

**ORDINANCE NO. 09-0331**

**AN ORDINANCE OF THE CITY OF EDGEWOOD, WASHINGTON, RELATING TO TAXATION OF UTILITY PROVIDERS; ENACTING CHAPTER 5.08 OF THE EDGEWOOD MUNICIPAL CODE, ESTABLISHING A THREE AND ONE HALF PERCENT (3.5%) UTILITY TAX ON THE GROSS RECEIPTS OF THOSE ENGAGED IN THE TELEPHONE BUSINESS, THE CABLE TV BUSINESS, THE DISTRIBUTION OF NATURAL GAS, ELECTRICITY, SANITARY SEWER, STORM WATER AND SOLID WASTE COLLECTION SERVICES; ESTABLISHING STANDARDS AND PROCEDURES FOR COLLECTION OF THE SAME; ESTABLISHING PENALTIES FOR FAILURE TO TIMELY REGISTER OR PAY THE UTILITY TAX; PROVIDING FOR SEVERABILITY, PROVIDING FOR AN AUTOMATIC SUNSET DATE, AND FIXING AN EFFECTIVE DATE.**

**WHEREAS**, RCW 35.21.865 authorizes the City to establish a utility tax of up to 6% of the gross revenues of those engaged in the telephone business and those engaged in the distribution of natural gas and electricity; and

**WHEREAS**, RCW 35A.82.020 authorizes the City to require business licenses and to impose excise taxes for the purpose of regulation and revenue; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1.** Chapter 5.08 of the Edgewood Municipal Code is hereby enacted to read as follows:

**CHAPTER 5.08  
UTILITY TAXES**

**Sections:**

- 5.08.010 Purpose.**
- 5.08.020 Definitions.**
- 5.08.030 Businesses subject to tax.**
- 5.08.040 Exceptions and deductions from gross income**
- 5.08.050 Quarterly returns and payments.**
- 5.08.060 Allocation of income for cellular telephone service.**
- 5.08.070 Books and records -- Inspection and confidentiality.**
- 5.08.080 Investigation of returns.**
- 5.08.090 Over or under payment.**
- 5.08.100 Failure to apply for license or make return.**
- 5.08.110 Appeal to City Council.**
- 5.08.120 Rules and regulations.**
- 5.08.130 Unlawful acts.**
- 5.08.140 Penalty for violation.**
- 5.08.150 Rate change.**
- 5.08.160 Refund application procedures.**
- 5.08.170 Refund amounts.**
- 5.08.180 Refund period.**

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

**5.08.020 Definitions.** Where used in this chapter, the following words and terms shall have the meanings as defined in this section, unless, from the context, a more limited or different meaning is clearly defined or apparent:

- A. "Cellular telephone service" means a one or two-way telecommunications system used to transmit voice and/or data-based signals or content 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, pager services, 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, including paging. Cellular telephone service shall not include competitive telephone service.
- B. "Director" shall mean the City Manager or designee.
- C. "Gross income" means the value proceeding or accruing from the sale of tangible property or service, and receipts (including all sums earned or charged, whether received or not) by reason of the investment of capital of the business engaged in, including rentals, royalties, fees or other emoluments, (except receipts or proceeds from the use or sale of real property or any interest therein, and proceeds from the sale of notes, bonds, mortgages or other evidences of indebtedness or stock and the like) and without any deduction on account of the cost of the property sold, the cost of materials used, labor costs, interest or discount paid, taxes, (excluding taxes imposed by this Chapter) or any expense whatsoever, and without any deduction on account of losses.
- D. "Household" means a single service address such as house or apartment number, regardless of the number of persons living at the service address.
- E. "Low income" means a household earning less than fifty percent of median income as defined by the U.S. Department of Housing and Urban Development, as verified by Pierce County Department of Social Services through Community Development Block Grant regulations, as amended annually.
- F. "Person" or "persons" means natural persons of either gender, firms, co-partnerships, corporations, municipal corporations, and other associations of natural persons whether acting by themselves or by servants, agents or employees.
- G. "Taxpayer" means any person liable for the license fee or taxes imposed by this chapter.
- H. "Tax year" or "taxable year" means the twelve month period commencing January 1st and ending December 31st of the same year.

**5.08.030 Businesses subject to tax.** There is hereby levied upon all persons engaged in business activities taxable under this chapter a tax in the amounts to be determined by the application of the respective rates against gross income of such taxpayer. Taxpayers engaged in or carrying on the business shall be charged with collection of the tax as a condition of doing business, and the tax shall be levied thereafter upon their subscribers at the rate set forth below.

- A. Upon every person engaged in or carrying on a telephone business, as defined in RCW 82.16.010, as said statute presently exists or is hereafter amended, a tax equal to three and one-half percent (3.5%) of the total gross income, including revenues for intrastate toll,

derived from the operation of such business within the City. To the extent permitted by applicable federal and state law, any telecommunications services provided by a cable operator (as defined in 47 U.S.C. Section 522(5)) or other persons over cable television facilities owned or controlled by a cable operator shall be taxable hereunder.

- B. Upon every person engaged in a gas distribution business, as defined in RCW 82.16.010, as said statute presently exists or is hereafter amended, a tax equal to three and one-half percent (3.5%) of the total gross income derived from the operation of such business within the City.
- C. Upon every person engaged in a light or power business, as defined in RCW 82.16.010, as said statute presently exists or is hereafter amended, a tax equal to three and one-half percent (3.5 %) of the total gross income derived from such business within the City.
- D. Upon every person engaged in or carrying on the sale of cellular telephone service, a tax equal to three and one-half percent (3.5%) of the total gross income derived from the operation of such business within the City.
- E. Upon every person engaged in the service of garbage, refuse, and solid waste collection, a tax equal to three and one-half percent (3.5%) of the total gross income derived from the operation of such business within the City.
- F. Upon every person engaged in the business of operating or providing cable television service, a tax equal to three and one-half percent (3.5%) of the total gross income derived from the operation of such business within the City.
- G. Upon every person engaged in the business of providing sanitary and/or storm sewer services, a tax equal to three and one-half percent (3.5%) of the total gross income derived from the operation of such business within the City.

**5.08.040 Exceptions and deductions from gross income.** There shall be excluded from the total gross income upon which the utility tax is computed the following:

- A. Revenues derived from transactions in interstate or foreign commerce, or from business done for the United States and the state, or their officers or agents or any amounts paid by the taxpayer to the United States and the state, the City or to any political subdivision of the state, as excise taxes levied or imposed upon the sale or distribution of property or services, or as a utility tax.
- B. That portion of gross income derived from charges to another telecommunications company, as defined in RCW 80.40.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate service.
- C. Charges incurred by a taxpayer engaging in a telephone business and paid to a telecommunications company, as defined in RCW 80.40.010, for telephone service that the taxpayer purchases for the purpose of resale.
- D. Adjustments made to a billing or to a customer account or a telecommunications company accrual account in order to reverse a billing or a charge that has been made as a result of third party fraud or other crime and was not properly a debt of a customer.
- E. Cash discounts and credit losses actually sustained by a taxpayer on an accrual basis.
- F. Revenues from transactions or activities which the City is prohibited from taxing under the laws and/or Constitutions of the United States or the State of Washington.

**5.08.050 Quarterly returns and payment.**

- A. On or before the 20th day following the end of each calendar quarter (i.e., April 20<sup>th</sup>, July 20<sup>th</sup>, October 20<sup>th</sup>, and January 20<sup>th</sup>), each taxpayer shall remit payment for the preceding quarter's utility tax, accompanied by a quarterly statement showing the manner in which the quarterly payment is calculated. The quarterly statement shall be upon a form provided by the director and shall contain such information as may be necessary to enable the director to arrive at the lawful amount of the tax. The taxpayer shall, in a legible manner provide all information required by the director on such returns, shall sign the same, and by affidavit shall swear or affirm that the information therein given is full and true and that the taxpayer knows the same to be so.
- B. Quarterly returns shall be accompanied by a remittance by bank draft, certified check, cashier's check or money order, payable to the City of Edgewood, or in cash, in the amount of the fee or tax owed, including delinquencies and installments.
- C. Payment made by draft or check shall not be deemed a payment of the fee or tax unless and until the same has been honored in the usual course of business, nor shall acceptance of any such check or draft operate as an acquittance or discharge of the fee or tax unless and until the check or draft is honored.
- D. If the taxpayer is a partnership, returns must be made by one of the partners; if a corporation, by one of the officers thereof, if a foreign corporation, co-partnership or nonresident individual, by the resident agent or local manager of said corporation, co-partnership or individual.

**5.08.060 Allocation of income for cellular telephone service.**

- A. Service Address. Payments by a customer for the telephone service from telephones without a fixed location (e.g., cellular telephone service) shall be allocated among taxing jurisdictions to the location which is the customer's principal service address during the period for which the tax applies.
- B. Presumption. There is a presumption that the service address a customer supplies to the taxpayer is current and accurate, unless the taxpayer has actual knowledge to the contrary.
- C. Roaming Phones. When 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 among one or more other cities, and/or the taxpayer, as to the service address of a customer who is receiving cellular telephone services, and the dispute 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). The taxpayer shall have no further liability with respect to additional taxes on the disputed revenues, but will charge his or her billing records for future revenues to comport with the settlement facilitated by AWC.
- E. Authority of Director. The director is authorized to represent the City in negotiations with other cities for the proper allocation of cellular telephone service taxes imposed pursuant to this chapter.

**5.08.070 Books and records - Inspection and confidentiality.**

- A. It is the duty of each taxpayer to keep and enter in a proper book or set of books or records an account which shall accurately reflect the amount of its gross income, which account shall be open to inspection by the director, or his or her designee at a reasonable time upon request, and from which said officer the director or his or her designee may verify returns made by the taxpayer.
- B. To the extent consistent with Chapter 42.17 RCW, Chapter 42.56 RCW and other applicable statutes, the applications, statements or returns made to the director pursuant to this chapter shall not be made public, nor shall they be subject to the inspection of any person except the mayor, the City Attorney, the director, or his or her authorized agent and members of the City Council.

**5.08.080 Investigation of returns.** If any taxpayer fails to apply for a license or make his or her return, or if the director is dissatisfied as to the correctness of the statements made in the application or return of any taxpayer, the director, or his or her designee, may, to the extent and in the manner permissible under applicable law : (1) enter the premises of such taxpayer at any reasonable time for the purpose of inspecting and auditing the taxpayer's books or records to ascertain the amount of the fee or tax or to determine the correctness of such statements, as the case may be; (2) examine any person under oath administered by the director, or his or her designee, touching the matters inquired into; or (3) fix a time and place for an investigation of the correctness of the return, and issue a subpoena to the taxpayer, or any other person, to attend such investigation and testify, under oath administered by the director, or his or her agent, in regard to the matters inquired into and may, by subpoena, require him or her, or any person, to bring with him or her such books, records and papers as may be necessary. In the event that any such audit reveals an underpayment of ten percent (10%) or more, the taxpayer shall, in addition to the penalties provided by this chapter, be responsible for all of the costs associated with the audit, including, but not limited to, staff time and overhead, accounting fees, professional service fees, and attorneys' fees.

**5.08.090 Over or under payment.**

- A. Overpayment. If the director, upon investigation or upon checking returns, finds that the fee or tax paid by a taxpayer is more than the amount required of the taxpayer, he or she shall return the amount overpaid, upon the written request of the taxpayer. Any refund request not submitted within three (3) years of the alleged overpayment shall be forever barred.
- B. Underpayment. If the director finds that the fee or tax paid by a taxpayer is less than required, he or she shall send a statement to the taxpayer showing the balance due, together with a penalty of ten percent (10%) of the amount due, and the taxpayer, shall within twenty (20) days, pay the amount shown thereon. If payment is not received by the director by the due date specified in the notice, the director shall add a penalty of an additional twenty-five percent (25%) of the amount of the additional tax found due. In the event that the balance due, including all penalties, is not paid in full within thirty (30) days from the date specified, the penalty shall be increased by fifteen percent (15%) of the amount due and the total amount due shall accrue interest at the rate of twelve percent (12%) per annum. If the director finds that all, or any part of, the deficiency resulted from an intent to evade the tax payable hereunder, a penalty of fifty percent (50%) of the additional tax found to be due shall be added and the amounts due, including penalties, shall accrue interest at the rate of twelve percent (12%) per annum from the date the tax became due and the date payment is actually made.

**5.08.100 Failure to make return.** If any taxpayer fails to make a return or pay the fees or taxes therefore, or any part thereof, the director shall ascertain the amount of the fee or tax or installment thereof due and shall notify the taxpayer thereof, who shall be liable therefore in any suit or action by the City for the collection thereof. In the event that any taxes imposed by this chapter remain unpaid, the director may refer such claims to a collection agency or to the City Attorney for collection. If referred to the City Attorney for collection, the City Attorney shall, with the assistance of the director, collect the same by any appropriate means or by suit or action in the name of the City. In the event that the City prevails on any claim that a taxpayer is noncompliant with the terms of this chapter, the City shall be entitled to an award of its reasonable attorneys' fees and other professional expenses associated with prosecuting the action.

**5.08.110 Appeal to City Council.**

- A. Any taxpayer aggrieved by the amount of the fee, tax, or penalty found by the director to be required under the provisions of this chapter, may appeal to the City Council from such finding by filing a written notice of appeal with the director within five (5) days from the time such taxpayer was given notice of such amount and paying an appeal fee in accordance with the City's adopted fee schedule. The City Clerk shall, as soon as practicable, fix a time and place for the hearing of such appeal, which time shall be not more than thirty (30) days after the filing of the notice of appeal, and the City Clerk shall cause a notice of the time and place thereof to be delivered or mailed to the appellant. At such hearing the taxpayer shall be entitled to be heard and to introduce evidence on his or her own behalf. The City Council shall thereupon ascertain the correct amount of the fee, tax, or penalty by resolution and the director shall immediately notify the appellant thereof, which amount, together with costs of the appeal including outside legal, accounting, and other expenses, if the appellant is unsuccessful therein, must be paid within ten (10) days after such notice is given.
- B. The City Council may direct that the appeal hearing provided by subsection (A) of this section be conducted by a hearing officer appointed by the City for that purpose. In such case, the hearing officer shall conduct an evidentiary hearing as provided in subsection (A) of this section and forward findings, conclusions, and a recommendation to the City Council for final action. Unless otherwise agreed to by the parties, the hearing officer shall convene the hearing within thirty (30) days of the matter being referred by the City Council and shall enter his or her written findings, conclusions, and recommendation within fifteen (15) days following conclusion of the hearing. Upon receipt of the hearing officer's findings, conclusions, and recommendation, the City Council shall either adopt the same as their own decision, conduct their own hearing and adopt new findings and conclusions, or remand the matter to the hearing officer for further review.
- C. Any judicial appeal of the City Council's final determination of such an appeal shall be filed and served within twenty-one (21) days of the date of the City Council's final vote on the matter, and the taxpayer shall be responsible for payment of the costs associated with producing the City's administrative record therein.

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

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

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

**5.08.150 Rate change.** No change in the rate of tax upon persons engaging in providing services taxable under this chapter shall apply to business activities occurring before the effective date of the change, and, except for a change in the tax rate authorized by RCW 35.21.870, no change in the rate of the tax may take effect sooner than sixty (60) days following the enactment of the ordinance establishing the change. The director, or his or her designee, shall send to each taxpayer a copy of any ordinance changing the rate or tax upon taxable services promptly upon its enactment.

**5.08.160 Refund application procedures.**

- A. Eligible low income households who meet low income criteria established under this chapter shall apply each year by June 30th to City Hall for a refund as a credit for payment of utility tax paid during the preceding year.
- B. Each applicant will be asked to sign a sworn statement that his or her household's income meets the refund program's low income and residence criteria.
- C. Each applicant must have been a resident of the City of Edgewood for at least six months during the refund period.

**5.08.170 Refund amounts.** All eligible low income households will be entitled to an annual refund of \$100.

**5.08.180 Refund period.** Refunds shall be calculated for that period of the preceding calendar year during which the utility tax was assessed.

**Section 2. Severability.** If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

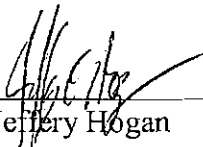
**Section 3. Effective Date.** This ordinance is subject to referendum as set forth in RCW 35.21.706. Any duly qualified person may file a referendum petition with the City Clerk within seven (7) days after the passage of this ordinance. In the event that such a petition is filed, the City Clerk shall, within ten (10) days, confer with the petitioner regarding the form and style of the petition, secure an accurate, concise, and positive ballot title from the City Attorney, and assign an

identification number to the petition. Thereafter, the petitioner shall have thirty (30) days within which to gather signatures from not less than fifteen percent (15%) of the City's registered voters as of the last municipal general election, upon petition forms which contain the ballot title and the full text of the measure to be referred. The City Clerk shall verify the sufficiency of the signatures on the petition, and, if sufficient valid signatures are properly submitted, shall certify the referendum measure to the next election ballot within the City or at a special election ballot as provided pursuant to RCW 35.17.260(2). In the event that no referendum petition is filed, this ordinance shall take effect 60 days after its passage and publication of an approved summary thereof consisting of the title.

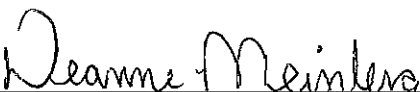
**Section 4. Sunset.** This ordinance shall sunset automatically 36 months after its effective date. PROVIDED, that the utility tax imposed hereunder shall continue to be imposed through the end of the calendar quarter within which said 36 month sunset date occurs, and the final taxpayer payment for said calendar quarter shall thereafter be due pursuant to EMC 5.08.050(A).

**Presented to Council for First Reading on November 24, 2009**  
**Presented to Council for Second Reading on December 8, 2009**

**ADOPTED BY THE CITY COUNCIL ON THE 8<sup>th</sup> DAY OF DECEMBER, 2009**

  
\_\_\_\_\_  
Mayor Jeffrey Hogan

**ATTEST/AUTHENTICATED:**

  
\_\_\_\_\_  
Deputy City Clerk Deanne Meinberg

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
City Attorney

Date of Publication: December 16, 2009

Effective Date: *In the event that no referendum petition is filed, this ordinance shall take effect 60 days after its passage and publication of an approved summary thereof consisting of the title in the City's official newspaper.*

**CITY OF EDGEWOOD**  
**2224 104<sup>th</sup> AVENUE EAST, EDGEWOOD, WA 98372-1513**  
**PH: (253) 952-3299 ♦ Fax: (253) 952-3537**

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**LEGAL NOTICE**

December 9, 2009

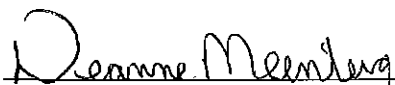
**NOTICE OF ORDINANCE PASSED BY EDGEWOOD CITY COUNCIL**

The following is a summary of an Ordinance passed by the City of Edgewood City Council on December 8, 2009 and, in the event that no referendum petition is filed, this ordinance shall take effect 60 days after its passage and publication of an approved summary thereof consisting of the title in the City's official newspaper.

**ORDINANCE NO. 09-0331**

**AN ORDINANCE OF THE CITY OF EDGEWOOD, WASHINGTON, RELATING TO TAXATION OF UTILITY PROVIDERS; ENACTING CHAPTER 5.08 OF THE EDGEWOOD MUNICIPAL CODE, ESTABLISHING A THREE AND ONE HALF PERCENT (3.5%) UTILITY TAX ON THE GROSS RECEIPTS OF THOSE ENGAGED IN THE TELEPHONE BUSINESS, THE CABLE TV BUSINESS, THE DISTRIBUTION OF NATURAL GAS, ELECTRICITY, SANITARY SEWER, STORM WATER AND SOLID WASTE COLLECTION; ESTABLISHING STANDARDS AND PROCEDURES FOR COLLECTION OF THE SAME; ESTABLISHING PENALTIES FOR FAILURE TO TIMELY REGISTER OR PAY THE UTILITY TAX; PROVIDING FOR SEVERABILITY, PROVIDING FOR AN AUTOMATIC SUNSET DATE, AND FIXING AN EFFECTIVE DATE.**

The full text of the Ordinance is available at the City Clerk's office, Edgewood City Hall, 2224 104<sup>th</sup> Avenue East, Edgewood, Washington, 98372-1513, (253) 952-3299

  
Deanne Meinberg, Deputy City Clerk

Published in the Pierce County Herald on December 16, 2009.