

ORDINANCE NO. 18-0520

AN ORDINANCE OF THE CITY OF EDGEWOOD, WASHINGTON, RELATING TO TAXATION OF UTILITY PROVIDERS, ESTABLISHING A SIX PERCENT (6%) UTILITY TAX ON THE GROSS INCOME OF THOSE ENGAGED IN THE FOLLOWING BUSINESSES: TELEPHONE, CELLULAR TELEPHONE, CABLE TV, ELECTRICITY, WATER, GAS DISTRIBUTION, STORM WATER/SEWAGE SERVICES AND SOLID WASTE COLLECTION; ESTABLISHING STANDARDS AND PROCEDURES FOR COLLECTION OF THE SAME; ESTABLISHING PENALTIES FOR FAILURE TO TIMELY REGISTER OR PAY THE UTILITY TAX; ESTABLISHING AN APPEAL PROCESS, ADOPTING A NEW CHAPTER 5.08 IN THE EDGEWOOD MUNICIPAL CODE, DESCRIBING THE PROCEDURE FOR A REFERENDUM, PROVIDING FOR SEVERABILITY, AND FIXING AN EFFECTIVE DATE.

WHEREAS, RCW 35A.82.020 authorizes the City to require business licenses and to impose excise taxes, such as a utility tax, for the purpose of regulation and revenue; and

WHEREAS, RCW 35.21.865 and RCW 35.21.870 limit the utility tax rate to 6% gross incomes of those engaged in the telephone business and those conducting an electrical energy or natural gas distribution business unless the rate is first approved by a majority of the voters of the city voting on the proposition; and

WHEREAS, the Mayor and City Council hired FCS Group of Redmond to review all staff generated materials predicting future revenue shortfalls together with lost Capital Improvement opportunities and any independent evaluation they could make regarding City finances; and

WHEREAS, said FCS Group study substantiated staff predicted shortfalls, lost Capital opportunities and compiled historical and comparative data that forecast an approximate 30 percent reduction in sustained revenue and therefore reduction in City Services; and

WHEREAS, on March 6th, 13th, 17th and 20th the Mayor and City Council held Town Hall Meetings to openly discuss the possibility of adopting a 6% utility tax with residents of the City, including the City's revenue history, periodic revenue shortfalls and the resulting reductions in levels of City services identified in the FCS study, including various tax rates; and

WHEREAS, on March 27th, the City Council held a regular council meeting attended by the public on this ordinance and during the regular public meeting voted to approve its adoption at the FCS recommended rate of 6% for all taxed utilities;

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

Section 1. A new Chapter 5.08 of the Edgewood Municipal Code is hereby adopted to read as follows:

**CHAPTER 5.08
UTILITY TAXES**

Sections:

5.08.010	Purpose.
5.08.020	Definitions.
5.08.030	Businesses subject to tax.
5.08.040	Exceptions and deductions from gross income.
5.08.050	Quarterly returns and payments.
5.08.060	Allocation of income for cellular telephone service.
5.08.070	Books and records -- Inspection and confidentiality.
5.08.080	Investigation of returns.
5.08.090	Over or under payment -- Penalties.
5.08.100	Failure to make return.
5.08.110	Appeals.
5.08.120	Rate change.

5.08.010 Purpose.

The provisions of this chapter shall be deemed to be an exercise of the power of the city to license for revenue, as authorized by RCW 35.21.865, RCW 35A.82.020, and other applicable state laws.

5.08.020 Definitions.

Where used in this chapter, the following words and terms shall have the meanings as defined in this section, unless, from the context, a more limited or different meaning is clearly defined or apparent:

A. "Cable television services" means the one-way transmission of video programming and associated non-video signals to subscribers together with subscriber interaction, if any, which is provided in connection with video programming.

B. "Cellular telephone service" means a one or two-way telecommunications system used to transmit voice and/or data-based signals or content 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, pager services, 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, including paging. Cellular telephone service shall not include competitive telephone service.

C. "Director", shall mean the Finance Director of the City of Edgewood, or such other person as appointed by the Mayor to administer this chapter.

D. "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

E. "Gross income" means the value proceeding or accruing from the distribution or 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 of the business engaged in, including rentals, royalties, fees or other emoluments, 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, taxes, or any expense whatsoever, and without any deduction on account of losses.

F. "Person" or "persons" means natural persons of either gender, firms, co-partnerships, corporations, municipal corporations, and other associations of natural persons whether acting by themselves or by servants, agents or employees.

G. "Sewerage system business" means and includes the business of operating the following facilities for the provision of sewer service:

1. Sanitary sewage disposal sewers and facilities, including without limitation on-site or off-site sanitary sewer facilities consisting of an approved septic tank or septic tank systems, or any other means of sewage treatment and disposal;
2. Combined sanitary sewage disposal and storm or surface water drains and facilities;
3. Storm or surface water drains, channels and facilities;
4. Outfalls for storm drainage or sanitary sewage and works, plants, and facilities for storm drainage or sanitary sewage treatment and disposal;
5. Any combination of or part of any or all of such facilities.

H. "Solid waste collection service" means receiving solid waste for transfer, processing, treatment, storage, or disposal, including but not limited to,

all collection services. "Solid waste," for purposes of this subsection, means garbage, trash, rubbish or other material discarded by the generator thereof as worthless or not economically viable for further use. "Solid waste" includes infectious, hazardous, or toxic wastes, and recyclable or reusable materials collected in whole or part for recycling or salvage as part of a general solid waste collection service to the public.

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

J. "Tax year" or "taxable year" means the twelve-month period commencing January 1st and ending December 31st of the same year.

I. "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

5.08.030 Businesses subject to tax.

There is hereby levied upon all persons engaged in the business activities set forth below a tax in the amounts to be determined by the application of the respective rates for each type of business against the gross income of such taxpayer. Taxpayers engaged in or carrying on the business shall be charged with collection of the tax as a condition of doing business, and the tax shall be levied thereafter upon their subscribers at the rate set forth below:

A. Upon every person engaged in or carrying on a telephone business, as defined in RCW 82.04.065(4), as said statute presently exists or is hereafter amended, a tax equal to six percent (6%) of the gross income, including revenues for intrastate toll, derived from the operation of such business within the city. To the extent permitted by applicable federal and state law, any telecommunications services provided by a cable operator (as defined in 47 U.S.C. Section 522(5)) or other persons over cable television facilities owned or controlled by a cable operator shall be taxable hereunder.

B. Upon every person engaged in a gas distribution business, as defined in RCW 82.16.010(7), as said statute presently exists or is hereafter amended, tax equal to six percent (6%) of the gross income derived from the operation of such business within the city.

C. Upon every person engaged in a light or power business, as defined in RCW 82.16.010(5), as said statute presently exists or is hereafter amended, tax equal to six percent (6%) of the gross income derived from the operation of such business within the city.

D. Upon every person engaged in or carrying on the sale of cellular telephone service, a tax equal to six percent (6%) of the total gross income

derived from the operation of such business within the city.

E. Upon every person engaged in the sale, delivery, distribution, or furnishing of water for domestic, farm, and other uses or the provision of sewage or stormwater collection and disposal, a tax equal to six percent (6%) of the total gross income derived from the operation of such business within the city. The tax shall also apply to all revenues derived from the sale, delivery, distribution, or furnishing of water for domestic, farm, and other uses to customers located outside the city when said service is provided by the City.

F. Upon every person engaged in the solid waste collection service, a tax equal to six percent (6%) of the gross income derived from the operation of such business within the city.

G. Upon every person engaged in or carrying on a cable television business within the city of Edgewood, a tax equal to six percent (6%) of the gross income derived from the operation of such business within the city.

5.08.040 Exceptions and deductions from gross income.

There shall be excluded from the gross income upon which the tax is computed the following:

A. Revenues derived from transactions in interstate or foreign commerce, or from business done for the United States and the state, or their officers or agents or any amounts paid by the taxpayer to the United States and the state, the city or to any political subdivision of the state, as excise taxes levied or imposed upon the sale or distribution of property or services, or as a utility tax.

B. That portion of gross income derived from charges to another telecommunications company, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate service.

C. Charges incurred by a taxpayer engaging in a telephone business and paid to a telecommunications company, for telephone service that the taxpayer purchases for the purpose of resale.

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

E. Cash discounts and credit losses actually sustained by a taxpayer on an accrual basis.

F. Charges to subscribers or customers passed on to compensate for the cost to the company of the taxes imposed by this chapter.

G. Revenues from transactions which the City is prohibited from taxing under the laws and/or constitutions of the United States or the State of Washington.

5.08.050 Monthly/Quarterly returns and payment.

A. On or before the 20th day following the end of each month or calendar quarter (i.e., April 20th, July 20th, October 20th, and January 20th), each taxpayer shall remit payment for the preceding month or quarter's tax, accompanied by a monthly or quarterly statement showing the manner in which the payment is calculated. The statement shall contain such information as may be necessary to enable the director to arrive at the lawful amount of the tax. The taxpayer shall, in a legible manner, provide all information required by the director on such returns, shall sign the same, and by affidavit shall swear or affirm that the information therein given is full and true and that the taxpayer knows the same to be so.

B. Returns shall be accompanied by a remittance by bank draft, certified check, cashier's check or money order payable to the City of Edgewood, or in cash or by previously arranged electronic transfer, in the amount of the fee or tax owed, including delinquencies and installments.

C. Payment made by draft or check shall not be deemed a payment of the fee or tax unless and until the same has been honored in the usual course of business, nor shall acceptance of any such check or draft operate as a discharge of the fee or tax unless and until the check or draft is honored.

D. If the applicant is a partnership, returns must be made by one of the partners; if a corporation, by one of the officers thereof, if a foreign corporation, co-partnership or nonresident individual, by the resident agent or president of said corporation, co-partnership or individual.

5.08.060 Allocation of income for cellular telephone service.

A. Service Address. Payments by a customer for the telephone service from telephones without a fixed location (i.e., cellular telephone service) shall be allocated among taxing jurisdictions to the location which is 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 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 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). The taxpayer shall have no further liability with respect to additional taxes on the disputed revenues, but will charge his or her billing records for future revenues to comply with the settlement facilitated by AWC.

E. Authority of Director. The director is authorized to represent the City in negotiations with other cities for the proper allocation of cellular telephone service taxes imposed pursuant to this chapter.

5.08.070 Books and records - Inspection and confidentiality.

A. It is the duty of each taxpayer to keep and enter in a proper book or set of books or records an account which shall accurately reflect the amount of its gross income, which account shall be open to inspection by the director, or his or her designee, at a reasonable time, and from which said officer, the director or his or her designee, may verify returns made by the taxpayer.

B. To the extent permitted by Chapter 42.56 RCW and other applicable statutes, the applications, statements or returns made to the 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 director, or his or her authorized agent.

5.08.080 Investigation of returns.

If any taxpayer fails to apply for a license or make his or her return, or if the director is dissatisfied as to the correctness of the statements made in the application or return of any taxpayer, the director, or his or her designee, may: (1) enter the premises of such taxpayer at any reasonable time for the purpose of inspecting and auditing the taxpayer's books or records to ascertain the amount of the fee or tax or to determine the correctness of such statements, as the case may be; (2) may examine any person under oath administered by the director, or his or her designee, touching the matters inquired into; or (3) fix a time and place for an investigation of the correctness of the return, and issue a subpoena to the taxpayer, or any other person, to attend such investigation and testify, under oath administered by the director, 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. In the event that any such audit reveals an underpayment of ten percent (10%) or more, the taxpayer shall, in addition to the penalties provided by 5.08.090, be responsible for all of the costs associated with the audit, including, but not limited to, staff time and overhead, accounting fees, professional service fees, and attorneys' fees.

5.08.090 Over or under payment -- Penalties.

A. Overpayment. If the director, upon investigation or upon checking returns, finds that the fee or tax paid by a taxpayer is more than the amount required of the taxpayer, he or she shall return the amount overpaid, upon the written request of the taxpayer. Any refund request not submitted within three (3) years of the alleged overpayment shall be forever barred and waived.

B. Underpayment. If the director finds that the fee or tax paid by a taxpayer is less than required, he or she shall send a statement to the taxpayer showing the balance due, together with a penalty of ten percent (10%) of the amount due, and the taxpayer, shall within ten (10) calendar days, pay the amount shown thereon. If payment is not received by the director by the due date specified in the notice, the director shall add a penalty of an additional twenty-five percent (25%) of the amount of the additional tax found due. In the event that the balance due, including all penalties, is not paid in full within thirty (30) calendar days from the date specified, the penalty shall be increased by fifteen percent (15%) of the amount due and the total amount due shall accrue interest at the rate of twelve percent (12%) per annum. If the director finds that all, or any part of, the deficiency resulted from an intent to evade the tax payable hereunder, a penalty of fifty percent (50%) of the additional tax found to be due shall be added and the amounts due, including penalties, shall accrue interest at the rate of twelve percent (12%) per annum from the date the tax became due until the date payment is actually made.

5.08.100 Failure to make return.

If any taxpayer fails to make a return or pay the fees or taxes therefor, or any part thereof, the director shall ascertain the amount of the fee or tax or installment thereof due and shall notify the taxpayer thereof, who shall be liable therefor in any suit or action by the city for the collection thereof. In the event that any taxes imposed by this chapter remain unpaid, the director may refer such claims to a collection agency or to the city prosecutor or city attorney for collection. If referred to the city prosecutor or city attorney for collection, the city prosecutor or city attorney shall, with the assistance of the director, collect the same by any appropriate means or by suit or action in the name of the city. In the event that the city prevails on any claim that a taxpayer is in non-compliance with the terms of this chapter, the city shall be entitled to an award of its reasonable attorneys' fees and other professional expenses associated with prosecuting the action, in addition to those penalties imposed in 5.08.090.

5.08.110 Appeals.

A. Who may appeal. Any taxpayer aggrieved by the amount of the fee, tax or penalty to be required under this Chapter or imposed by the Director.

B. How to file an appeal. The aggrieved taxpayer may file an appeal to the City Council from such amount by filing a written notice of appeal with the City Clerk within five (5) days after the taxpayer was given notice of the amount. The written notice of appeal shall be accompanied by a written appeal fee in accordance with the City's adopted Fee Resolution.

C. Notice of the appeal hearing. The City Clerk shall fix a time for the hearing on such appeal, which shall be no later than thirty (30) days after the filing of the notice of appeal. The appeal hearing shall take place during a regular City Council meeting. The City Clerk shall cause a notice of the time and place of the appeal hearing to be mailed and e-mailed to the appellant.

D. Appeal hearing. The Council may determine that the appeal hearing should be held before a hearing officer appointed by the Council for this purpose. The taxpayer shall be entitled to be heard at the hearing, and to introduce evidence on his or her own behalf. The City Council or appointed hearing officer shall consider the evidence, deliberate and ascertain the correct amount of the fee, tax or penalty.

E. Decision. The Council's or hearing officer's decision shall be incorporated into a resolution, which shall be adopted by the Council at the next regular Council meeting. The City Clerk shall immediately provide a copy of the decision to the appellant.

F. Payment. If the appeal is unsuccessful, the appellant shall pay the fee, tax or penalty, together with any costs incurred by the City for outside legal services and/or accounting reports/expenses, within ten (10) days after the appellant receives the notice of the decision from the Clerk.

G. Judicial Appeal. Any appeal of the appeal decision shall be filed with the Pierce County Superior Court within twenty-one (21) days after the date of the appeal decision. The appellant shall be responsible to pay the costs associated with the preparation of the City's administrative record for transmittal to the Court.

5.08.120 Rate change.

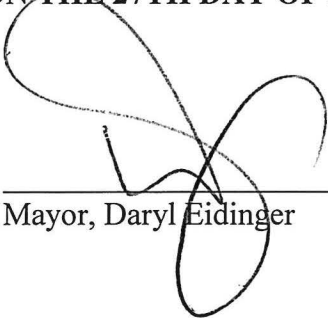
No change in the rate of tax upon persons engaging in providing services taxable under this chapter shall apply to business activities occurring before the effective date of the change, and, except for a change in the tax rate authorized by RCW

35.21.870, no change in the rate of the tax may take effect sooner than sixty (60) days following the enactment of the ordinance establishing the change. The director, or his or her designee, shall send to each registered taxpayer a copy of any ordinance changing the rate or tax upon taxable services promptly upon its enactment.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. This ordinance is subject to referendum as set forth in RCW 35.21.706. Any duly qualified person may file a referendum petition with the city clerk within seven (7) days after the passage of this ordinance. In the event that such a petition is filed, the city clerk shall, within ten (10) days, confer with the petitioner regarding the form and style of the petition, secure an accurate, concise, and positive ballot title from the city attorney, and assign an identification number to the petition. Thereafter, the petitioner shall have thirty (30) days within which to gather signatures from not less than fifteen percent (15%) of the city's registered voters as of the last municipal general election. The filing officer shall verify the sufficiency of the signatures on the petition, and if sufficient valid 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). In the event that no referendum petition is filed, this ordinance shall take effect on June 1, 2018 and shall be published as required by law.

**Presented to Council for its First Reading and Adoption on March 27, 2018
PASSED BY THE CITY COUNCIL ON THE 27TH DAY OF MARCH, 2018**



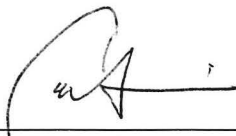
Mayor, Daryl Eidinger

ATTEST/AUTHENTICATED:



City Clerk, Rachel Pitzel

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY  _____
Carol Morris

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