly on or before the twentieth day of each month following the close of each calendar month except such tax

shall not apply to the amounts collected pursuant to the state solid waste collection tax which is remitted by the taxpayer to the state of Washington. If a general contractor pays a tax under this section that includes the services of a subcontractor, then the subcontractor shall not be obligated to pay a tax under this section for its bills to the general contractor. (Ord. 2807 § 2, 2013; Ord. 2719 § 2, 2011; Ord. 2643 § 1, 2008; Ord. 2517 § 1, 2005; Ord. 2392 § 2, 2003; Ord. 1898 § 1, 1996; Ord. 1629 § 1, 1993).

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**3.74.030 Exceptions and deductions.**

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A. A taxpayer may except and deduct from the total gross income upon which license fee and occupation tax is computed (and before computation of the tax) so much thereof as is derived from transactions in interstate or foreign commerce, or from business done for the government of the United States, its officers or agents, and any amount which must by federal or state laws be deducted before calculating the amount of the tax imposed by this chapter.

B. Nothing in this chapter shall be construed as requiring a license, or the payment of a license fee and occupation tax, or the doing of any act, which would constitute an unlawful burden or interference in violation of the Constitution or laws of the United States, or which would not be consistent with the Constitution or laws of the state. (Ord. 2504 § 1, 2005; Ord. 1629 § 1, 1993).

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**3.74.040 Monthly payment of tax.**

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When the amount of the license fee and occupation tax is based upon gross income, the taxpayer shall pay his license fee and occupation tax in monthly installments on or before the twentieth day of the month. At the end of the year, he shall make a complete return and pay the balance of any found to be due. (Ord. 1629 § 1, 1993).

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**3.74.050 Commencement of business during tax year.**

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When a business, occupation or pursuit subject to tax upon gross income has not been carried on for a full month preceding the tax month for which license is required, the license fee and occupation tax shall be paid for the first full month of the commencement of business, and shall be based upon the gross income for the month next preceding that in which payment is due. In such cases, the taxpayer shall make monthly returns on or before the twentieth day of the month, under oath or affirmation covering the business of the previous month. (Ord. 1629 § 1, 1993).

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**3.74.060 Sale or transfer of business.**

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Upon the sale or transfer during any tax year of a business on account of which a license fee and occupation tax is required, the purchaser or transferee shall, if the license fee and occupation tax has not been paid in full for the year, be responsible for its payment for that portion of the year during which he carried on such business. (Ord. 1629 § 1, 1993).

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**3.74.070 Taxpayer to keep books and records—Returns confidential.**

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A. It shall be the duty of each taxpayer taxed upon his gross income to keep and enter in a proper book or set of books or records, an account which shall accurately reflect the amount of his gross income, which account shall always be open to the inspection of the city finance director or his/her duly authorized agent, and from which such officer or his agent may verify the return made by the taxpayer.

B. The applications, statement or returns made to the city finance director, pursuant to this chapter, shall not be made public, nor shall they be subject to the inspection of any person except the mayor, the corporation counsel, the city finance director or his/her authorized agent, and member of the city council. (Ord. 1629 § 1, 1993).

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**3.74.080 Finance director to investigate returns.**

If any taxpayer fails to apply for or make his return or if the city finance director is dissatisfied as to the correctness of the statements made in the application or the return of any taxpayer, said officer, or his authorized agent, may enter the premises of such taxpayer at any reasonable time, for the purpose of inspecting his books or records of account to ascertain the amount of the license fee and occupation tax or to determine the correctness of such statements, as the case may be, and may examine any person under oath administered by said officer, or his agent, touching upon the matters inquired into, or said officer, or his authorized agent, may fix a time and place for an investigation of the correctness of the return and may issue a subpoena to the taxpayer, or any other person, to attend upon such investigation and there testify, under oath administered by said officer, or his agent, in regards to the matters inquired into and may, by subpoena, require him, or any person, to bring with him such books, records and papers as may be necessary. (Ord. 1629 § 1, 1993).

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**3.74.090 Cost of audit.**

Upon the failure or refusal of the taxpayer to furnish the information called for by the city finance director, or if the books and records of the taxpayer are complicated, or do not readily disclose the information required for making a complete or satisfactory return without the assistance of a skilled accountant, then the city finance director may, in his or her discretion, employ a skilled accountant and such clerical assistance as is necessary to make an audit of the books and records of the taxpayer and such expenses shall be collected from the taxpayer in the manner provided for the collection of the license fee and occupation tax. (Ord. 1629 § 1, 1993).

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**3.74.100 Underpayment of tax, and interest.**

A. If upon examination of any returns, or from other information obtained by the finance director, it appears that a tax or penalty less than that properly due has been paid, the finance director shall assess the additional amount found to be due and shall add thereto interest on the tax only. The finance officer shall notify the person by mail of the additional amount, which shall become due and shall be paid within thirty days from the date of the notice, or within such time as the finance director



may provide in writing.

B. For the purpose of this chapter the rate of interest that may be charged shall be one percent per month of all taxes and fees due.

C. The finance officer shall not assess, or collect an assessment for, additional taxes or interest due more than four years after the close of the calendar year in which they were due, except that the finance officer may issue an assessment:

1. Against a person that has committed fraud or who misrepresented a material fact; or
2. Against a person that has executed a written waiver of such limitations. (Ord. 2807 § 4, 2013).

#### **3.74.105 Overpayment of tax.**

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A. If, upon receipt of an application for refund for any tax paid under protest, the finance director determines that the amount of tax or interest paid is in excess of that properly due, the excess amount shall be credited to the taxpayer's account or shall be refunded to the taxpayer. No refund or credit shall be made for taxes or interest paid more than one year prior to the beginning of the calendar year in which the refund application is made or examination of records is completed. No refund or credit shall be made for tax paid without concurrent protest.

B. Refunds shall be made by means of voucher approved by the finance director and by the issuance of a city check or warrants drawn upon and payable from such funds as the city may provide or by a credit to future tax due by the taxpayer, at the discretion of the finance director.

C. Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, interest, or cost paid by any person shall be paid in the same manner as provided in subsection B of this section upon the filing with the finance director of a certified copy of the order or judgment of the court.

D. For refunds or credits of amounts paid or the recovery allowed to a taxpayer, the city shall pay no interest. (Ord. 2807 § 5, 2013).

#### **3.74.120 Appeals to the city council.**

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A. Any taxpayer aggrieved by the amount of the license fee and occupation tax found by the city finance director to be required under the provisions of this chapter, may appeal to the city council from such finding by filing a written notice of appeal with the city clerk within five days from the time such taxpayer was given notice of such amount. The city clerk shall, as soon as practicable, fix a time and place for the hearing of such appeal, which time shall not be less than ten days after the filing of the notice of appeal, nor more than thirty days, and shall cause a notice of the time and place

thereof to be delivered or mailed to the appellant. At such hearing, the taxpayer shall be entitled to be heard and to introduce evidence in his own behalf. The city council shall thereupon ascertain the correct amount of the license fee and occupation tax by resolution and the city clerk shall immediately notify the appellant thereof, which amount, together with the costs of appeal, if appellant is unsuccessful therein, must be paid within three days after such notice is given.

B. The mayor of the city, or any councilman, acting at the direction of the city council of the city, may, by subpoena, require the attendance thereat of any person, and may also require him to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated and produce the books and records required, if any, and shall testify truthfully under oath administered by a person qualified to administer oaths, and it shall be unlawful for him to fail or refuse so to do. (Ord. 1629 § 1, 1993).

#### **3.74.130 False returns, etc.**

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It shall be unlawful for any person liable to tax hereunder to fail or refuse to make application or return or make any false statement or representation in, or in connection with, any such application or return, or to aid or abet another in any attempt to evade payment of the license fee and occupation tax, or any part thereof, or for any person to fail to appear, and/or testify in response to subpoena issued pursuant hereto, or to testify falsely upon any investigation of the correctness of a return, or upon the hearing of any appeal, or in any manner to hinder or delay the city or any of its officers or auditor in carrying out the provisions of this chapter. (Ord. 1629 § 1, 1993).

#### **3.74.140 Violation—Penalty.**

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Any person violating or failing to comply with any of the provisions of this chapter or any lawful rule or regulation adopted by the city clerk pursuant thereto shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine in any sum not to exceed one thousand dollars, or by punishment in the county jail for a term not exceeding ninety days, or by both such fine and imprisonment. (Ord. 1629 § 1, 1993).

#### **3.74.900 Severability.**

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The provisions of this chapter are hereby declared to be severable. If any section, subsection, sentence, clause, or phrase of this chapter or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remainder of this chapter shall not as a result of said section, subsection, sentence, clause, or phrase be held unconstitutional or invalid. (Ord. 2504 § 2, 2005).

## Chapter 5.06 UTILITY TAX

### Sections:

- [5.06.010](#) Definitions.
- [5.06.020](#) Utility tax levied—Rate.
- [5.06.025](#) Cellular telephone utility tax levied—Rate.
- [5.06.030](#) License requirement.
- [5.06.035](#) Public utilities.
- [5.06.040](#) Allocation of income—Cellular telephone service.
- [5.06.050](#) Remittance.
- [5.06.060](#) Taxpayer engaged in more than one business.
- [5.06.070](#) Deductions.
- [5.06.080](#) Record retention requirements.
- [5.06.090](#) Tax delinquency—Unlawful acts.
- [5.06.100](#) Quitting, selling or transferring business.
- [5.06.110](#) Tax not exclusive.
- [5.06.120](#) Rate changes.
- [5.06.130](#) Appeal procedure.
- [5.06.140](#) Over or underpayment of tax.
- [5.06.150](#) Pass-through to customer.
- [5.06.155](#) Use of funds.

### **5.06.010 Definitions.**

Unless the context clearly indicates otherwise, the words, phrases and terms used in this chapter shall have the following meanings:

- A. “Cellular telephone service” means a two-way voice and data telephone/telecommunications system based in whole or substantially in part on wireless radio communications which is not subject to regulation by the Washington State Utilities and Transportation Commission (WUTC). This includes cellular mobile service. The definition of cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology which accomplishes a purpose similar to cellular mobile service. Cellular telephone service is included within the definition of “telephone business” for the purposes of this chapter.
- B. “City clerk” means the city clerk of Sedro-Woolley and his or her designees or agents.
- C. “Competitive telephone service” means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or

maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under RCW Title 80 and for which a separate charge is made.

D. "Gross income" means the value proceeding or accruing from the sale of tangible property or service, and receipts (including all sums earned or charged, whether received or not) by reason of investment of capital in the business engaged in (including rentals, royalties, interest and other emoluments however designated) excluding receipts or proceeds from the sale or use of real property or any interest therein and the proceeds from the sale of notes, bonds, mortgages, or other evidences of indebtedness, or stocks and the like and without any deduction on account of the cost of the property sold, cost of materials used, labor costs, interest or discount paid, or any expenses whatsoever, and without any deduction on account of losses. Further deductions and exceptions from gross income upon which the fee or tax described in this chapter is computed are set forth in Section [5.06.070](#).

E. "Person" or "persons" means persons of either sex, firms, partnerships, corporations, limited liability companies, public utility districts, cities, counties, water/sewer associations and other associations, whether acting by themselves or through servants, agents or employees, and shall include the city of Sedro-Woolley for purposes of imposition and collection of this tax.

F. "Taxpayer" means any person liable for the license fee or tax imposed by this chapter.

G. "Tax year" or "taxable year" means (1) the year commencing January 1st and ending on December 31st, of such year, or (2) the taxpayer's fiscal year when permission is obtained from the city clerk to use that period as the tax year, or (3) the year commencing December 15th and ending on December 14th of the following calendar year when permission is obtained from the city clerk to use that period as the tax year.

H. "Telephone business" means the business of providing access to a local telephone network, local telephone network switching service, toll service or coin telephone services or providing telephonic, video, data or similar communication or transmission for hire, via a local telephone network, toll line or channel cable, microwave, or similar communication or transmission system. The term includes cooperative or farmer line telephone companies or associations operating an exchange. Telephone business also includes cellular telephone service; provided, that the utility tax therefor shall be collected under Section [5.06.025](#). Telephone business does not include the providing of competitive telephone service, the providing of cable television service, nor the providing of broadcast services by radio and television stations. (Ord. 1802-14 § 1, 2014; Ord. 1721-11 § 2 (part), 2011; Ord. 1514-05 § 1, 2005; Ord. 1499-05 § 1, 2005)

#### **5.06.020 Utility tax levied—Rate.**

On and after January 1, 2015, there is levied on and shall be collected from every person a tax for the

act or privilege of engaging in certain business activities, measured by the application of the respective rates against gross income as follows:

- A. Telephone Business. Upon every person engaged in or carrying on any telephone business (excluding cellular telephone service) within the city of Sedro-Woolley, a fee or tax equal to six percent of the total gross income from such business in the city of Sedro-Woolley. Tax liability imposed under this section shall not apply to that portion of gross income derived from charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for network telephone service that is purchased for the purpose of resale.
- B. Solid Waste. Upon every person engaged in or carrying on the business of collecting solid waste, recyclable materials or yard waste, a tax equal to seven and one-half percent of the total gross income from such business in the city of Sedro-Woolley, but not including income from the sale of recyclable materials or yard waste.
- C. Sewer System. Upon every person engaged in or carrying on the business of operating a sanitary sewer system, a tax equal to seven and one-half percent of the total gross income from such business in the city of Sedro-Woolley.
- D. Domestic Water. Upon every person engaged in the business of selling or supplying domestic water, a tax equal to six percent of the total gross income from such business in the city of Sedro-Woolley, not including revenue derived from the delivery of water for fire suppression. (Ord. 1802-14 § 2, 2014: Ord. 1792-14 § 1, 2014: Ord. 1743-12 § 1, 2012: Ord. 1721-11 § 2 (part), 2011: Ord. 1499-05 § 2, 2005)

**5.06.025 Cellular telephone utility tax levied—Rate.**

On and after January 1, 2006, there is levied on and shall be collected from every person a tax for the act or privilege of engaging in certain business activities, measured by the application of the respective rates against gross income as follows:

- A. Cellular Telephone Business. Upon every person engaged in or carrying on any cellular telephone service business within the city of Sedro-Woolley, a fee or tax equal to six percent of the total gross income from such business in the city of Sedro-Woolley. Tax liability imposed under this section shall not apply to that portion of gross income derived from charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for network telephone service that is purchased for the purpose of resale. (Ord. 1721-11 § 2 (part), 2011: Ord. 1514-05 § 2, 2005)

**5.06.030 License requirement.**

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Any person subject to taxation under the provisions of this chapter is required to obtain an occupation license from the city of Sedro-Woolley. On and after April 1, 2005, no person subject to payment of the tax herein shall engage in any business, occupation, or activity in the city of Sedro-Woolley without first obtaining and holding a valid license to do so, which license shall be known as an "occupation license" for which the applicant will pay no charge. Such occupation license shall expire at the end of the calendar year in which it is issued and a new license shall be required for each calendar year, unless the taxpayer is transacting business on a fiscal year with the prior consent of the city clerk, obtains an occupation license for the period of its current fiscal year which shall be deemed the tax year for such taxpayer. In such case, the occupation license shall expire at the end of the taxpayer's tax year.

Application for an occupation license shall be made to the city of Sedro-Woolley's community services department which shall provide the forms therefor and shall issue the license.

Any person engaging in or carrying on more than one business, occupation, pursuit or privilege within the city of Sedro-Woolley that is subject to taxation under this chapter shall apply for and obtain an occupation license and shall pay the tax imposed on each of the same. Each occupation license shall be numbered, shall show the name, place and character of business of the taxpayer, and such other information on as the city clerk shall deem necessary, and shall be conspicuously posted in the place of business for which it is issued at all times. Such license shall be personal and nontransferable.

No person to whom an occupation license has been issued pursuant to this chapter shall suffer or allow any other person for whom a separate license is required to operate under or display that person's license, nor shall such other person operate under or display such license.

Any taxpayer who engages in or carries on any business subject to tax hereunder without obtaining and maintaining a valid occupation license 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 and the taxpayer who fails or refuses to pay the license fee or tax on any part thereof on or before the due date shall be deemed to be operating without having a license to do so. (Ord. 1499-05 § 3, 2005)

**5.06.035 Public utilities.**

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A. There is levied upon, and shall be collected from, every person, firm or corporation engaged in carrying on the following business for hire or for sale of a commodity or a service within or partly within the corporate limits of the city, the tax for the privilege of so doing business as hereinafter defined:

1. Upon any cable television business, there shall be levied a tax equal to six and one-half percent of the total gross subscriber revenues from business in the city.

2. There is levied a tax on the sale, delivery or distribution of electricity and electrical energy, and for the privilege of carrying on said business such tax shall be equal to six percent of the total gross revenue derived from sales of such electricity to ultimate users within the city; provided, however, that there shall not be any tax levied for the installation charges of electrical units.

3. There is levied a tax on the sale, delivery, distribution or furnishing of natural gas for domestic, business or industrial consumption, and for the privilege of carrying on said business such tax shall be equal to six percent of the total gross income from such business in the city; provided, however, that there shall not be any tax levied for installation charges of gas energy units.

B. The tax imposed by this section shall be due and payable in quarterly installments and remittance shall be made on or before the thirtieth day of the month next succeeding the end of the quarterly period in which the tax accrued, such quarterly periods being, as follows:

1. First quarter: January, February, March;
2. Second quarter: April, May, June;
3. Third quarter: July, August, September;
4. Fourth quarter: October, November, December.

This section shall be effective January 1, 1982, and the first payment made under this section shall be made on or before April 30, 1982, for the first quarter. On or before said due date, the taxpayer shall file with the city clerk a written return upon such form and setting forth such information as the clerk reasonably requires, together with payment of the amount of the tax.

C. In computing the tax, there shall be deducted from gross operating revenues, the following items:

1. The amount of credit losses and uncollectibles actually sustained by the taxpayer;
2. Amounts derived from transactions in interstate or foreign commerce or from any business which the city is prohibited from taxing under the Constitutions of the United States or the state.

D. Each taxpayer shall keep records reflecting the amount of his gross operating revenues, and such records shall be open at all reasonable times to the inspection of the city clerk or her duly authorized subordinates for verification of said tax returns or for the fixing of the tax of a taxpayer who fails to make such returns.

E. If any person, firm or corporation subject to this section fails to pay any tax required by this section within thirty days after the due date thereof, there shall be added to such tax a penalty of one

percent per month of the amount of such tax, and any tax due under this section and unpaid and all penalties thereon shall constitute a debt to the city and may be collected by court proceedings, which remedy shall be in addition to all other remedies.

F. Any money paid to the city through error or not otherwise in payment of the tax imposed by this section or in excess of such tax, upon request of the taxpayer, shall be credited against any tax due or to become due from such taxpayer under this section or, upon the taxpayer ceasing to do business in the city, shall be refunded to the taxpayer.

G. Any person, firm or corporation subject to this section who fails or refuses to make the required tax returns or to pay the tax when due, or who makes any false statement or representation in or in connection with any such tax return, or otherwise violates or refuses or fails to comply with this section, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not to exceed three hundred dollars or by imprisonment in the city or county jail for a term of not to exceed ninety days, or by both such fine and imprisonment. (Ord. 1721-11 § 2 (part), 2011)

#### **5.06.040 Allocation of income—Cellular telephone service.**

A. Service Address. Payments by a customer for the telephone service from telephones without a fixed location shall be allocated among taxing jurisdictions to the location of the customer's principal service address during the period for which the tax applies.

B. Presumption. There is a presumption that the service address a customer supplies to the taxpayer is current and accurate, unless the taxpayer has actual knowledge to the contrary.

C. Roaming Phones. When the service is provided while a subscriber is roaming outside the subscriber's normal cellular network area, the gross income shall be assigned consistent with the taxpayer's accounting system to the location of the originating cell site of the call, or to the location of the main cellular switching office that switched the call.

D. Dispute Resolution. If there is a dispute between or among the city of Sedro-Woolley and one or more other cities as to the service address of a customer who is receiving cellular telephone services and the dispute is not resolved by negotiation among the parties, then the dispute shall be resolved by the city of Sedro-Woolley and the other city or cities by submitting the issue for settlement to the Association of Washington Cities (AWC). Once the taxes on the disputed revenues have been paid to one of the contesting cities, the cellular telephone service company shall have no further liability with respect to additional taxes on the disputed revenues so long as it changes its billing records for future revenues to comport with the settlement facilitated by AWC. (Ord. 1721-11 § 2 (part), 2011; Ord. 1514-05 § 3, 2005)

#### **5.06.050 Remittance.**

A. Monthly Remittance. The tax imposed by this chapter shall be reported and remitted to the city of



Sedro-Woolley monthly on or before the last day of the subsequent month. If a taxpayer commences to engage in business at any time other than the first day of the month, then the taxpayer's first return and tax payment shall be based upon and cover the portion of the month during which the taxpayer engaged in business.

B. Returns. The remittance shall be in legal tender and shall be accompanied by a return on a form to be provided and prescribed by the city clerk. The taxpayer shall be required to swear or affirm in writing on the return that the information therein given is full and true and that the taxpayer knows it to be so. If the total tax for which any person is liable under this chapter is not reasonably expected to exceed one hundred dollars in any month, the taxpayer may file a written request with the city clerk to file and pay taxes due under this chapter annually. Such requests are subject to approval by the city clerk. (Ord. 1721-11 § 2 (part), 2011: Ord. 1499-05 § 4, 2005)

#### **5.06.060 Taxpayer engaged in more than one business.**

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Any person engaged in or carrying on more than one activity or business subject to the tax imposed by this chapter shall pay the tax so imposed on each such business or activity. (Ord. 1721-11 § 2 (part), 2011: Ord. 1499-05 § 5, 2005)

#### **5.06.070 Deductions.**

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In computing the tax imposed by this chapter, the following may be deducted from the measure of the tax:

- A. Adjustments made to a billing or to a customer account or to a telecommunications company accrual account in order to reverse a billing or charge that had been made as a result of third-party fraud or other crime and was properly a debt of a customer and for which the taxpayer can provide documentation to the city of Sedro-Woolley.
- B. All cash discounts allowed and actually granted to customers of the taxpayer during the tax year and for which the taxpayer can provide documentation to the city of Sedro-Woolley.
- C. Amounts derived from transactions in interstate or foreign commerce, or from business done for the government of the United States, its officers or agents in their official capacity, and any amount paid by the taxpayer to the United States or the state of Washington, as excise taxes.
- D. The amount of credit losses actually sustained by taxpayers whose regular books are kept on an accrual basis.
- E. Amounts derived from business which the city of Sedro-Woolley is prohibited from taxing under the Constitution or the laws of this state or the United States. (Ord. 1748-12 § 1, 2012: Ord. 1721-11 § 2 (part), 2011: Ord. 1499-05 § 6, 2005)

**5.06.080 Record retention requirements.**

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It shall be the duty of every person required to obtain an occupation license and liable for payment of any tax imposed by this chapter to keep and preserve for a period of five years such books and records as will accurately reflect the amount of gross income from the business, and from which can be determined the amount of any tax for which the person may be liable under the provisions of this chapter. The term "books and records" as used in this section includes but is not limited to copies of the taxpayer's federal income tax returns, federal excise tax returns, state of Washington excise tax returns, and copies of income tax and excise tax audits made by the United States or the state of Washington and furnished to such person. The taxpayer's books and records shall be available for examination at all reasonable times by the city clerk and his or her duly authorized designee.

In the case of any taxpayer who does not keep the necessary books and records within the city of Sedro-Woolley for examination, it shall be sufficient if such person produce the same within the city of Sedro-Woolley as instructed or required by the city clerk.

Any taxpayer who fails, neglects, or refuses to produce such books and records in accordance with this chapter, or fails to file a return, in addition to being subject to other civil and criminal penalties provided by this chapter, is subject to a tax assessment in an amount determined by the city clerk in accordance with the provisions of this chapter, which tax assessment shall be deemed prima facie correct and shall be the amount of fee or tax owing to the city of Sedro-Woolley by the taxpayer unless the person can prove otherwise by competent evidence. The taxpayer shall be notified by mail by the city clerk of the amount of tax assessment imposed pursuant to this section, together with any penalty and/or interest due, and the total of such amounts shall thereupon become immediately due and payable. (Ord. 1721-11 § 2 (part), 2011; Ord. 1499-05 § 7, 2005)

**5.06.090 Tax delinquency—Unlawful acts.**

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A. Penalties and Interest. For each payment due, if such payment is not made by the due date thereof, there shall be added penalty and interest as follows:

1. If paid one to ten days late, there shall be a penalty of ten percent added to the amount of tax due.
2. If paid eleven to twenty days late, there shall be a penalty of fifteen percent added to the amount of tax due.
3. If paid twenty-one to thirty days late, there shall be a penalty of twenty percent added to the amount of tax due.
4. If paid thirty-one to sixty days late, there shall be a penalty of twenty-five percent added to the amount of tax due.

5. In addition to the above penalty, the city of Sedro-Woolley shall charge the taxpayer interest on all taxes due at the rate of one percent per month or portion thereof that such amounts are past due.

6. The tax imposed by this chapter and all penalties and interest thereon shall constitute a debt to the city of Sedro-Woolley and may be collected by court proceedings in the same manner as any other debt which remedy shall be in addition to all other available remedies. Any judgment entered in favor of the city of Sedro-Woolley may include an award to the city of Sedro-Woolley of all court and collection costs including attorneys' fees to the extent permitted by law. Amounts delinquent more than sixty days may be assigned to a third party for collection in which case the amount of any collection charges shall be in addition to all other amounts owed. Amounts due shall not be considered paid until the city of Sedro-Woolley has received payment for the full amount due or has discharged the amount due and not paid.

B. Unlawful Acts. It is unlawful for any person liable for the tax imposed by this chapter to fail to pay the tax when due or for any person, firm, or corporation to make any false or fraudulent return or any false statement in connection with the return.

C. Criminal Penalties. Any person who intentionally violates any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof punished pursuant to state law or city ordinance. (Ord. 1721-11 § 2 (part), 2011: Ord. 1499-05 § 8, 2005)

#### **5.06.100 Quitting, selling or transferring business.**

Whenever any taxpayer quits business, or sells out, exchanges, or otherwise disposes of such business, any tax payable under this chapter shall become immediately due and payable, and such taxpayer shall, within ten days thereafter, make a return and pay the tax due; and any person who becomes a successor shall become liable for the full amount of any unpaid tax, interest, and penalties and shall withhold from the purchase price an amount sufficient to pay any tax due from the taxpayer until such time as the taxpayer shall produce a receipt from the city of Sedro-Woolley showing payment in full of any tax due or a certificate that no tax is due. If such tax, interest or penalty has not been paid by the taxpayer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax, interest and penalties. The successor's liability shall be limited to the purchase price or fair market value of the business purchased if no cash transaction took place. No successor shall be liable for any tax due from the taxpayer from whom the successor has acquired a business or stock of goods if the successor gives written notice to the city clerk of such acquisition and no assessment is issued by the city clerk within six months of receipt of such notice against the former operator of the business. Taxpayer's account will remain on an active status and be subject to all taxes, penalties and interest until such time as the city clerk is notified in writing that the taxpayer has discontinued business activity within the city of Sedro-Woolley. Nothing in this chapter is intended nor shall it be construed to prohibit the successor

from engaging in business in the city of Sedro-Woolley pending resolution of the successor's tax liability. (Ord. 1721-11 § 2 (part), 2011: Ord. 1499-05 § 9, 2005)

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**5.06.110 Tax not exclusive.**

The tax levied herein shall be additional to any license fee or tax imposed or levied under any other law or under any other ordinance of the city of Sedro-Woolley. (Ord. 1721-11 § 2 (part), 2011: Ord. 1499-05 § 10, 2005)

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**5.06.120 Rate changes.**

No change in the rate of tax upon persons engaging in the telephone business, including cellular telephone service, shall apply to business activities occurring before the effective date of the change. Furthermore, except for a change in the tax rate authorized by RCW 35.21.870, no change in the rate of the tax on the telephone business may take effect sooner than sixty days following the enactment of the ordinance codified in this chapter establishing the change. The city of Sedro-Woolley shall send to each cellular telephone service company at the address on its occupation license a copy of any ordinance changing the rate of tax upon cellular telephone service promptly upon its enactment. (Ord. 1721-11 § 2 (part), 2011: Ord. 1514 § 4, 2005: Ord. 1499-05 § 11, 2005)

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**5.06.130 Appeal procedure.**

Any taxpayer aggrieved by the amount of the fee or tax found by the city clerk to be required under the provisions of this chapter may, upon full payment of the amount assessed, appeal from such finding by filing a written notice of appeal with the city clerk within fourteen days from the date such taxpayer was given notified in writing of such amount. The clerk shall, as soon as practicable, fix a time and place for the hearing of such appeal before the city council, which time shall be not more than sixty days after the filing of the notice of appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the appellant. At such hearing before the city council, the taxpayer shall be entitled to be heard and to introduce evidence in his or her own behalf. The city council shall render a decision, together with findings of fact and conclusions of law, based upon the evidence presented at the time of the hearing and all material on file in the case. The city council's decisions shall indicate the correct amount of the fee or tax owing. The city council's decision shall be final. The appellant or the city of Sedro-Woolley may appeal the decision of the city council to the Superior Court of Washington in and for Skagit County within thirty days after the date of the city council's decision. The city council, through the mayor, may, by subpoena, require the attendance of any person, and may also require him or her to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated and produce the books and records required, if any, and shall testify truthfully under oath administered by the mayor as to any matter required of him or her pertinent to the appeal, and it is unlawful for him or her to fail or refuse to do so. (Ord. 1721-11 § 2 (part), 2011: Ord. 1499-05 § 12, 2005)

**5.06.140 Over or underpayment of tax.**

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In the event that any person makes an overpayment and within two years of the date of such overpayment makes application for a refund or credit, the person's claims shall be allowed and a refund made by the city of Sedro-Woolley upon determination by the city clerk that no other sums are owed by the person to the city of Sedro-Woolley. If a person determines that the tax has been underpaid and without notice by any party pays the amount due to the city of Sedro-Woolley, such amount shall not be subject to penalty. (Ord. 1721-11 § 2 (part), 2011; Ord. 1499-05 § 13, 2005)

**5.06.150 Pass-through to customer.**

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The taxpayer may pass any tax in this chapter on to a customer, client, or purchaser, showing the additional amount on the billing for or invoice. However, doing so shall not cause the customer, client, or purchaser to become a "taxpayer" for purposes of this chapter. (Ord. 1721-11 § 2 (part), 2011; Ord. 1499-05 § 14, 2005)

**5.06.155 Use of funds.**

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All monies collected from the tax upon cellular telephone services shall be deposited into the Facilities Maintenance Reserve Fund (Fund 303) and used only for construction of, acquisition of real estate for, or repairs to city municipal buildings, including fixtures and appliances. (Ord. 1721-11 § 2 (part), 2011; Ord. 1514-05 § 6, 2005)

**Chapter 3.37  
OCCUPATION TAX\***

Sections:

[3.37.010 Power to license for revenue.](#)

[3.37.020 Definitions.](#)

[3.37.030 Tax levy for certain businesses.](#)

[3.37.040 Payment of tax – Quarterly installments.](#)

[3.37.050 Computation of tax – Deduction of gross operating revenues.](#)

[3.37.060 Recordkeeping – Inspection.](#)

[3.37.070 Failure to pay tax – Penalty – Collection.](#)

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[3.37.100 Finance director/city clerk’s authority to adopt and enforce regulations.](#)

[3.37.110 Business license – Required.](#)

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[3.37.180 License fee and tax to be additional to others.](#)

[3.37.190 Collection of unpaid fee or tax.](#)

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[3.37.210 Violation – Penalty.](#)

**3.37.220 Severability.**

\*For statutory provisions authorizing cities to impose an occupation tax, see RCW 35.21.280.

**3.37.010 Power to license for revenue.**

The provisions of this chapter shall be deemed an exercise of the power of the city to license for revenue. (Ord. 2005-2 § 1, 2005).

**3.37.020 Definitions.**

In construing this chapter, save when otherwise plainly declared or clearly apparent from the context, the following definitions shall be applied:

A. "Gross income" means the value proceeding or accruing from the sale of tangible property or service, and receipts (including all sums earned or charged whether received or not), by reason of the investment of capital in the business engaged in, including rentals, royalties, fees or other emoluments, however designated, derived from business activities conducted within the corporate limits of the city (excluding receipts or proceeds from the use or sale of real property or any interest therein and proceeds from the sale of notes, bonds, mortgages or other evidence of indebtedness, or stocks and the like) and without any deduction on account of the cost of the property sold, and the cost of materials used, labor costs, interest or any expenses whatsoever; provided, however, that only the gross income attributed to those taxable services or commodities as are specifically set forth in TMC [3.37.030\(A\)](#) and (B) shall be subject to the tax provided herein and any taxpayer deriving income from the sale of any other tangible property or services and receipts not so specifically set forth in TMC [3.37.030](#) may exclude said income from gross income as herein defined.

B. "Person" or "persons" means persons of either sex, firms, copartnerships, corporations, public utility districts, public or private utilities, water companies or districts, and other associations, whether acting by themselves or by servants, agents or employees.

C. "Taxpayer" means any person liable to the license fee or tax imposed by this chapter.

D. "Tax year" or "taxable year" means the year commencing January 1st and ending on the last day of December of the same year when permission is obtained from the finance director/city clerk to use the same as the tax period. (Ord. 2005-2 § 1, 2005).

**3.37.030 Tax levy for certain businesses.**

From and after January 1, 1986, and for each succeeding year, there is levied upon, and there shall be collected from every person, firm or corporation engaged in carrying on the following business for hire or for sale of a commodity of service within or partly within the corporate limits of the city the tax specified for each respective year at the rate set forth in subsection E of this section (herein referred as "the specified rate") for the privilege of so doing business as hereinafter defined:

A. Upon any telephone business there shall be levied a tax equal to the specified rate of the total gross

operating revenues, including revenues from intrastate toll derived from the operation of such businesses within the city. Gross operating revenues for this purpose shall not include charges which are passed on to the subscribers by a telephone company pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this chapter.

“Telephone business” means the business providing access to a local telephone network, local telephone network switching service, toll service, cellular telephone service, or coin telephone services, or providing telephonic, video, data or similar communication or transmission for hire, via a local telephone network, toll line or channel or similar communication or transmission system. It includes cooperative or farmer line telephone companies or associations operating in exchange. “Telephone business” does not include the providing of competitive telephone service nor the providing of cable television service.

“Cellular telephone service” is a two-way voice and data telephone/telecommunications system based in whole or substantially in part on wireless radio communications and which is not subject to regulation by the Washington Utilities and Transportation Commission. This includes cellular mobile service. The definition of “cellular mobile service” includes other wireless radio communications services such as specialized mobile radio, personal communications services, and any other evolving wireless radio communications technology which accomplishes a purpose similar to cellular mobile service.

“Competitive telephone service” means the providing by any person of telephone equipment, apparatus, or service other than toll service, which is a type which can be provided by persons that are not subject to regulations as telephone companies under RCW Title 80 and for which a separate charge is made.

The tax rate set forth above shall include the franchise fee as provided in the franchise agreement with the telephone utility.

B. There is levied a tax on the sale, delivery or distribution of electricity and electrical energy and for the privilege of carrying on said business, such tax to be equal to the specified rate of the total gross operating revenue derived from sales of such electricity to ultimate users within the city; provided, however, that there shall not be any tax levied for the installation charges of electrical units.

The tax rate set forth above shall include the franchise fee as provided in the franchise agreement with the electrical utility.

C. There is levied a tax on the sale of natural, manufactured or mixed gas for residential, commercial or industrial consumption and for the privilege of carrying on said business, such tax to be equal to the specified rate of gross operating revenues from such sales of natural, manufactured or mixed gas within the limits of the city.

The tax rate set forth above shall include the franchise fee as provided in the franchise agreement with the natural gas utility.



D. There shall be levied a tax on the sale, delivery or distribution of cable television picture or signal and for the privilege of carrying on said business, such tax to be equal to the specified rate of the total gross operating revenues derived from the sale of such cable signal to ultimate users within the city; provided, that there shall not be any tax levied for the installation charges for cable service.

E. The rate of tax upon telephone business, the sale, delivery or distribution of electricity or electrical energy and for the privilege of carrying on said business, and on the sale of natural, manufactured or mixed gas for residential, commercial or industrial consumption and for the privilege of carrying on said business shall be eight and one-half percent, commencing from the first day of August, 1995. The rate of tax on the sale, delivery or distribution of cable television pictures or signals and for the privilege of carrying on said business shall be six percent.

F. That portion of the tax imposed by this chapter representing the excess over the tax rate of six percent, which is collected upon telephone, electrical or natural gas business conducted during the period commencing from the first day of August, 1995, shall be allocated for use solely for police department purposes. (Ord. 2005-2 § 1, 2005).

**3.37.040 Payment of tax – Quarterly installments.**

The tax imposed by this chapter shall be due and payable in quarterly installments unless monthly payments are permitted by the finance director/city clerk and remittance shall be made on or before the thirtieth day of the month next succeeding the end of the quarterly period in which the tax accrued. Such quarterly periods are as follows:

First quarter: January, February, March.

Second quarter: April, May, June.

Third quarter: July, August, September.

Fourth quarter: October, November, December.

The first payment made hereunder shall be made by April 30th for the three-month period ending March 31, 1982. On or before said due date, the taxpayer shall file with the finance director/city clerk a written return, upon such form and setting forth such information as the finance director/city clerk shall reasonably require, together with the payment of the amount of the tax. (Ord. 2005-2 § 1, 2005).

**3.37.050 Computation of tax – Deduction of gross operating revenues.**

In computing the tax there shall be deducted from the gross operating revenues the following items:

A. The amount of credit losses and uncollectibles actually sustained by the taxpayer;

B. Amounts derived from transactions in interstate or foreign commerce or from any business which the city is prohibited from taxing under the Constitutions of the United States or the state;

C. Amounts derived by the taxpayer from the city of Toppenish. (Ord. 2005-2 § 1, 2005).

**3.37.060 Recordkeeping – Inspection.**

Each taxpayer shall keep records reflecting the amount of his gross operating revenues, and such records shall be open at all reasonable times to the inspection of the finance director/city clerk, or his duly authorized subordinates, for verification of the tax returns or for the fixing of the tax of a taxpayer who shall fail to make such returns. (Ord. 2005-2 § 1, 2005).

**3.37.070 Failure to pay tax – Penalty – Collection.**

If any person, firm or corporation subject to this chapter shall fail to pay any tax required by this chapter within 30 days after the due date thereof, there shall be added to such tax a penalty of 16 percent of the amount of such tax, and any tax due under this chapter and unpaid, and all penalties thereon, shall constitute a debt to the city and may be collected by court proceedings, which remedy shall be in addition to all other remedies. (Ord. 2005-2 § 1, 2005).

**3.37.080 Credits or refunds.**

Any money paid to the city through error or otherwise not in payment of the tax imposed by this chapter or in excess of such tax shall, upon request of the taxpayer, be credited against any tax due or to become due from such taxpayer under this chapter, or, upon the taxpayer's ceasing to do business in the city, be refunded to the taxpayer. (Ord. 2005-2 § 1, 2005).

**3.37.090 Annexations.**

Whenever the boundaries of the city are extended by annexation, all persons, firms and corporations subject to this chapter will be provided copies of all annexation ordinances by the city. (Ord. 2005-2 § 1, 2005).

**3.37.100 Finance director/city clerk's authority to adopt and enforce regulations.**

The finance director/city clerk is authorized to adopt, publish and enforce, from time to time, such rules and regulations for the proper administration of this chapter as shall be necessary, and it shall be a violation of this chapter to violate or to fail to comply with any such rule or regulation lawfully promulgated hereunder. (Ord. 2005-2 § 1, 2005).

**3.37.110 Business license – Required.**

A. No person subject to the payment of the tax provided herein shall engage in any business or activity in the city for which a tax is imposed by this chapter without first having obtained and being the holder of a valid and subsisting license to do so, as required by TMC Title 5. The fee for the license required under TMC Title 5 shall be in addition to the tax imposed by this chapter. Such license shall be obtained, issued and maintained pursuant to the provisions of TMC Title 5.

B. The license shall be personal and nontransferable. Each license shall be numbered, shall show the name, place and character of business of the taxpayer and such other information as the finance director/city clerk deems necessary and shall at all times be conspicuously posted in the place of

business for which it is issued.

C. No person to whom a license has been issued pursuant to this chapter shall suffer or allow any other person for whom a separate license is required to operate under or display his license; nor shall such other person operate under or display such license. (Ord. 2005-2 § 1, 2005).

**3.37.120 Business license – Fee – Records.**

The license fee or tax payable thereunder shall, at the time of the return being required to be filed hereunder, be paid to the finance director/city clerk by bank draft, certified check, cashier's check, personal check or money order or in cash. If payment is made by draft or check, the tax or fee shall not be deemed paid until the check or draft is honored in the usual course of business; nor shall the acceptance of any sum by the finance director/city clerk be an acquittance or discharge of the tax or fee due unless the amount of payment is in full and the actual amount due.

It shall be the duty of every person liable for the payment of any fee or tax imposed by this chapter to keep and preserve for the period of five years such books and records as will accurately reflect the amount of his gross income as defined herein and from which can be determined the amount of any fee or tax for which he may be liable under the provisions of this chapter and all books as provided herein shall be open for examination at all reasonable times by the finance director/city clerk or his duly authorized agent. (Ord. 2005-2 § 1, 2005).

**3.37.130 Sale or transfer of business.**

Upon the sale or transfer during a quarterly period of a business on account of which a license fee or tax is required, the purchaser or transferee shall, if the fee or tax has not been paid in full for the quarterly period, be responsible for the payment of the fee or tax for that portion of the quarterly period during which he carries on such business. (Ord. 2005-2 § 1, 2005).

**3.37.140 Applications and returns not to be made public.**

The application and returns made to the finance director/city clerk pursuant to this chapter shall not be made public, nor shall they be subject to the inspection of any person except the city manager, city attorney, finance director/city clerk or his duly authorized agent, and members of the city council; and it is unlawful for any person to make public or to inform any other person as to the contents of any information contained in or to permit inspection of any application or return except as authorized in this section. (Ord. 2005-2 § 1, 2005).

**3.37.150 Refunds – Underpayment.**

If the finance director/city clerk upon investigation or upon checking returns finds that the fee or tax paid on any of them is more than the amount required of the taxpayer, he shall refund the amount overpaid by a warrant upon the current expense fund. If the finance director/city clerk finds that the fee or tax is less than required, he shall mail a statement to the taxpayer showing the balance due, who shall within seven days pay the amount shown thereon. (Ord. 2005-2 § 1, 2005).

**3.37.160 Notice of underpayment.**

If any taxpayer fails, neglects or refuses to make his return as and when required herein, the finance director/city clerk is authorized to determine the amount of tax payable, and by mail to notify such taxpayer of the amount so determined. The amount so fixed shall thereupon become the tax and be immediately due and payable. (Ord. 2005-2 § 1, 2005).

**3.37.170 Unlawful acts.**

It is unlawful for any person liable to tax hereunder to fail or refuse to secure the license, to make the returns as and when required, or to pay the fee or tax when due, or for any person to make any false or fraudulent application or return or any false statement or representation in, or in connection with, any such application or return, or to aid or abet another in an attempt to evade payment of the fee or tax, or any part thereof, or for any person to fail to appear and/or testify in response to a subpoena issued pursuant hereto, or to testify falsely upon any investigation of the correctness of a return, or upon the hearing of any appeal, or in any manner to hinder or delay the city or any of its officers in carrying out the provisions of this chapter. (Ord. 2005-2 § 1, 2005).

**3.37.180 License fee and tax to be additional to others.**

The license fee and tax herein levied shall be additional to any license or tax imposed or levied under any law or any other ordinance of the city. (Ord. 2005-2 § 1, 2005).

**3.37.190 Collection of unpaid fee or tax.**

Any license fee or tax due and unpaid under this chapter, and all penalties thereon, shall constitute a debt to the city and may be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies. (Ord. 2005-2 § 1, 2005).

**3.37.200 Appeal.**

Any taxpayer aggrieved by the amount of the fee or tax found by the finance director/city clerk to be required under the provisions of this chapter may appeal to the city council from such finding by filing a written notice of appeal with the finance director/city clerk within five days from the time such taxpayer was given notice of such amount. The clerk-treasurer shall, as soon as practicable, fix a time and place for the hearing of such appeal, which time shall be not more than 10 days after the filing of the notice of appeal, and he shall cause a notice of the time and place thereof to be mailed to the appellant. At such hearing the taxpayer shall be entitled to be heard and to introduce evidence in his own behalf. The city council shall thereupon ascertain the correct amount of the fee or tax by resolution and the finance director/city clerk shall immediately notify the appellant thereof by mail, which amount, together with costs of the appeal, if appellant is unsuccessful therein, must be paid within three days after such notice is given.

The city manager may, by subpoena, require the attendance thereat of any person and may also require him to produce any pertinent books or records. Any person served with such subpoena shall appear at the time and place therein stated and produce the books and records required, if any, and shall testify truthfully under oath administered by the chairman in charge of the matter required of him pertinent to

the appeal, and it is unlawful for him to fail or refuse to do so. (Ord. 2005-2 § 1, 2005).

**3.37.210 Violation – Penalty.**

Any person violating or failing to comply with any of the provisions of this chapter or any lawful rule or regulation adopted by the finance director/city clerk pursuant thereto, upon conviction thereof, shall be punished by a fine in any sum not to exceed \$100.00 or by imprisonment in the city jail for a term not exceeding 30 days, or by both such fine and imprisonment.

Any taxpayer who engages in or carries on any business subject to a tax hereunder without having his occupation license to do so is guilty of a violation of this chapter for each day during which the business is so engaged in or carried on; and any taxpayer who fails or refuses to pay the license fee or tax, or any part thereof, on or before the due date, shall be deemed to be operating without having his license to do so. (Ord. 2005-2 § 1, 2005).

**3.37.220 Severability.**

The invalidity or unconstitutionality of any provision or section of the ordinance codified in this chapter shall not render any other provision or section of the ordinance codified in this chapter invalid or unconstitutional. (Ord. 2005-2 § 1, 2005).

## Chapter 5.20 - PUBLIC UTILITIES

### Sections:

#### 5.20.010 - License for revenue.

The provisions of this chapter shall be deemed to be an exercise of the power of the city to license for revenue.

(Ord. 526 § 1, 1981)

#### 5.20.020 - License requirements.

After August 17, 1981, no person, firm or corporation shall engage in or carry on any business, occupation, act or privilege for which a tax is imposed by Section 5.20.030 without first having obtained, and being the holder of, a license so to do, to be known as a business license. Each such person, firm or corporation shall promptly apply to the city clerk-treasurer for such license upon such forms as the city clerk-treasurer shall prescribe, giving such information as the clerk-treasurer shall deem reasonably necessary to enable the clerk-treasurer's office to administer and enforce this chapter; and, upon acceptance of such application by the clerk-treasurer, the clerk-treasurer shall thereupon issue such license to the applicant. Such business license shall be personal and nontransferable and shall be valid as long as the licensee shall continue in the business and shall comply with this chapter.

(Ord. 526 § 2, 1981)

#### 5.20.030 - Tax—Levy.\*

From and after August 17, 1981, there is levied upon, and there shall be collected from, every person, firm or corporation engaged in carrying on the following business for hire or for sale of a commodity or a service within or partly within the corporate limits of the city, the tax for the privilege of so doing business, as defined in this section:

- A. 1. Upon any telephone business there shall be levied a tax equal to six percent of the total gross operating revenues, including revenues from intrastate toll, derived from the operation of such business within the city. Gross operating revenues for this purpose shall not include charges which are passed on to the subscribers by a telephone company pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this chapter.
2. "Telephone business" means the business of providing access to a local telephone network, local telephone network switching service, toll service, coin telephone services, telephonic, video, data, pagers, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. The term includes cooperative or farmer line telephone companies or associations operating exchanges. "Telephone business" does not include the providing of competitive telephone service, or providing of cable television services, or other providing of broadcast services by radio or television stations.
3. "Competitive telephone service means the providing by any person of telecommunications equipment or apparatus, directory advertising and lease of telephone street directories, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which may be provided by persons not subject to regulation as telephone companies under Title 80 RCW, and for which a separate charge

is made. Transmission of communication through cellular telephone is classified as "telephone business" rather than "competitive telephone service".

4. "Cellular telephone service" is a two-way voice and data telephone/telecommunications system based in whole or substantial part on wireless radio communications and which is not subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service. Cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology, which accomplishes the same purpose as cellular mobile service. Cellular telephone service is included within the definition of "telephone business" for the purposes of this chapter.
  5. "Pager service" means service provided by means of an electronic device which has the ability to send or receive voice or digital messages transmitted through the local telephone network, via satellite or any other form of voice or data transmission.
- B. There is levied a tax on the sale, delivery or distribution of electricity and electrical energy and for the privilege of carrying on said business, such tax to be equal to six percent of the gross operating revenue derived from sales of such electricity to ultimate users within the city; provided, however, that there shall not be any tax levied for the installation charges of electrical units.
  - C. There is levied a tax on the sale of natural, manufactured or mixed gas for residential, commercial or industrial consumption and for the privilege of carrying on said business, such tax to be equal to six percent of gross operating revenues from such sales of natural, manufactured or mixed gas within the limits of the city.

(Amended during 11-06 supplement; Ord. 1031 § 1, 2004: Ord. 949 § 1, 2001: Ord. 685 § 2, 1989: Ord. 526 § 3, 1981)

(Ord. No. 1171, § 1, 12-7-2009)

\*Editor's note— Ord. No. 1228 adopts a six and one-half percent temporary utility tax on gross revenues from water, sewer and solid waste/recycling services effective from October 16, 2012 through January 1, 2016.

5.20.040 - Tax—Due and payable when.

The tax imposed by this chapter shall be due in bimonthly installments and remittance shall be made on or before the thirtieth day of the month next succeeding the end of the bimonthly period in which the tax accrued. The first payment made under this chapter shall be made by March 31, 1988 for the bimonthly period ending February 29, 1988. On or before the due date, the taxpayer shall file with the city clerk-treasurer a written return, upon such form and setting forth such information as the city clerk-treasurer shall reasonably require, together with the payment of the amount of the tax. Provided, however, if the gross revenue upon which such tax is computed during any bimonthly period is less than five hundred dollars, remittance shall be made semi-annually.

(Ord. 773 § 1, 1994: Ord. 660 §§ 2, 3, 1988: Ord. 526 § 4, 1981)

5.20.050 - Tax—Computation.

In computing the tax, there shall be deducted from the gross operating revenues the following items:

- A. The amount of credit losses and uncollectibles actually sustained by the taxpayer;

- B. Amounts derived from transactions in interstate or foreign commerce or from any business which the city is prohibited from taxing under the Constitutions of the United States or the state; and
- C. Amounts derived by the taxpayer from the city.

(Ord. 526 § 5, 1981)

5.20.060 - Tax—Records of gross operating revenues.

Each taxpayer shall keep records reflecting the amount of his gross operating revenues, and such records shall be open at all times to the inspection of the city clerk-treasurer, or his duly authorized subordinates, for verification of the tax returns or for the fixing of the tax of a taxpayer who fails to make such returns.

(Ord. 526 § 6, 1981)

5.20.070 - Tax—Penalty for nonpayment.

If any person, firm or corporation subject to this chapter fails to pay any tax required by this chapter within thirty days after the due date thereof, there shall be added to such tax a penalty of ten percent of the amount of such tax, and any tax due under this chapter and unpaid, and all penalties thereon, shall constitute a debt to the city and may be collected by court proceedings, which remedy shall be in addition to all other remedies.

(Ord. 526 § 7, 1981)

5.20.080 - Tax—Credit and refunds.

Any money paid to the city through error, or otherwise not in payment of the tax imposed by this chapter, or in excess of such tax, shall, upon request of the taxpayer, be credited against any tax due or to become due from such taxpayer under this chapter or, upon the taxpayer's ceasing to do business in the city, be refunded to the taxpayer.

(Ord. 526 § 8, 1981)

5.20.090 - Procedure upon annexations to city.

Whenever the boundaries of the city are extended by annexation, all persons, firms and corporations subject to this chapter will be provided copies of all annexation ordinances by the city.

(Ord. 526 § 9, 1981)

5.20.100 - Administration and enforcement.

The city clerk-treasurer is authorized to adopt, publish and enforce, from time to time, such rules and regulations for the proper administration of this chapter as shall be necessary, and it shall be a violation of this chapter to violate or to fail to comply with any such rule or regulation lawfully promulgated under this chapter.

(Ord. 526 § 11, 1981)



## Chapter 5.21 - NATURAL OR MANUFACTURED GAS USE TAX

### Sections:

#### 5.21.010 - Levied.

There is hereby levied and there shall be collected from every person, firm or corporation, as authorized by RCW 82.14.230, a use tax for the privilege of using natural gas or manufactured gas within the city as a consumer.

(Ord. 887 § 1 (part), 1998)

#### 5.21.020 - Rate.

The rate of the tax levied by Section 5.21.010 shall be an amount equal to the value of the article used by the taxpayer multiplied by five percent. The "value of the article used" does not include any amounts that are paid for the hire or use of a natural gas business in transporting the gas subject to tax under this section if those amounts are subject to tax under RCW 35.21.870.

(Ord. 887 § 1 (part), 1998)

#### 5.21.030 - Exemption.

The rate of the tax levied under this chapter shall not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer was paid a tax under RCW 35.21.870 (Section 5.20.030(C)) with respect to the gas for which exemption is sought under this section.

(Ord. 887 § 1 (part), 1998)

#### 5.21.040 - Credit.

There shall be a credit against the tax levied under this chapter in an amount equal to any tax paid by:

- A. The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by another state with respect to the gas for which a credit is sought under this subsection; or
- B. The person consuming the gas upon which a use tax similar to the tax imposed by this chapter was paid to another state with respect to the gas for which a credit is sought under this subsection.

(Ord. 887 § 1 (part), 1998)

#### 5.21.050 - Payment.

The use tax levied by this chapter shall be paid by the consumer.

(Ord. 887 § 1 (part), 1998)

5.21.060 - Administration and collection.

The administration and collection of the tax levied by this chapter shall be pursuant to RCW 82.14.050.

(Ord. 887 § 1 (part), 1998)

5.21.070 - Inspection of records.

The city consents to the inspection of such records as are necessary to qualify the city for inspection of records of the Department of Revenue, pursuant to RCW 82.32.330.

(Ord. 887 § 1 (part), 1998)

5.21.080 - Contract with state.

The mayor is authorized to enter into a contract with the Department of Revenue for the administration and collection of this tax.

(Ord. 887 § 1 (part), 1998)

5.21.090 - Violation—Penalty.

Any person, firm or corporation violating or failing to comply with the provisions of this chapter or any lawful rule or regulation adopted pursuant thereto, shall be guilty of a misdemeanor.

(Ord. 887 § 1 (part), 1998)

**Chapter 5.50**  
**OCCUPATION TAXES—UTILITIES**

## Sections:

- [5.50.010](#) Exercise of revenue power.
- [5.50.020](#) Definitions.
- [5.50.030](#) License required.
- [5.50.040](#) License tax year.
- [5.50.050](#) Electric, telephone, gas and steam businesses.
- [5.50.060](#) Water businesses.
- [5.50.065](#) Cable television business—Annual fee.
- [5.50.070](#) Deductions.
- [5.50.080](#) Application for license.
- [5.50.090](#) Payment.
- [5.50.095](#) Cellular telephone service businesses—Service location.
- [5.50.100](#) Commencement of business during tax year.
- [5.50.110](#) Prerequisite for monthly payments.
- [5.50.120](#) Sale or transfer of business.
- [5.50.130](#) Taxpayer to keep record—Returns to be kept confidential.
- [5.50.140](#) Authority of clerk to investigate.
- [5.50.150](#) Over or under payment.
- [5.50.160](#) Remedy for nonpayment.
- [5.50.170](#) Appeals.
- [5.50.180](#) Director of finance and budget authorized to make rules.
- [5.50.190](#) Posting of license—Unlawful use.
- [5.50.200](#) Unlawful acts.
- [5.50.205](#) Referendum procedure.
- [5.50.210](#) Severability.

**5.50.010 Exercise of revenue power.**

The provisions of this chapter shall be deemed an exercise of the power of the city of Yakima to license for revenue. (Ord. 2005-56 § 1 (part), 2005: Ord. B-95 § 1, 1935).

**5.50.020 Definitions.**

In construing the provisions of this chapter, save when otherwise plainly declared or clearly apparent from the context, the following definitions shall be applied:

- (a) “Gross revenue” means the value proceeding or accruing from the sale of tangible property or service, and receipts (including all sums earned or charged whether received or not) by reason of the

investment of capital in the business engaged in, including, but not limited to, rental, royalties, fees or other emoluments, however designated (excluding receipts or proceeds from the use or sale of real property or any interest therein and proceeds from the sale of notes, bonds, mortgages, or other evidences of indebtedness, or stock and the like) and without any deduction on account of the cost of the property sold, the cost of materials used, labor costs, interest or discount paid, or any expense whatsoever, and without any deduction on account of losses.

(b) “Person” or “persons” means persons of either sex, firms, copartnerships, corporations and other associations of natural persons, whether acting by themselves or by servants, agents or employees.

(c) “Taxpayer” means any person liable to the license fee or tax imposed by this chapter.

(d) “Tax year” or “taxable year” means the year commencing January 1st and ending on the last day of December of the year, or in lieu thereof, the taxpayer’s fiscal year when the taxpayer files with the director of finance and budget for the city of Yakima a statement indicating that the taxpayer will pay according to the taxpayer’s fiscal year as defined in that statement. (Ord. 2005-56 § 1 (part), 2005: Ord. 93-73 § 4, 1993: Ord. 2568 § 1, 1981: Ord. B-95 § 2, 1935).

#### **5.50.030 License required.**

No person shall engage in or carry on any business, occupation, pursuit or privilege for which a license fee or tax is imposed by this chapter without having first obtained, and being the holder of, a valid and subsisting license to do so, to be known as an occupation license.

Any person engaging in, or carrying on, more than one such business, occupation, pursuit or privilege shall pay the license tax so imposed upon each of the same.

Any taxpayer who engages in, or carries on, any business subject to tax hereunder without having his or her occupation license 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, and any taxpayer who fails or refuses to pay the license fee or tax or a part thereof on or before the due dates shall be deemed to be operating without having his or her license to do so. (Ord. 2005-56 § 1 (part), 2005: Ord. B-95 § 3, 1935).

#### **5.50.040 License tax year.**

All occupation licenses shall be for the tax year for which issued and shall expire at the end of such tax year. (Ord. 2005-56 § 1 (part), 2005: Ord. 300, 1961: Ord. B-95 § 4, 1935).

#### **5.50.050 Electric, telephone, gas and steam businesses.**

A. There are levied and shall be collected annual license fees or taxes against the persons on account of business activities, and in the amounts to be determined by the application of the rates herein prescribed, as follows:

1. Commencing October 1, 1994, upon every person engaged in or carrying on the business of selling or furnishing electric light or power, a fee or tax equal to six percent of the total gross revenue derived from such business in the city of Yakima.
2. Commencing July 1, 1989, upon every person engaged in carrying on a telephone business, a fee or tax equal to six percent of the total gross revenue derived from such business in the city of Yakima; provided, that such fee or tax be subject to the limitations prescribed by RCW 35.21.714; and provided further, that the city shall suspend collection of any franchise fee on a telephone business in excess of the rates of fees and taxes permitted under RCW 35.21.870(2), which rate is six percent.

Total gross revenue for this purpose shall not include charges which are passed on to the subscribers by a telephone business pursuant to tariffs required by regulatory order to compensate for the cost to the telephone business of the tax imposed by the ordinance codified in this section.

“Telephone business” as used herein means the business of providing access to a local telephone network, local telephone network switching service, toll service or coin telephone services, or providing telephonic, video, data or similar communication or transmission for hire, via a local telephone network, toll line or channel, or similar communication or transmission system. It includes cooperative or farmer line telephone companies or associations operating an exchange. “Telephone business” does not include the providing of “competitive telephone service” as defined hereinbelow nor the providing of cable television service or cellular telephone service.

“Competitive telephone service” as used herein means the providing by any person of telephone equipment, apparatus, or service, other than toll service, which is of a type which can be provided by persons that are not subject to regulation as telephone companies under RCW Title 80 and for which a separate charge is made.

3. Commencing November 17, 2005, upon every person engaged in or carrying on the business of selling or furnishing natural gas for heat, power, light and other purposes, a fee or tax equal to six percent of the total gross revenue derived from such business in the city of Yakima as explained in subsection E of this section.
4. Commencing January 1, 1985, upon every person engaged in or carrying on the business of selling or furnishing steam for heating or other commercial consumption, a fee or tax equal to five and eight-tenths percent of the total gross revenue derived from such business in the city of Yakima.
5. Commencing February 1, 1997, upon every person engaging in or carrying on the cellular telephone service business, a fee or tax equal to six percent of the total gross revenue derived from conducting such business within the city of Yakima, as indicated by billings and/or charges

to Yakima customers.

“Cellular telephone service” as used herein means a two-way voice and data telephone/telecommunications system based in whole, or substantially in part, on wireless radio communications, and which is not subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service. The definition of cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology that accomplishes a purpose similar to cellular mobile service. “Cellular telephone service” as used herein also means service provided by means of an electric device that has the ability to send or receive voice or digital messages transmitted through the local telephone network, via satellite, or any other form of voice or data transmission.

B. The minimum fee or tax on each such business activity shall not be less than two hundred fifty dollars per tax year.

C. Commencing October 1, 1994, the rates of tax set forth in subsection A of this section shall be measured against a maximum of the first four thousand dollars of the total gross revenue attributable to selling or furnishing telephone services described in the definition of “telephone business” contained herein, selling or furnishing natural gas, selling or furnishing steam, or selling or furnishing cellular telephone services described in the definition of “cellular telephone service” contained herein to any one customer in any one calendar month or fraction thereof.

D. Commencing October 1, 1994, the first four percent of the tax set forth in subsection A of this section shall be measured against a maximum of the first four thousand dollars of the total gross revenue attributable to selling or furnishing electric light or power to any one customer in any one calendar month or fraction thereof; two percent of the tax set forth in subsection A of this section shall be measured against the total gross revenue attributable to selling or furnishing electric light or power.

E. Commencing November 17, 2005, the first four percent of the tax set forth in subsection A of this section shall be measured against a maximum of the first four thousand dollars of the total gross revenue attributable to selling or furnishing natural gas to any one customer in any one calendar month or fraction thereof; two percent of the tax set forth in subsection A of this section shall be measured against the total gross revenue attributable to selling or furnishing natural gas. (Ord. 2005-56 § 1 (part), 2005: Ord. 96-84 § 1, 1996: Ord. 94-46 § 1, 1994: Ord. 93-105 § 1, 1993: Ord. 3263 § 4, 1990: Ord. 3163 § 1, 1989: Ord. 2807 § 1, 1984: Ord. 2717 § 1, 1983: Ord. 2653 § 1, 1982: Ord. 2568 § 2, 1981: Ord. 2449 § 1, 1980: Ord. 2343 § 1, 1979: Ord. 2224 § 1, 1978: Ord. 2134 § 1, 1977: Ord. 2020 § 1, 1976: Ord. 1865 § 1, 1975: Ord. 1717 § 1, 1974: Ord. 1592 § 1, 1973: Ord. 1469 § 1, 1972: Ord. 1359 § 1, 1971: Ord. 1263 § 1, 1970: Ord. 1192 § 1, 1969: Ord. 1162 § 1, 1969: Ord. 1091 § 1, 1968: Ord. 1080 § 1, 1968: Ord. 974 § 1, 1967: Ord. 851 § 1, 1966: Ord. 786, 1966: Ord. 735, 1965:

Ord. 582 § 1, 1964: Ord. 476, 1963: Ord. B-95 § 5, 1935).

#### **5.50.060 Water businesses.**

There is levied and shall be collected as an annual license fee or tax against persons on account of business activities, in the amount to be determined by application of the rates herein prescribed, as follows:

1. Commencing January 1, 1990, and effective until December 31, 1990, upon every person engaging in or carrying on the business of selling or furnishing potable water, a fee or tax equal to six percent of the total gross revenue derived from such business in the city of Yakima.
2. Commencing January 1, 1991, and effective until December 31, 1992, upon every person engaged in or carrying on the business of selling or furnishing potable water, a fee or tax equal to twelve percent of the total gross revenue derived from such business in the city of Yakima.
3. (a) Commencing January 1, 1993, and effective until December 31, 1993, upon every person engaged in or carrying on the business of selling or furnishing potable water, a fee or tax equal to fourteen percent of the total gross revenue derived from such business in the city of Yakima.  
  
(b) Commencing January 1, 1994, and effective thereafter, upon every person engaged in or carrying on the business of selling or furnishing potable water, a fee or tax equal to fourteen percent of the total gross revenue derived from such business in the city of Yakima.
4. Commencing January 1, 2012, and effective thereafter, upon every person engaged in or carrying on the business of selling or furnishing potable water, a fee or tax equal to twenty percent of the total gross revenue derived from such business in the city of Yakima.

The city of Yakima shall not be subject to the license fee or tax imposed by this section. (Ord. 2011-59 § 8, 2011: Ord. 2005-56 § 1 (part), 2005: Ord. 93-113 § 2, 1993: Ord. 93-104 § 2, 1993: Ord. 3488 § 2, 1992: Ord. 3227 § 1, 1989).

#### **5.50.065 Cable television business—Annual fee.**

- A. There shall be levied and shall be collected as an annual license fee or tax against persons on account of business activities, in the amount determined by application of the rates herein prescribed, as follows:
1. Commencing February 15, 1994, and effective until February 28, 2005, upon every person engaging in the business of providing cable television service a fee or tax equal to five percent of the total gross revenue derived from such business in the city of Yakima.
  2. Commencing March 1, 2005, and effective thereafter, upon every person engaging in the business of providing cable television service a fee or tax equal to six percent of the total gross

revenue derived from such business in the city of Yakima.

- B. For purposes of this provision, “cable television service” shall be defined to mean:
1. A system providing service pursuant to a franchise issued by the city under the Cable Communications Policy Act of 1984 (Public Law No. 98-549, 47 U.S.C. 521 (Supp.)) as it may be amended or superseded; and
  2. Any system that competes directly with such franchised system by employing antennas, microwave, wires, wave-guides, coaxial cables, or other conductors, equipment or facilities designed, construed or used for the purpose of: (i) collecting and amplifying local and distant broadcast television signals and distributing and transmitting them; (ii) transmitting original cablecast programming not received through television broadcast signals; or (iii) transmitting television pictures, film and video-tape programs not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers; provided, however, that “cable television service” shall not include entities that are subject to charges as “Commercial TV Stations” under 47 U.S.C. Section 158 or providers of “direct-to-home satellite service” as defined in Section 602 of the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56 (1996).
- C. A system “competes directly” within the meaning of subsection B of this section if it provides one or more functionally equivalent services at competitive rates, terms and conditions. (Ord. 2005-56 § 1 (part), 2005: Ord. 2004-82 § 1, 2004: Ord. 94-13 § 1, 1994: Ord. 93-107 § 1, 1993).

#### **5.50.070 Deductions.**

In computing the license fee or tax imposed by this chapter, there shall be deducted from gross revenue the amounts derived from transactions in interstate or foreign commerce or from any business which the city of Yakima is prohibited from taxing under the Constitutions of the United States or the state of Washington; and the tax shall not apply to income derived by the taxpayer from the city of Yakima. (Ord. 2005-56 § 1 (part), 2005: Ord. 2568 § 3, 1981: Ord. 1162 § 2, 1969: Ord. B-95 § 7, 1935).

#### **5.50.080 Application for license.**

On or before the first day of each tax year, every taxpayer shall apply to the director of finance and budget for an occupation license upon blanks or forms of return to be prepared and provided by him or her requesting such information as may be necessary to enable him or her to arrive at the lawful amount of the fee or tax. The taxpayer shall, in a legible manner, write in such blank or form of return the information required and shall sign the same and by affidavit at the foot thereof shall swear or affirm that the information therein given is full and true and that he knows the same to be so.

Every such application or return shall be accompanied by a remittance in the amount of the tax or fee



or installment thereof required by the provisions hereof.

If the applicant be a partnership, the application or return must be made by one of the partners, or, if a corporation, by one of the officers thereof. In the event that all the partners in a partnership or all the officers of a corporation reside outside the city of Yakima, or in the event the applicant is a nonresident individual, the application or return may be made by an authorized resident and/or an authorized local manager of such partnership, corporation or individual. (Ord. 2005-56 § 1 (part), 2005: Ord. 93-73 § 5, 1993: Ord. 325 § 1, 1962: Ord. B-95 § 8, 1935).

#### **5.50.090 Payment.**

Every taxpayer shall pay the fee or tax in this chapter provided on or before the twenty-fifth day of each and every month hereafter beginning on February 25, 1962, on said total gross revenue derived from any such business activity during the next preceding calendar or related billing month. Every taxpayer also shall file with the director of finance and budget of the city at the time of paying its fee or tax, a return in the form prepared by the director. Such return shall include a schedule of all revenue taxable under this chapter and earned for the period payable under this section, which schedule identifies, by total dollar amount and number of accounts, gross revenue in one-thousand-dollar increments. (Ord. 2005-56 § 1 (part), 2005: Ord. 3263 § 5, 1990: Ord. 3163 § 2, 1989: Ord. 300, 1961: Ord. B-95 § 9, 1935).

#### **5.50.095 Cellular telephone service business—Service location.**

- A. **Service Address.** Payments by a customer for the telephone service from telephones without a fixed location shall be allocated among taxing jurisdictions to the location of the customer's principal service address during the period for which the tax applies, regardless of the location of the facilities used to provide the service. The customer's "principal service address" is, with respect to each telephone: (a) the customer's plant, store, office, or other facility where the telephone is normally assigned for use in conjunction with the customer's business activity; or (b) the customer's place of residence if the telephone is for personal use.
- B. **Presumption.** There is a presumption that the service address shown on the telephone service company's records is current and accurate, unless the taxpayer has actual knowledge to the contrary.
- C. **Roaming Phones.** When the service is provided while a subscriber is roaming outside the subscriber's normal cellular network area, the gross revenue shall be assigned consistent with the taxpayer's accounting system to the location of the originating cell site of the call, or to the location of the originating cell site of the call, or to the location of the main cellular switching office that switched the call.
- D. **Dispute Resolution.** If there is a dispute between or among the city of Yakima and another city, or cities, as to the service address of a customer who is receiving cellular telephone services, and

the dispute is not resolved by negotiation among the parties, then the dispute shall be resolved by the city and the other city or cities by submitting the issue for settlement to the Association of Washington Cities (“AWC”). Once taxes on the disputed revenues have been paid to one of the contesting cities, the cellular telephone service company shall have no further liability with respect to additional taxes, penalties or interest on the disputed revenues so long as it promptly changes its billing records for future revenues to comport with the settlement facilitated by AWC. (Ord. 2005-56 § 1 (part), 2005: Ord. 96-84 § 2, 1996).

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**5.50.100 Commencement of business during tax year.**

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Where a business, occupation or pursuit subject to tax upon gross revenue has not been carried on for the full calendar or fiscal year next preceding the tax year for which license is required, the license fee or tax shall be paid monthly in installments during the life of the license on or before the tenth day of the month, and shall be based upon the gross revenue for the month next preceding that in which payment is due. In such cases the taxpayer shall make monthly returns similar to the annual returns provided for herein on or before the tenth day of the month, under oath or affirmation covering the business of the previous month.

In all other cases where a person commences during any tax year to engage in any business, occupation, pursuit, or privilege, he or she is entitled to a license for the remainder of such tax year for the required fee apportioned in the ratio of the remainder to a full tax year. (Ord. 2005-56 § 1 (part), 2005: Ord. B-95 § 10, 1935).

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**5.50.110 Prerequisite for monthly payments.**

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In any case where the taxpayer pays his or her license fee or tax monthly he or she shall nevertheless first procure his or her occupation license in the manner herein required before commencing or continuing in business, and shall pay the premium fee or tax therefor, which shall be credited against future installments. (Ord. 2005-56 § 1 (part), 2005: Ord. B-95 § 11, 1935).

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**5.50.120 Sale or transfer of business.**

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Upon the sale or transfer during any tax year of a business on account of which a fee or tax is required, the purchaser or transferee shall, if the fee or tax has not been paid in full for the year, be responsible for its payment for that portion of the year during which he or she carries on such business. (Ord. 2005-56 § 1 (part), 2005: Ord. B-95 § 12, 1935).

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**5.50.130 Taxpayer to keep record—Returns to be kept confidential.**

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It shall be the duty of each taxpayer taxed upon his or her gross revenue to keep and enter in a proper book or set of books or records an account which shall accurately reflect the amount of his or her gross revenue, which account shall always be open to the inspection of the director of finance and budget of the city, or his or her duly authorized agent, and from which said officer or his or her agent

may verify the return made by the taxpayer.

The applications, statements or returns made to the director of finance and budget, pursuant to this chapter, shall be subject to disclosure as provided by state law. (Ord. 2005-56 § 1 (part), 2005: Ord. 3163 § 3, 1989: Ord. B-95 § 13, 1935).

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**5.50.140 Authority of clerk to investigate.**

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If any taxpayer fails to apply for license or make his or her return, or if the director of finance and budget of the city is dissatisfied as to the correctness of the statements made in the application or return of any taxpayer, said officer, or his or her authorized agent, may enter the premises of such taxpayer at any reasonable time for the purpose of auditing or otherwise inspecting his or her books or records of account to ascertain the amount of the fee or tax or to determine the correctness of such statements, as the case may be, and may examine any person under oath administered by said officer, or his or her agent, touching the matters inquired into, or said officer, or his or her authorized agent, may fix a time and place for an investigation of the correctness of the return and may issue a subpoena to the taxpayer, or any other person, to attend upon such investigation and there testify, under oath administered by said officer, or his or her agent, in regard to the matters inquired into and may, by subpoena, require him or her, or any person, to bring with him or her such books, records and papers as may be necessary. (Ord. 2005-56 § 1 (part), 2005: Ord. 3163 § 4, 1989: Ord. B-95 § 14, 1935).

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**5.50.150 Over or under payment.**

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If the director of finance and budget upon investigation or upon checking returns finds that the fee or tax paid on any of them is more than the amount required of the taxpayer, he or she shall refund the amount overpaid by a warrant upon the general fund. If the director of finance and budget finds that the fee or tax paid is less than required, he or she shall send a statement to the taxpayer showing the balance due, who shall within thirty days pay the amount shown thereon. (Ord. 2005-56 § 1 (part), 2005: Ord. 3263 § 6, 1990: Ord. B-95 § 15, 1935).

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**5.50.160 Remedy for nonpayment.**

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If any taxpayer fails to apply for license, or make his or her return, or to pay the fee or tax therefor, or any part thereof, within three days after the same shall have become due, the director of finance and budget shall ascertain the amount of the fee or tax or installment thereof due and shall notify such taxpayer thereof, who shall be liable therefor in any suit or action by the city for the collection thereof. The director of finance and budget shall also notify the city attorney in writing of the name of such delinquent taxpayer and the amount due from him or her and said officer shall, with the assistance of the director of finance and budget, collect the same by any appropriate means or by suit or action in the name of the city. (Ord. 2005-56 § 1 (part), 2005: Ord. 3263 § 7, 1990: Ord. B-95 § 16, 1935).

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**5.50.170 Appeals.**

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Any taxpayer aggrieved by the amount of the fee or tax found by the director of finance and budget to be required under the provisions of this chapter may appeal to the city council from such finding by filing a written notice of appeal with the director of finance and budget within five days from the time such taxpayer was given notice of such amount. The director of finance and budget shall, as soon as is practicable, fix a time and place for the hearing of such appeal, which time shall not be more than thirty days after the filing of the notice of appeal, and he or she shall cause a notice of the time and place thereof to be delivered or mailed to the appellant. At such hearing, the taxpayer shall be entitled to be heard and to introduce evidence on his or her own behalf. The city council shall thereupon ascertain the correct amount of the fee or tax by resolution and the director of finance and budget shall immediately notify the appellant thereof, which amount, together with costs of the appeal, if appellant is unsuccessful therein, must be paid within three days after such notice is given.

The city manager of the city of Yakima may, by subpoena, require the attendance thereof of any person, and may also require him or her to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated and produce the books and records required, if any, and shall testify truthfully under oath administered by the city manager as to any matter required of him or her pertinent to the appeal, and it shall be unlawful for him or her to fail or refuse so to do. (Ord. 2005-56 § 1 (part), 2005: Ord. 3263 § 8, 1990: Ord. B-95 § 17, 1935).

#### **5.50.180 Director of finance and budget authorized to make rules.**

The director of finance and budget shall have the power and it shall be his or her duty, from time to time, to adopt, publish, and enforce rules and regulations not inconsistent with this chapter or with law for the purpose of carrying out the provisions thereof, and it shall be unlawful to violate or fail to comply with any such rule or regulation. (Ord. 2005-56 § 1 (part), 2005: Ord. 93-73 § 6, 1993: Ord. 3263 § 9, 1990: Ord. B-95 § 17, 1935).

#### **5.50.190 Posting of license—Unlawful use.**

All licenses issued pursuant to the provisions of this chapter shall be kept posted by the licensee in a conspicuous place in his or her principal place of business in the city.

No person to whom a license has been issued, pursuant to this chapter, shall suffer or allow any other person chargeable with a separate license to operate under or display his or her license, nor shall such other person operate under or display such license. (Ord. 2005-56 § 1 (part), 2005: Ord. B-95 § 19, 1935).

#### **5.50.200 Unlawful acts.**

It shall be unlawful for any person liable to tax hereunder to fail or refuse to make application or return for a license or to pay the fee or tax or installment thereof when due, or for any person to make any false or fraudulent application or return or any false statement or representation in, or in connection

with, any such application or return, or to aid or abet another in any attempt to evade payment of the fee or tax, or any part thereof, or for any person to fail to appear and/or testify in response to subpoena issued pursuant hereto, or to testify falsely upon any investigation of the correctness of a return, or upon the hearing of any appeal, or in any manner to hinder or delay the city or any of its officers in carrying out the provisions of this chapter. (Ord. 2005-56 § 1 (part), 2005: Ord. B-95 § 20, 1935).

#### **5.50.205 Referendum procedure.**

A special referendum procedure shall apply to all business and occupation taxes first imposed by the city and to all increases in the rates of such taxes. The city intends this procedure to conform to the requirements of RCW 35.21.706 as presently enacted. If RCW 35.21.706 is repealed, the referendum procedure contained in Article IV, Section 3 of the City Charter shall apply. If RCW 35.21.706 is amended, such amendments shall be deemed to be incorporated herein.

A referendum petition may be filed with the city clerk (the “filing officer”) within seven days of passage of any ordinance first imposing or increasing the rate of a business and occupation tax; provided, that with respect to Ordinance No. 3163, a referendum petition may be filed within seven days of passage of that ordinance. Within ten days, the filing officer shall confer with the petitioner concerning form and style of the petition, issue the petition an identification number, and secure an accurate, concise, and positive ballot title from the city clerk. The petitioner shall have thirty days in which to secure the signatures of not less than fifteen percent of the registered voters of the city, as of the last municipal general election, upon petition forms which contain the ballot title and full text of the measure to be referred. The filing officer shall verify the sufficiency of the signatures on the petition and, if sufficient signatures are properly submitted, shall certify the referendum measure to the next election ballot within the city or at a special election ballot as provided pursuant to RCW 35.17.260(2). (Ord. 2005-56 § 1 (part), 2005: Ord. 3263 § 1, 1990).

#### **5.50.210 Severability.**

If any provision or section of this chapter shall be held void or unconstitutional, all other parts, provisions and sections of this chapter not expressly so held to be void or unconstitutional shall continue in full force and effect. (Ord. 2005-56 § 1 (part), 2005: Ord. B-95 § 21, 1935).