

AN ORDINANCE OF THE CITY OF MILLWOOD, SPOKANE COUNTY, WASHINGTON, AMENDING CHAPTER 3.18 OF THE MILLWOOD MUNICIPAL CODE REGARDING PUBLIC UTILITY TAX; REPEALING ORDINANCE 495; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

WHEREAS, the City of Millwood (the "City"), Spokane County, Washington is a non-charter code city, by virtue of the Constitution and the laws of the State of Washington; and

WHEREAS, pursuant to Chapter 35A.11 RCW, the City Council (the "Council") may adopt and enforce ordinances of all kinds, relating to and regulating its local or municipal affairs and appropriate to the good government of the City and may impose penalties and fines for violations of such ordinances; and

WHEREAS, the Council has heretofore enacted chapter 3.18 MMC, as amended, which provides for certain utility taxes levied upon certain business activities in the City, in accordance with applicable law, including but not limited to RCW 35.21.865 and RCW 35.21.870; and

WHEREAS, on November 27, 2018, the Council adopted Ordinance 495, which amended and updated certain provisions of chapter 3.18 MMC; and

WHEREAS, the Council finds it is in the best interests of the City to repeal Ordinance 495 in its entirety; and

WHEREAS, the Council finds it is in the best interests of the City to amend and update chapter 3.18 MMC to: (i) Implement a utility tax on the business of transfer, storage, disposal and/or collection of garbage or solid waste; (ii) implement a utility tax on telephone business; and (iii) revise chapter 3.18 MMC to provide for better clarity and understanding; and

WHEREAS, with the adoption of this Ordinance, the Council provides for a referendum procedure pursuant to RCW 35.21.706 for the matters addressed in this Ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY MILLWOOD DOES ORDAIN AS FOLLOWS:

Section 1. Amendment to Chapter 3.18 MMC- Definitions. Chapter 3.18 MMC is hereby deleted in its entirety and replaced as follows (deleted language ~~stricken~~, added language double-underlined):

Chapter 3.18 - PUBLIC UTILITY TAX

3.18.010 - Scope and intent.

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

3.18.020 - Occupation license required.

After the effective date of this chapter no person, firm or corporation shall engage in, conduct or carry on any business, occupation, act or privilege for which a tax is imposed without first having obtained, and being the holder of, a license to do so. Such license shall be known as an occupation license. Each person, firm or corporation shall promptly apply to the city clerk for such license upon such forms as the clerk shall prescribe, giving such information as the city clerk shall deem reasonably necessary to enable the city clerk's office to administer and enforce this chapter. Upon acceptance of such application by the clerk, the clerk shall issue an occupation license to the applicant. The occupation license shall be personal and nontransferable, and shall comply with this chapter.

3.18.030 - 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:

"Business" means all activities engaged in with the object of gain, benefit or advantage to the taxpayer or to another person, directly or indirectly.

"City" means city of Millwood.

"Clerk" means clerk of the city of Millwood.

"Cellular telephone service" means a two (2) way voice and data telephone or similar communications system based in whole or substantial part on wireless radio communications, including cellular mobile service, and which is not subject to regulation by the Washington Utilities and Transportation Commission (WUTC). Cellular mobile service includes wireless radio communications services such as specialized mobile radio, personal communications services, and any other evolving wire radio communications technology that accomplishes the same or similar purpose as cellular mobile service. "Cellular telephone service" is included within the definition of "telephone business" for the purpose of this chapter.

"Competitive telephone service" means the provision by any person of telecommunications equipment or apparatus, directory advertising and lease of telephone street directories, or service related to the equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type that can 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 telephones is classified as a "telephone business" rather than a "competitive telephone service."

"Garbage or solid waste" means all putrescible and nonputrescible solids and semisolid waste, including but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction waste, abandoned vehicles or parts thereof, and recyclable materials.

"Gross income" means the value proceeding or accruing from the privilege of conducting and/or transacting of the business engaged in within the city of Millwood, including but not limited to the sale, delivery, distribution, or furnishing of property, products, commodities or services, and receipts (including all sums earned or charged, whether received or not) by reason of the transacting of or investment of capital in the business engaged in within the city of Millwood, 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 cost of the property, products, commodities, or services sold, delivered, distributed or furnished, or the cost of materials, labor, interest, discounts, delivery, taxes or any expense whatsoever, and without any deduction on account of losses. Gross income does not include charges that are passed on to subscribers or customers by a taxpayer pursuant to tariffs required by regulatory order to compensate for the cost to the taxpayer of the tax imposed by this chapter.

"Person or persons" mean all individuals, group of individuals, limited liability company, firms, partnerships, corporations and other associations whether acting by themselves or by officers, agents, or employees, and includes the United States, state of Washington and any political subdivision thereof, including the city, provided a valid tax may be levied upon or collected therefor under the provisions of this chapter.

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

"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 to use the same as the tax period.

"City" ~~means city of Millwood.~~

"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, 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. Telephone business includes any cooperative or farmer line telephone companies or associations operating exchanges. Telephone business does not include the provision of competitive telephone service, or provision of cable television service, or other provision of broadcast services by radio or television stations.

3.18.040 - Imposition—Amount.

Pursuant to RCW 35.21.870, as amended, there is levied and there shall be collected from every person, engaged in the business activity hereinafter set forth, after ~~the effective date hereof~~, for the act or privilege of engaging in such activity within the city, a tax to be known as a "utility tax" in the amount to be determined by the application of the rate stated in this chapter against gross income, as follows:

A. Upon every person engaged in or carrying on a business of sale, delivery, distribution or furnishing of electricity and electrical energy, a tax equal to six percent (6%) of the gross income derived from the sale, delivery, distribution or furnishing of such electricity or electrical energy to ultimate users in the city, which shall be deposited into the street fund and used for purposes related thereto, subject to the following exception: ~~provided however the tax shall be equal to one half of one percent (0.5%) of the gross income derived each month from the sale, delivery, distribution or furnishing of electricity or electrical energy to any single ultimate user in the city in excess of four thousand one hundred sixty six dollars) \$4,166.00). The tax shall be equal to six and one-half tenths of one percent (0.65%) of the gross income derived each month from the sale, delivery, distribution or furnishing of electricity or electrical energy to any person under an Extra Large General Service rate schedule (including but not limited to Avista Rate Schedule 25, or equivalent), which shall be deposited into the street fund and used for purposes related thereto.~~

B. Upon every person engaged in or carrying on a business of sale, delivery, distribution or furnishing of natural gas or manufactured gas, a tax equal to two percent (2%) of the gross income derived from the sale, delivery, distribution or furnishing of such natural gas or manufactured gas to ultimate users in the city, which shall be deposited into the street fund and used for purposes related thereto.

C. Upon every person engage in or carrying on the business of transfer, storage, disposal, or collection of garbage or solid waste within the city, a tax equal to two percent (2%) of the gross income derived from such business, which shall be deposited into the street fund and used for purposes related thereto.

D. Upon every person engaged in or carrying on a telephone business, or a combined telephone and telegraph business, a tax equal to two percent (2%) of the gross income derived from such business, which shall be deposited into the street fund and used for purposes related thereto; provided, however, that in the event a city franchised cable company pays a franchise fee on income derived from cable modem services provided within the city, any such payments shall be credited against the tax imposed hereunder.

3.18.050 - Payment.

A. The tax imposed by this chapter shall be due and payable in quarterly installments beginning with the quarter first ending after the effective date of the

ordinance codified in this chapter 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:

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

B. On or before the due date, the taxpayer shall file with the city clerk a written return, upon such form and setting forth such information as the clerk shall reasonably require, together with the payment of the amount of tax.

3.18.060 - Deductions.

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

- A. The amount of credit losses and uncollectible accounts sustained by the taxpayer
- B. Amounts from a business which the city is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.
- C. Adjustments made to billing or to a customer 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.

3.18.070 - Record keeping.

Each taxpayer shall keep records reflecting the amount of the taxpayer's gross operating revenues, and such records shall be open at all reasonable times to the inspection of the city clerk or his/her duly authorized subordinates, for the verification of the tax returns or for fixing of the tax of a taxpayer who shall fail to make such returns. It shall be the duty of every person required to obtain a business license by this chapter to keep and preserve for a period of five (5) years such books and records as will accurately reflect the amount of gross income from which can be determined the amounts of any fee or tax for which there may be liability under the provisions of this chapter. The term "books and records" as used in this section includes the taxpayer's copies of federal excise tax returns, state of Washington excise tax returns and copies of excise tax audits made by the United States or state of Washington, and furnished to such person, firm or corporation, if any. The taxpayer's books and records shall be open for examination at all reasonable times by the clerk or a duly authorized representative.

3.18.080 - Overpayment credit and refund.

Any money paid to the city through error or otherwise not in payment of the tax imposed 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 hereunder or, upon taxpayer's ceasing to do business in the city be refunded to the taxpayer.

3.18.090 - Delinquency penalty and collection.

A. If payment of any fee or tax due under this chapter is not received by the city clerk on or before the day it becomes due, there shall be added a penalty in interest as follows:

1. One to forty (40) days delinquency, ten percent (10%), with a minimum penalty of five dollars (\$5.00);

2. Forty-one (41) to seventy (70) days delinquency, fifteen percent (15%) ~~percent~~ with a minimum penalty of ten dollars (\$10.00); and

3. Seventy-one (71) or more days delinquency, twenty percent (20%) ~~percent~~ with a minimum penalty of fifteen dollars (\$15.00).

B. 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.

3.18.100 - Rules and regulations.

The 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 violation of this chapter to violate or to fail to comply with any such rule or regulation lawfully promulgated hereunder.

3.18.110 - Violation.

It shall be a violation of this chapter for any person liable for the tax hereunder to:

- A. Fail or refuse to obtain an occupation license;
- B. Fail or refuse to file tax returns when due;
- C. Fail or refuse to pay the tax when due;
- D. Make or file any false or fraudulent statement, representation or return;
- E. Otherwise violate the provisions of this chapter.

Each violation shall be a separate violation. Any person found guilty of violating any provision of this chapter shall be subject to a fine not to exceed five thousand dollars (\$5,000.00) for each violation.

~~3.18.120 - Effectiveness.~~

~~The ordinance codified in this chapter shall be in full force and effect as of February 10, 2005.~~

3.18.120 - Tax not exclusive.

The tax levied in this chapter shall be additional to any license fee or tax imposed or levied under any other law or any other ordinances of the City.

~~3.18.130 - Referendum procedures.~~

~~Any person or persons seeking referendum on this chapter shall file a referendum petition within seven days of passage of the ordinance codified in this chapter with the city's clerk. Within ten days, the clerk shall confer with the petitioner concerning form and style of the petition, issue the petition an identification number, and secure as~~

~~accurate, concise and positive ballot title. The petitioner shall have thirty (30) days in which to secure the signatures of not less than fifteen (15) 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 clerk 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).~~

Section 2. Referendum. Any person or persons seeking referendum on this Ordinance shall file with the City Clerk a referendum petition within seven (7) days of passage of this Ordinance. Within ten (10) days, the clerk 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. The petitioner shall have thirty (30) days in which to secure the signatures of not less than fifteen percent (15%) 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 City Clerk 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).

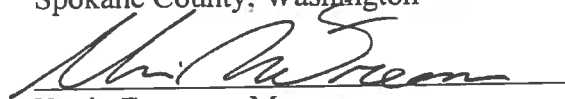
Section 3. Repeal. Ordinance 495, adopted by the Council on November 27, 2018, is expressly repealed by this Ordinance. Additionally, All all ordinances, resolutions, laws, and regulations, or parts thereof in conflict with this ordinance are, to the extent of said conflict, hereby repealed.

Section 4. 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 5. Effect. Except as otherwise set forth in this Ordinance, this Ordinance or a summary of this Ordinance shall be published in the official newspaper of the City and shall take effect and be in full force sixty (60) days after passage and publication as provided by law.

PASSED BY THE COUNCIL OF THE CITY OF MILLWOOD THIS 11th DAY OF DECEMBER 2018.

CITY OF MILLWOOD,
Spokane County, Washington


Kevin Freeman, Mayor

ATTEST:


Christina Janssen, City Clerk

STATE OF WASHINGTON)

)ss:

County of Spokane)

Christina Janssen, being first duly sworn on oath deposes and says:

I am the Clerk of the City of Millwood, Washington, and the foregoing ordinance entitled "AN ORDINANCE OF THE CITY OF MILLWOOD, SPOKANE COUNTY, WASHINGTON, AMENDING CHAPTER 3.18 OF THE MILLWOOD MUNICIPAL CODE REGARDING PUBLIC UTILITY TAX; REPEALING ORDINANCE 495; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO" is the true and correct copy of the City of Millwood's Ordinance numbered 499 and that the same was posted and published according to law.

Christina Janssen

Christina Janssen

SUBSCRIBED AND SWORN TO BEFORE ME THIS 11th DAY OF December 2018.

Lisa Casseles

Lisa Casseles

Notary Public in and for the State of

Washington, residing at Deer Park, WA

My Commission expires September 30, 2020



