

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE UTILITY OCCUPATION TAX CODE.

WHEREAS, the City of Kirkland's practice has been to require any cable service provider to pay a utility occupation fee or tax at a rate of 6% of its total gross income per tax year from its business within the City; and

WHEREAS, the practice of charging a utility occupation fee or tax was undertaken with the knowledge of, and after consultation with, a predecessor of the current cable service provider in the City; and

WHEREAS, the City's current cable service provider is already paying and has indicated that it is willing to continue to pay a utility occupation fee or tax per tax year; and

WHEREAS, the City desires to amend and clarify certain sections of the Utility Occupation Tax Code without affecting in any way the continued responsibilities and obligations of cable service providers to make utility occupation fee or tax payments to the City;

NOW, THEREFORE, The City Council of the City of Kirkland do ordain as follows:

Section 1. Section 5.08.020 of the Kirkland Municipal Code is hereby amended to read as follows:

**5.08.020 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:

(1) "Cable service" means, without limitation, (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 or use of such video programming or other programming service.

(12) "Gross income" means 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 of 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; provided, that there shall be excluded from the gross income subject to the tax imposed by Section 5.08.050 upon telephone service that portion of the receipts received which represent access to or charges for interstate services for which rates are contained in tariffs filed with the Federal Communications

Commission, but only with respect to those businesses falling within subparagraph (67)(B) of this section;

(23) "Person" or "persons" means persons of either sex, firms, copartnerships, corporations, including municipal corporations, and other associations of natural persons whether acting by themselves or by servants, agents or employees;

(34) "Residential domestic activities" means those activities commonly occurring or required in the operation and day-to-day maintenance of a human family unit of one or more persons when carried on within the residence of such human family unit. "Residential domestic activities" shall not include activities directly relating substantially to gainful employment, the production of income, or the operation and maintenance of activities, serving or benefitting more than one human family unit;

(45) "Taxpayer" means any person liable to for the license fee or tax imposed by this chapter;

(56) "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 director of finance to use the same as the tax period;

(67) "Telephone service" as used in this chapter includes the providing by any person of:

(A) Access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, 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 transportation system; or

(B) Interstate service, including toll service originating from or received on telecommunications equipment or apparatus within the city of Kirkland if the charge for the service is billed to a person or a customer located within the city of Kirkland; or

(C) The transmission of information data or other communication in either sound or visual patterns from a point of origin to a point of destination when such transmission includes the utilization of electromagnetic, light spectrum vibrations or waves as a carrier.

Telephone service does not include the providing by any person of telecommunications equipment, 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 not subject to regulation as telephone companies under RCW Title 80 and for which a separate charge is made.

Section 2. Section 5.08.050 of the Kirkland Municipal Code is hereby amended to read as follows:

**5.08.050 Utility occupations subject to tax—Amount.**

There are levied upon and shall be collected from every person engaging within this city in utility occupations annual license fees or occupation taxes in the amounts to be determined by the application of the rates against gross income as follows:

(1) Upon every person engaged in or carrying on the business of providing telephone services a fee or tax equal to six percent of the total gross income from such business in the city, including one hundred percent of the total gross revenues derived from toll service, during the tax year for which the license is required;

(2) Upon every person engaged in or carrying on the business of selling or furnishing natural or manufactured gas a fee or tax equal to six percent of the total gross income for such business in the city during the tax year for which the license is required;

(3) 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 six percent of the total gross income from such business in the city for the tax year for which the license is required;

(4) Upon every person engaged in or carrying on the business of furnishing water distribution and/or sanitary collection services including both sewage and refuse a fee or tax equal to six and one-half percent of the total gross income from such business in the city during the tax year for which the license is required;

(5) Upon every person conducting or operating a storm water and/or surface water utility for any customer, including residential and commercial customers, a fee or tax equal to six percent of the total gross income from such business in the city during the tax year for which the license is required;

(6) Upon every person engaged in or carrying on the business of providing cable service, a fee or tax equal to six percent of the total gross income from such business in the city during each tax year.

Section 3. Section 5.08.060 of the Kirkland Municipal Code is hereby amended to read as follows:

**5.08.060 Exceptions and deductions.**

(a) 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.

(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.

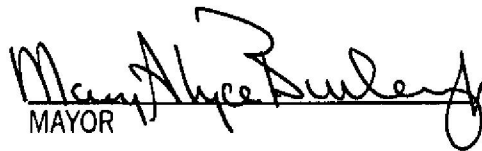
(c) Any person subject to the payment of a ~~license fee~~ or tax under the provisions of any ordinance of the city, other than this chapter, on account of engaging in any activity for which he is liable to for tax thereunder, may deduct the amount of such ~~fee~~ or tax imposed by said other ordinance on account of such activity except when the tax therein imposed is paid by the customer.

Section 4. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, and the application of the provision to other persons or circumstances is not affected.

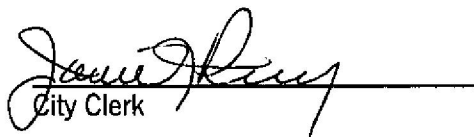
Section 5. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this 18th day of May, 2004.

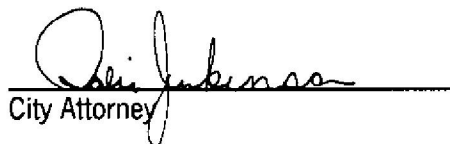
Signed in authentication thereof this 18th day of May, 2004.

  
MAYOR

Attest:

  
City Clerk

Approved as to Form:

  
City Attorney