

Title 5

BUSINESS LICENSES, TAXES AND REGULATIONS

Chapters:

- 5.04 Business Licenses**
- 5.05 Business and Occupation Tax**
- 5.06 Administrative Provisions for Business and Occupation Taxes**
- 5.08 Utilities Tax**
- 5.10 Commercial Parking Tax**
- 5.12 Amusement Games**
- 5.16 Cabarets**
- 5.20 Gambling**
- 5.24 Games of Skill**
- 5.28 Jukeboxes**
- 5.32 Sale and Delivery of Kegs of Malt Beverages**
- 5.36 *Repealed***
- 5.40 Temporary Stationary Businesses**
- 5.44 Closing Hours of Businesses**

Chapter 5.04

BUSINESS LICENSES¹**Sections:**

- 5.04.010 Purpose.**
- 5.04.020 Definitions and presumption.**
- 5.04.030 License required.**
- 5.04.040 License – Application and issuance.**
- 5.04.050 License – Nontransferable.**
- 5.04.055 Standards of conduct.**
- 5.04.060 License – Suspension, denial or revocation.**
- 5.04.070 License – Multiple locations.**
- 5.04.080 Exempt activities.**
- 5.04.090 Payment of license fees.**
- 5.04.190 License – Fee additional to others.**
- 5.04.200 License fee – Collection.**
- 5.04.210 Over or underpayment of fees.**
- 5.04.220 Appeal procedure.**
- 5.04.230 License – Confidentiality of applications.**
- 5.04.240 Duties of the director.**
- 5.04.250 Civil penalty.**
- 5.04.260 Violation – Penalty.**
- 5.04.270 Successor liability.**
- 5.04.280 Limitations on license.**

5.04.010 Purpose.

The provisions of this chapter are an exercise of the police and taxation powers of the city to license for revenue purposes and to govern the privilege of engaging in business in the city. (Ord. 99-28 § 1, 1999)

5.04.020 Definitions and presumption.

A. This chapter incorporates by reference all definitions set forth in Chapter 82.04 RCW,

1. Code reviser's note: § 24 of Ord. 92-10 provided for the levy and collection of taxes for the year 1992 only. Specific provisions of that section are on file in the city clerk's office.

Prior legislation: Ords. 92-04, 89-61, 88-16, 86-03, 84-32, 82-22, and 82-01, all repealed by 92-10, and further amended by Ords. 93-21, 94-31 and 97-01.

hereafter amended, except where a conflicting definition is stated in this chapter.

B. "Director" means the director of finance and administrative services for the city.

C. Businesses or persons soliciting business within the city or using either a business telephone number or business address within the city shall be presumed to be engaged in business within the city. (Ord. 99-28 § 1, 1999)

5.04.030 License required.

Every person who engages in business activities within the city shall apply for and obtain from the director a license for the privilege of engaging in business within the city for each calendar year or portion thereof. The fee for the business license shall be in the amount established by resolution of the city council. No person shall engage in any business for which a business license is required under this chapter without being so licensed, regardless of the amount of income received, except as otherwise provided in this title. (Ord. 99-28 § 1, 1999)

5.04.040 License – Application and issuance.

A. Business licenses must be obtained and the fee paid before a business commences operation within the city. The license fee shall be considered delinquent if not paid when due.

B. The business license required by this chapter shall expire on December 31st of the year for which it is issued. A new license shall be required for each year and the fee paid on or before the last day of February.

C. Applications for business licenses shall be made to and issued by the finance director on forms provided by the city, which shall state the residence of the applicant, the nature of each business activity in which the applicant desires to engage, and the place where the applicant proposes to conduct its business. If the director finds that the application is complete and correct, that all required fees have been paid, and all laws and requirements have been complied with, the business license shall be issued.

D. The director shall, when appropriate, refer applications to the department of plan-

5.04.050

ning and community development, the department of public safety, the Bainbridge Island fire department, and other governmental agencies for their review.

E. Multiple business activities under common ownership may be conducted under a single license.

F. Neither the filing of an application for a license, or the renewal thereof, nor the payment of any application or renewal fee, shall authorize a person to engage in or conduct a business until such license has been granted or renewed. (Ord. 99-28 § 1, 1999)

5.04.050 License – Nontransferable.

The business license issued under this chapter shall be personal and nontransferable, and shall at all times be posted in the place of business for which it is issued. Where a licensee's place of business is changed, the licensee shall return the license to the director and a new license shall be issued for the new place of business without charge. No licensee shall allow another person to operate a business under, or display, the license, nor shall another person operate under or display the license. (Ord. 99-28 § 1, 1999)

5.04.055 Standards of conduct.

Every licensee under this chapter shall:

A. Permit reasonable inspections of the business premises by governmental authorities for the purpose of enforcing the provisions of this chapter;

B. Comply with all federal, state and city statutes, laws, ordinances and regulations relating to the business premises and the conduct of the business thereon;

C. Refrain from unfair or deceptive acts or practices, or consumer fraud, in the conduct of the business and avoid maintaining a public nuisance on the business premises;

D. Refrain from operating the business after expiration of a license or during the period that the license may be suspended or revoked. (Ord. 99-28 § 1, 1999)

5.04.060 License – Suspension, denial or revocation.

A. A business license may be suspended, denied or revoked by the city without notice for any of the following causes:

1. The licensee or any of its officers, directors, agents or employees while acting within the scope of their duties has violated or failed to keep the building, structure or equipment of the licensed premises in compliance with applicable health, building, fire or safety laws, ordinances or regulations;

2. The licensee or any of its officers, directors, agents or employees while acting within the scope of their duties has violated or failed to comply with the standards of conduct specified in this chapter;

3. The license was procured by fraud or false representation of fact;

4. The licensee or any of its officers, directors, agents or employees has been convicted of a crime involving the business;

5. The license was issued through mistake or inadvertence.

B. A business license may be revoked on 20 days' written notice to the licensee where the licensee fails to pay the annual license fee and/or applicable business and occupation tax, together with any penalties due thereon, within six months after the fee or tax is due and owing. The licensee shall have the right to full reinstatement of the business license, if, within 10 days of such revocation, the licensee pays all amounts due and owing.

C. Upon suspension, denial or revocation of a license, the director shall, by certified mail, give written notice of such action to the applicant or licensee, including a written report summarizing the complaints, objections and/or information received and considered by the director and further stating the reason for the action. Notice mailed to the mailing address on the application or most recent renewal shall be deemed received three days after mailing. Appeal of the director's decision shall follow the appeal procedures set forth in this chapter. (Ord. 2004-17 § 3, 2004; Ord. 99-28 § 1, 1999)

5.04.070 License – Multiple locations.

If business is transacted by one person at two or more separate locations within the city,

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a separate license shall be obtained and displayed in each location at which business is transacted. (Ord. 99-28 § 1, 1999)

5.04.080 Exempt activities.

The following activities shall be exempt from the licensing provisions of this chapter:

A. Nonprofit activities carried on by religious, charitable, educational, benevolent, fraternal or social organizations which have been determined by the Internal Revenue Service of the United States to be exempt from the payment of income tax;

B. The exercise of governmental functions performed by any instrumentality of the United States, the state of Washington, or any political subdivision thereof.

C. Farmers or gardeners selling their own farm products raised and grown exclusively upon lands owned or occupied by them;

D. Garage sales conducted on residential premises in compliance with this code;

E. The mere delivery of goods or services to the customer or client by businesses where the sale occurred on business premises outside of the city, and was the only event occurring within the city except that the performance of contracting or subcontracting services is not an exempt activity; or

F. Any business activity which is owned and operated solely by a person under the age of 18, and which does not generate a gross income of more than \$2,500 per year. (Ord. 99-28 § 1, 1999)

5.04.090 Payment of license fees.

A. There shall be a license fee imposed for the privilege of doing business as set by resolution of the city council.

B. Payment of the fee imposed by this chapter shall be due on or before the commencement of business and renewed on or before the last day of February of each successive year.

C. On or before the due date, every person required to pay a license fee or a tax as set forth by this chapter shall file with the city a written return, upon such form and including such information as the director shall require,

together with the payment of the amount of the fee. (Ord. 99-28 § 1, 1999)

5.04.190 License – Fee additional to others.

The license imposed and levied by this chapter shall be in addition to any license fee or tax imposed or levied under any law or other ordinance of the city, except as otherwise expressly provided. (Ord. 99-28 § 1, 1999)

5.04.200 License fee – Collection.

The license fee imposed by this chapter, and all penalties thereon, shall constitute a debt to the city, and may be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies. Any judgment entered in favor of the city shall include an award to the city of all court and collection costs including attorneys' fees. Amounts delinquent more than 90 days may be assigned to a third party for collection, in which case the amount of any collection charges shall be in addition to all other amounts owed. Amounts due shall not be considered paid until the city has received good funds for the full amount due or has discharged the amount due and not paid. (Ord. 99-28 § 1, 1999)

5.04.210 Over or underpayment of fees.

In the event that any person makes an overpayment, and within two years of the date of such overpayment makes application for a refund or credit, the person's claim shall be allowed and a refund made by the city upon determination by the director that no other sums are owed by the person to the city. If a person determines that the fees have been underpaid and without notice by any party pays the amount due to the city, the amount underpaid and corrected by the person shall not be subject to penalty. (Ord. 99-28 § 1, 1999)

5.04.220 Appeal procedure.

A person who has had a license suspended, denied or revoked or who has been aggrieved by the amount of the license fee determined to be due to the city by the director under the pro-

visions of this chapter may appeal to the city council from such determination by filing a written notice of appeal with the city clerk within 20 days from the date on which such person is given notice of the license fee. The city council or a committee of the city council shall, as soon as practicable, fix a time and place for the hearing for such appeal. Notice of the hearing shall be given to the appellant by certified mail at least five days prior to the date of the hearing. The licensee may appear at the hearing and be heard in opposition to such denial, suspension or revocation or to the fee imposed. The decision of the city council or its committee shall be announced at the conclusion of the hearing and shall be final, subject only to a writ of certiorari being filed with the Kitsap County superior court within 14 days following the date of the decision of the city council or a committee of the city council. (Ord. 99-28 § 1, 1999)

5.04.230 License – Confidentiality of applications.

The applications made to the city pursuant to this chapter shall be made public, and shall be subject to inspection excepting only that emergency telephone numbers shall not be made public except where required by law. (Ord. 99-28 § 1, 1999)

5.04.240 Duties of the director.

A. The director shall keep full and accurate records of all funds received under the provisions of this chapter. Upon receipt of any license fee or penalties collected under the provisions of this chapter, the director shall deposit the amounts collected into the current expense fund of the city.

B. In order to carry out the provisions of this chapter, the director shall have the power to adopt, publish and enforce rules and regulations consistent with this chapter. (Ord. 99-28 § 1, 1999)

5.04.250 Civil penalty.

In the event that any person fails to pay the license fee imposed by this chapter within 15 days of the due date, a civil penalty shall be imposed in the amount of 10 percent of the

delinquent license fee plus any previously assessed and unpaid penalties under this chapter. For the purposes of calculating the penalty, each month that the amounts owed under this chapter are due and unpaid shall be considered a separate violation subject to penalty. Civil penalties shall be limited to not more than amount of the full license fee for each year for which a license is required and shall not commence until the business has been notified of the need for a license and failed to get one within thirty days. A fraction of a month shall be deemed a full month. In the event that a penalty has been wrongfully collected, the director shall refund the penalty. (Ord. 99-28 § 1, 1999)

5.04.260 Violation – Penalty.

A. It shall be a violation of this chapter:

1. For a person required to obtain a business license under this chapter to fail or refuse to secure the business license or to fail to pay the fee imposed;

2. For a person to make any false representation in connection with application for a business license under this chapter;

3. For a person to evade payment of the fee or any part thereof;

4. For a person to fail to appear and/or refuse to testify in response to a subpoena issued hereto;

5. For a person to testify falsely upon any investigation of the correctness of a return, or upon the heading of any appeal; or

6. For a person to in any manner hinder or delay the city or any of its officers in carrying out the provisions of this chapter.

B. It shall be unlawful for any person to conduct business within the city limits when not in compliance with this chapter.

C. A person violating any of the provisions of this chapter, upon conviction thereof, shall be punished by a fine of not more than \$500.00 or by imprisonment for not more than six months, or by both such fine and imprisonment. Each such person is guilty of a separate offense for each and every day during the portion of which any violation of any provision of this chapter is committed, continued or permitted by any such person and he is punishable accordingly. (Ord. 99-28 § 1, 1999)

5.04.270 Successor liability.

A. Whenever any person required to be licensed by this chapter quits business, or sells out, exchanges or otherwise disposes of his/her business or stock of goods, any license fees or penalty payable to the city shall immediately become due and payable, and such person shall, within 30 days, file the required forms and pay the fees due. Any person who becomes a successor to such person shall become liable for the full amount of the license fees and penalties due and owing and shall withhold from the purchase price a sum sufficient to pay any amount due from the seller until such time as the seller shall produce a receipt from the city clerk showing payment in full of any amount due or a certificate that no license fees are due. The payment of the fees by the successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater than the purchase price, the amount of the difference shall become a debt due such successor from the seller. The successor's liability shall be limited to the purchase price or the fair market value of the business if no cash transaction took place.

B. No successor shall be liable for any license fees due from the person from whom he/she has acquired a business or stock of goods if he/she gives written notice to the city clerk or director of such acquisition, and no assessment is issued by the director within six months of receipt of such notice against the former operation of the business and a copy of the assessment mailed to the successor.

C. Each person's account will remain on an active status and be subject to all license fees and penalties until such time as the director is notified in writing that the person has discontinued business activity within the city. (Ord. 99-28 § 1, 1999)

5.04.280 Limitations on license.

Notwithstanding any provisions to the contrary, a license issued under this chapter shall not be issued to any person who uses or occupies or proposes to use or occupy any real property or otherwise conducts or proposes to conduct any business in violation of the provisions of an ordinance of the city of Bainbridge

Island, specifically including the city's zoning laws, or of the laws of the state of Washington. The granting of a business license shall in no way be construed as permission or acquiescence in a prohibited activity or other violation. Because the issuance of a license under this chapter specifically denies the applicant authority to violate any law or regulation, the city shall not be held liable for the actions of any licensed business by virtue of having issued a license to conduct business. (Ord. 99-28 § 1, 1999)

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Chapter 5.05

BUSINESS AND OCCUPATION TAX¹**Sections:**

- 5.05.010 Exercise of revenue license power.**
- 5.05.020 Administrative provisions.**
- 5.05.030 Definitions.**
- 5.05.050 Imposition of the tax – Tax or fee levied.**
- 5.05.060 Doing business with the city.**
- 5.05.070 Multiple activities credit when activities take place in one or more cities with eligible gross receipt taxes.**
- 5.05.075 Deductions to prevent multiple taxation of transactions involving more than one city with an eligible gross receipts tax.**
- 5.05.090 Exemptions.**
- 5.05.100 Deductions.**
- 5.05.120 Tax part of overhead.**
- 5.05.130 Severability clause.**

5.05.010 Exercise of revenue license power.

The provisions of this chapter shall be deemed an exercise of the power of the city to license for revenue. The provisions of this chapter are subject to periodic statutory or administrative rule changes or judicial interpretations of the ordinances or rules. The responsibility rests with the licensee or taxpayer to reconfirm tax computation procedures and remain in compliance with this chapter and the city code. (Ord. 2004-16 § 1, 2004)

5.05.020 Administrative provisions.

Except as expressly stated to the contrary herein, the administrative provisions contained in Chapter 5.06 BIMC shall be fully applicable to the provisions of this chapter. (Ord. 2004-16 § 1, 2004)

¹ Prior legislative history: Ords. 99-28, 99-48, 99-49, 2000-45 and 2000-50.

5.05.030 Definitions.

In construing the provisions of this chapter, the following definitions shall apply. This chapter incorporates by reference all definitions set forth in Chapter 82.04 RCW, as hereafter amended, except where a conflicting definition is stated in this chapter. Words in the singular number shall include the plural, and the plural shall include the singular.

“Agricultural product” means any product of plant cultivation or animal husbandry including, but not limited to: a product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; turf; or any animal including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal. “Agricultural product” does not include animals intended to be pets.

“Business” includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

“Business and occupation tax” or “gross receipts tax” means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business.

“Commercial or industrial use” means the following uses of products, including byproducts, by the extractor or manufacturer thereof:

1. Any use as a consumer; and
2. The manufacturing of articles, substances or commodities.

“Eligible gross receipts tax” means a tax which:

1. Is imposed on the act or privilege of engaging in business activities within BIMC 5.05.050;
2. Is measured by the gross volume of business in terms of gross receipts and is not an income tax or value added tax;
3. Is not, pursuant to law or custom, separately stated from the sales price;
4. Is not a sales or use tax, business license fee, franchise fee, royalty or severance tax measured by volume or weight, or conces-

sion charge, or payment for the use and enjoyment of property, property right or a privilege; and

5. Is a tax imposed by a local jurisdiction, whether within or without the state of Washington, and not by a country, state, province, or any other nonlocal jurisdiction above the county level.

Engaging in Business.

1. The term "engaging in business" means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business. Without being all-inclusive, any one of the following activities conducted within the city by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf, constitutes "engaging in business" and requires a person to register and obtain a business license:

a. Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the city;

b. Owning, renting, leasing, using, or maintaining an office, place of business, or other establishment in the city;

c. Soliciting sales;

d. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance;

e. Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf;

f. Installing, constructing, or supervising installation or construction of real or tangible personal property;

g. Soliciting, negotiating, or approving franchise, license, or other similar agreements;

h. Collecting current or delinquent accounts;

i. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials;

j. Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape-architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property;

k. Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians;

l. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings;

m. Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the city, acting on its behalf, or for customers or potential customers;

n. Investigating, resolving, or otherwise assisting in resolving customer complaints;

o. In-store stocking or manipulating products or goods sold to and owned by a customer, regardless of where sale and delivery of the goods took place;

p. Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf; and

q. Accepting or executing a contract with the city, irrespective of whether goods or services are delivered within or without the city, or whether the person's office or place of business is within or without the city.

The activities listed in this subsection are illustrative only and are not intended to narrow the definition of "engaging in business." If an activity is not listed in this subsection, whether it constitutes "engaging in business" in the city shall be determined by considering all the facts and circumstances and applicable law.

2. A person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, shall not be deemed to be "engaging in business" within the city, and shall not be required to register and obtain a business license and pay business and occupation tax if that person or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf engages in no other activities in or with the city but the following:

a. Meeting with suppliers of goods and services as a customer;

b. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions;

c. Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf;

d. Renting tangible or intangible property as a customer when the property is not used in the city;

e. Attending, but not participating in, a "trade show" or "multiple vendor event." Persons participating at a trade show shall review the city's trade show or multiple vendor event ordinances;

f. Conducting advertising through the mail; and

g. Soliciting sales by phone from a location outside the city.

3. A seller located outside the city merely delivering goods into the city by means of common carrier shall not be considered to be "engaging in business" in the city and shall not be required to register and obtain a business license; provided, that it engages in no other business activities in the city.

The city expressly intends that "engaging in business" shall include any activity sufficient to establish nexus for purposes of applying the tax under the law and the Constitutions of the United States and the state of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that

constituted the original nexus generating contact or subsequent contacts.

"Extracting" means the activity engaged in by an extractor and is reportable under the extracting classification.

"Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. "Farmer" does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber.

"Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

"Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property or for services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

Manufacturer, To Manufacture.

1. "Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commer-

cial or industrial use from the person's own materials or ingredients any products. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to less than 20 percent of the total value of all materials or ingredients that become a part of the finished product, the owner of the equipment or facilities will be deemed to be a processor for hire, and not a manufacturer. A business not located in the city that is the owner of materials or ingredients processed for it in the city by a processor for hire shall be deemed to be engaged in business as a manufacturer in the city.

2. "To manufacture" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials or ingredients so that as a result thereof a new, different or useful product is produced for sale or commercial or industrial use, and shall include:

- a. The production of special-made or custom-made articles;
- b. The production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;
- c. Crushing and/or blending of rock, sand, stone, gravel, or ore; and
- d. The producing of articles for sale or for commercial or industrial use from raw materials or prepared materials by giving such materials, articles, and substances of trade or commerce new forms, qualities, properties or combinations including, but not limited to, such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, aging, curing, mild curing, preserving, canning, and the preparing and freezing of fresh fruits and vegetables.

"Manufacturing" means the activity conducted by a manufacturer and is reported under the manufacturing classification.

"Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company,

association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

"Retailing" means the activity of engaging in making sales at retail and is reported under the retailing classification.

"Retail service" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

1. Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquetball, handball, squash, tennis, batting cages, day trips for sightseeing purposes, and others, when provided to consumers. "Amusement and recreation services" also includes the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons;
2. Abstract, title insurance, and escrow services;
3. Credit bureau services;
4. Automobile parking and storage garage services;
5. Landscape maintenance and horticultural services but excluding:
 - a. Horticultural services provided to farmers; and
 - b. Pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;
6. Service charges associated with tickets to professional sporting events; and
7. The following personal services: physical fitness services, tanning salon services, tattoo parlor services, steam bath

services, Turkish bath services, escort services, and dating services.

“Retail service” shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

Sale, Casual or Isolated Sale.

1. “Sale” means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a “sale at retail,” “retail sale,” or “retail service.” It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

2. “Casual or isolated sale” means a sale made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis.

Sale at Retail, Retail Sale.

1. “Sale at retail” or “retail sale” means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers, other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

a. Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person;

b. Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person;

c. Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal

property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale;

d. Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

e. Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a “sale at retail” or “retail sale” even though such property is resold or utilized as provided in subsection (1)(a), (1)(b), (1)(c), (1)(d), or (1)(e) of this definition following such use.

2. “Sale at retail” or “retail sale” also means every sale of tangible personal property to persons engaged in any business activity which is taxable under BIMC 5.05.050.A.7.

3. “Sale at retail” or “retail sale” shall also include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

a. The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

b. The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or

above real property of or for consumers; including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

c. The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

d. The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

e. The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under Chapter 82.16 RCW;

f. The sale of and charge made for the furnishing of lodging and all other services, except network telephone service and cable service, by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as dis-

tinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this definition, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

g. The sale of or charge made for tangible personal property, labor and services to persons taxable under subsections (3)(a), (3)(b), (3)(c), (3)(d), (3)(e), and (3)(f) of this definition when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in subsection 3 of this definition shall be construed to modify subsection 1 of this definition and nothing contained in subsection 1 of this definition shall be construed to modify subsection 3 of this definition.

4. "Sale at retail" or "retail sale" shall also include the providing of competitive telephone service to consumers.

5. "Sale at retail" or "retail sale" shall also include the sale of canned software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of canned software.

6. "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state, the state of Washington, or by the United States and which is used or to be used primarily for foot or vehicular

traffic, including mass transportation vehicles of any kind ("public road construction").

7. "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to Chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation ("government contracting").

8. "Sale at retail" or "retail sale" shall not include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development. (This should be reported under the service and other classification.)

9. "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and services rendered for environmental remedial action as defined in RCW 82.04.2635(2). (This should be reported under the service and other classification.)

"Sale at wholesale" or "wholesale sale" means any sale of tangible personal property which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a retail sale when rendered to or for consumers. "Sale at wholesale" also includes the sale of network telephone service to a telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715.

Services. At such time as Chapter 82.04 RCW defines "services," that definition shall apply. Until such time as Chapter 82.04 RCW shall define "services," "services" means all

business activities not defined elsewhere in this section.

"Taxpayer" means any "person," as herein defined, required to have a business license under Chapter 5.04 BIMC or liable for the collection of any tax or fee under this chapter, or who engages in any business or who performs any act for which a tax or fee is imposed by this chapter.

"Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. The value proceeding or accruing from sales on the installment plan under conditional contracts of sale shall be reported as of the dates when the payments become due.

Value of Products.

1. The "value of products," including byproducts, extracted or manufactured, shall be determined by the gross proceeds derived from the sale thereof, whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or byproducts by the seller.

2. Where such products, including byproducts, are extracted or manufactured for commercial or industrial use; and where such products, including byproducts, are shipped, transported or transferred out of the city, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products. In the absence of sales of similar products as a guide to value,

5.05.050

such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs. The director may prescribe rules for the purpose of ascertaining such values.

3. Notwithstanding subsection 2 of this definition, the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond to:

a. The retail selling price of such new or improved product when first offered for sale; or

b. The value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

“Wholesaling” means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification. (Ord. 2004-16 § 1, 2004)

5.05.050 Imposition of the tax – Tax or fee levied.

A. In addition to the business license fee required by Chapter 5.04 BIMC, and except as provided in subsection B of this section or elsewhere in this chapter, there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the city, whether the person’s office or place of business be within or without the city. The tax shall be in amounts to be determined by the application of rates against gross proceeds of sale, gross income of business, or value of products, including byproducts, as the case may be, as follows:

1. Upon every person engaging within the city in business as an extractor, as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, extracted for sale or for commercial or industrial use, multiplied by the rate of one-tenth of one percent. The measure of the tax is the value of the products, including byproducts, so extracted, regardless of the place of sale or the fact that

deliveries may be made to points outside the city.

2. Upon every person engaging within the city in business as a manufacturer, as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, manufactured, multiplied by the rate of one-tenth of one percent. The measure of the tax is the value of the products, including byproducts, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the city.

3. Upon every person engaging within the city in the business of making sales at wholesale, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of one-tenth of one percent.

4. Upon every person engaging within the city in the business of making sales at retail, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business, without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of one-tenth of one percent.

5. Upon every person engaging within the city in the business of (a) printing; (b) both printing and publishing newspapers, magazines, periodicals, books, music and other printed items; (c) publishing newspapers, magazines and periodicals; (d) extracting for hire; and (e) processing for hire, as to such person, the amount of tax on such business shall be equal to the rate of one-tenth of one percent.

6. Upon every person engaging within the city in the business of making sales of retail services, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales multiplied by the rate of one-tenth of one percent.

7. Upon every other person engaging within the city in any business activity other than or in addition to those enumerated in this section, as to such persons, the amount of tax

on account of such activities shall be equal to the gross income of the business multiplied by the rate of one-tenth of one percent. This subsection includes but is not limited to (regardless of whether title to material used in the performance of such business passes to another by accession, merger or other than by outright sale) persons engaged in the business of developing or producing custom software or of customizing canned software, producing royalties or commissions, and persons engaged in the business of rendering any type of service which does not constitute a sale at retail, a sale at wholesale, or a retail service.

B. For 2011, the gross receipts tax imposed in this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including byproducts, as the case may be, from all activities conducted within the city during 2011 is equal to or less than \$200,000. Persons with gross income exceeding \$200,000 for 2011 shall be taxed only on the amount of gross income exceeding \$200,000. For 2012 and thereafter, the gross receipts tax imposed in this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including byproducts, as the case may be, from all activities conducted within the city during any calendar year is equal to or less than \$150,000. Persons with gross income exceeding \$150,000 per year for 2012 and thereafter shall be taxed only on the amount of gross income exceeding \$150,000 per year. (Ord. 2010-46 § 1, 2010; Ord. 2004-16 § 1, 2004)

5.05.060 Doing business with the city.

Except where such a tax is otherwise levied and collected by the city from such person, there is hereby levied a tax on the privilege of accepting or executing a contract with the city. Such tax shall be levied and collected whether goods or services are delivered within or without the city and whether or not such person has an office or place of business within or without the city. As to such persons, the amount of tax shall be equal to the gross contract price multiplied by the rate under BIMC 5.05.050 that would otherwise apply if the sale or service

were taxable pursuant to that section. (Ord. 2004-16 § 1, 2004)

5.05.070 Multiple activities credit when activities take place in one or more cities with eligible gross receipt taxes.

A. Persons who engage in business activities that are within the purview of two or more subsections of BIMC 5.05.050 shall be taxable under each applicable subsection.

B. Notwithstanding anything to the contrary herein, if the imposition of the city's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the city's tax; provided, that the city tax shall still apply to as much of the taxpayer's activities as may be constitutionally subject to the city's taxing authority.

C. As a condition to taking the credit authorized by this section, a taxpayer must be able to document that the amount of tax sought to be credited was paid upon the same gross receipts used in computing the tax against which the credit is applied.

D. Persons engaged in the retailing or wholesaling business with respect to selling products in the city shall be allowed a credit against those taxes for any eligible gross receipts taxes paid (1) with respect to the manufacturing of the products sold in the city, and (2) with respect to the extracting of the products, or the ingredients used in the products, sold in the city. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

E. Persons engaged in a manufacturing business with respect to manufacturing products in the city shall be allowed a credit against those taxes for any eligible gross receipts tax paid with respect to extracting the ingredients of the products manufactured in the city. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

F. Persons engaged in a retailing or wholesaling business with respect to selling products in the city shall be allowed a credit

5.05.075

against those taxes for any eligible gross receipts taxes paid with respect to the printing, or the printing and publishing, of the products sold within the city. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products. (Ord. 2004-16 § 1, 2004)

5.05.075 Deductions to prevent multiple taxation of transactions involving more than one city with an eligible gross receipts tax.

A. A taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:

1. A taxpayer that has paid an eligible gross receipts tax, with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the city.

2. Notwithstanding subsection A.1 of this section, a person that is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties, trademarks, patents, or goodwill shall assign those gross receipts to the jurisdiction where the person is domiciled or where its headquarters is located.

3. A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with another city may deduct an amount equal to the contract price used to measure the tax due to the other city from the measure of the tax owed to the city.

B. A person manufacturing products within the city and using products manufactured by the same person outside the city may deduct from the measure of the manufacturing tax the value of products manufactured outside the city and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products. (Ord. 2004-16 § 1, 2004)

5.05.090 Exemptions.

A. Public Utilities. This chapter shall not apply to any person conducting a business

activity upon which tax liability is specifically imposed under the provisions of Chapters 3.88, 5.08, or 5.10 BIMC.

B. Investments – Dividends from Subsidiary Corporations. This chapter shall not apply to amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations.

C. Employees.

1. This chapter shall not apply to any person with respect to the person's employment in the capacity as an employee or servant as distinguished from that of an independent contractor. For the purposes of this subsection, the definition of "employee" shall include those persons that are defined in the Internal Revenue Code, as hereafter amended.

2. For purposes of this chapter, a booth renter, as defined by RCW 18.16.020, is an independent contractor.

D. Amounts Derived from Sale of Real Estate. This chapter shall not apply to gross proceeds derived from the sale of real estate; provided, that this exemption shall not be construed to exempt amounts received as commissions from the sale of real estate, nor as fees, handling charges, discounts, interest or similar financial charges resulting from, or relating to, real estate transactions. This chapter shall also not apply to amounts received for the rental of real estate if the rental income is derived from a contract to rent for a continuous period of 30 days or longer.

E. Mortgage Brokers' Third-Party Provider Services Trust Accounts. This chapter shall not apply to amounts received from trust accounts to mortgage brokers for the payment of third-party costs if the accounts are operated in a manner consistent with RCW 19.146.050 and any rules adopted by the director of financial institutions.

F. Amounts Derived from Manufacturing, Selling or Distributing Motor Vehicle Fuel. This chapter shall not apply to the manufacturing, selling, or distributing of motor vehicle fuel, as the term "motor vehicle fuel" is defined in RCW 82.36.010 and as exempt

under RCW 82.36.440; provided, that any fuel not subjected to the state fuel excise tax, or any other applicable deduction or exemption, will be taxable under this chapter.

G. Amounts Derived from Liquor, and the Sale or Distribution of Liquor. This chapter shall not apply to liquor as defined in RCW 66.04.010 and exempt in RCW 66.08.120.

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H. Casual and Isolated Sales. This chapter shall not apply to the gross proceeds derived from casual or isolated sales.

I. Accommodation Sales. This chapter shall not apply to sales for resale by persons regularly engaged in the business of making retail sales of the type of property so sold to other persons similarly engaged in the business of selling such property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to the vendor in the acquisition of the article, and (2) the sale is made as an accommodation to the buyer to enable the buyer to fill a bona fide existing order of a customer or is made within 14 days to reimburse in kind a previous accommodation sale by the buyer to the seller.

J. Taxes Collected as Trust Funds. This chapter shall not apply to amounts collected by the taxpayer from third parties to satisfy third party obligations to pay taxes, such as the retail sales tax, use tax, and admission tax.

K. Nonprofit Activities. This chapter shall not apply to the nonprofit activities of religious, charitable, educational, benevolent, fraternal, or social organizations which have been determined by the Internal Revenue Service of the United States to be exempt from the payment of income tax.

L. Governmental Activities. This chapter shall not apply to the exercise of governmental functions performed by any instrumentality of the United States, the state of Washington, or any political subdivision thereof. (Ord. 2004-16 § 1, 2004)

5.05.100 Deductions.

In computing the license fee or tax, there may be deducted from the measure of tax the following items:

A. Receipts from Tangible Personal Property Delivered outside the State. In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property that is received by the purchaser or its agent outside the state of Washington.

B. Cash Discount Taken by Purchaser. In computing tax, there may be deducted from the measure of tax the cash discount amounts actu-

ally taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extracting or manufacturing classifications with respect to articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the "value of product" provisions.

C. Credit Losses of Accrual Basis Taxpayers. In computing tax, there may be deducted from the measure of tax the amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis.

D. Constitutional Prohibitions. In computing tax, there may be deducted from the measure of the tax amounts derived from business which the city is prohibited from taxing under the Constitution of the state of Washington or the Constitution of the United States.

E. Other Deductions. All other items allowed by the state of Washington as deductions from the business and occupation tax imposed by the state; provided, that the items being deducted have been included in the remaining income after having subtracted the exemptions in BIMC 5.05.090. (Ord. 2004-16 § 1, 2004)

5.05.120 Tax part of overhead.

It is not the intention of this chapter that the taxes or fees herein levied upon persons engaging in business be construed as taxes or fees upon the purchaser or customer, but that such taxes or fees shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes or fees shall constitute a part of the cost of doing business of such persons. (Ord. 2004-16 § 1, 2004)

5.05.130 Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances shall not be affected. (Ord. 2004-16 § 1, 2004)

Chapter 5.06

ADMINISTRATIVE PROVISIONS FOR
BUSINESS AND OCCUPATION TAXES

Sections:

- 5.06.010 Purpose.
- 5.06.015 Application of chapter stated.
- 5.06.020 Definitions.
- 5.06.030 Registration/license requirements.
- 5.06.040 When due and payable – Reporting periods – Annual returns – Threshold provisions or relief from filing requirements – Computing time periods – Failure to file returns.
- 5.06.050 Payment methods – Mailing returns or remittances – Time extension – Deposits – Recording payments – Payment must accompany return – NSF checks.
- 5.06.060 Records to be preserved – Examination – Estoppel to question assessment.
- 5.06.070 Accounting methods.
- 5.06.080 Public work contracts – Payment of fee and tax before final payment for work.
- 5.06.090 Underpayment of tax, interest, or penalty – Interest.
- 5.06.095 Time in which assessment may be made.
- 5.06.100 Overpayment of tax, penalty, or interest – Credit or refund – Interest rate – Statute of limitations.
- 5.06.110 Late payment – Disregard of written instructions – Evasion – Penalties.
- 5.06.120 Cancellation of penalties.
- 5.06.130 Taxpayer quitting business – Liability of successor.
- 5.06.140 Administrative appeal.
- 5.06.150 Judicial review of administrative appeal decision.
- 5.06.160 Director to make rules.
- 5.06.170 Ancillary allocation authority of director.
- 5.06.180 Mailing of notices.
- 5.06.190 Tax declared additional.
- 5.06.200 Public disclosure – Confidentiality – Information sharing.
- 5.06.210 Tax constitutes debt.
- 5.06.220 Unlawful actions – Violation – Penalties.
- 5.06.230 Closing agreement provisions.
- 5.06.240 Charge-off of uncollectible taxes.
- 5.06.250 Severability.

5.06.010 Purpose.

The provisions of this chapter are intended to provide a structure for the efficient administration of the city's business and occupation tax with the minimum administrative imposition upon the businesses taxed. (Ord. 2004-17 § 1, 2004)

5.06.015 Application of chapter stated.

The provisions of this chapter shall apply with respect to the taxes imposed under Chapter 5.05 BIMC and under other titles, chapters, and sections in such manner and to such extent as indicated in each such title, chapter or section. (Ord. 2004-17 § 1, 2004)

5.06.020 Definitions.

For purposes of this chapter, the definitions contained in Chapter 5.05 BIMC shall apply equally to the provisions of this chapter unless the term is defined otherwise in this chapter. In addition to those definitions contained in Chapter 5.05 BIMC, the following definitions will apply:

A. "Director" means the director of finance and administrative services of the city or any officer, agent or employee of the city designated to act on the director's behalf.

B. "Reporting period" means the 12-month period, or portion thereof, beginning the first day of January of each year.

5.08.100 Procedure upon annexations to city.

Whenever the boundaries of the city are extended by annexation, all persons, firms and corporations subject to this chapter will be provided copies of all annexation ordinances by the city. (Ord. 81-38 § 11, 1981)

5.08.110 Enforcement.

The 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 a violation of this chapter to violate or to fail to comply with any such rule or regulation lawfully promulgated under this chapter. (Ord. 81-38 § 13, 1981)

5.08.120 Violation – Penalty.

Any person, firm or corporation subject to this chapter who fails or refuses to file a tax return or pay tax when due, or who makes any false statement or representation in or in connection with a tax return, or otherwise violates or refuses or fails to comply with this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$500.00 or by imprisonment not to exceed six months, or by both. (Ord. 98-26 § 3, 1998; Ord. 81-38 § 10, 1981)

Chapter 5.10**COMMERCIAL PARKING TAX****Sections:**

- 5.10.010 Definitions.**
- 5.10.020 Tax levied.**
- 5.10.030 Payment of tax.**
- 5.10.040 Tax – Collection.**
- 5.10.050 Overpayment or underpayment of tax.**
- 5.10.060 Appeal procedure.**
- 5.10.070 Confidentiality of tax returns.**
- 5.10.080 Duties of the director.**
- 5.10.090 Use of proceeds of tax.**
- 5.10.100 Civil penalty.**
- 5.10.110 Violation – Penalty.**

5.10.010 Definitions.

For the purposes of this chapter, the following definitions shall apply unless the context indicates otherwise:

A. “Commercial parking business” means the ownership, lease, operation, or management of a commercial parking lot in which fees are charged.

B. “Commercial parking lot” means a covered or uncovered area with stalls for the purpose of parking motor vehicles.

C. *Repealed by Ord. 2003-22.*

D. “Gross proceeds” means and includes the gross receipts collected or accruing by reason of the transaction of the commercial parking business, without any deduction on account of the cost of tangible property sold, labor costs, interest, discount, taxes, or any other costs or expenses whatsoever paid or accrued and without any deduction on account of losses.

E. *Repealed by Ord. 2003-22.* (Ord. 2003-22 § 6, 2003; Ord. 92-11 § 2, 1992)

5.10.020 Tax levied.

There is levied upon and shall be collected from every person engaged in a commercial parking business within the city a commercial parking tax in an amount equal to 30 percent of the gross proceeds of the commercial parking business. (Ord. 2010-45 § 1, 2010; Ord. 2004-32 § 1, 2004; Ord. 2000-47 § 1, 2000; Ord. 99-

5.10.030

54 § 1, 1999: Ord. 92-47 § 1, 1992: Ord. 92-11 § 3, 1992)

5.10.030 Payment of tax.

A. The tax imposed by this chapter shall be due and payable in quarterly installments, on or before the last day of the month next succeeding the end of the quarterly period in which the tax accrued. The 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. The director may require payment of the tax to be accompanied by a written tax return, upon such form and setting forth such information as the director may reasonably require in order to calculate the amount of tax due to the city.

C. The director shall have the right to require proof of the gross proceeds of the commercial parking business. Each person required to pay the tax imposed by this chapter shall retain records reflecting the gross proceeds of the commercial parking business and the records shall be open at all reasonable hours to inspection by the director or the director's designee.

D. If the payment of any tax due under this chapter is not received by the city by the last day of the month in which the tax becomes due, the tax shall be delinquent. (Ord. 92-11 § 4, 1992)

5.10.040 Tax - Collection.

The tax imposed by this chapter, and all penalties thereon, shall constitute a debt to the city and may be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies. Any judgment entered in favor of the city shall include an award to the city of all court and collection costs, including attorneys' fees. Amounts delinquent more than 90 days may be assigned to a third party for collection, in which case the

amount of any collection charges shall be in addition to all other amounts owed. Amounts due shall not be considered paid until the city has received good funds for the full amount due or has discharged the amount due and not paid. (Ord. 92-11 § 5, 1992)

5.10.050 Overpayment or underpayment of tax.

In the event that a person makes an overpayment, and within two years of the date of such overpayment makes application for a refund or a credit, the person's claim shall be allowed and a refund made by the city upon determination by the director that no other sums are owed by the person to the city. If a person determines that the tax has been underpaid and without notice by any party pays the amount due to the city, the amount underpaid and corrected by the person shall not be subject to penalty. (Ord. 92-11 § 6, 1992)

5.10.060 Appeal procedure.

Any person aggrieved by the amount of the tax determined to be due to the city by the director under the provisions of this chapter, may appeal to the city council from such determination by filing a written notice of appeal with the city clerk within 20 days from the date on which such person is given notice of the tax. The city council shall, as soon as practicable, fix a time and place for the hearing for such appeal. Notice of the hearing of the appeal shall be given to the appellant by certified mail at least five days prior to the date of the hearing. (Ord. 92-11 § 9, 1992)

5.10.070 Confidentiality of tax returns.

The tax returns made to the city pursuant to this chapter shall not be made public, nor shall they be subject to inspection by a person who is not an employee of or under contract to the city and who is not acting in an official capacity. It shall be unlawful for any person to make public or to inform any unauthorized person as to the contents of a tax return, or to permit inspection of a tax return, except as authorized in this section or as required by law. This sec-

B. Any person who fails or refuses the director's request to provide or make available records or to allow inspection or examination of the business premises shall be forever barred from questioning in any court action the correctness of any assessment of taxes made by the city for any period for which such records have not been provided, made available or kept and preserved, or in respect of which inspection or examination of the business premises has been denied. The director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the estimate of the tax or fees due. Such fee or tax assessment shall be deemed prima facie correct and shall be the amount of tax owing the city by the taxpayer. The director shall notify the taxpayer by mail the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable. (Ord. 2004-17 § 1, 2004)

5.06.070 Accounting methods.

A. A taxpayer may file tax returns in each reporting period with amounts based upon cash receipts only if the taxpayer's books of account are kept on a cash receipts basis. A taxpayer that does not regularly keep books of account on a cash receipts basis must file returns with amounts based on the accrual method.

B. The taxes imposed and the returns required hereunder shall be upon a calendar-year basis. (Ord. 2004-17 § 1, 2004)

5.06.080 Public work contracts – Payment of fee and tax before final payment for work.

The director may, before issuing any final payment to any person performing any public works contract for the city, require such person to pay in full all license fees or taxes due under this title from such person on account of such contract or otherwise, and may require such taxpayer to file with the director a verified list of all subcontractors supplying labor and/or materials to the person in connection with said public works. (Ord. 2004-17 § 1, 2004)

5.06.090 Underpayment of tax, interest, or penalty – Interest.

A. If, upon examination of any returns, or from other information obtained by the director, it appears that a tax or penalty less than that properly due has been paid, the director shall assess the additional amount found to be due and shall add thereto interest on the tax only. The director shall notify the person by mail of the additional amount, which shall become due and shall be paid within 30 days from the date of the notice, or within such time as the director may provide in writing.

B. For the purposes of this section:

1. The rate of interest to be charged to the taxpayer for taxes on the taxable gross receipts prior to January 1, 2005, shall be one percent per month.

2. Interest imposed as of January 1, 2005, and thereafter shall be computed from the last day of the month following the end of the reporting period and will continue to accrue until payment is made. In case of an audit the interest shall be computed from the first day of the month following each calendar year or portion thereof included in the audit period.

3. The rate of interest to be charged to the taxpayer for taxes on the taxable gross receipts as of January 2005 and thereafter shall be an average of the federal short-term rate as defined in 26 U.S.C. Section 1274(d) plus two percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year. The rate shall be adjusted on the first day of January of each year for use in computing interest for that calendar year. (Ord. 2004-17 § 1, 2004)

5.06.095 Time in which assessment may be made.

The director shall not assess, or correct an assessment for, additional taxes, penalties, or interest due more than four years after the

5.06.100

close of the calendar year in which they were incurred, except that the director may issue an assessment:

A. Against a person who is not currently registered or licensed or has not filed a tax return as required by this chapter for taxes due within the period commencing 10 years prior to the close of the calendar year in which the person was contacted in writing by the director;

B. Against a person that has committed fraud or who misrepresented a material fact; or

C. Against a person that has executed a written waiver of such limitations. (Ord. 2004-17 § 1, 2004)

5.06.100 Overpayment of tax, penalty, or interest – Credit or refund – Interest rate – Statute of limitations.

A. If, upon receipt of an application for a refund, or during an audit or examination of the taxpayer's records and tax returns, the director determines that the amount of tax, penalty, or interest paid is in excess of that properly due, the excess amount shall be credited to the taxpayer's account or shall be refunded to the taxpayer, in the director's discretion. Except as provided in subsection B of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

B. The execution of a written waiver shall extend the time for applying for, or making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the director discovers that a refund or credit is due.

C. Refunds shall be made by means of vouchers approved by the director and by the issuance of a city check or warrants drawn upon and payable from such funds as the city may provide.

D. Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest, or costs paid

by any person shall be paid in the same manner as provided in subsection C of this section, upon the filing with the director a certified copy of the order or judgment of the court.

E. No interest shall be paid on overpayments of taxes for periods ending on or before December 31, 2004. Interest on overpayments of taxes for periods beginning on or after January 1, 2005, shall be the average federal short-term interest rate as outlined for assessments under BIMC 5.06.090.B.3 plus two percentage points. (Ord. 2004-17 § 1, 2004)

5.06.110 Late payment – Disregard of written instructions – Evasion – Penalties.

A. If payment of any tax due on a return to be filed by a taxpayer is not received by the director by the due date, the director shall add a penalty equal to five percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, the director shall add a total penalty equal to 15 percent of the amount of the tax; and if the tax is not received on or before the last day of the second month following the due date, the director shall add a total penalty equal to 25 percent of the amount of the tax. No penalty assessed herein shall be less than \$5.00.

B. If a tax deficiency is assessed by the director, there shall be added a penalty equal to five percent of the amount of the deficiency. If payment of any tax deficiency assessed by the director is not received by the due date specified in the notice, or any extension thereof, the director shall assess a penalty equal to 15 percent of the amount of the additional tax found due. If payment of any tax deficiency assessed by the director is not received on or before the thirtieth day following the due date specified in the notice, or any extension thereof, the director shall assess a penalty equal to 25 percent of the amount of additional tax found due. No penalty added shall be less than \$5.00.

C. If a citation or criminal complaint is issued by the director for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty of 10 percent of the amount due, but not less than \$10.00.

D. If the director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the director a license as required by Chapter 5.04 BIMC, the director shall impose a penalty of five percent of the amount of tax due from that person for the period that the person was not licensed. No penalty shall be imposed under this subsection if the person who has engaged in business without a license obtains a license prior to being notified by the director of the need to be licensed.

E. If the director determines that all or any part of a deficiency resulted from the taxpayer's failure to follow specific written tax reporting instructions, there shall be assessed a penalty of 10 percent of the amount of the additional tax due.

1. A taxpayer fails to follow specific written tax reporting instructions when the director has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the director has not issued final instructions because the matter is under appeal pursuant to this chapter. The director shall not assess the penalty under this subsection E upon any taxpayer that has made a good faith effort to comply with the specific written instructions provided by the director to that taxpayer.

2. Specific written instructions may be given as a part of a tax assessment, audit, determination or closing agreement; provided, that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents.

3. Any specific written instructions by the director shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

F. If the director finds that all or any part of the deficiency resulted from an intent to evade the tax payable, the director shall assess a penalty of 50 percent of the additional tax found to be due.

G. The director may impose the penalties authorized under subsections A through E of this section on the same tax found to be due or anytime thereafter. This subsection does not prohibit or restrict the application of other penalties authorized by law.

H. The director shall assess the penalties authorized by subsections E and F of this section in accordance with the provisions of this chapter governing assessment of tax deficiencies. The director shall not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

I. For the purposes of this section, "return" means any document a person is required by the city to file to satisfy or establish a tax or fee obligation that is administered or collected by the city, and that has a statutorily defined due date. (Ord. 2004-17 § 1, 2004)

5.06.120 Cancellation of penalties.

A. The director may cancel any penalties imposed under BIMC 5.06.110.A if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the taxpayer shows that it exercised ordinary business care and prudence in making arrangements to file the return and pay the tax but was, nevertheless, due to circumstances beyond the taxpayer's control, unable to file or pay by the due date. The director has no authority to cancel any other penalties or to cancel penalties for any other reason except as provided in subsection C of this section.

B. A request for cancellation of penalties must be received by the director within 30 days after the date the department of finance and administrative services mails the notice that the penalties are due. The request must be in writing and contain competent proof of all pertinent facts supporting a reasonable cause determination. In all cases the burden of proving the facts rests upon the taxpayer.

C. The director may waive the penalties in BIMC 5.06.110.A one time if a person:

1. Is not currently licensed and filing returns;

5.06.130

2. Was unaware of its responsibility to file and pay tax; and

3. Obtained business licenses and filed past due tax returns within 30 days after being notified by the department of finance and administrative service of the violation.

D. The director shall not cancel any interest charged upon amounts due. (Ord. 2004-17 § 1, 2004)

5.06.130 Taxpayer quitting business – Liability of successor.

A. Whenever any taxpayer quits business, sells out, exchanges, or otherwise disposes of his business or its stock of goods, any tax payable hereunder shall become immediately due and payable. Such taxpayer shall, within 10 days thereafter, make a return and pay the tax due.

B. Any person who becomes a successor shall become liable for the full amount of any tax owing. The successor shall withhold from the purchase price a sum sufficient to pay any tax due to the city from the taxpayer until such time as:

1. The taxpayer shall produce a receipt from the city showing payment in full of any tax due or a certificate that no tax is due; or

2. More than six months has passed since the successor notified the director of the acquisition and the director has not issued and notified the successor of an assessment.

C. Payment of the tax by the successor shall, to the extent thereof, be deemed a payment upon the purchase price. If such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due such successor from the taxpayer.

D. Notwithstanding the above, if a successor gives written notice to the director of the acquisition, and the department does not within six months of the date it received the notice issue an assessment against the taxpayer and mail a copy of that assessment to the successor, the successor shall not be liable for the tax. (Ord. 2004-17 § 1, 2004)

5.06.140 Administrative appeal.

A. Except to the extent that such appeal may be barred pursuant to BIMC 5.06.060.B, any person aggrieved by the amount of the fee or tax determined by the director to be required under the provisions of this chapter, or any other determination by the director pursuant to this chapter, may, upon paying the amount determined by the director to be due, appeal such determination to the city [hearing examiner/council or a committee of the city council].

B. The appeal shall be in writing and shall contain the following:

1. The name and address of the taxpayer appealing the director's decision;

2. A statement identifying the determination of the director from which the appeal is taken;

3. A statement setting forth the grounds upon which the appeal is taken and identifying the specific errors that the director is alleged to have made in making the determination;

4. A statement identifying the requested relief from the determination being appealed; and

5. The appeal fee as provided by city council resolution.

C. The appeal must be filed with the city clerk within 30 days from the date written notice of the amount determined to be due, or other notice of the director's determination, is mailed to the taxpayer.

D. The [city council or a committee of the city council/hearing examiner] shall, as soon as practical, fix a time and place for the hearing of such appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the parties.

[The hearing examiner shall conduct an appeal hearing in accordance with the applicable hearing procedures set forth in BIMC 2.16.100, and] *[to be used if hearing examiner only]* the taxpayer and the director or designee shall have the opportunity to be heard and to introduce evidence relevant to the subject of the appeal. [The hearing examiner shall estab-

lish rules for such hearings consistent with the provisions of this section] *[to be used if hearing examiner only]*.

F. The [hearing examiner/city council or committee of the city council] shall give substantial weight to the director's decision.

G. Following the hearing, the [hearing examiner/city council or committee of the city council] shall render a decision on the appeal, and shall enter written findings and conclusions of law in support thereof. A copy of the findings, conclusion and decision shall be mailed to the taxpayer and the director. The decision shall state the correct amount of tax owing as determined by the [hearing examiner/city council or committee of the city council], and/or any other information relevant to the hearing examiner's decision. (Ord. 2004-17 § 1, 2004)

5.06.150 Judicial review of administrative appeal decision.

The taxpayer or the city may obtain judicial review of the [hearing examiner's/city council's or committee of the city council's] decision by appealing the decision to the Kitsap County superior court within 21 days from the date of such decision, in accordance with state law. (Ord. 2004-17 § 1, 2004)

5.06.160 Director to make rules.

The director shall have the power, from time to time, to adopt, publish and enforce rules and regulations not inconsistent with this chapter or with law for the purpose of carrying out the provisions of this chapter and it shall be unlawful to violate or fail to comply with any such rule or regulation. (Ord. 2004-17 § 1, 2004)

5.06.170 Ancillary allocation authority of director.

The director is authorized to enter into agreements with other Washington cities which impose an "eligible gross receipts tax":

A. To conduct an audit or joint audit of a taxpayer by using an auditor employed by the city, another city, or a contract auditor; pro-

vided, that such contract auditor's pay is not in any way based upon the amount of tax assessed;

B. To allocate or apportion in a manner that fairly reflects the gross receipts earned from activities conducted within the respective cities the gross proceeds of sales, gross receipts, or gross income of the business, or taxes due from any person that is required to pay an eligible gross receipts tax to more than one Washington city.

C. To apply the city's tax prospectively where a taxpayer has no office or place of business within the city and has paid tax on all gross income to another Washington city where the taxpayer is located; provided, that the other city maintains an eligible gross receipts tax, and the income was not derived from contracts with the city. (Ord. 2004-17 § 1, 2004)

5.06.180 Mailing of notices.

Any notice required by this chapter to be mailed to any taxpayer or licensee shall be sent by ordinary mail, addressed to the address of the taxpayer or licensee as shown by the records of the director. Failure of the taxpayer or licensee to receive any such mailed notice shall not release the taxpayer or licensee from any tax, fee, interest, or any penalties thereon, nor shall such failure operate to extend any time limit set by the provisions of this chapter. It is the responsibility of the taxpayer to inform the director in writing about a change in the taxpayer's address. (Ord. 2004-17 § 1, 2004)

5.06.190 Tax declared additional.

The license fee and tax herein levied shall be additional to any license fee or tax imposed or levied under any law or any other ordinance of the city except as herein otherwise expressly provided. (Ord. 2004-17 § 1, 2004)

5.06.200 Public disclosure – Confidentiality – Information sharing.

A. For purposes of this section, unless a different meaning is clearly established by context, the following definitions apply:

5.06.210

1. "Disclose" means to make known to any person in any manner.

2. "Tax information" means:

a. A taxpayer's identity;

b. The nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemption, credits, assets, liability, net worth, tax liability deficiencies, over assessments, or tax payments, whether taken from the taxpayer's books and records or any other source;

c. Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or

d. Other data received by, recorded by, prepared by, or provided to the director with respect to a taxpayer; provided, that tax information shall not include data, material, or documents that do not disclose information related to a specific or identifiable taxpayer.

B. Tax returns and information may be "public records" as that term is defined in RCW 42.17.020. The director shall not disclose tax information if disclosure would violate Chapter 42.17 RCW or any other law prohibiting disclosure.

C. Reserved.

D. Tax information may be disclosed to the following:

1. The city manager, members of the city council, city attorney, city clerk, or their authorized designees, for official purposes;

2. Any agency or officer of the United States of America, the state of Washington, or a tax department of any state, county, city or town; provided, that the agency or officer grants substantially similar privileges to the city; and further provided, that the agency or officer shall not further disclose the tax information except as authorized in this section;

3. The taxpayer to whom it pertains or to such person or persons as the taxpayer may designate in writing as the taxpayer's designee; except that tax information not received from the taxpayer shall not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal

liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the director that provides for the reciprocal exchange of information with other government agencies, which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court.

E. Nothing in this section shall prevent the use of tax information by the director or any other agency in any civil or criminal action involving any license, tax, interest, or penalty.

F. A person disclosing tax information to a person not entitled to receive that information under this section is guilty of a misdemeanor, and if the person violating this privacy requirement is an officer or employee of the city, such person may be required to forfeit their office or employment. (Ord. 2009-21 § 28, 2009; Ord. 2004-17 § 1, 2004)

5.06.210 Tax constitutes debt.

Any license fee or tax due and unpaid under this chapter, and all interest and penalties thereon, shall constitute a debt to the city and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies. (Ord. 2004-17 § 1, 2004)

5.06.220 Unlawful actions – Violation – Penalties.

A. It shall be unlawful for any person liable for fees under this chapter (or other chapters as listed):

1. To violate or fail to comply with any of the provisions of this chapter or any lawful rule or regulation adopted by the director;

2. To make any false statement on any license application or tax return;

3. To aid or abet any person in any attempt to evade payment of a license fee or tax;

4. To fail to appear or testify in response to a subpoena issued pursuant to applicable federal, state or local law;

5. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this chapter.

B. Violation of any of the provisions of this chapter is a gross misdemeanor. Any person convicted of a violation of this chapter may be punished by a fine not to exceed \$1,000, imprisonment not to exceed one year, or both fine and imprisonment. Penalties or punishments provided in this chapter shall be in addition to all other penalties provided by law.

C. Any person or officer of a corporation convicted of continuing to engage in business after the revocation of a license shall be guilty of a gross misdemeanor and may be punished by a fine not to exceed \$5,000, or imprisonment not to exceed one year, or both fine and imprisonment. (Ord. 2004-17 § 1, 2004)

5.06.230 Closing agreement provisions.

The director may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the chapters within this title and administered by this chapter for any taxable period(s). Upon approval of such agreement, evidenced by execution thereof by the director and the person so agreeing, the agreement shall be final and conclusive as to the tax liability or tax immunity covered thereby, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

A. The case shall not be reopened as to the matters agreed upon, or the agreement modified, by the director or the taxpayer; and

B. In any suit, action or proceeding such agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith shall not be annulled, modified, set aside, or disregarded. (Ord. 2004-17 § 1, 2004)

5.06.240 Charge-off of uncollectible taxes.

The director may charge off any tax, penalty, or interest that is owed by a taxpayer, if the director reasonably ascertains that the cost

of collecting such amounts would be greater than the total amount that is owed or likely to be collected from the taxpayer. Charge-offs in excess of \$500.00 shall require city council approval. (Ord. 2004-17 § 1, 2004)

5.06.250 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances shall not be affected. (Ord. 2004-17 § 1, 2004)

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Chapter 5.08

UTILITIES TAX

Sections:

- 5.08.010** Exercise of revenue license powers.
- 5.08.020** Definitions.
- 5.08.030** *Repealed.*
- 5.08.040** Tax – Levy.
- 5.08.045** Solid waste utility tax – Levied.
- 5.08.050** Tax – Payment.
- 5.08.060** Tax – Exemptions.
- 5.08.070** Taxpayer records required.
- 5.08.080** Penalty for failure to pay tax.
- 5.08.090** Credit or refund upon overpayment.
- 5.08.100** Procedure upon annexations to city.
- 5.08.110** Enforcement.
- 5.08.120** Violation – Penalty.

5.08.010 Exercise of revenue license powers.

The provisions of this chapter shall be deemed to be an exercise of the power of the city to license for revenue. (Ord. 81-38 § 1, 1981)

5.08.020 Definitions.

For purposes of this chapter, the following definitions shall apply:

A. *Repealed by Ord. 2003-22.*

B. 1. "Gross income" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes or other expense whatsoever paid or accrued and without any deduction on account of losses.

2. Gross income does not include charges that are passed on to customers by the taxpayers pursuant to tariffs required by regulatory order to compensate for the cost to the company of tax imposed by this chapter. (Ord. 2003-22 § 5, 2003; Ord. 90-33 § 1, 1990; Ord. 81-38 § 2, 1981)

5.08.030 Occupation license required.

Repealed by Ord. 98-26. (Ord. 81-38 § 3, 1981)

5.08.040 Tax – Levy.

There is levied upon and there shall be collected from every person, firm or corporation engaged in carrying on the following business for hire or for sale of a commodity or a service within or partly within the corporate limits of the city a tax for the privilege of so doing business as hereinafter defined:

A. Upon any city-owned utility selling, transmitting or distributing water a tax to be equal to a percent of the total gross income derived from the operation of such business within the city as established by resolution of the city council.

B. Upon any city-owned utility providing sewer service, a tax to be equal to a percent of the total gross income from the operation of such business within the city as established by resolution of the city council.

C. Upon any city-owned utility providing storm drain service, a tax to be equal to a percent of the total gross income from the operation of such business within the city as established by resolution of the city council.

D. Upon any person selling or otherwise providing coaxial or other cable distribution of entertainment or information including television, radio, computer data, or any other electronically transmitted information, a tax equal to a percentage of the total gross income derived from the operation of such business within the city which percentage shall be the lower of the percentage charged to utility providers under Chapter 3.88 BIMC or the percentage charged to utility providers under other subsections of this section. (Ord. 2000-46 § 1, 2000; Ord. 99-53 § 1, 1999; Ord. 98-26 § 2, 1998; Ord. 90-33 § 2, 1990; Ord. 88-16

5.08.045

§ 2, 1988: Ord. 85-14 § 1, 1985: Ord. 84-24 § 1, 1984: Ord. 83-13 § 1, 1983: Ord. 82-37 § 1, 1982: Ord. 81-38 § 4, 1981)

5.08.045 Solid waste utility tax – Levied.

From and after October 1, 1998, there is levied upon and there shall be collected from every person, firm or corporation engaged in the business of providing solid waste collection and disposal services within or partly within the city, a tax for the privilege of doing such business in the city in the amount of five percent of the total gross income from the operation of such business within the city, except that for purposes of this section, gross income does not include amounts received for the sale of materials obtained in the operation of a recycling facility. (Ord. 98-17 § 1, 1998)

5.08.050 Tax – Payment.

A. The tax imposed by this chapter shall be due and payable in quarterly installments and remittance shall be made on or before the last day of the month next succeeding the end of the quarterly period in which the tax accrued. These 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. The first payment made under this chapter shall be made by April 30th for the 3-month period ending March 31st. On or before said due date the taxpayer shall file with the 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 the tax. (Ord. 81-38 § 5, 1981)

5.08.060 Tax – Exemptions.

In computing the tax there shall be deducted from said gross operating revenues the following items:

A. Amounts derived from transactions in interstate or foreign commerce or from any

business which the city is prohibited from taxing under the Constitutions of the United States or the state;

B. Amounts derived by the taxpayer from the city. (Ord. 81-38 § 6, 1981)

5.08.070 Taxpayer records required.

Each taxpayer shall keep records reflecting the amount of the taxpayer's gross income. In addition, each taxpayer required to pay tax under BIMC 5.08.045 shall keep records reflecting the amount of gross income received for the sale of materials obtained in the operation of a recycling facility. Such records shall be open at all reasonable times to the inspection of the finance director or the finance director's designee, for verification of the tax returns or for the fixing of the tax of a taxpayer who fails to make such returns. (Ord. 98-17 § 2, 1998: Ord. 81-38 § 7, 1981)

5.08.080 Penalty for failure to pay tax.

If any person, firm or corporation subject to this chapter fails to pay any tax required by this chapter within 30 days after the due date thereof, there shall be added to such tax a penalty of 10 percent of the amount of such tax, and 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. Any judgment entered in favor of the city shall include recovery by the city of all court costs including attorney fees. (Ord. 81-38 § 8, 1981)

5.08.090 Credit or refund upon overpayment.

Any money paid to the city through error or otherwise not in payment of the tax imposed by this chapter 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 under this chapter or, upon the taxpayer's ceasing to do business in the city, be refunded to the taxpayer. (Ord. 81-38 § 9, 1981)

5.08.100 Procedure upon annexations to city.

Whenever the boundaries of the city are extended by annexation, all persons, firms and corporations subject to this chapter will be provided copies of all annexation ordinances by the city. (Ord. 81-38 § 11, 1981)

5.08.110 Enforcement.

The 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 a violation of this chapter to violate or to fail to comply with any such rule or regulation lawfully promulgated under this chapter. (Ord. 81-38 § 13, 1981)

5.08.120 Violation – Penalty.

Any person, firm or corporation subject to this chapter who fails or refuses to file a tax return or pay tax when due, or who makes any false statement or representation in or in connection with a tax return, or otherwise violates or refuses or fails to comply with this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$500.00 or by imprisonment not to exceed six months, or by both. (Ord. 98-26 § 3, 1998; Ord. 81-38 § 10, 1981)

Chapter 5.10**COMMERCIAL PARKING TAX****Sections:**

- 5.10.010 Definitions.**
- 5.10.020 Tax levied.**
- 5.10.030 Payment of tax.**
- 5.10.040 Tax – Collection.**
- 5.10.050 Overpayment or underpayment of tax.**
- 5.10.060 Appeal procedure.**
- 5.10.070 Confidentiality of tax returns.**
- 5.10.080 Duties of the director.**
- 5.10.090 Use of proceeds of tax.**
- 5.10.100 Civil penalty.**
- 5.10.110 Violation – Penalty.**

5.10.010 Definitions.

For the purposes of this chapter, the following definitions shall apply unless the context indicates otherwise:

A. “Commercial parking business” means the ownership, lease, operation, or management of a commercial parking lot in which fees are charged.

B. “Commercial parking lot” means a covered or uncovered area with stalls for the purpose of parking motor vehicles.

C. *Repealed by Ord. 2003-22.*

D. “Gross proceeds” means and includes the gross receipts collected or accruing by reason of the transaction of the commercial parking business, without any deduction on account of the cost of tangible property sold, labor costs, interest, discount, taxes, or any other costs or expenses whatsoever paid or accrued and without any deduction on account of losses.

E. *Repealed by Ord. 2003-22.* (Ord. 2003-22 § 6, 2003; Ord. 92-11 § 2, 1992)

5.10.020 Tax levied.

There is levied upon and shall be collected from every person engaged in a commercial parking business within the city a commercial parking tax in an amount equal to 30 percent of the gross proceeds of the commercial parking business less a discount to be determined by

5.10.030

resolution of the city council. (Ord. 2004-32 § 1, 2004; Ord. 2000-47 § 1, 2000; Ord. 99-54 § 1, 1999; Ord. 92-47 § 1, 1992; Ord. 92-11 § 3, 1992)

5.10.030 Payment of tax.

A. The tax imposed by this chapter shall be due and payable in quarterly installments, on or before the last day of the month next succeeding the end of the quarterly period in which the tax accrued. The 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. The director may require payment of the tax to be accompanied by a written tax return, upon such form and setting forth such information as the director may reasonably require in order to calculate the amount of tax due to the city.

C. The director shall have the right to require proof of the gross proceeds of the commercial parking business. Each person required to pay the tax imposed by this chapter shall retain records reflecting the gross proceeds of the commercial parking business and the records shall be open at all reasonable hours to inspection by the director or the director's designee.

D. If the payment of any tax due under this chapter is not received by the city by the last day of the month in which the tax becomes due, the tax shall be delinquent. (Ord. 92-11 § 4, 1992)

5.10.040 Tax - Collection.

The tax imposed by this chapter, and all penalties thereon, shall constitute a debt to the city and may be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies. Any judgment entered in favor of the city shall include an award to the city of all court and collection costs, including attorneys' fees. Amounts

delinquent more than 90 days may be assigned to a third party for collection, in which case the amount of any collection charges shall be in addition to all other amounts owed. Amounts due shall not be considered paid until the city has received good funds for the full amount due or has discharged the amount due and not paid. (Ord. 92-11 § 5, 1992)

5.10.050 Overpayment or underpayment of tax.

In the event that a person makes an overpayment, and within two years of the date of such overpayment makes application for a refund or a credit, the person's claim shall be allowed and a refund made by the city upon determination by the director that no other sums are owed by the person to the city. If a person determines that the tax has been underpaid and without notice by any party pays the amount due to the city, the amount underpaid and corrected by the person shall not be subject to penalty. (Ord. 92-11 § 6, 1992)

5.10.060 Appeal procedure.

Any person aggrieved by the amount of the tax determined to be due to the city by the director under the provisions of this chapter, may appeal to the city council from such determination by filing a written notice of appeal with the city clerk within 20 days from the date on which such person is given notice of the tax. The city council shall, as soon as practicable, fix a time and place for the hearing for such appeal. Notice of the hearing of the appeal shall be given to the appellant by certified mail at least five days prior to the date of the hearing. (Ord. 92-11 § 9, 1992)

5.10.070 Confidentiality of tax returns.

The tax returns made to the city pursuant to this chapter shall not be made public, nor shall they be subject to inspection by a person who is not an employee of or under contract to the city and who is not acting in an official capacity. It shall be unlawful for any person to make public or to inform any unauthorized person as to the contents of a tax return, or to permit inspection of a tax return, except as authorized in this section or as required by law. This sec-

tion shall not be construed to prohibit the disclosure of information received under this chapter to the Federal Internal Revenue Service, State Department of Revenue, or to tax enforcement officials of any other city in the state of Washington for official purposes only, and this section shall not be construed to prohibit or make unlawful the disclosure of the name and address of any person licensed under this chapter, or of any person signing an application on behalf of an applicant. (Ord. 92-11 § 10, 1992)

5.10.080 Duties of the director.

A. The director shall keep full and accurate records of all funds received under the provisions of this chapter. Upon receipt of any tax or penalty collected under the provisions of this chapter, the director shall deposit the amounts collected into the street fund of the city.

B. In order to carry out the provisions of this chapter, the director shall have the power to adopt, publish and enforce rules and regulations consistent with this chapter.

C. The director for good cause shown may extend the time for making and filing any tax return required under this chapter; provided, that any extension in excess of 30 days shall be conditioned upon payment of interest of one percent for each 30 days or portion thereof on the amount of tax from the date upon which the tax became due. (Ord. 92-11 § 11, 1992)

5.10.090 Use of proceeds of tax.

The proceeds of the tax imposed and collected pursuant to this chapter shall be used strictly for transportation purposes in accordance with RCW 82.80.070. (Ord. 92-11 § 12, 1992)

5.10.100 Civil penalty.

In the event that a person fails to pay the tax imposed by this chapter, a civil penalty shall be imposed in the amount of 10 percent of the delinquent tax plus any previously assessed and unpaid penalties under this chapter. For the purpose of calculating the penalty, each month that the amounts owed under this chapter are due and unpaid shall be considered

a separate violation subject to penalty. A fraction of a month shall be deemed a full month. In no event shall the penalty for a fee or tax delinquent more than 90 days be less than \$50.00. In the event that a penalty has been wrongfully collected, the penalty shall be refunded by the director. (Ord. 92-11 § 7, 1992)

5.10.110 Violation – Penalty.

A. It shall be a violation of this chapter:

1. For a person required to pay a tax under this chapter to fail or refuse to pay the tax imposed;

2. For a person to evade payment of the tax, or any part thereof;

3. For a person to fail to appear and/or refuse to testify in response to a subpoena issued in any proceeding under this chapter;

4. For a person to testify falsely upon any investigation into the correctness of a return, or upon the hearing of any appeal; or

5. For a person to in any manner hinder or delay the city or any of its officers in carrying out the provisions of this chapter.

B. A person violating any of the provisions of this chapter, upon conviction thereof, shall be punished by a fine of not more than \$500.00 or by imprisonment for not more than six months, or by both such fine and imprisonment. A person is guilty of a separate offense for each and every day during the portion of which any violation of any provision of this chapter is committed, continued or permitted by any such person, and shall be punished accordingly. (Ord. 92-11 § 8, 1992)

Chapter 5.12

AMUSEMENT GAMES

Sections:

- 5.12.010 License – Required.
- 5.12.020 License – Application.
- 5.12.030 License – Fees.
- 5.12.040 License – Issuance.
- 5.12.050 License – Term.
- 5.12.060 License – Nontransferable.
- 5.12.070 License – Qualification of licensee.
- 5.12.080 License – Refusal, cancellation or revocation.
- 5.12.090 License fee in addition to other taxes.
- 5.12.100 Violation – Penalty.

5.12.010 License – Required.

It is unlawful for any person, firm or corporation to open, carry on, or maintain any business on which premises pool or billiard tables, foosball games and shuffleboards are maintained within the city without first obtaining a license therefor, in accordance with the provisions of this chapter. (Ord. 80-06 § 1, 1980)

5.12.020 License – Application.

Any person, firm or corporation desiring to maintain, keep or operate any place of business on which premises pool or billiard tables, foosball games and shuffleboards are maintained, shall make written application for a license to do so and file the same with the city clerk. Such application shall state the name of the applicant and address and place of the business at which any of the said pool or billiard tables, foosball games, and shuffleboards are applied for, and the total number of each device desired to be covered by the license. (Ord. 80-06 § 2, 1980)

5.12.030 License – Fees.

Each license shall be issued for a period of one calendar year commencing March 1, 1980. The calendar year license fee shall be an amount as established by resolution of the city council for each pool or billiard table, shuffle-

board and foosball game operated by the licensee and shall be payable prior to March 31st for the year required or prior to commencement of business in the city. For any license procured after the applicable date required in this section, there is assessed and shall be collected by the city clerk, in addition to the required annual license fee, a penalty as established by resolution of the city council on the annual license fee for each month or part of a month accruing between the time such license is procured and the time when the same should have been procured under the terms of this chapter. (Ord. 88-16 § 3, 1988; Ord. 80-06 § 3, 1980)

5.12.040 License – Issuance.

Upon approval of the application and payment of the fee, as provided in Section 5.12.030, the city clerk shall issue to the applicant a license to operate the machines or devices for which the license has been applied. (Ord. 80-06 § 4, 1980)

5.12.050 License – Term.

All licenses issued under Section 5.12.040 shall expire on the last day of February in each year. The fees for the licenses shall not be prorated for a partial year but the full fees provided by Section 5.12.030 shall be payable regardless of the date of the application. (Ord. 80-06 § 5, 1980)

5.12.060 License – Nontransferable.

The license issued under this chapter shall be personal and nontransferable, and shall at all times be conspicuously posted in the place of business for which it is issued. When the location of business of the taxpayer is changed, the taxpayer shall return the license to the city clerk and a new license shall be issued for the new location of business without charge. No person to whom a license has been issued pursuant to this chapter shall permit or allow any other person to operate any business or display his/her license, nor shall such other person operate under or display such license. (Ord. 80-06 § 6, 1980)

5.12.070 License – Qualification of licensee.

In addition to the general qualification of licensee set forth in this chapter, no license for the operation of pool or billiard tables, foosball games and shuffleboards shall be granted or issued to the following persons:

A. Any person who has been convicted of violation of federal, state or city laws or ordinances regulating the manufacture, transportation, possession or sales of narcotics or intoxicating liquors or of any crime involving moral turpitude within a period of three years next prior to the date of making applications for such license;

B. Any person who names another person to have the active management of such place where pool or billiard tables, foosball games and shuffleboards are maintained for public use for hire, who has been convicted as described in subsection A of this section or had a similar license previously revoked;

C. Any person, where in the opinion of the city council the location for said place where pool or billiard tables, foosball games and shuffleboards are maintained for public use for hire is not proper or for the best interests of public safety or morals. (Ord. 80-06 § 7, 1980)

5.12.080 License – Refusal, cancellation or revocation.

The city clerk may refuse to issue a license for pool or billiard tables, foosball games and shuffleboards, or the city council may cancel or revoke such license after it has been issued, if it is learned that the same was procured by fraud or false representation of facts, or that the applicant or permittee has failed to comply with the provisions and requirements of this chapter, or has violated any provisions of this chapter, or for any other reason which, in the opinion of the chief of police, will be detrimental to the public peace, health or welfare. No license may be revoked or canceled until after a public hearing conducted in accordance with the quasi-judicial hearings procedures of the Bainbridge Island hearing examiner ordinance. Any person may appeal the refusal to issue a license under the appeal procedures in the hearing procedures ordinance for adminis-

trative hearings. It shall be the duty of all licensees granted licenses for the operation of pool or billiard tables, foosball games and shuffleboards to comply with the following regulations, and the failure of any licensee to do so shall constitute, but shall not be exclusive grounds for suspension or revocation of any license, a violation of this chapter and, in the event of such revocation, no part of the license fee shall be refunded:

A. To employ no one on the premises covered by the license who has been convicted of a violation of the state or city laws or ordinances relative to gambling within one year from the date of such conviction;

B. To have no one employed or financially interested in the business to be conducted who has had a license revoked for cause by the city within one year from the date of such revocation. (Ord. 80-06 § 8, 1980)

5.12.090 License fee in addition to other taxes.

The license fees imposed by this chapter shall be in addition to any other taxes or fees imposed by the city. (Ord. 80-06 § 9, 1980)

5.12.100 Violation – Penalty.

Any person, firm or corporation violating any of the terms or provisions of this chapter shall, upon conviction thereof, lose their license to operate and be fined the sum of \$500.00 or punished by imprisonment for a period of not more than six months or by both such fine and imprisonment. (Ord. 80-06 § 10, 1980)

Chapter 5.16

CABARETS

Sections:

- 5.16.010 Definitions.**
- 5.16.020 License – Required.**
- 5.16.030 License – Application.**
- 5.16.040 License – Fees.**
- 5.16.050 License – Issuance.**
- 5.16.060 License – Term.**
- 5.16.070 License – Nontransferable – Posting.**
- 5.16.080 License – Refusal, cancellation or revocation.**
- 5.16.090 License subject to State Liquor Control Board rules.**
- 5.16.100 Private clubs exempt.**
- 5.16.110 Violation – Penalty.**

5.16.010 Definitions.

For the purposes of this chapter, the words set forth in this section shall be defined as follows:

A. "Cabaret" means any room, place or space in the city open for service to the public in which the guests, patrons, entertainers or other persons are allowed to dance, sing, or perform music or live entertainment, including comedy in connection with the restaurant business or the business of directly or indirectly selling food or refreshments, including alcoholic beverages.

B. "Music and entertainment" does not include radios, televisions, mechanical music devices or jukeboxes in accordance with RCW 66.28.080. (Ord. 79-41 § 2, 1979)

5.16.020 License – Required.

No person, firm or corporation shall open up, conduct, manage, operate or maintain a cabaret without having a license to do so issued by the city clerk in accordance with the provisions of this chapter. (Ord. 79-41 § 1, 1979)

5.16.030 License – Application.

Any person, firm, or corporation desiring to maintain, keep or operate any such cabaret shall make written application for license to do

so and file the same with the city clerk. Such application shall state the name of the applicant and address and place of business at which any cabaret is operated. (Ord. 79-41 § 3, 1979)

5.16.040 License – Fees.

Each license shall be issued for a period of one calendar year. The calendar year license fee for each license shall be an amount as established by resolution of the city council. The license fee shall be payable prior to January 31st for the year required or prior to commencement of business in the city. For any license procured after the applicable date required in this section, there is assessed and shall be collected by the city clerk, in addition to the required annual license fee, a penalty as established by resolution of the city council for each month or part of a month accruing between the time such license is procured and the time when the same should have been procured under the terms of this chapter. (Ord. 88-16 § 4, 1988; Ord. 79-41 § 4, 1979)

5.16.050 License – Issuance.

The application for a cabaret license shall be filed with the city clerk who shall refer the application to the chief of police for his recommendations on the consideration referred to in Section 5.16.080. If the chief of police approves the same, the city clerk may then issue the license, upon payment by the applicant of the fees required by Section 5.16.040. (Ord. 79-41 § 5, 1979)

5.16.060 License – Term.

All licenses issued under Section 5.16.050 shall expire on the last day of each calendar year. The fees for the license shall not be prorated for a partial year but the full fees provided by Section 5.16.040 shall be payable regardless of the date of application. (Ord. 79-41 § 6, 1979)

5.16.070 License – Nontransferable – Posting.

The license issued under this chapter shall be personal and nontransferable, and shall at all times be conspicuously posted in the place

of business for which it is issued. Where a location of business of the taxpayer is changed, the taxpayer shall return the license to the city clerk and a new license shall be issued for the new location of business without charge for said taxpayer. No person to whom a license has been issued pursuant to this chapter shall permit or allow any other person to operate any business or display his/her license, nor shall such other person operate under or display such license. (Ord. 79-41 § 7, 1979)

5.16.080 License – Refusal, cancellation or revocation.

The city clerk may refuse to issue a cabaret license, or may cancel or revoke such license after it has been issued, if it is learned that the same was procured by fraud or false representation of facts or that the applicant or permittee has failed to comply with the provisions and requirements of this chapter or has violated any provision of this chapter or for any other reason which, in the opinion of the chief of police, will be detrimental to the public peace, health or welfare. Any person may appeal the refusal to issue or cancellation or revocation of a license for a cabaret under the appeal provisions of the hearing procedures ordinance. (Ord. 79-41 § 8, 1979)

5.16.090 License subject to State Liquor Control Board rules.

Any license issued pursuant to this chapter shall be subject, where applicable, to any rules or regulations of the State Liquor Control Board relating to the sale of intoxicating liquor. (Ord. 79-41 § 9, 1979)

5.16.100 Private clubs exempt.

This chapter shall not apply to private clubs holding valid licenses authorizing the sale of alcoholic beverages for consumption on the premises but all clubs shall, nevertheless, be subject to the rules and regulations of the State Liquor Control Board relating to music, dancing, or entertainment within such club. For the purposes of this chapter, a "club" is an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social pur-

poses and not for pecuniary gain. (Ord. 79-41 § 10, 1979)

5.16.110 Violation – Penalty.

Any person, firm or corporation violating any of the terms or provisions of this chapter shall, upon conviction thereof, lose their license and be fined \$500.00 or be punished by imprisonment for a period of not more than six months, or by both such fine and imprisonment. (Ord. 79-41 § 11, 1979)

Chapter 5.20

GAMBLING

Sections:

- 5.20.010 Title.
- 5.20.020 Definitions.
- 5.20.030 Persons subject to tax – Tax rates.
- 5.20.040 Bingo.
- 5.20.050 Raffles.
- 5.20.060 Amusement games.
- 5.20.070 Punchboards or pull tabs.
- 5.20.080 Card playing.
- 5.20.090 Charitable or nonprofit organizations exempt.
- 5.20.100 Notice of intention to engage in activity to be filed.
- 5.20.110 Tax – Quarterly computation and payment – Exceptions.
- 5.20.120 Tax – Administration and collection.
- 5.20.130 Tax – Method of payment.
- 5.20.140 Tax – Penalty for failure to make timely payment.
- 5.20.150 Tax – Overpayment or underpayment.
- 5.20.160 Tax – Failure to make return.
- 5.20.170 Tax – Additional to other fees or taxes.
- 5.20.180 Records – Required.
- 5.20.190 Records – Inspection and audit.
- 5.20.200 Records – Penalty for failure to produce for inspection.
- 5.20.210 Taxes, penalties and fees constitute debt to municipality.
- 5.20.220 Limitation on right to recovery.
- 5.20.230 City clerk to make rules.
- 5.20.240 Appeal.
- 5.20.250 Violation – Penalty.

5.20.010 Title.

The ordinance codified in this chapter shall be known as the “city of Bainbridge Island gambling ordinance.” (Ord. 75-04 § 1, 1975)

5.20.020 Definitions.

For the purposes of this chapter, the words and terms used shall have the same meaning as each has under Chapter 218, Laws of 1973, First Extraordinary Session and RCW Chapter 9.46, each as amended, and under the rules of the State Gambling Commission, WAC Title 230, unless otherwise specifically provided or the context in which they are used in this chapter clearly indicates that they be given some other meaning. (Ord. 75-04 § 2, 1975)

5.20.030 Persons subject to tax – Tax rates.

There is levied upon all persons, associations and organizations conducting or operating within the jurisdiction of the city of Bainbridge Island any of the activities listed below a tax in the amounts set forth in Sections 5.20.040 through 5.20.090 to be paid to the city of Bainbridge Island. (Ord. 77-20, 1977: Ord. 75-04 § 3, 1975)

5.20.040 Bingo.

The tax on bingo shall be in the amount of gross receipts therefrom, less the amount of money paid in cash or for the merchandise actually awarded as prizes during the taxable period, multiplied by a rate as established by resolution of the city council. (Ord. 88-16 § 5, 1988: Ord. 77-20, 1977: Ord. 75-04 § 3(a), 1975)

5.20.050 Raffles.

The tax on the raffles shall be in the amount of the gross receipts therefrom, less the amount of money paid in cash, and paid for the merchandise, actually awarded as prizes during the taxable period, multiplied by the rate as established by the resolution of the city council. (Ord. 88-16 § 6, 1988: Ord. 77-20, 1977: Ord. 75-04 § 3(b), 1975)

5.20.060 Amusement games.

The tax on the amusement games shall be in the amount of the gross receipts therefrom, less the amount of money paid in cash, and paid for merchandise actually awarded as prizes during the taxable period, multiplied by a rate as established by the resolution of the

city council. (Ord. 88-16 § 7, 1988: Ord. 77-20, 1977: Ord. 75-04 § 3(c), 1975)

5.20.070 Punchboards or pull tabs.

The tax on any punchboards or pull tabs shall be in the amount of a percent of the gross receipts as established by resolution of the city council, directly from the operation of the punchboards or pull tabs themselves. (Ord. 88-16 § 8, 1988: Ord. 77-20, 1977: Ord. 75-04 § 3(d), 1975)

5.20.080 Card playing.

The tax on card playing shall be in the amount of a percent of the gross receipts, as established by resolution of the city council, received as fees charged persons for the privilege of playing in card games. (Ord. 88-16 § 9, 1988: Ord. 77-20, 1977: Ord. 75-04 § 3(e), 1975)

5.20.090 Charitable or nonprofit organizations exempt.

No tax shall be imposed by this chapter on bingo, raffles or amusement games when such activities or any combination thereof are conducted by any bona fide charitable or nonprofit organization as defined in RCW 9.46.020(3), which organization has no paid operating or management personnel and has gross income from bingo, raffles or amusement games, or any combination thereof, not exceeding \$5000 per year, less the amount paid for as prizes. Taxation of punchboards and pull tabs shall not exceed five percent of gross receipts. (Ord. 77-20, 1977: Ord. 76-08 § 1, 1976: Ord. 75-04 § 3(f), 1975)

5.20.100 Notice of intention to engage in activity to be filed.

In order that the city of Bainbridge Island may identify those persons who are subject to taxation under this chapter, each person, association or organization shall file with the city clerk a sworn declaration of intent to conduct an activity taxable under this chapter upon a form to be prescribed by that officer, together with a copy of the license issued therefor by the State Gambling Commission. The filing shall be made not later than 10 days prior to

conducting or operating the taxable activity. No fee shall be charged for such filing, which is not for the purpose of regulation of this activity but for the purposes of administration of this taxing chapter only. Failure to timely file shall not excuse any person, association or organization from any tax liability. (Ord. 75-04 § 8, 1975)

5.20.110 Tax – Quarterly computation and payment – Exceptions.

Each of the various taxes imposed by this chapter shall be computed on the basis of activity during each calendar quarter year, shall be due and payable in quarterly installments, and remittance therefor, together with return forms, shall be made to the city of Bainbridge Island on or before the last day of the month next succeeding the quarterly period in which the tax accrued, that is, on January 31st, April 30th, July 31st and October 31st of each year; provided, that the following exceptions to this payment schedule shall be allowed, or required:

A. Except as provided in subsection B of this section, whenever any person, association or organization taxable under this chapter conducting or operating a taxable activity on a regular basis discontinues operation of that taxable activity for a period of more than four consecutive weeks, or quits business, sells out, or otherwise disposes of its business, or terminates the business, any tax due under this chapter shall become due and payable, and such taxpayer shall, within 10 days thereafter, make a return and pay the tax due.

B. It is recognized that some bona fide charitable or bona fide nonprofit organization taxpayers will be conducting or operating taxable activities only upon an occasional and random basis. Except as provided in subsection C of this section, when such a taxpayer conducts only one taxable activity during any calendar quarter, the duration of each such activity does not exceed 15 consecutive calendar days, and the gross receipts therefrom do not exceed \$1500 per quarter, that taxpayer need not remit the tax due with a return therefor until on or before January 31st of the year following that year in which the activity took

5.20.120

place. Such returns shall be made upon a special form to be supplied by the city clerk.

C. Whenever it appears to the city clerk that the collection of taxes from any person, association or organization may be in jeopardy, that officer, after not less than five days' notice to the taxpayer, is authorized to require that taxpayer to remit taxes and returns at such shorter intervals than quarterly or annually, as that officer shall deem appropriate under the circumstances. (Ord. 75-04 § 4, 1975)

5.20.120 Tax – Administration and collection.

A. Administration and collection of the various taxes imposed by this chapter shall be the responsibility of the city clerk. Remittance of the amount due shall be accompanied by a completed return form prescribed and provided by that officer. The taxpayer shall be required to swear and affirm that the information given in the return is true, accurate and complete.

B. The city clerk is authorized, but not required, to mail to taxpayers forms for returns. Failure of the taxpayer to receive such a form shall not excuse a taxpayer from making the return and timely paying all taxes due. The city clerk shall make forms available to the public in reasonable numbers in the City Hall during regular business hours.

C. In addition to the return form, a copy of the taxpayer's quarterly report to the State Gambling Commission, required by WAC 230-08 for the period in which the tax accrued, shall accompany remittance of the tax amount due. (Ord. 75-04 § 5, 1975)

5.20.130 Tax – Method of payment.

Taxes payable under this chapter shall be remitted to the city clerk on or before the time required by bank draft, certified check, cashier's check, personal check, money order, or in cash. If payment is made by draft or check, the tax shall not be deemed paid until the draft or check is honored in the usual course of business, nor shall the acceptance of any sum by the city clerk be an acquittance or discharge of the tax unless the amount paid is the full amount due. The return, and copy of quarterly

report to the State Gambling Commission, shall be filed in the office of the city clerk after notation by that office upon the return of the amount actually received from the taxpayer. (Ord. 75-04 § 6, 1975)

5.20.140 Tax – Penalty for failure to make timely payment.

A. If the full payment of any tax or fee under this chapter is not received by the city clerk on or before the date due, there shall be added to the amount due a penalty fee as follows:

1. One to 10 days late, a percent of tax due as established by resolution of the city council;

2. Eleven to 20 days late, a percent of tax due as established by resolution of the city council;

3. Twenty-one to 31 days late, a percent of tax due as established by resolution of the city council;

4. Thirty-two to 60 days late, a percent of tax due as established by the city council; but in no event shall the penalty amount be less than an amount as established by resolution of the city council. In addition to this penalty, the city clerk may charge the taxpayer interest of a percent as established by resolution of the city council, per year of all taxes and fees due for each 30-day period, or portion thereof, that said amounts are past due.

B. Failure to make payment in full of all tax amounts, and penalties within 60 days following the day the tax amount initially became due, shall be both a civil and a criminal violation of this section. (Ord. 88-16 § 10, 1988: Ord. 75-04 § 7, 1975)

5.20.150 Tax – Overpayment or underpayment.

If, upon application by a taxpayer for a refund or for an audit of his records, or upon any examination of the returns or records of any taxpayer, it is determined by the city clerk that within three years immediately preceding receipt by the city clerk of the application by the taxpayer for a refund, or an audit, or, in the absence of such an application, within the three years immediately preceding the com-

mencement by the city clerk of such examination:

A. A tax or other fee has been paid in excess of that properly due, the total excess paid over all amounts due to the city of Bainbridge Island within such period of three years shall be credited to the taxpayer's account or shall be credited to the taxpayer at the taxpayer's option. No refund or credit shall be allowed with respect to the city clerk more than three years before the date of such application or examination.

B. A tax or other fee has been paid which is less than that properly due, or no tax or other fee has been paid, the city clerk shall mail a statement to the taxpayer showing the balance due, including the tax amount or penalty assessments and fees, and it shall be a separate, additional violation of this chapter, both civil and criminal, if the taxpayer fails to make payment in full within 10 calendar days of such mailing. (Ord. 75-04 § 10, 1975)

5.20.160 Tax – Failure to make return.

If any taxpayer fails, neglects or refuses to make and file his return as and when required under this chapter, the city clerk is authorized to determine the amount of tax payable, together with any penalty and/or interest assessed under the provisions of this chapter, and by mail to notify such taxpayer of the amount so determined, which amount shall thereupon become the tax and penalty and/or interest and shall become immediately due and payable. (Ord. 75-04 § 11, 1975)

5.20.170 Tax – Additional to other fees or taxes.

The tax levied in this chapter shall be additional to any license fee or tax imposed or levied under any law or any other ordinance of the city of Bainbridge Island, except as otherwise expressly provided in this chapter. (Ord. 75-04 § 12, 1975)

5.20.180 Records – Required.

Each person, association or organization engaging in an activity taxable under this chapter shall maintain records respecting that activity which truly, completely and accu-

rately disclose all information necessary to determine the taxpayer's tax liability under this chapter during each base tax period. Such records shall be kept and maintained for a period of not less than three years. In addition all information and items required by the State Gambling Commission under WAC 230-08 and the United States Internal Revenue Service respecting taxation shall be kept and maintained for the periods required by those agencies. (Ord. 75-04 § 9, 1975)

5.20.190 Records – Inspection and audit.

A. All books, records, and other items required to be kept and maintained under this section and Sections 5.20.180 and 5.20.200 shall be subject to, and immediately made available for, inspection and audit at any time, with or without notice at the place where such records are kept upon demand by the city clerk or his designees for the purpose of enforcing the provisions of this taxing chapter.

B. Where a taxpayer does not keep all of the books, records or items required to be kept or maintained under this section and Sections 5.20.180 and 5.20.200 in this jurisdiction so that the city clerk may examine them conveniently, the taxpayer shall either:

1. Produce all of the required books, records or items within this jurisdiction for such inspection within 15 days following a request of the local official that he do so; or

2. Bear the actual cost of inspection by the city clerk or his designee, at the location at which such books, records or items are located, provided that a taxpayer choosing to bear these costs shall pay in advance to the city clerk the estimated cost thereof, including but not limited to, round trip fare by the most rapid means, lodging, meals, and incidental expenses. The actual amount due, or to be refunded, for expenses shall be determined following said examination of the records. (Ord. 75-04 § 9, 1975)

5.20.200 Records – Penalty for failure to produce for inspection.

A. A taxpayer who fails, neglects or refuses to produce such books and records either within or without this jurisdiction, in

5.20.210

addition to being subject to other civil and criminal penalties provided by this chapter, shall be subject to a jeopardy fee or tax assessment by the city clerk.

B. This penalty fee or jeopardy assessment shall be deemed prima facie correct and shall be the amount of fee or tax owing the city clerk by the taxpayer unless he can prove otherwise by competent evidence. The taxpayer shall be notified by mail by the city clerk of the amount of tax so determined by jeopardy assessment, together with any penalty and/or interest, and the total of such amounts shall thereupon become immediately due and payable. (Ord. 75-04 § 9, 1975)

5.20.210 Taxes, penalties and fees constitute debt to municipality.

Any tax due and unpaid under this chapter and all penalties or fees shall constitute a debt to the city of Bainbridge Island, a municipal corporation, and may be collected by court proceedings the same as any other debt in like amount which shall be in addition to all other existing remedies. (Ord. 75-04 § 14, 1975)

5.20.220 Limitation on right to recovery.

The right of recovery by the city of Bainbridge Island from the taxpayer for any tax provided under this chapter shall be outlawed after the expiration of three calendar years from the date said tax became due. The right of recovery against the city of Bainbridge Island because of overpayment of tax by any taxpayer shall be outlawed after the expiration of three calendar years from the date such payment was made. (Ord. 75-04 § 15, 1975)

5.20.230 City clerk to make rules.

The city clerk shall have the power, and it shall be his duty, from time to time, to adopt, publish and enforce rules and regulations not inconsistent with this chapter or with superior law, for the purpose of carrying out the provisions of this chapter, and it is unlawful to violate or fail to comply with any such rule or regulation. (Ord. 75-04 § 13, 1975)

5.20.240 Appeal.

In the event any person feels aggrieved by any decision or determination of the city clerk, said person shall have the right to appeal such determination to the city council by filing a notice of appeal within 10 days after such determination is made and the city council shall have the power to affirm, disaffirm or modify such administrative determination and any person feeling aggrieved by any determination of the city council shall have the right of appeal to the Superior Court of the county in accordance with the procedures established for extraordinary remedies. (Ord. 75-04 § 17, 1975)

5.20.250 Violation - Penalty.

A. Any person violating or failing to comply with any of the provisions of this chapter or any lawful rule or regulation adopted by the city clerk pursuant hereto, upon conviction thereof, shall be punished by a fine in any sum not to exceed \$300.00, or by imprisonment in the city jail for a term not exceeding six months, or by both such fine and imprisonment.

B. Any taxpayer who engages in, or carries on, any gambling activity subject to a tax under this chapter without having complied with the provisions of this chapter shall be guilty of a violation of this chapter for each day during which the gambling activity is carried on. (Ord. 75-04 § 16, 1975)

Chapter 5.24

GAMES OF SKILL

Sections:

- 5.24.010** Definition.
- 5.24.020** License – Required.
- 5.24.030** License – Application.
- 5.24.040** License – Fees.
- 5.24.050** License – Issuance.
- 5.24.060** License – Term.
- 5.24.070** License – Nontransferable.
- 5.24.080** License – Qualifications of licensee.
- 5.24.090** License – Refusal, cancellation or revocation.
- 5.24.100** Violation – Penalty.

5.24.010 Definition.

A "game of skill," as used in this chapter, means and includes all games involving an element of skill capable of being played or operated, with or upon, any electronic or mechanical device or machine of any kind, nature or description in the playing or operation of which a player may be entitled to receive, whether automatically or otherwise, any merchandise awards, or any right to further operate said machine or device. (Ord. 79-39 § 2, 1979)

5.24.020 License – Required.

It is unlawful for any person, firm or corporation to operate within the city any game of skill without first obtaining a license therefor, in accordance with the provisions of this chapter. (Ord. 79-39 § 1, 1979)

5.24.030 License – Application.

Any person, firm or corporation desiring to maintain, keep or operate any such game of skill, as defined in Section 5.24.010, shall make written application for license to do so and file the same with the city clerk. Such application shall state the name of the applicant and address and place of business at which any of said machines shall be maintained and operated, a description of such game or device for which license is applied for

and the total number of games desired to be covered by the license. (Ord. 79-39 § 3, 1979)

5.24.040 License – Fees.

Each license shall be issued for a period of one calendar year. The calendar year license fee for each license shall be an amount as established by resolution of the city council for each establishment where games of skill are maintained. In addition there will be a fee as established by resolution of the city council per machine per calendar year. The license fee shall be payable prior to January 31st for the year required or prior to commencement of business in the city. For any license procured after the applicable date required in this section, there is assessed and shall be collected by the city clerk, in addition to the required annual license fee, a penalty as established by resolution of the city council, of the annual license fee for each month or part of a month accruing between the time such license is procured and the time when the same should have been procured under the terms of this chapter. (Ord. 88-16 § 11, 1988; Ord. 79-39 § 4, 1979)

5.24.050 License – Issuance.

Upon approval of the application and payment of the fee, as provided in Section 5.24.030, the city clerk shall issue to the applicant a license to operate said machines or devices for which license has been applied. The license shall be procured by the licensee prior to January 31st of the calendar year for which required or prior to commencement of business in the city. (Ord. 79-39 § 5, 1979)

5.24.060 License – Term.

All licenses issued under Section 5.24.040 shall expire on the last day of each calendar year. The fees for the license for each establishment where games of skill are maintained shall not be prorated for a partial year. The additional fee per machine per calendar year shall be prorated for any license procured after June 1st at the rate of one-half of the fee per machine per calendar year. (Ord. 82-26 § 1, 1982; Ord. 79-39 § 6, 1979)

5.24.070 License – Nontransferable.

The license issued under this chapter shall be personal and nontransferable and shall at all times be conspicuously posted in the place of business for which it is issued. Where the location of business of the taxpayer is changed, the taxpayer shall return the license to the city clerk and a new license shall be issued for the new location of business without charge for the transfer. No person to whom a license has been issued pursuant to this chapter shall permit or allow any other person to operate any business or display his license, nor shall such other person operate under or display such license. (Ord. 79-39 § 7, 1979)

5.24.080 License – Qualifications of licensee.

In addition to the general qualifications of licensee set forth in this chapter, no license for the operation of games of skill shall be granted or issued to the following persons:

A. Any person who has been convicted of violation of federal, state or city laws or ordinances regulating the manufacture, transportation, possession or sale of narcotics or intoxicating liquors or of any crime involving moral turpitude within a period of three years next prior to the date of making applications for such license;

B. Any person who names another person to have the active management of such place where games of skill are maintained for public use for hire, who has been convicted as described in subsection A of this section or had a similar license previously revoked;

C. Any person, where in the opinion of the city council the location for said place where games of skill are maintained for public use for hire is not proper or for the best interest of public safety or morals. (Ord. 79-39 § 8, 1979)

5.24.090 License – Refusal, cancellation or revocation.

The city clerk may refuse to issue a games of skill license, or may cancel or revoke such license after it has been issued, if it is learned that the same was procured by fraud or false representation of facts, or that the applicant or permittee has failed to comply with the provi-

sions and requirements of this chapter, or which, in the opinion of the chief of police, will be detrimental to the public peace, health or welfare. Any person may appeal the cancellation or revocation of a games of skill license under the provisions of the hearing examiner ordinance. It shall be the duty of all licensees granted licenses for games of skill to comply with the following regulations and the failure of any licensee to do so shall constitute, but shall not be exclusive grounds for suspension or revocation of any license, a violation of this chapter and in the event of such revocation, no part of the unearned portion of the license fee shall be refunded: to have no one employed on the premises covered by the license who has been convicted of a violation of the state or city laws or ordinances relative to gambling within one year from the date of such revocation. (Ord. 79-39 § 9, 1979)

5.24.100 Violation – Penalty.

Any person, firm or corporation violating any of the terms or provisions of this chapter shall, upon conviction thereof, lose their license and be fined \$500.00, or be punished by imprisonment for a period of not more than six months, or by both such fine and imprisonment. (Ord. 79-39 § 10, 1979)

Chapter 5.28

JUKEBOXES

Sections:

- 5.28.010 Definition.
- 5.28.020 License – Required.
- 5.28.030 License – Application.
- 5.28.040 License – Fees.
- 5.28.050 License – Issuance.
- 5.28.060 License – Term.
- 5.28.070 License – Nontransferable.
- 5.28.080 License – Refusal, cancellation or revocation.
- 5.28.090 Violation – Penalty.

5.28.010 Definition.

A "jukebox," as defined in this section, shall be any electronic or mechanical device or machine of any kind, nature or description in which the operation is dependent upon the insertion of a United States coin, whether automatically or otherwise, which results in the playing of music of any type. (Ord. 79-40 § 2, 1979)

5.28.020 License – Required.

It is unlawful for any person, firm or corporation to operate within the city, any coin-operated music box, commonly known as a jukebox, without first obtaining a license therefor in accordance with the provisions of this chapter. (Ord. 79-40 § 1, 1979)

5.28.030 License – Application.

Any person, firm, or corporation desiring to maintain, keep or operate any such jukebox shall make written application for license to do so and file the same with the city clerk. Such application shall state the name of the applicant and address and place of business at which any of said jukeboxes are applied for and the total number of each device desired to be covered by the license. (Ord. 79-40 § 3, 1979)

5.28.040 License – Fees.

Each license shall be issued for a period of one calendar year. The calendar year license fee for each license shall be an amount as

established by resolution of the city council. In addition there shall be issued a license for each particular machine used by the licensee and the fee for each individual machine shall be an amount as established by resolution of the city council per machine. The license fee shall be payable prior to January 31st for the year required or prior to commencement of business in the city. For any license procured after the applicable date required in this section, there is assessed and shall be collected by the city clerk, in addition to the required annual license fee, a penalty as established by resolution of the city council on the annual license fee for each month or part of a month accruing between the time such license is procured and the time when the same should have been procured under the terms of this chapter. (Ord. 88-16 § 12, 1988; Ord. 79-40 § 4, 1979)

5.28.050 License – Issuance.

Upon approval of the application and payment of the fee as provided in Section 5.28.040, the city clerk shall issue to the applicant a license to operate said machines or devices for which license has been applied. (Ord. 79-40 § 5, 1979)

5.28.060 License – Term.

All licenses issued under Section 5.28.050 shall expire on the last day of each calendar year. The fees for the licenses shall not be prorated for a partial year but the full fees provided by Section 5.28.040 shall be payable regardless of the date of application. (Ord. 79-40 § 6, 1979)

5.28.070 License – Nontransferable.

The license issued under this chapter shall be personal and nontransferable, and shall at all times be conspicuously posted in the place of business for which it is issued. Where a location of business of the taxpayer is changed, the taxpayer shall return the license to the city clerk and a new license shall be issued for the new location of business without charge for the taxpayer. No person to whom a license has been issued pursuant to this chapter shall permit or allow any other person to operate any business or display his/her license, nor shall

such other person operate under or display such license. (Ord. 79-40 § 7, 1979)

5.28.080 License – Refusal, cancellation or revocation.

The city clerk may refuse to issue a jukebox license, or may cancel or revoke such license after it has been issued, if it is learned that the same was procured by fraud or false representation of facts, or that the applicant or permittee has failed to comply with the provisions and requirements of this chapter, or has violated any provisions of this chapter, or for any other reason which, in the opinion of the chief of police, will be detrimental to the public peace, health or welfare. Any person may appeal the refusal to issue, or cancellation or revocation of a jukebox license under the appeal procedures in the hearing procedure ordinance. (Ord. 79-40 § 8, 1979)

5.28.090 Violation – Penalty.

Any person, firm or corporation violating any of the terms or provisions of this chapter shall, upon conviction thereof, lose their license and be fined \$500.00, or be punished by imprisonment for a period of not more than six months, or by both such fine and imprisonment. (Ord. 79-40 § 9, 1979)

Chapter 5.32

SALE AND DELIVERY OF KEGS OF MALT BEVERAGES

Sections:

- 5.32.010 Purchase – Identification required.**
- 5.32.020 Purchase – Affidavit required.**
- 5.32.030 Records of sales required.**
- 5.32.040 Purchasers not to allow consumption by persons under twenty-one.**
- 5.32.050 Violation – Penalty.**

5.32.010 Purchase – Identification required.

All natural persons, corporations, and other entities of any type who sell or offer for sale kegs or other containers containing seven gallons or more of malt beverage within the city shall require all persons who purchase from such sellers identification of such persons, including a Washington driver's license, driver's license from some other state, or equivalent positive identification. (Ord. 79-10 § 1, 1979)

5.32.020 Purchase – Affidavit required.

All natural persons, corporations and any other entities of any type who sell or offer for sale kegs or other containers containing seven gallons or more of malt beverages within the city shall require all purchasers from such sellers to sign an affidavit to the effect that such purchaser will not allow any person under the age of 21 years of age to consume the beverage contained therein. (Ord. 79-10 § 2, 1979)

5.32.030 Records of sales required.

All natural persons, corporations and any other entities of any type who sell or offer for sale kegs or other containers containing seven gallons or more of malt beverage within the city shall record the identification number of all kegs or other such containers sold to purchasers, and shall record the name of the purchaser(s) thereof. Such records shall be maintained by sellers subject to the inspection

of the police of the city for a period of one year. (Ord. 79-10 § 3, 1979)

5.32.040 Purchasers not to allow consumption by persons under twenty-one.

No person who purchases a keg or other container containing seven gallons or more of malt beverage shall allow any person or persons under the age of 21 years of age to consume the contents thereof. (Ord. 79-10 § 4, 1979)

5.32.050 Violation – Penalty.

Any person, corporation or other entity that violates or fails to comply with any provision of this chapter shall be guilty of a misdemeanor and shall be punishable by a fine not in excess of \$500.00, or imprisonment for a term not to exceed six months, or both such fine and imprisonment. Any person, corporation or other entity that violates or fails to comply with any provision of this chapter may also be enjoined, in a civil suit in the municipal court of the city or the superior court of the county, at the option of the city, from such violation or failure to comply. The city may also report violations or instances of failure to comply to the State Liquor Control Board. (Ord. 79-10 § 5, 1979)

Chapter 5.36

SALE OF FIREWORKS

(Repealed by Ord. 2009-05)

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Title 8

HEALTH AND SAFETY

Chapters:

- 8.04 Enforcement of Health Regulations**
- 8.08 False Alarms**
- 8.12 *Repealed***
- 8.16 Litter Control**
- 8.20 Emergency Proclamation**
- 8.24 Use of Nonbiodegradable Packaging Materials**
- 8.28 Fireworks**

Chapter 5.40

**TEMPORARY STATIONARY
BUSINESSES****Sections:**

- 5.40.010 Definitions.**
- 5.40.020 Permission required.**
- 5.40.030 Exemption from business and occupation licensing and taxation ordinance.**

5.40.010 Definitions.

For the purposes of this chapter the words set out in this section shall be defined as follows:

A. "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the person engaging in such activities, or to another person or class, directly or indirectly.

B. *Repealed by Ord. 2003-22.*

C. "Temporary stationary business" includes any business carried on at the same fixed location within the city for not more than one day per week and not more than four consecutive weeks in one calendar year or any business carried on at the same fixed location in the city for not more than four consecutive days in one calendar year. (Ord. 2003-22 § 8, 2003; Ord. 82-21 § 1, 1982)

5.40.020 Permission required.

No temporary stationary business shall be allowed to operate on any property owned by the city, including but not limited to the streets, sidewalks, and parks, without first having secured permission to do so from the city council. (Ord. 82-21 § 2, 1982)

5.40.030 Exemption from business and occupation licensing and taxation ordinance.

Temporary stationary businesses shall be exempt from the requirements of the business and occupation licensing and taxation ordinance, codified in Chapter 5.04 BIMC. (Ord. 82-21 § 3, 1982)

Chapter 5.44

CLOSING HOURS OF BUSINESSES**Sections:**

- 5.44.010 Designated.**
- 5.44.020 Violation – Penalty.**

5.44.010 Designated.

It is unlawful for any person owning or operating any restaurant, dining room, cafe or other place where commercial food is served to the public or any person owning or operating any premises for the purpose of offering to the public any food, drink or entertainment at a profit, within the city, to have or keep such premises or places open to the public between the hours of 2:00 a.m. and 6:00 a.m. on all days of the week, Monday through Sunday, except as such shall be necessary for the protection or preservation of property or of the health, safety, life or limb of some person. (Ord. 67-10 § 1, 1967)

5.44.020 Violation – Penalty.

Any person found guilty of any of the acts or offenses prohibited or defined in this chapter shall be punished by a fine in any sum not to exceed \$300.00 or by imprisonment not exceeding 90 days, or by both such fine and imprisonment. (Ord. 67-10 § 2, 1967)

