Title 5

BUSINESS TAXES, LICENSES AND REGULATIONS*

Chapters:

5.02 Business and Occupation Tax

5.08 Utility Taxes

5.12 Solicitors

5.16 Cabarets

* Cross-reference: For provisions on adult businesses, see Chapter 10.77 of this code. For general business licensing regulations, see Chapter 2.58.

Chapter 5.02

BUSINESS AND OCCUPATION TAX

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5.02.020 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 the city code. (Ord. 776 § 1 Exh. A (part), 2004)

5.02.030 Definitions.

In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

"Business" means and includes all activities engaged in with the object of gain, benefit, or advan-

tage 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 by-products, 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 Section 5.02.050 of this chapter;

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 concession 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.

2. This section sets forth examples of activities that constitute engaging in business in the city, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimus business activities in the city without having to register and obtain a business license under Chapter 2.58 of this code or pay city business and occupation taxes. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection 1. If an activity is not listed, whether it constitutes engaging in business in the city shall be determined by considering all the facts and circumstances and applicable law.

3. 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 under Chapter 2.58 of this code:

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;

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.

4. If a 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, it need not register and obtain a business license under Chapter 2.58 of this code and pay tax:

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 events." Persons participating at a trade show shall review the city's trade show or multiple vendor event ordinances;

f. Conducting advertising through the mail;

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

5. A seller located outside the city merely delivering goods into the city by means of common carrier is not required to register and obtain a business license under Chapter 2.58 of this code, provided that it engages in no other business activities in the city.

The city expressly intends that engaging in business includes 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.

"Extractor" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product; or fells, cuts or takes timber, Christmas trees, other than plantation Christmas trees, or other natural products; or takes fish, shellfish, or other sea or inland water foods or products. "Extractor" does not include persons performing under contract the necessary labor or mechanical services for others; or persons meeting the definition of farmer.

"Extractor for hire" means a person who performs under contract necessary labor or mechanical services for an extractor.

"Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross pro-

ceeds 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.

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

"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 commercial 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 twenty 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 this city that is the owner of materials or ingredients processed for it in this city by a processor for hire shall be deemed to be engaged in business as a manufacturer in this 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.

"To manufacture" shall not include the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

"Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, 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.

"Reporting period" means:

1. A one-month period beginning the first day of each calendar month (monthly);

2. A three-month period beginning the first day of January, April, July or October of each year (quarterly); or

3. A twelve-month period beginning the first day of January of each year (annual).

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

"Retail service" means and includes 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, racquet ball, handball, squash, tennis, batting cages, day trips for sightseeing purposes, and others, when provided to consumers. "Amusement and recreation services" also include 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: (i) horticultural services provided to farmers and (ii) 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;

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; and

8. The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

"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.

"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 rail," "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," or "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; or

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; or

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; or

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 subsections (1)(a) through (d) or this subsection 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 Section 5.02.050(A) of this chapter.

3. "Sale at retail" or "retail sale" shall 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 distinguished 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 subsection, 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) through (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 this subsection shall be construed to modify subsection 1 of this definition and nothing contained in subsection 1 of this definition shall be construed to modify this subsection.

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 by-products 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 and retail services, if such charge is expressly defined as a retail sale or retail service 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" Reserved.

"Successor" means any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, any part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

"Tax year" or "taxable year" means the calendar year.

"Taxpayer" means any "person," as herein defined, required to have a business license 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 of products" means:

1. The value of products, including by-products, 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 by-products by the seller.

2. Where such products, including by-products, are extracted or manufactured for commercial or industrial use; and where such products, including by-products, 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, 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 city clerk-treasurer 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.

"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.

"Wholesaling" means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification. (Ord. 820 § 1, 2006; Ord. 776 § 1 Exh. A (part), 2004)

5.02.050 Imposition of the tax—Tax or fee levied.

A. Except as provided in subsections B and C of this section, there is 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 application of rates against gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as follows:

1. 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 by-products, manufactured within the city, multiplied by the rate of fifteen one-hundredths of one percent. The measure of the tax is the value of the products, including by-products, so manufactured, 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 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.

3. 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.

4. Upon every person engaging within the city in the business of: (i) printing, (ii) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (iii) publishing newspapers, magazines and periodicals, (iv) extracting for hire, and (v) processing for hire; as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of fifteen one-hundredths of one percent.

5. 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 two-tenths of one percent.

6. Upon every other person engaging within the city in any business activity other than or in addition to those enumerated in the above subsections; 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 fifteen one-hundredths of one percent. This subsection includes, among others, and without limiting the scope hereof (whether or not 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. The gross receipts tax imposed in this section shall not apply to the first thirty-two thousand dollars in gross proceeds of sales, gross income of the business, and value of products, including by-products, as the case may be, from all activities conducted within the city during any calendar year, or if on a quarterly reporting basis, to the first eight thousand dollars in gross proceeds of sales, gross income of the business, and value of products, including by-products, as the case may be, from all activities conducted within the city during any quarter.

C. Sunset Provision. The city of Black Diamond shall cease to impose and levy a business and occupation tax under this chapter on January 1, 2008. (Ord. 847 § 1, 2007: Ord. 820 § 2, 2006: Ord. 776 § 1 Exh. A (part), 2004)

5.02.060 Doing business with the city.

Except where such a tax is otherwise levied and collected by the city from such person, there is 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 Section 5.02.050 of this chapter that would otherwise apply if the sale or service were taxable pursuant to that section. (Ord. 776 § 1 Exh. A (part), 2004)

5.02.070 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 Section 5.02.050 of this chapter shall be taxable under each applicable subsection.

B. Notwithstanding anything to the contrary herein, if 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, and still apply the city tax to as much of the taxpayer's activities as may be subject to the city's taxing authority.

C. To take 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. Credit for Persons That Sell in the City Products That They Extract or Manufacture. Persons taxable under the retailing or wholesaling classification with respect to selling products in this city shall be allowed a credit against those taxes for any eligible gross receipts taxes paid: (a) with respect to the manufacturing of the products sold in the city, and (b) 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. Credit for Persons That Manufacture Products in the City Using Ingredients They Extract. Persons taxable under the manufacturing classification with respect to manufacturing products in this 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. Credit for Persons That Sell Within the City Products That They Print, or Publish and Print. Persons taxable under the retailing or wholesaling classification with respect to selling products in this city shall be allowed a credit 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. 776 § 1 Exh. A (part), 2004)

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

A. Amounts Subject to an Eligible Gross Receipts Tax in Another City That Also Maintains Nexus Over the Same Activity. A taxpayer that is subject to an eligible gross receipts tax on the same activity 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 the above, 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 (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. Person Manufacturing Products Within and Without. A person manufacturing products within the city 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. 776 § 1 Exh. A (part), 2004)

5.02.076 Assignment of gross income derived from intangibles.

Gross income derived from the sale of intangibles such as royalties, trademarks, patents, or goodwill shall be assigned to the jurisdiction where the person

is domiciled (its headquarters is located). (Ord. 776 § 1 Exh. A (part), 2004)

5.02.090 Exemptions.

A. Public Utilities. This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of Chapter 5.08 of this code.

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 in 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. A booth renter, as defined by RCW 18.16.020, is an independent contractor for purposes of this chapter.

D. Amounts Derived From Sale of Real Estate. This chapter shall not apply to gross proceeds derived from the sale of real estate. This, however, shall not be construed to allow an exemption of 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 thirty 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 motor vehicle fuel, as the term "motor vehicle fuel" is defined in RCW 82.36.010 and 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.

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 fourteen 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. (Ord. 776 § 1 Exh. A (part), 2004)

5.02.100 Deductions.

In computing the 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 actually 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. (Ord. 776 § 1 Exh. A (part), 2004)

5.02.120 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 purchasers 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. 776 § 1 Exh. A (part), 2004)

5.02.140 When due and payable—Reporting periods—Monthly, quarterly, and annual returns—Threshold provisions or relief from filing requirements—Computing time periods—Failure to file returns.

A. The tax imposed by this chapter shall be due and payable in quarterly installments. At the city clerk-treasurer's discretion, businesses may be assigned to a monthly or annual reporting period depending on the tax amount owing or type of tax. Tax payments are due on or before the last day of the next month following the end of the assigned reporting period covered by the return.

B. Taxes shall be paid as provided in this chapter and accompanied by a return on forms as prescribed by the city clerk-treasurer. The return shall be signed by the taxpayer personally or by a responsible officer or agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is complete and true.

C. Tax returns must be filed and returned by the due date whether or not any tax is owed.

D. For purposes of the tax imposed by this chapter, any person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, is equal to or less than thirty-two thousand dollars in the current calendar year, if reporting on an annual basis, or equal to or less than eight thousand dollars during the current quarter, if reporting in a quarterly basis, shall file a return, declare no tax due on their return, and submit the return to the city clerk-treasurer. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due.

E. A taxpayer that commences to engage in business activity shall file a return and pay the tax or fee for the portion of the reporting period during which the taxpayer is engaged in business activity.

F. Except as otherwise specifically provided by any other provision of this chapter, in computing any period of days prescribed by this chapter the day of the act or event from which the designated period of time runs shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or city or federal legal holiday, in which case the last day of such period shall be the next succeeding day which is neither a Saturday, Sunday, or city or federal legal holiday.

G. If any taxpayer fails, neglects or refuses to make a return as and when required in this chapter, the city clerk-treasurer is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the city clerk-treasurer's estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the city by the

taxpayer. The city clerk-treasurer shall notify the taxpayer by mail of 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. 820 § 3, 2006; Ord. 776 § 1 Exh. A (part), 2004)

5.02.150 Payment methods—Mailing returns or remittances—Time extension—Deposits—Recording payments—Payment must accompany return—NSF checks.

A. Taxes shall be paid to the city clerk-treasurer in United States currency by bank draft, certified check, cashier's check, personal check, money order, cash, or by wire transfer or electronic payment if such wire transfer or electronic payment is authorized by the city clerk-treasurer. If payment so received is not paid by the bank on which it is drawn, the taxpayer, by whom such payment is tendered, shall remain liable for payment of the tax and for all legal penalties, the same as if such payment had not been tendered. Acceptance of any sum by the city clerk-treasurer shall not discharge the tax or fee due unless the amount paid is the full amount due.

B. A return or remittance that is transmitted to the city by United States mail shall be deemed filed or received on the date shown by the cancellation mark stamped by the post office upon the envelope containing it. The city clerk-treasurer may allow electronic filing of returns or remittances from any taxpayer. A return or remittance which is transmitted to the city electronically shall be deemed filed or received according to procedures set forth by the city clerk-treasurer.

C. If a written request is received prior to the due date, the city clerk-treasurer, for good cause, may grant, in writing, additional time within which to make and file returns.

D. The city clerk-treasurer shall keep full and accurate records of all funds received or refunded. The city clerk-treasurer shall apply payments first against all penalties and interest owing, and then upon the tax, without regard to any direction of the taxpayer.

E. For any return not accompanied by a remittance of the tax shown to be due thereon, the taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the penalties and interest provided in this chapter.

F. Any payment made that is returned for lack of sufficient funds or for any other reason will not be

considered received until payment by certified check, money order, or cash of the original amount due, plus a "nonsufficient funds" (NSF) charge of twenty dollars ($25.00) is received by the city clerk-treasurer.

G. The city clerk-treasurer is authorized, but not required, to mail tax return forms to taxpayers, but failure of the taxpayer to receive any such forms shall not excuse the taxpayer from filing returns and making payment of the taxes or fees, when and as due under this chapter. (Ord. 776 § 1 Exh. A (part), 2004)

5.02.160 Records to be preserved—Examination—Estoppel to question assessment.

Every person liable for any fee or tax imposed by this chapter shall keep and preserve, for a period of five years after filing a tax return, such records as may be necessary to determine the amount of any fee or tax for which the person may be liable; which records shall include copies of all federal income tax and state tax returns and reports made by the person. All books, records, papers, invoices, vendor lists, inventories, stocks of merchandise, and other data including federal income tax and state tax returns and reports shall be open for examination at any time by the city clerk-treasurer or its duly authorized agent. Every person's business premises shall be open for inspection or examination by the city clerk-treasurer or a duly authorized agent.

A. If a person does not keep the necessary books and records within the city, it shall be sufficient if such person: (a) produces within the city such books and records as may be required by the city clerk-treasurer, or (b) hears the cost of examination by the city clerk-treasurer's agent at the place where such books and records are kept; provided that the person electing to bear such cost shall pay in advance to the city clerk-treasurer the estimated amount thereof including round-trip fare, lodging, meals and incidental expenses, subject to adjustment upon completion of the examination.

B. Any person who fails, or refuses a department 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 city clerk-treasurer 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 city clerk-treasurer 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. 776 § 1 Exh. A (part), 2004)

5.02.170 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. 776 § 1 Exh. A (part), 2004)

5.02.180 Public work contracts—Payment of fee and tax before final payment for work.

The city clerk-treasurer may, before issuing any final payment to any person performing any public work contract for the city, require such person to pay in full all license fees due under Chapter 2.58 of this code or taxes due under this chapter from such person on account of such contract or otherwise, and may require such taxpayer to file with the city clerk-treasurer a verified list of all subcontractors supplying labor and/or materials to the person in connection with said public work. (Ord. 776 § 1 Exh. A (part), 2004)

5.02.190 Underpayment of tax, interest, or penalty—Interest.

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

B. 1. Interest imposed after the effective date of the ordinance codified in this chapter, 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.

2. For the purposes of this section, the rate of interest to be charged to the taxpayer 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. 776 § 1 Exh. A (part), 2004)

5.02.195 Time in which assessment may be made.

The city clerk-treasurer shall not assess, or correct an assessment for, additional taxes, penalties, or interest due more than four years after the close of the calendar year in which they were incurred, except that the city clerk-treasurer 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 ten years prior to the close of the calendar year in which the person was contacted in writing by the city clerk-treasurer;

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. 776 § 1 Exh. A (part), 2004)

5.02.200 Over payment 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 city clerk-treasurer 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. 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 city clerk-treasurer discovers that a refund or credit is due.

C. Refunds shall be made by means of vouchers approved by the city clerk-treasurer 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 city clerk-treasurer a certified copy of the order or judgment of the court.

E. 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 Section 5.02.190(B)(2) of this chapter plus two percentage points. (Ord. 776 § 1 Exh. A (part), 2004)

5.02.210 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 city clerk-treasurer by the due date, the city clerk-treasurer 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 city clerk-treasurer shall add a total penalty equal to fifteen 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 city clerk-treasurer shall add a total penalty equal to twenty-five percent of the amount of the tax. No penalty assessed herein shall be less than five dollars.

B. If a tax deficiency is assessed by the city clerk-treasurer, 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 city clerk-treasurer is not received by the due date specified in the notice, or any extension thereof, the city clerk-treasurer shall assess a penalty equal to fifteen percent of the amount of the additional tax found due. If payment of any tax deficiency assessed by the city clerk-treasurer is not received on or before the thirtieth day following the due date specified in the notice, or any extension thereof, the city clerk-treasurer shall assess a penalty equal to twenty-five percent of the amount of additional tax found due. No penalty added shall be less than five dollars.

C. If a citation or criminal complaint is issued by the city clerk-treasurer for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty of ten percent of the amount due, but not less than ten dollars.

D. If the city clerk-treasurer finds that a person has engaged in any business or performed any act upon which a tax is imposed under this chapter and that person has not obtained from the city clerk-treasurer a license as required by Chapter 2.58 of this code, the city clerk-treasurer 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 city clerk-treasurer of the need to be licensed.

E. If the city clerk-treasurer 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 ten percent of the amount of the additional tax due.

1. A taxpayer fails to follow specific written tax reporting instructions when the city clerk-treasurer 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 city clerk-treasurer has not issued final instructions because the matter is under appeal pursuant to this chapter. The city clerk-treasurer shall not assess the penalty under subsection E of this section, upon any taxpayer that has made a good faith effort to comply with the specific written instructions provided by the city clerk-treasurer 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 city clerk-treasurer 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 city clerk-treasurer finds that all or any part of the deficiency resulted from an intent to evade the tax payable, the city clerk-treasurer shall assess a penalty of fifty percent of the additional tax found to be due.

G. The penalties imposed under subsections A through E of this section can each be imposed on the same tax found to be due. This subsection does not

prohibit or restrict the application of other penalties authorized by law.

H. The penalties authorized by subsections E and F of this section shall be assessed in accordance with the provisions of this chapter governing assessment of tax deficiencies. The city clerk-treasurer 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 of Black Diamond 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. 776 § 1 Exh. A (part), 2004)

5.02.220 Cancellation of penalties.

A. The city clerk-treasurer may cancel any penalties imposed under Section 5.02.210(A) of this chapter, if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not wilful neglect. Wilful 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 city clerk-treasurer 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 far cancellation of penalties must be received by the city clerk-treasurer within thirty days after the date the department 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 city clerk-treasurer may cancel the penalties in Section 5.02.210(A) of this chapter one time if a person:

1. Is not currently licensed and filing returns;

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

3. Obtained business licenses and filed past due tax returns within thirty days after being notified by the department; and

D. The city clerk-treasurer shall not cancel any interest charged upon amounts due. (Ord. 776 § 1 Exh. A (part), 2004)

5.02.230 Taxpayer quitting business—Liability of successor.

A. Whenever any taxpayer quits business, sells out, exchanges, or otherwise disposes of his or her business or his or her stock of goods, any tax payable hereunder shall become immediately due and payable. Such taxpayer shall, within ten 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: (a) 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 (b) more than six months has passed since the successor notified the city clerk-treasurer of the acquisition and the city clerk-treasurer 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 city clerk-treasurer 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. 776 § 1 Exh. A (part), 2004)

5.02.240 Administrative appeal.

Any person, except one who has failed to comply with Section 5.02.160 of this chapter, aggrieved by the amount of the fee or tax determined by the city clerk-treasurer to be required under the provisions of

this chapter may pay the amount due and appeal from such determination by filing a written notice of appeal with the city clerk-treasurer within thirty days from the date written notice of such amount was mailed to the taxpayer. The city clerk-treasurer shall, as soon as practical, fix a time and place for the hearing of such appeal before the city council, and shall cause a notice of the time and place thereof to be delivered or mailed to the parties. The decision of the city council shall indicate the correct amount of the fee or tax owing, and shall be supported by written findings of fact and conclusions of law. (Ord. 776 § 1 Exh. A (part), 2004)

5.02.260 City clerk-treasurer to make rules.

The city clerk-treasurer 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. 776 § 1 Exh. A (part), 2004)

5.02.270 Ancillary allocation authority of city clerk-treasurer.

The city clerk-treasurer 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 of Black Diamond, another city, or a contract auditor, provided, 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. 776 § 1 Exh. A (part), 2004)

5.02.280 Mailing of notices.

Any notice required by this chapter to be mailed to any taxpayer shall be sent by ordinary mail, addressed to the address of the taxpayer as shown by the records of the city clerk-treasurer. Failure of the taxpayer to receive any such mailed notice shall not release the taxpayer 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 city clerk-treasurer in writing about a change in the taxpayer's address. (Ord. 776 § 1 Exh. A (part), 2004)

5.02.290 Tax declared additional.

The tax herein levied shall be additional to any fee or tax imposed or levied under any law or any other ordinance of the city of Black Diamond except as herein otherwise expressly provided. (Ord. 776 § 1 Exh. A (part), 2004)

5.02.310 Tax constitutes debt.

Any fee or tax due and unpaid under this chapter, and all interest and penalties thereon, shall constitute a debt to the city of Black Diamond 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. 776 § 1 Exh. A (part), 2004)

5.02.320 Unlawful actions—Violation—Penalties.

A. It shall be unlawful for any person liable for fees under this chapter:

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

2. To make any false statement on any tax return;

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

4. 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 one thousand dollars, 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. (Ord. 776 § 1 Exh. A (part), 2004)

5.02.330 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. 776 § 1 Exh. A (part), 2004)

Chapter 5.08

UTILITY TAXES

Sections:

5.08.010	**Purpose.**
5.08.020	**License required.**
5.08.025	**Definitions.**
5.08.030	**Taxes levied.**
5.08.035	**Rate change.**
5.08.040	**Quarterly installments—Due when.**
5.08.045	**Exceptions and deductions—Telephone business.**
5.08.050	**Deductions from gross operating revenues—Electricity, natural gas, sewerage system business, water distribution system and solid waste collection.**
5.08.055	**Allocation of income—Cellular telephone service.**
5.08.060	**Records to be kept.**
5.08.070	**Failure to pay tax.**
5.08.080	**Payments made in error—Credits—Refunds.**
5.08.090	**Notice of annexation.**
5.08.100	**Unconstitutionality.**
5.08.110	**Administration.**

5.08.010 Purpose.

The provisions of the ordinance codified in this chapter shall be deemed to be an exercise of the power of the city to license for revenue. (Ord. 251 § 1, 1981)

5.08.020 License required.

After January 1, 1982, no person, firm or corporation shall engage in or carry on any business, occupation, act or privilege for which a tax is imposed by Section 5.08.030 without first having obtained, and being the holder of, a license so to do, to be known as an occupation license. Each such person, firm or corporation shall promptly apply to the city clerk-treasurer for such license upon such forms as

the city clerk-treasurer shall prescribe, giving such information as the clerk-treasurer shall deem reasonably necessary to enable the clerk-treasurer's office to administer and enforce this chapter; and, upon acceptance of such application by the clerk-treasurer, the clerk-treasurer shall thereupon issue such license to the applicant. The occupation license shall be personal and nontransferable and shall be valid as long as the licensee continues in the business and complies with this chapter. (Ord. 251 § 2, 1981)

5.08.025 Definitions.

Unless the context clearly indicates otherwise, the words, phrases and terms used in this chapter shall have the following meanings:

"Cellular telephone service" is a two-way voice and data telephone/telecommunications system based in whole or substantially in part on wireless radio communications and which is not subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service. The definition of cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS) and any other evolving wireless radio communications technology which accomplishes a purpose similar to cellular mobile service.

"Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which may be provided by persons not subject to regulation as telephone companies under Title 80 RCW, and for which a separate charge is made. Transmission of communication through cellular telephones is classified as "telephone business" rather than "competitive telephone service."

"Gross income" means "gross income of the business" as defined in Section 82.04.080, Revised Code of Washington, and the city incorporates by reference that definition and any amendments or additions thereto.

"Sewerage system business" means and includes:

1. Sanitary sewage disposal sewers and facilities, including without limitation on-site or off-site sanitary sewer facilities consisting of an approved septic tank or septic tank systems, or any other means of sewage treatment and disposal;
2. Combined sanitary sewage disposal and storm or surface water drains and facilities;
3. Storm or surface water drains, channels and facilities;
4. Outfalls for storm drainage or sanitary sewage and works, plants, and facilities for storm drainage or sanitary sewage treatment and disposal;
5. Any combination of or part of any or all of such facilities.

"Solid waste collection service" means receiving solid waste from any facility or location within the city for transfer, processing, treatment, storage, or disposal, including, but not limited to, all collection services, public or private dumps or landfills, transfer stations, and other similar operations.

"Solid waste," for purposes of this chapter, means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use, infectious, hazardous, or toxic wastes, and recyclable or reusable materials collected, in whole or part, for recycling or salvage.

"Telephone business" means the business of providing access to a local telephone network, local telephone network switching service, toll service, cellular telephone service, coin telephone services, telephonic, video, data, or similar communication, or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. It further includes cooperative or farmer line telephone companies or associations operating an exchange. "Telephone business" does not include the providing of competitive telephone service, the providing of cable television service, nor the providing of broadcast services by radio or television stations.

"Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale. (Ord. 756 § 1, 2004: Ord. 631 § 1, 1998: Ord. 539 § 1, 1995)

this chapter may pay the amount due and appeal from such determination by filing a written notice of appeal with the city clerk-treasurer within thirty days from the date written notice of such amount was mailed to the taxpayer. The city clerk-treasurer shall, as soon as practical, fix a time and place for the hearing of such appeal before the city council, and shall cause a notice of the time and place thereof to be delivered or mailed to the parties. The decision of the city council shall indicate the correct amount of the fee or tax owing, and shall be supported by written findings of fact and conclusions of law. (Ord. 776 § 1 Exh. A (part), 2004)

5.02.260 City clerk-treasurer to make rules.

The city clerk-treasurer 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. 776 § 1 Exh. A (part), 2004)

5.02.270 Ancillary allocation authority of city clerk-treasurer.

The city clerk-treasurer 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 of Black Diamond, another city, or a contract auditor, provided, 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. 776 § 1 Exh. A (part), 2004)

5.02.280 Mailing of notices.

Any notice required by this chapter to be mailed to any taxpayer shall be sent by ordinary mail, addressed to the address of the taxpayer as shown by the records of the city clerk-treasurer. Failure of the taxpayer to receive any such mailed notice shall not release the taxpayer 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 city clerk-treasurer in writing about a change in the taxpayer's address. (Ord. 776 § 1 Exh. A (part), 2004)

5.02.290 Tax declared additional.

The tax herein levied shall be additional to any fee or tax imposed or levied under any law or any other ordinance of the city of Black Diamond except as herein otherwise expressly provided. (Ord. 776 § 1 Exh. A (part), 2004)

5.02.310 Tax constitutes debt.

Any fee or tax due and unpaid under this chapter, and all interest and penalties thereon, shall constitute a debt to the city of Black Diamond 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. 776 § 1 Exh. A (part), 2004)

5.02.320 Unlawful actions—Violation—Penalties.

A. It shall be unlawful for any person liable for fees under this chapter:

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

2. To make any false statement on any tax return;

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

4. 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 one thousand dollars, 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. (Ord. 776 § 1 Exh. A (part), 2004)

5.02.330 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. 776 § 1 Exh. A (part), 2004)

Chapter 5.08

UTILITY TAXES

Sections:

5.08.010	**Purpose.**
5.08.020	**License required.**
5.08.022	**License fees—Time for payment—Penalty.**
5.08.025	**Definitions.**
5.08.030	**Taxes levied.**
5.08.035	**Rate change.**
5.08.040	**When tax due—Reporting period.**
5.08.045	**Exceptions and deductions—Telephone business.**
5.08.050	**Deductions from gross operating revenues—Electricity, natural gas, sewerage system business, water distribution system and solid waste collection.**
5.08.055	**Allocation of income—Cellular telephone service.**
5.08.060	**Records to be kept.**
5.08.070	**Failure to pay tax.**
5.08.080	**Payments made in error—Credits—Refunds.**
5.08.090	**Notice of annexation.**
5.08.100	**Unconstitutionality.**
5.08.110	**Administration.**
5.08.120	**Violation—Penalties.**

5.08.010 Purpose.

The provisions of the ordinance codified in this chapter shall be deemed to be an exercise of the power of the city to license for revenue. (Ord. 251 § 1, 1981)

5.08.020 License required.

After January 1, 1982, no person, firm or corporation shall engage in or carry on any business, occupation, act or privilege for which a tax is imposed by Section 5.08.030 without first having obtained, and being the holder of, a license so to do, to be known as

an occupation license. Each such person, firm or corporation shall promptly apply to the city clerk-treasurer for such license upon such forms as the city clerk-treasurer shall prescribe, giving such information as the clerk-treasurer shall deem reasonably necessary to enable the clerk-treasurer's office to administer and enforce this chapter; and, upon acceptance of such application by the clerk-treasurer, the clerk-treasurer shall thereupon issue such license to the applicant. The occupation license shall be personal and nontransferable and shall be valid as long as the licensee continues in the business and complies with this chapter. (Ord. 251 § 2, 1981)

5.08.022 License fees—Time for payment—Penalty.

A. The annual license fee for the occupation license issued pursuant to this chapter shall be sixty dollars. The fee for renewals shall be sixty dollars per year.

B. The occupation license issued pursuant to this chapter shall be valid for the year in which it was issued only. Occupation license renewals must be acquired prior to the thirty-first day of January each year. A business which renews its occupation license after January 31st shall be subject to a penalty in addition to the regular license fee in the amount specified in subsection C of this section. No renewal license shall be issued until the regular license fee and the penalty have both been paid in full.

C. Late Payment. In addition to any other penalties provided in this chapter, any business which fails to make application for an original occupation license, or fails to renew an existing license by January 31st shall be subject to the following penalties based on the number of days delinquent:

Days Delinquent	Penalty
1—30 days	$10.00
31—60 days	20.00
61—90 days	30.00
91 days or more	Misdemeanor

(Ord. 849 § 1, 2007)

5.08.025 Definitions.

Unless the context clearly indicates otherwise, the words, phrases and terms used in this chapter shall have the following meanings:

"Cable service" means: (1) the one-way transmission to subscribers of video programming or other programming service, and (2) subscriber interaction, if any, which is required for the selection by the subscriber of such video programming or other programming service.

"Cellular telephone service" is a two-way voice and data telephone/telecommunications system based in whole or substantially in part on wireless radio communications and which is not subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service. The definition of cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS) and any other evolving wireless radio communications technology which accomplishes a purpose similar to cellular mobile service.

"Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which may be provided by persons not subject to regulation as telephone companies under Title 80 RCW, and for which a separate charge is made. Transmission of communication through cellular telephones is classified as "telephone business" rather than "competitive telephone service."

"Gross income" means "gross income of the business" as defined in Section 82.04.080, Revised Code of Washington, and the city incorporates by reference that definition and any amendments or additions thereto.

"Sewerage system business" means and includes:

1. Sanitary sewage disposal sewers and facilities, including without limitation on-site or off-site sanitary sewer facilities consisting of an approved septic tank or septic tank systems, or any other means of sewage treatment and disposal;

2. Combined sanitary sewage disposal and storm or surface water drains and facilities;

3. Storm or surface water drains, channels and facilities;

4. Outfalls for storm drainage or sanitary sewage and works, plants, and facilities for storm drainage or sanitary sewage treatment and disposal;

5. Any combination of or part of any or all of such facilities.

"Solid waste collection service" means receiving solid waste from any facility or location within the city for transfer, processing, treatment, storage, or disposal, including, but not limited to, all collection services, public or private dumps or landfills, transfer stations, and other similar operations.

"Solid waste," for purposes of this chapter, means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use, infectious, hazardous, or toxic wastes, and recyclable or reusable materials collected, in whole or part, for recycling or salvage.

"Telephone business" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. It includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over Internet Protocol services or is classified by the Federal Communications Commission as enhanced or value added. Telecommunication services or telephone business also includes ancillary services that are associated with or incidental to the provision of telecommunication services including, but not limited to conference bridging, detailed telecommunications billing, directory assistance, vertical service, or voice mail services as defined in RCW 82.04.065. "Telephone business" also includes those activities previously used to define telephone business such as the business of providing access to a local telephone network, local telephone network switching service, toll service, cellular or mobile telephone service, coin telephone services, pager service or the providing of telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. The term includes the provision of cooperative or farmer line telephone services or associations operating exchanges. The term also includes the provision of transmission to and from the site of an Internet provider via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Telephone business" does not include the providing of competitive telephone service, data processing, providing of cable television service, or other providing of broadcast services by radio or television stations.

"Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale. (Ord. 849 §§ 2, 3, 2007; Ord. 756 § 1, 2004: Ord. 631 § 1, 1998: Ord. 539 § 1, 1995)

5.08.030 Taxes levied.

Upon every person, firm or corporation engaged in carrying on the following types of business for hire or for sale of a commodity or a service within or partly within the corporate limits of the city shall be levied the following tax:

A. Upon any telephone business there shall be levied a tax equal to six percent of the total gross income, including income from intrastate toll, derived from the operation of such businesses within the corporate limits of the city.

B. Upon the sale, delivery or distribution of electricity and electrical energy and for the privi-

lege of carrying on the business, there shall be levied a tax equal to six percent of the total gross operating revenue derived from sales of such electricity to ultimate users within the corporate limits of the city; provided, however, that there shall not be any tax levied for the installation charges of electrical units.

C. Upon the sale of natural, manufactured or mixed gas for residential, commercial or industrial consumption and for the privilege of carrying on the business, there shall be levied a tax equal to six percent of gross operating revenues from such sales of natural, manufactured or mixed gas within the corporate limits of the city.

D. Upon any sewerage system business, there shall be levied a tax equal to six percent of the total gross income derived from the operation of such business within or partly within the corporate limits of the city.

E. Upon any water distribution system, there shall be levied a tax equal to six percent of the total gross income derived from the operation of such business within or partly within the corporate limits of the city.

F. Upon every person or entity engaging in the business of providing solid waste collection service, there shall be levied a tax equal to six percent of the total gross income derived from the operation of such business within or partly within the corporate limits of the city.

G. Upon any cable service there shall be levied a tax equal to one percent of the total gross income derived from operation of such service within the corporate limits of the city. Such tax shall be in addition to any cable franchise fee paid the city by such person, firm, or corporation.

H. Upon any stormwater utility there shall be levied a tax equal to six percent of the total gross income derived from the operation of such utility within or partly within the corporate limits of the city. This tax shall be levied on services provided after January 1, 2009. (Ord. 849 § 4, 2007; Ord. 756 § 2, 2004; Ord. 631 § 2, 1998: Ord. 539 § 2, 1995: Ord. 277 § 1, 1982; Ord. 251 § 3, 1981)
(Ord. No. 883, § 1, 12-23-2008)

5.08.035 Rate change.

No change in the rate of tax upon persons engaging in providing cellular telephone service shall apply to business activities occurring before the effective date of the change and, except for a change in the tax rate authorized by RCW 35.21.870, no change in the rate of the tax may take effect sooner than sixty days following the enactment of the ordinance establishing the change. The city administrator shall send to each cellular telephone service company, at the address on its license, a copy of any ordinance changing the rate of tax upon cellular telephone service promptly upon its enactment. (Ord. 539 § 3, 1995)

5.08.040 When tax due—Reporting period.

A. The tax imposed by this chapter shall be due and payable in monthly installments and remittance shall be made on or before a payment due date established by the city finance director, in consultation with the mayor or his or her designee. The payment due date shall be no sooner than the fourteenth day of the month following the end of the month in which the tax accrued.

B. The payment due date may be amended from time to time when, in the determination of the finance director in consultation with the mayor or his her designee, adjustment is necessary to ensure adequate cash flow for the city or for other reasonable purposes, provided, at least thirty (30) days notice shall be given prior to any change in the due date.

C. At the finance director's discretion, businesses may be assigned to a quarterly reporting period depending on the tax amount owing, with the payment due date to be established by the finance director. (Ord. 849 § 5, 2007: Ord. 251 § 4, 1981)
(Ord. No. 916, § 1, 7-16-2009)

5.08.045 Exceptions and deductions—Telephone business.

A. There shall be excluded from the total gross income upon which the license fee or tax imposed by Section 5.08.030(A) is computed the following:

1. That portion of the gross income derived from charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges or carrier access charges relating to intrastate toll telephone charges, or for access to, or charges for, interstate services;

2. Charges by a taxpayer engaging in a telephone business to a telecommunications company, as defined in RCW 80.04.010, for telephone service that the purchaser buys for the purpose of resale;

3. Adjustments made to a billing or to a customer account or to a telecommunications company accrual account in order to reverse a billing or charge that had been made as a result of third-party fraud or other crime and was not properly a debt of a customer;

4. Charges to subscribers passed on to compensate for the cost to the company of the tax imposed by this chapter.

B. A deduction from gross income shall be allowed, only to cellular telephone service companies which keep the regular books of account on an accrual basis, for credit losses actually sustained by a taxpayer as a result of cellular telephone business which shall be phased in as follows: twenty percent of the credit losses occurring in 1995; forty percent of the credit losses occurring in 1996; sixty percent of the credit losses occurring in 1997; eighty percent of the credit losses occurring in 1998; and a complete deduction for the credit losses occurring in 1999 and thereafter.

C. A deduction from gross income shall be allowed to all other telephone business companies other than cellular telephone service companies, in the amount of credit losses and uncollectibles actually sustained by the taxpayer. (Ord. 539 § 4, 1995)

5.08.050 Deductions from gross operating revenues—Electricity, natural gas, sewerage system business, water distribution system and solid waste collection.

In computing the tax imposed under Section 5.08.030(B), (C), (D), (E), (F) and (H), there shall be deducted from the gross operating revenues or gross income the following items:

A. The amount of credit losses and uncollectibles actually sustained by the taxpayer; and

B. Amounts derived from transaction in interstate or foreign commerce or from any business in which the city is prohibited from taxing under the Constitution of the United States or the Constitution of the State; and

C. Amounts derived by the taxpayer from the city. (Ord. 756 § 3, 2004: Ord. 613 § 3, 1998: Ord. 539 § 5, 1995: Ord. 251 § 5, 1981)
(Ord. No. 883, § 2, 12-23-2008)

5.08.055 Allocation of income—Cellular telephone service.

A. Service Address. Payments by a customer for the telephone service from telephones without a fixed location shall be allocated among taxing jurisdictions to the location of the customer's principal service address during the period for which the tax applies.

B. Presumption. There is a presumption that the service address the customer supplies to the taxpayer is current and accurate, unless the taxpayer has actual knowledge to the contrary.

C. Roaming Phones. When the service is provided while a subscriber is roaming outside the subscriber's normal cellular network area, the gross income shall be assigned consistent with the taxpayer's accounting system to the location of the originating cell site of the call, or to the location of the main cellular switching office that switched the call.

D. Dispute Resolution. If there is a dispute between or among the city and another city or cities as to the service address of a customer who is receiving cellular telephone services and the dis-

pute is not resolved by negotiation among the parties, then the dispute shall be resolved by the city and the other city or cities by submitting the issue for settlement to the Association of Washington Cities (AWC). Once taxes on the disputed revenues have been paid to one of the contesting cities, the cellular telephone service company shall have no further liability with respect to additional taxes, penalties or interest on the disputed revenues, so long as said company promptly changes its billing records for future revenues to comport with the settlement facilitated by AWC.

E. The city administrator is authorized to represent the city in negotiations with other cities for the proper allocation of taxes due under subsection A of this section. (Ord. 539 § 6, 1995)

5.08.060 Records to be kept.

Each taxpayer shall keep records reflecting the amount of his gross operating revenues, and such records shall be open at all reasonable times to the inspection of the city clerk-treasurer, or his duly authorized subordinates, for verification of the tax returns or for the fixing of the tax of a taxpayer who fails to make such returns. (Ord. 251 § 6, 1981)

5.08.070 Failure to pay tax.

If any person, firm or corporation subject to this chapter fails to pay any tax required by this chapter on the date due, then there shall be added to the tax a penalty of five percent of the amount of the tax due if paid within thirty days from the date due, ten percent of the amount of the tax due if paid between thirty and sixty days from the date due, and twenty percent of the amount of the tax due if paid after sixty days from the date due, together with one and one half percent interest per month times the amount of the tax due. Any tax due together with penalties and interest remaining unpaid to the city shall constitute a debt to the city and may be collected by court proceedings, which remedy shall be in addition to all other remedies. (Ord. 415 § 1, 1989: Ord. 251 § 7, 1981)

5.08.080 Payments made in error—Credits—Refunds.

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 the request of the taxpayer, be credited against any tax due or to become due from such taxpayer hereunder or, upon the taxpayer's ceasing to do business in the city, be refunded to the taxpayer. (Ord. 251 § 8, 1981)

5.08.090 Notice of annexation.

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. 251 § 9, 1981)

5.08.100 Unconstitutionality.

The invalidity or unconstitutionality of any provision or section of this chapter shall not render any other provision or section of this chapter invalid or unconstitutional. (Ord. 251 § 10, 1981)

5.08.110 Administration.

The city council may, by resolution, 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 hereunder. (Ord. 251 § 11, 1981)

5.08.120 Violation—Penalties.

A. Any person, firm or corporation violating or failing to comply with the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine in any sum not exceeding one thousand dollars or by imprisonment in jail for a period not exceeding ninety days, or both such fine and imprisonment.

B. Civil Penalties. Any person, firm, or corporation who fails to comply with the provisions of this chapter is, in addition to any criminal

5.12.080 Orders.

All orders taken by licensed solicitors shall be in writing, stating the name as it appears on the license, and address, of both the solicitor and his employer, the terms thereof, and the amount, if any, paid in advance, and one copy shall be given the purchaser. (Ord. 164 § 8, 1974)

5.12.090 Scales, weights and measures.

The applicant for a license, if any scales, weights or measures are used in the selling of goods, wares, merchandise or services, shall present and file with his application a certificate from the State Department of Weights and Measures showing that all scales, weights and measures to be used by him in the licensed activity have been tested and found accurate and correct immediately prior to the filing of the application. (Ord. 164 § 9, 1974)

5.12.100 Time of solicitations.

No solicitations shall be made except between the hours of ten a.m. and seven p.m.

No solicitations shall be made on city-recognized holidays. (Ord. 868 § 1, 2008: Ord. 164 § 10, 1974)

5.12.110 Violation—Penalty.

Any person, firm or corporation found guilty of violating this chapter or any part of this chapter shall be guilty of misdemeanor, and upon conviction thereof shall be subject to a fine not exceeding one hundred dollars and/or thirty days in jail. (Ord. 164 § 11, 1974)

Chapter 5.16

CABARETS

Sections:

5.16.010	**Definitions.**
5.16.020	**License—Required.**
5.16.030	**License—Application—Contents.**
5.16.040	**Review by police department.**
5.16.050	**Procedure for issuing license—Public hearing.**
5.16.060	**Term of license.**
5.16.065	**Temporary cabaret license.**
5.16.070	**License fees.**
5.16.080	**Revocation or suspension—Grounds.**
5.16.090	**Initiation of revocation proceedings—Alternative methods.**
5.16.100	**Appeals.**
5.16.110	**Sale or transfer of cabaret—New license required.**
5.16.120	**Separate license required.**
5.16.130	**License additional to others.**
5.16.140	**Violation—Penalty.**

5.16.010 Definitions.

As used in this chapter, the following terms shall have the meanings set forth in this section:

A. "Cabaret" means any hotel, restaurant, cafe, lunchroom, tavern or other place of public resort open for service to the public or operated for gain or profit where liquor is served and where shows, exhibitions, dances, dancing, vocal or other live or recorded musical performances are maintained or permitted.

B. "Liquor" means all beverages included within the definition of "liquor" established by RCW Chapter 66.04, as now or hereafter amended.

C. "Liquor license" means any liquor license issued by the state on an annual or permanent basis, regardless of the class designation of the licensed premises to which the license pertains.

D. "Person" means one or more natural persons of either sex, firms, partnerships and corporations and other legal entities, whether acting by themselves or by or through an agent or employee. (Ord. 307 § 1, 1984)

5.16.020 License—Required.

It is unlawful for any person to conduct, manage or operate a cabaret in the city unless such person shall first have obtained and has in full force and effect a valid license issued by the city to do so, obtained in the manner provided in this chapter. (Ord. 307 § 2, 1984)

5.16.030 License—Application—Contents.

No cabaret license shall be issued or renewed except upon written application made to the city clerk-treasurer at City Hall. The application shall be signed by the person who intends to conduct, manage or operate the proposed cabaret and shall be in such form as the city clerk-treasurer shall prescribe. The application shall be accompanied by a nonrefundable license fee in the amount of the first annual license fee for the cabaret and shall contain, at a minimum, the following information:

A. The name, address and telephone number of the owner of the premises on which the cabaret is to be conducted, managed or operated;

B. The name, address and telephone number of the person intending to operate, conduct and manage the cabaret, if different from the owner;

C. The name of the premises or business operated thereon, if any;

D. A certification from the city building official that the premises on which the cabaret is to be located meets all current zoning and building code requirements;

E. A statement of the type of liquor license which covers the premises on which the cabaret is to be conducted, operated or managed and the dates during which such liquor license will be in force; and

F. Such other information as the city clerk-treasurer may reasonably require to evaluate the permit. (Ord. 307 § 3, 1984)

5.16.040 Review by police department.

Upon the receipt of a completed application for a cabaret license, the city clerk-treasurer shall refer the application to the chief of police who shall cause the police department to conduct a full investigation as to the truth of the statements contained therein, and any and all other matters which might tend to aid in determining whether or not such application should be granted. Upon completion of the police department investigation, the chief of police shall forward the results of the investigation in writing to the city clerk-treasurer together with a recommendation from the chief of police as to whether the license should be granted or denied. (Ord. 307 § 4, 1984)

5.16.050 Procedure for issuing license—Public hearing.

A. Upon receipt of the written recommendation of the chief of police, the city clerk-treasurer shall schedule a public hearing on the cabaret license application before the city council. The city clerk-treasurer shall give notice of the public hearing to the applicant and all owners of real property located within three hundred feet of the boundaries of the property on which the cabaret is to be operated. The notice shall be given at least ten days prior to the date set for the hearing and shall include the date, time, place and purpose of the hearing.

B. At the public hearing the city council shall consider all relevant evidence to determine whether the application for a cabaret license should be approved, disapproved, or approved with conditions. In making its determination, the city council shall consider whether all certificates required to be made by the building official have been made, whether all statements contained in the application are true based upon the investigation conducted by the chief of police, whether the public interest will be served by the proposed cabaret, and whether all adverse

impacts on the neighborhood in which the cabaret is to be located are or can be mitigated by the proposal. Any hearing may be continued at the discretion of the city council.

C. Based upon the evidence presented at the hearing, the city council shall approve, disapprove, or approve the application for a cabaret license with conditions. In the event that conditions are imposed, the conditions shall be clearly noted on the cabaret license. (Ord. 307 § 5, 1984)

5.16.060 Term of license.

Except for any temporary permit issued under this chapter, all licenses issued pursuant to the provisions of this chapter shall be valid until December 31st of the year in which they are issued, and all renewals thereafter shall for a period of one calendar year commencing January 1st of the year for which the license is issued and terminating and expiring December 31st of the same year. (Ord. 565 § 1, 1995: Ord. 307 § 6, 1984)

5.16.065 Temporary cabaret license.

A. The city shall be authorized to issue a temporary cabaret license for a duration not to exceed three consecutive days, subject to any restrictions or conditions imposed by the city council reasonably related to protection of the health, welfare and safety of the public.

B. The procedure for obtaining a temporary cabaret license shall be that established in Sections 5.16.030, 5.16.040 and 5.16.050. Applicants shall pay the license fee specified in the city's consolidated list of fees, as authorized in Section 2.62.010. Said license shall be subject to revocation as set forth in Sections 5.16.080, 5.16.090 and 5.16.100.

C. Any licensee or related entity may apply for no more than one temporary cabaret permit in any twelve-month period.

D. A temporary cabaret license shall automatically expire at midnight upon the last day of the period for which the license was issued. (Ord. 565 § 2, 1995)

5.16.070 License fees.

The fee for each license and renewal thereof required by this chapter, including a temporary cabaret license, shall be the amount set forth in the city's consolidated list of fees, as authorized in Section 2.62.010. (Ord. 565 § 3, 1995: Ord. 307 § 7, 1984)

5.16.080 Revocation or suspension—Grounds.

Any license issued under the provisions of this chapter may be suspended or revoked pursuant to the procedures set forth in Section 5.16.100 whenever the licensee, or any person acting on behalf of the licensee has:

A. Violated any city ordinance of the city in the operation of a cabaret; or

B. Violated any state law or regulation governing the sale, dispensing or furnishing of liquor; or

C. Made any false statement in connection with the application or renewal of any license required by this chapter; or

D. Conducted, operated or managed the cabaret in such a manner as to permit any noise generated by the conduct or operation of the cabaret to unreasonably interfere with or disturb the peace of two or more owners or lessees of property located within three hundred feet of the cabaret. (Ord. 307 § 8, 1984)

5.16.090 Initiation of revocation proceedings—Alternative methods.

A. Initiation by city clerk-treasurer. Whenever the city clerk-treasurer determines that there is cause for suspending or revoking any license issued pursuant to this chapter, the city clerk-treasurer may initiate revocation proceedings before the city council. The city clerk-treasurer shall initiate such proceedings by notifying the person holding the license by registered or certified mail, return receipt requested, of the city clerk-treasurer's determination that grounds exist for the revocation or suspension

of the license and of the date on which the city clerk-treasurer shall request that the council revoke or suspend the license. Notice mailed to the address on the license shall be deemed received three days after mailing. The notice shall specify the grounds for suspension or revocation of the license and shall also specify that the holder of the license may request a hearing before the city council on the revocation or suspension by filing a written request for such hearing with the city clerk-treasurer within five days after the notice of suspension or revocation is received or deemed received. The licensee may appear at the hearing and be heard in opposition to such revocation or suspension. Following the hearing, the city council may revoke the license or suspend the license subject to reinstatement upon such terms and conditions as the city council may set.

B. Initiation by Petition. As an alternative to initiation by the city clerk-treasurer, proceedings to revoke or suspend any cabaret license issued under the provisions of this chapter may be commenced by the filing of a petition with the city clerk-treasurer by a majority of the owners or lessees of property located within three hundred feet of the premises for which the license has been issued and stating that the cabaret is being operated or conducted in such a manner as to violate subsection D of Section 5.16.080. Upon the filing of such a petition with the city clerk-treasurer, the city clerk-treasurer shall examine the petition for sufficiency of the signatures and for the required statement of grounds. If the clerk-treasurer finds the signatures to be sufficient and the grounds properly alleged, the clerk-treasurer shall initiate revocation or suspension proceedings pursuant to subsection A of this section. (Ord. 307 § 9, 1984)

5.16.100 Appeals.

The decision of the city council to deny, revoke or suspend any license issued under the provisions of this chapter shall be final and all appeals from such decision must be made by an appropriate request for review filed in the Superior Court of the State of Washington for King County within fourteen days after the decision is rendered by the city council. (Ord. 307 § 10, 1984)

5.16.110 Sale or transfer of cabaret—New license required.

Upon the sale or transfer of any premises for which a cabaret license has been issued pursuant to this chapter, the license issued to the prior owner or transferor shall automatically expire on the date of such sale or transfer and the new owner or transferee intending to continue or operate such cabaret in the city shall apply for and obtain a new license pursuant to the procedures established by this chapter. (Ord. 307 § 11, 1984)

5.16.120 Separate license required.

A separate cabaret license shall be required for each premises on which a cabaret is operated in the city. (Ord. 307 § 12, 1984)

5.16.130 License additional to others.

The license provided for under the provisions of this chapter shall be in addition to any other license or permit otherwise required by city ordinances for the premises or the operation of any business upon the premises on which the cabaret is to be conducted or operated. (Ord. 307 § 13, 1984)

5.16.140 Violation—Penalty.

Any person violating or failing to comply with any of the provisions of this chapter is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed five thousand dollars or by imprisonment not to exceed one year or by both such fine and imprisonment. Each separate day during which any violation occurs or continues shall be deemed a separate violation of this chapter and a separate offense under this section, and punishable as such. (Ord. 307 § 14, 1984)