

ORDINANCE NO. ⁷¹⁶~~715~~

AN ORDINANCE RELATING TO, AND PROVIDING FOR, THE LICENSING OF CERTAIN BUSINESSES, OCCUPATIONS AND PRIVILEGES, FIXING THE AMOUNT OF LICENSE FEE THEREFORE, PROVIDING FOR THE COLLECTION THEREOF AND PROVIDING PENALTIES FOR THE VIOLATION OF THIS ACT, AND FURTHER PROVIDING THAT ALL RECEIPTS FROM THE TAX HEREBY IMPOSED SHALL GO TO THE STREET FUND OF THE CITY OF KIRKLAND FOR THE FOLLOWING PURPOSES: COMPLETION OF STATE STREET PAVING PROJECT AND STREET FUND.

WHEREAS, the total revenues of the City of Kirkland, from all sources, are insufficient to defray the necessary and legitimate expenses of operation of the government of said City, and the Council of said City has found and determined that it is necessary, and in the best interests of said City, and of the taxpayers therein, that licenses be required and license fees collected as in this act hereinafter provided, now therefore,

THE CITY COUNCIL OF THE CITY OF KIRKLAND DO ORDAIN AS FOLLOWS:

Section 1. Exercise of Revenue License Powers. The provisions of this ordinance shall be deemed an exercise of the power of the City of Kirkland to license for revenue.

Section 2. Definitions. In construing the provisions of this ordinance, save when otherwise plainly declared or clearly apparent from the context, the following definitions shall be applied:

(a) Gross Income. The value proceeding or accruing from the sale of tangible property or service, 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, and without any deduction on account of losses.

(b) Person or Persons. 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. Any person liable to the license fee or tax imposed by this ordinance.

(d) Tax Year or Taxable Year. 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.

Section 3. "Occupation License" Required. After the taking effect of this ordinance 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 ordinance without having first obtained, and being holder of, a valid and subsisting license so to do, to be known as an "Occupation License".

Any person engaging, 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, carries on, any business subject to tax hereunder without having his "Occupation License" so to do, shall be guilty of a violation of this ordinance 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 so to do.

Section 4. 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. Such "Occupation License" and the fee or tax therefor hereby imposed shall be for the year commencing January 1st and ending on the last day of December of the same year; Provided, however, that if the taxpayer in transacting his business keeps the books reflecting same for a fiscal year not based on the calendar year, he may, with the assent of the City Clerk obtain his license for the period of his current fiscal year which shall be deemed 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. Licenses issued during 1957 shall expire December 31, 1957.

Section 5. Occupations Subject to Tax -- Amount. There are hereby levied upon and shall be collected from the persons on account of the business activities annual license fees or 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 fee or tax equal to 5% of the total gross income from such business in the City during the fiscal year next preceding the tax year for which the license is required.

(b) Upon every person engaged in or carrying on the business of selling or furnishing natural or manufactured gas for domestic or industrial consumption a fee or tax equal to 5% of the total gross income from such business in the City during his fiscal year next preceding the tax year for which the license is required.

(c) Upon every person engaged in or carrying on the business of selling or furnishing electric light and power, or electrical energy, a fee or tax equal to 5% of the total gross income from such business in the City during his fiscal year next preceding the tax year for which the license is required.

Section 6. Exceptions and Deductions. There shall be excepted and deducted from the total gross income upon which the license fee or tax is computed (and before the 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 paid by the taxpayer to the United States, the State of Washington, or the City of Kirkland, as excise taxes levied or imposed upon the sale or distribution of property or services.

Nothing in this ordinance 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.

Any person subject to the payment of a license fee or tax under the provisions of any ordinance of the City, other than this, on account of engaging in any activity for which he is liable to tax hereunder, may deduct the amount of such fee or tax imposed by this ordinance on account of such activity except when the tax herein imposed is paid by the customer, but such person shall nevertheless, in the manner herein provided for, apply for and procure an "Occupation License".

Section 7. Application or Return for License. On or before the first day of each tax year, every taxpayer shall apply to the City Clerk for an "Occupation License" upon blanks or forms of return to be prepared and provided by said clerk requesting such information as may be necessary to enable the clerk 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 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 by bank draft, certified check, cashier's check or money order, payable to the City Treasurer, or in cash, in the amount of the tax or fee or installment thereof required by the provisions hereof, and such return and payment shall be made on or before the 10th day of such tax year.

If the applicant be 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 non-resident individual by the resident agent or local manager of said corporation, copartnership or individual.

Section 8. Monthly Payment of Tax. Where the amount of the license fee or tax is based upon gross income, the taxpayer may pay his fee or tax in equal monthly installments (or may pay any multiple thereof) during the life of his license, each such installment to be paid on or before the 10th day of the month and shall be for one-twelfth of the minimum annual license tax (or any multiple thereof) and at the end of the year make a complete return and pay the overplus if any be found to be due.

Section 9. When Tax Based on Current Year -- Commencement of Business During Tax Year. When a business, occupation or pursuit subject to tax upon gross income 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 10th day of the month, and shall be based upon the gross income for the month next preceding that in which payment is due. In such cases the taxpayers shall make monthly returns similar to the annual returns provided for herein on or before the 10th 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 shall be entitled to a license for the remainder of such tax year for the required fee apportioned in the ratio of said remainder to a full tax year, at the minimum rate.

Section 10. Monthly Payments -- License Prerequisites. In any case where the taxpayer pays his license fee or tax monthly he shall nevertheless first procure his "Occupation License" in the manner herein required before commencing or continuing in business and shall pay the minimum fee or tax therefor, which shall be credited against future installments.

Section 11. 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 hereby required, 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 carried on such business.

Section 12. 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 City Clerk or his duly authorized agent, and from which said officer or his agent may verify the return made by the taxpayer.

The applications, statements or returns made to the City Clerk pursuant to this ordinance shall not be made public nor shall they be subject to the inspection of any person except the Mayor, the City Attorney, the City Clerk or his authorized agent, and members of the City Council.

Section 13. City Clerk to Investigate Returns. If any taxpayer fails to apply for license or make return, or if the City Clerk 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 statements as the case may be and may 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.

Section 14. Cost of Audit. Upon the failure or refusal of the taxpayer to furnish the information called for by the City Clerk, 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 Clerk 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 said taxpayer and such expenses shall be collected from the taxpayer in the manner provided for the collection of the license or tax.

Section 15. The income derived by the City from the tax hereby imposed shall be deposited in and used exclusively in the Street Fund of the City and its use shall include the completion of the State Street Paving Project.

Section 16. Over or Under Payment of Tax. If the City Clerk upon investigation or upon checking returns finds that the fee or tax paid or

any of them is more than the amount required of the taxpayer, he shall refund the amount overpaid by a warrant upon the Street Fund. If the City Clerk 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 (3) days pay the amount shown thereon.

Section 17. Remedy for Nonpayment of Tax. If any taxpayer fails to apply for license or make his return, or to pay the fee or tax therefor, or the cost of any audit required by the City Clerk or any part thereof within three (3) days after the same shall have become due, the City Clerk shall ascertain the amount of the fee or tax or installment thereof and/or cost of audit 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 City Clerk 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 City Clerk collect the same by any appropriate means or by suit or action in the name of the City.

Section 18. Appeals to City Council. All taxpayers aggrieved by the amount of the fee or tax found by the City Clerk to be required under the provisions of this ordinance, may appeal to the City Council from such finding by filing a written notice of appeal with the City Clerk within five (5) days from the time such taxpayer was given notice of such amount. The Clerk shall, as soon as practicable, fix a time and place for the hearing of such appeal, which time shall be not more than ten (10) days after 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 City Clerk 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.

The Mayor of the City, or any councilman of the City of Kirkland, 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 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 or any member of the City Council in charge of the hearing on appeal as to any matter required of him pertinent to the appeal, and it shall be unlawful for him to fail or refuse to do so.

Section 19. City Council to Make Rules. The City Council shall have the power, and it shall be its duty, from time to time, to adopt, publish, and enforce rules and regulations not inconsistent with this ordinance or with law for the purpose of carrying out the provisions thereof, and it shall be unlawful for any taxpayer to violate or fail to comply with any such rule or regulation.

Section 20. Licenses -- Posting -- Unlawful Use of. All licenses issued pursuant to the provisions of this ordinance shall be kept posted by the licensee in a conspicuous place in his principal place of business in the City of Kirkland.

No persons to whom a license has been issued pursuant to this ordinance shall suffer or allow any other person chargeable with a separate license to operate under or display such license.

Section 21. False Returns, Etc. It shall be unlawful for any person liable to tax hereunder 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 on 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.

Section 22. Effect of Partial Invalidity. If any provision or section of this ordinance or any part shall be held void or unconstitutional

by the court having jurisdiction, all other parts, provisions and sections of this ordinance not expressly so held to be void or unconstitutional shall continue in full force and effect.

Section 23. Penalty. Any person violating or failing to comply with any of the provisions of this ordinance or any lawful rule or regulation adopted by the City Council pursuant thereto, shall be deemed guilty of misdemeanor and upon conviction thereof, shall be punished by a fine in any sum not to exceed one hundred (\$100.00) dollars, or by imprisonment in the City jail for a term not exceeding thirty (30) days or by both such fine and imprisonment.

Section 24. This Ordinance shall take effect and be in full force and effect, May 1, 1957, which date is more than five days after its passage, approval and publication.


Introduced the 1st day of April, 1957.

Passed by the Council of the City of Kirkland, Washington, this 15th day of April, 1957.

Approved the 15th day of April, 1957.


Mayor

Attest:


Clerk

Approved as to Form:


City Attorney