

CITY OF LAKE STEVENS
LAKE STEVENS, WASHINGTON

ORDINANCE NO. 1037

AN ORDINANCE OF **THE CITY OF LAKE STEVENS**, WASHINGTON, RELATING TO TAXATION OF **UTILITY PROVIDERS**; REPEALING IN **THEIR ENTIRETY** CHAPTERS **3.08, 3.12, 3.16** AND **3.20** OF **THE LAKE STEVENS MUNICIPAL CODE** (“LSMC”); REENACTING NEW CHAPTER 3.08 OF THE LAKE STEVENS MUNICIPAL CODE, ESTABLISHING A SIX **PERCENT (6.0%) UTILITY TAX** ON THE GROSS RECEIPTS OF THOSE ENGAGED IN THE TELEPHONE BUSINESS, THE **TELEGRAPH** BUSINESS, THE DISTRIBUTION OF NATURAL GAS, THE LIGHT OR POWER BUSINESS, THE DISTRIBUTION OF WATER, THE SALE OF CELLULAR TELEPHONE SERVICE, AND THE SERVICE OF GARBAGE, REFUSE, AND SOLID WASTE **COLLECTION**; ESTABLISHING STANDARDS AND PROCEDURES FOR **COLLECTION OF THE SAME**; ESTABLISHING PENALTIES FOR FAILURE TO TIMELY REGISTER OR PAY TITE UTILITY TAX; PROVIDING FOR SEVERABILITY; FIXING AN **EFFECTIVE DATE**; AND PROVIDING FOR SUMMARY PUBLICATION BY ORDINANCE TITLE ONLY.

WHEREAS, RCW 35.21.865 - .870 authorizes the City to establish a utility tax of up to 6% of the gross revenues of those engaged in the telephone business and those engaged in the distribution of natural gas and electricity without approval of a majority of voters; and

WHEREAS, RCW 35A.82.020 authorizes the City to require business licenses and to impose excise taxes for the purpose of regulation and revenue, including but not limited to the utility businesses of sewer, solid waste, water and cable tv; and

WHEREAS, the cost of providing public safety, parks, streets and other city services have continued to increase, and additional revenue is needed by the City to perform these and other essential services; and

WHEREAS, the current utility tax rates in the LSMC for the utilities covered may be increased and additional utilities not currently covered may be included within the scope of the utility tax to provide the City with additional revenue needed to provide essential services; and

WHEREAS, the current utility tax provisions in the LSMC are found in four separate chapters and it is in the interest of convenience, transparency, and best practice that all utility tax provisions be codified in a single chapter.

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

Section 1. Chapters 3.08 *Public Utilities District Tax*, 3.12 *Telephone Utility Tax*, 3.16 *Telegraph Tax*, and 3.20 *Sale of Gases Tax* of the Lake Stevens Municipal Code are hereby repealed in their entirety.

Section 2. Chapter 3.08 of the Lake Stevens Municipal Code is hereby reenacted to read as follows:

**CHAPTER 3.08
UTILITY TAXES**

Sections:

- 3.08.010 Purpose.**
- 3.08.020 Definitions.**
- 3.08.030 Businesses subject to tax.**
- 3.08.040 Exceptions and deductions from gross income**
- 3.08.050 Returns and payments.**
- 3.08.070 Books and records -- Inspection and confidentiality.**
- 3.08.080 Investigation of returns.**
- 3.08.090 Over or under payment.**
- 3.08.100 Failure to apply for license or make return.**
- 3.08.110 Appeal to City Administrator.**
- 3.08.120 Rules and regulations.**
- 3.08.130 Unlawful acts.**
- 3.08.140 Penalty for violation.**
- 3.08.150 Rate change.**

3.08.010 Purpose. The provisions of this chapter shall be deemed to be an exercise of the power of the City of Lake Stevens to license for revenue, as authorized by RCW 35.21.865, RCW 35A.82.020, and other applicable state law.

3.08.20 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. "Director" means the City Finance Director.
- B. "Gross income" means the total gross monthly service and other charges billed to business and residence customers within the corporate limits of the city for the service or commodity of the business subject to the tax, exclusive of moneys collected by such business for reimbursement of such tax 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, (excluding taxes imposed by this Chapter) or any expense whatsoever, and without any deduction on account of losses.
- C. "Household" means a single service address such as house or apartment number, regardless of the number of persons living at the service address.
- D. "Person" or "persons" means natural persons of either gender, firms, co-partnerships, corporations, municipal corporations/special purpose districts, and other associations of natural persons whether acting by themselves or by servants, agents or employees.
- E. "Taxpayer" means any person liable for the license fee or taxes imposed by this chapter.
- F. "Tax year" or "taxable year" means the twelve month period commencing January 1st and ending December 31st of the same year.

3.08.30 Businesses subject to tax. There is hereby levied upon all persons engaged in business activities taxable under this chapter a tax in the amounts to be determined by the application of the respective rates against 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, in the amount described below:

- A. Upon every person engaged in or carrying on a telephone business (including cellular and pager), as defined in RCW 82.16.010, as said statute presently exists or is hereafter amended, a tax equal to six percent (6.0%) of the total 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 or carrying on a telegraph business, as defined in RCW 82.16.010, a tax equal to six percent (6%) of the total gross income from such business in the City.
- C. Upon every person engaged in a gas distribution business, as defined in RCW 82.16.010, as said statute presently exists or is hereafter amended, a tax equal to six percent (6.0%) of the total gross income derived from the operation of such business within the City.
- D. Upon every person engaged in a light or power business, as defined in RCW 82.16.010, as said statute presently exists or is hereafter amended, a tax equal to six percent (6.0%) of the total gross income derived from such business within the City.
- E. Upon every person engaged in water distribution business, a tax equal to six percent (6.0%) of the total gross income derived from the operation of such business within the City.
- F. Upon every person engaged in the service of garbage, refuse, and solid waste collection, a tax equal to six percent (6.0%) of the total gross income derived from the operation of such business within the City.

3.08.40 Exceptions and deductions from gross income. There shall be excluded from the total gross income upon which the utility 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, as defined in RCW 80.40.010, 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, as defined in RCW 80.40.010, 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. Revenues from transactions or activities which the City is prohibited from taxing under the laws and/or Constitutions of the United States or the State of Washington.

3.08.50 Returns and payment.

- A. *Quarterly Returns.* On or before the 20th day following the end of each calendar quarter (i.e., April 20th, July 20th, October 20th, and January 20^{*}), each taxpayer not submitting monthly returns and payment shall remit payment for the preceding quarter's utility tax, accompanied by a quarterly statement showing the manner in which the quarterly payment is calculated. The quarterly statement shall be upon a form provided by the Finance Director and 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. *Monthly Returns.* Taxpayers may submit monthly returns and payment in the same form and manner as taxpayer's making quarterly returns.

- C. Returns shall be accompanied by a remittance by bank draft, certified check, cashier's check or money order, payable to the City of Lake Stevens, or in cash, in the amount of the fee or tax owed, including delinquencies and installments.
- D. 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 an acquittance or discharge of the fee or tax unless and until the check or draft is honored.
- E. If the taxpayer 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 local manager of said corporation, co-partnership or individual.

3.08.70 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 upon request, 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, City Administrator, the City Attorney, the Director, or his or her authorized agent and members of the City Council.

3.08.080 Investigation of returns. If any taxpayer fails to apply for a license or make his or her return, or if the Finance Director is dissatisfied as to the correctness of the statements made in the application or return of any taxpayer, the Finance Director or his or her designee, may, to the extent and in the manner permissible under applicable law: (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) examine any person under oath administered by the Finance 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 often percent (10%) or more, the taxpayer shall, in addition to the penalties provided by this chapter, 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.

3.08.90 Over or under payment.

- A. Overpayment. If, upon written request of the taxpayer, the Finance 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. Any refund request not submitted within two (2) years of the alleged overpayment shall be forever barred.
- B. Underpayment. If the Finance 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 twenty (20) days, pay the amount shown thereon. If payment is not received by the director by the due date specified in the notice, the Finance 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) 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 Finance 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 and the date payment is actually made.

3.08.100 Failure to make return. If any taxpayer fails to make a return or pay the fees or taxes therefore, or any part thereof, the Finance Director shall ascertain the amount of the fee or tax or installment thereof due and shall notify the taxpayer thereof, who shall be liable therefore 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 Finance Director may refer such claims to a collection agency or to the City Attorney for collection. If referred to the City Attorney for collection, the City Attorney 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. In the event that the City prevails on any claim that a taxpayer is noncompliant 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.

3.08.110 Appeal to City Administrator.

- A. Any taxpayer aggrieved by the amount of the fee, tax, or penalty found by the Finance Director to be required under the provisions of this chapter, may appeal to the City Administrator from such finding by filing a written notice of appeal with the Finance Director within fourteen (14) days from the time such taxpayer was given notice of such amount. and paying an appeal fee in accordance with the City's adopted fee schedule. The City Administrator shall, as soon as practicable, fix a time and place for the hearing of such appeal, which time shall be not more than thirty (30) 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 the taxpayer shall be entitled to be heard and to introduce evidence on his or her own behalf. The City Administrator shall thereupon ascertain the correct amount of the fee, tax, or penalty by resolution and the director shall immediately notify the appellant thereof, which amount, together with costs of the appeal including outside legal, accounting, and other expenses, if the appellant is unsuccessful therein, must be paid within ten (10) days after such notice is given.
- B. The City Administrator may direct that the appeal hearing provided by subsection (A) of this section be conducted by a hearing officer appointed by the City for that purpose. In such case, the hearing officer shall conduct an evidentiary hearing as provided in subsection (A) of this section and forward findings, conclusions, and a recommendation to the City Administrator for final action. Unless otherwise agreed to by the parties, the hearing officer shall convene the hearing within thirty (30) days of the matter being referred by the City Administrator and shall enter his or her written findings, conclusions, and recommendation within fifteen (15) days following conclusion of the hearing. Upon receipt of the hearing officer's findings, conclusions, and recommendation, the City Administrator shall either adopt the same as their own decision, conduct their own hearing and adopt new findings and conclusions, or remand the matter to the hearing officer for further review.
- C. Any judicial appeal of the City Council's final determination of such an appeal shall be filed and served within twenty-one (21) days of the date of the City Administrator's final decision on the matter, and the taxpayer shall be responsible for payment of the costs associated with producing the City's administrative record therein.

3.08.120 Rules and regulations. The director shall have the power to adopt, publish and enforce rules and regulations not inconsistent with this chapter or with applicable law for the purpose of carrying out the provisions of this chapter, and it is unlawful for any person or taxpayer to violate or fail to comply with any such rule or regulation.

3.08.130 Unlawful acts. It is unlawful: (1) for any person liable for taxes or fees hereunder to fail or refuse to file returns, or to pay any fee or tax or installment thereof when due; (2) for any person to make any false or fraudulent return or any false statement or representation in, or in connection with any return; (3) to aid or abet another in any attempt to evade payment of the fee or tax, or any part thereof; (4) for any person to fail to appeal and/or testify in response to a subpoena issued pursuant hereto; (5) to testify falsely upon any investigation of the correctness of a return, or upon the hearing of any appeal; or (6) in any manner to hinder or delay the City or any of its officers in carrying out the provisions of this chapter.

3.08.140 Penalty for violation. Any person violating any of the provisions or failing to comply with any of the requirements of this chapter shall, in addition to being liable for the monetary penalties set forth herein, be guilty of a gross misdemeanor and upon conviction of such violation or failure be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or by imprisonment not to exceed ninety (90) days or by both such fine and imprisonment.

3.08.150 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 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 shall take effect March 1, 2019 or 60 days after the date of enactment, whichever date is last to occur. Publication of this ordinance may be by an approved summary thereof consisting of the ordinance title.

Jo Spencer, Mayor

ATTEST/AUTHENTICATED:



Kathy Pugh, City Clerk

APPROVED AS TO FORM:



Greg A. Rubstello, City Attorney

Passed: 11/13/2018
Date of Publication: iT 10/1/2018

Effective Date: *This ordinance shall take effect March 1, 2019 or 60 days after its enactment, whichever date is last to occur.*