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ORDINANCE NO. 200

AN ORDINANCE OF THE CITY OF WOODINVILLE, WASHINGTON, AMENDING TITLE 3 OF THE WOODINVILLE MUNICIPAL CODE TO ADD A NEW CHAPTER 3.30 IN ORDER TO LEVY A TWO PERCENT UTILITY TAX ON THE GROSS INCOME OF ELECTRIC LIGHT AND POWER AND NATURAL OR MANUFACTURED GAS BUSINESSES WITHIN THE CITY, AND A FOUR PERCENT UTILITY TAX ON THE GROSS INCOME OF SOLID WASTE COLLECTION AND TELEPHONE BUSINESSES WITHIN THE CITY, ADOPTING REGULATIONS FOR THE SAME, SETTING THE REVENUE GENERATED INTO THE 177th STREET CONSTRUCTION FUND, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, RCW 35A.82.020 authorizes the City to impose excises for revenue purposes, and

WHEREAS, pursuant to RCW 35A.82.020, the City Council of the City of Woodinville wishes to levy a utility tax for revenue, and

WHEREAS, the City Council has determined that additional revenue is required for capital street projects, and

WHEREAS, the City Council wishes to levy a two percent utility tax on the gross income of electric light and power, and natural or manufactured gas businesses within the City, and a four percent utility tax on the gross income of solid waste collection and telephone businesses within the City, and

WHEREAS, the revenue generated by this ordinance shall be used solely for the improvements to the intersection of 131st Ave. and N.E. 177th Place, and the necessary improvements, including right-of-way acquisition of N.E. 177th Place from 131st to 140th, and

WHEREAS, the City Council wishes to review said utility taxes annually, simultaneously with the Council's annual consideration of the City's budget, and

WHEREAS, the City Council wishes to amend Title 3 of the Woodinville Municipal Code to add a new Chapter, "Utilities Tax," NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF WOODINVILLE, WASHINGTON,
DO ORDAIN AS FOLLOWS:

Section 1. New Chapter Added. Title 3 of the Woodinville Municipal Code is hereby amended by adding a new Chapter 3.30, entitled "Utilities Tax", to read as follows:

Chapter 3.30

UTILITIES TAX

Sections:

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|-----------------|--|
| 3.30.010 | Purpose and effect. |
| 3.30.020 | Definitions. |
| 3.30.030 | License Required. |
| 3.30.040 | Utility occupations subject -- Rate. |
| 3.30.050 | Return required--Due dates and payment. |
| 3.30.060 | Payment procedure. |
| 3.30.070 | More than one business. |
| 3.30.080 | Exceptions and deductions. |
| 3.30.090 | Allocation of income -- Cellular telephone service. |
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| 3.30.120 | Sale of business. |
| 3.30.130 | Not exclusive. |
| 3.30.140 | Reserves into fund. |
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3.30.170	Overpayment of tax.
3.30.180	Debt to city when unpaid.
3.30.190	Rules and regulations.
3.30.200	Appeals.
3.30.210	Violation -- unlawful acts.
3.30.220	Sunset.

3.30.010 Purpose and effect. The provisions of this chapter shall be deemed to be an exercise of the power of the city to license for revenue pursuant to the laws of the State of Washington.

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

(a) "Cellular telephone service" means 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.

(b) "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 can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

(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 investment of capital in the business engaged in (including rentals, royalties, 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 evidence of indebtedness, or stocks and the like) and without any deduction on account of the cost of the property sold, cost of materials used, labor costs, interest or discount paid, or any expenses

whatsoever, and without any deduction on account of losses. Further deductions and exceptions from gross income upon which the fee or tax described in this chapter is computed are set forth in Section 3.30.080.

(d) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, corporation, joint venture, club, company, joint stock company, business trust, public utility districts, municipal corporation or department thereof, public or private utilities, and all other associations, whether acting by themselves or by servants, agents or employees.

(e) "Tax year or taxable year" means the year commencing January 1st and ending on December 31st, of such year, or in lieu thereof, the taxpayer's fiscal year when permission is obtained from the City Clerk to use the same as the tax period.

(f) "Taxpayer" means any person liable for the license fee or tax imposed by this chapter.

(g) "Telephone business" means the business of providing access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, or providing 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. Telephone business includes the provision of transmission to and from the site or an Internet provider via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. It also 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, the providing of broadcast services by radio and television stations, nor the provision of internet service as defined in RCW 82.04.297, including the reception of dial-in-connection, provided at the site of the internet service provider.

3.30.030 License Required.

A. On and after June 1, 1998, no person shall engage in any business, occupation or activity in the city for which a tax is

imposed by Section 3.30.040 without first having obtained and being the holder of a valid license to do so, to be known as a "utility occupation license." The city shall be exempt from such license requirement. The annual license fee for such license shall be \$20.00. Each such person shall promptly apply to the city Clerk for such license upon such forms as the Clerk shall prepare and provide, giving such information as the Clerk shall deem reasonably necessary to enable the Clerk to administer and enforce this chapter; and upon acceptance of such application by the Clerk, the Clerk shall thereupon issue such license to the applicant. Such utility occupation license shall be personal and nontransferable and shall be valid as long as the licensee shall continue in the business and shall comply with this chapter.

3.30.040 Utility occupations subject — Rate. From and after June 1, 1998, there is levied upon, and there shall be collected from every person engaged in carrying on the following business for hire or for sale of a commodity or a service within or partly within the corporate limits of the city a tax for the privilege of so doing business as defined as follows:

(a) Electric Light and Power. By authority of RCW 35.21.870, a fee or tax is levied upon all persons engaged in or carrying on the business of furnishing electric light and power within the city, in an amount equal to two percent (2%) of the total gross income from such business in the city during the current calendar year for which a license is required;

(b) Natural or Manufactured Gas and Service. By authority of RCW 35.21.870, a fee or tax is levied upon all persons engaged in or carrying on the business of transmitting, distributing, selling and furnishing natural and/or manufactured gas within the city, in an amount equal to two percent (2%) of the total gross income from such business in the city during the calendar year for which a license is required.

(c) Telephone Business. By authority of RCW 35.21.870, a fee or tax is levied upon all persons engaged in or carrying on any telephone business within the city, in an amount equal to four percent (4%) of the total gross income of such business in the city during the current calendar year for which a license is required, including revenues from intrastate long distance toll service.

(d) Garbage Collection. A fee or tax is levied upon all persons engaged in or carrying on the business of solid waste collection, transportation, and/or disposal within the city, in an amount equal to four percent (4%) of the total gross income from such business in the city during the calendar year for which a license is required.

3.30.050 Return required — Due dates and payment. The tax imposed by this chapter, except the annual license fee required to accompany the application for the utility occupation license and renewal, shall be due and payable in monthly installments. The remittance shall be made as hereinafter provided and shall be accompanied by a return on a form to be provided and prescribed by the City Clerk. The return and remittance shall be in the city Clerk's office by 5:00 p.m. Pacific time, on or before the last day of each month succeeding the end of the month in which the tax accrued. The taxpayer shall be required to swear or affirm in writing on the return that the information therein given is full and true and that the taxpayer knows it to be so. Whenever the total tax for which any person is liable under this chapter does not exceed the sum of \$15.00 for any monthly period, an annual return may be made upon written request and subject to the approval of the City Clerk. The Finance Director may also require verified annual returns from any taxpayer, setting forth such additional information as it may deem necessary to correctly determine tax liability.

Whenever a taxpayer commences to engage in business during any monthly period, his or her first return and tax shall be based upon and cover the portion of the month during which he or she engaged in business.

3.30.060 Payment procedure. The tax shall be paid at the time the tax return is filed with the City Clerk to the Finance Director by bank draft, certified check, cashier's check, personal check or money order or in cash. If payment is made by draft or check, the tax shall not be deemed paid until the check or draft is honored in the usual course of business; nor shall the acceptance of any sum by the Finance Director be an acquittance or discharge of the tax due unless the amount of payment is in full and is the actual amount due.

3.30.070 More than one business. Any person engaged in, or carrying on more than, one such business or occupation subject

to the tax hereunder shall pay the tax so imposed separately for each of the same.

3.30.080 Exceptions and deductions.

A. There shall be excepted and deducted from the total gross income upon which the license fee or tax 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 services, or for access to, or charges for, interstate services.

(2) Charges by a taxpayer engaging in a telephone business or 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) There shall be excepted and deducted from the total gross income upon which the tax is computed all cash discounts allowed and actually granted to customers of the taxpayer during the tax year.

(5) Amounts derived from transactions in interstate or foreign commerce, or any business which the city is prohibited from taxing under the Constitutions of the United States or the State of Washington.

B. There shall be excepted and deducted from the total gross income upon which the tax is computed all bad debts for services incurred, rendered or charged for during the tax year. Debts shall be deemed bad and uncollectible when they have been written off the books of the taxpayer. In the event debts are subsequently collected, the income shall be reported in the return for the quarter in which the debts are collected and at the rate prevailing in the tax year when collected.

C. Nothing in this chapter shall be construed as requiring a license, or the payment of a license fee or tax, or the doing of any act, which would constitute an unlawful burden or interference in violation of the Constitution or laws of the United States or which would not be consistent with the Constitution or laws of the State of Washington.

3.30.090 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 a 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 one or more other cities, 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). Once the 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 on the disputed revenues so long as it changes its billing records for future revenues to comport with the settlement facilitated by AWC.

3.30.100 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 (60) days following the enactment of the ordinance establishing the change. The city 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.

3.30.110 Records required — audit authorized. It shall be the duty of each taxpayer taxed upon his/her or its gross income to keep and enter in a proper book or set of books or records an account which shall accurately reflect the amount of his/her or its gross income, which account shall be open at all reasonable times to the inspection of the City Clerk, or the Clerk's duly authorized agent, for verification of the tax returns or for the fixing of the tax of a taxpayers who fails to make such returns.

3.30.120 Sale of business. Upon the sale or transfer during a quarterly period of a business or account of which a tax is required under this chapter, the purchaser or transferee shall, if the tax has not been paid in full for the quarterly period, be responsible for the payment of the tax for that portion of the quarterly period during which he or it carries on such business.

3.30.130 Not exclusive. The license fee or tax herein levied shall be additional to any license fee or tax imposed or levied under any law or any other ordinance of the city.

3.30.140 Reserves into fund. All monies received by the City pursuant to the tax imposed by Section 3.30.040 shall be placed in the 177th Street Construction Fund and shall only be expended on improvements to the intersection of 131st Avenue and N.E. 177th Place, and the improvements, including right-of-way acquisition, of N.E. 177th Place from 131st to 140th.

3.30.150 Penalty for late payment interest. For each payment due, if such payment is not made by the due date and time thereof, there shall be added penalties and interest as follows:

A. For each month or portion thereof that the payment is overdue, a penalty of five percent of the tax due shall be

imposed, provided, that the total penalty imposed shall not exceed a total of 25 percent.

B. In addition to the penalties imposed, interest on the amount due shall accrue at the rate of eight percent per annum from the date of the delinquency.

The Finance Director is authorized to waive all or any portion of the penalties and interest provided herein in the event that the Director determines that late payment was the result of excusable neglect or extreme hardship.

3.30.160 Underpayment of tax. If upon examination of any returns or from other information obtained by the Finance Director it appears that a tax or penalty has been paid less than that properly due, the Finance Director shall assess against the taxpayer such additional amount found to be due and shall add thereto interest at the rate of one percent for each 30 days or portion thereof, compounded monthly, from the respective due dates of such additional amount until date of such assessment. The Finance Director shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within 10 days from the date of notice, or within such further time as the Finance Director may provide. If payment is not received by the Finance Director by the due date specified in the notice, the Finance Director shall add a penalty of 10 percent of the amount of the additional tax found due. If the Finance Director finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of 50 percent of the additional tax found to be due shall be added.

No assessment or correction of assessment for additional taxes due may be made by the Finance Director more than three years after the close of the tax year, except (1) against a taxpayer who has not registered as required by this chapter, (2) upon a showing of fraud or misrepresentation of a material fact by the taxpayer, or (3) where a taxpayer has executed a written waiver of such limitation.

3.30.170 Overpayment of tax. If, upon application by a taxpayer for a refund or for an audit of his/her records, or upon an examination of the returns or records of any taxpayer, it is determined by the Finance Director that within three years immediately preceding the receipt by the Finance Director of the application by the taxpayer for a refund or for an audit, or, in the absence of such an application, within the three years immediately preceding the commencement by the Finance Director of such examination, a tax has been paid in excess of that properly due, the excess amount paid within such period of three years shall be credited to the taxpayer's account or shall be refunded to the taxpayer, at his/her option. No refund or credit shall be allowed with respect to any payment made to the Finance Director more than three years before the date of such application or examination. Where a refund or credit may not be made because of the lapse of said three-year period, the amount of the refund or credit which would otherwise be allowable for the portion of the statutory assessment period preceding the three-year period may be offset against the amount of any tax deficiency which may be determined by the Finance Director for such preceding period. Interest upon any such refund or credit shall be allowed by the Director at the rate of three percent per annum.

3.30.180 Debt to city when unpaid. Any license fee or tax due and unpaid under this chapter, and all penalties and interest thereon, shall constitute a debt to the city and may be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

3.30.190 Rules and regulations. The City Clerk shall have the power and authority 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 thereof, and it is unlawful for any person to violate or fail to comply with any such rule or regulation.

3.30.200 Appeals.

A. Any taxpayer aggrieved by the amount of the fee or tax determined by the City Clerk to be due under the provisions of

this chapter may, upon full payment of the amount assessed, appeal such determination to the City Hearing Examiner.

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

1. The name and address of the taxpayer;
2. A statement identifying the determination of the Clerk from which the appeal is taken;
3. A statement setting forth the grounds upon which the appeal is taken, and identifying the specific errors the Clerk is alleged to have made in making his or her determination;
4. A statement identifying the requested relief from the determination being appealed.

C. The appeal must be filed with the Clerk within ten (10) days from the date the taxpayer was mailed notice of the Clerk's decision.

D. The Hearing Examiner shall conduct an appeal hearing, at which the appellant taxpayer and the Clerk shall have the opportunity to be heard and to introduce evidence relevant to the subject of the appeal. The Hearing Examiner shall establish rules for such hearings consistent with the provisions of this section, including rules relating to the issuance and reconsideration of decisions.

E. The appellant taxpayer shall have the burden of proving by the preponderance of the evidence that the determination of the Clerk is erroneous.

F. Appeal proceedings before the Hearing Examiner shall be tape recorded and all exhibits admitted by the Examiner shall be made part of the record.

G. Following the hearing, the Hearing Examiner shall render a decision on the appeal and shall enter written findings and conclusions in support thereof. A copy of the findings, conclusions, and decision shall be mailed to the appellant taxpayer and the Clerk. The decision shall state the correct amount of the tax owing as determined by the Hearing Examiner.

H. The decision of the Hearing Examiner shall be final and conclusive unless the same is appealed to the City Council. Any such appeal must be filed with the Clerk within ten (10) working days of the decision appealed from or any final decision on reconsideration thereof. Any such appeal shall be based solely on the record of the appeal hearing conducted by the Hearing Examiner.

I. Any and all actions seeking judicial review of a City Council decision under this section must be filed in the King County Superior Court within ten (10) calendar days following the date of the decision. Any action not brought within this time limit is barred.

3.30.210 Violation — unlawful acts. It is unlawful, and shall be a violation of this chapter, for any person liable to tax hereunder to fail or refuse to secure the utility occupation license, to make the returns when required, or to pay the license fee or tax when due, or for any person to make any false or fraudulent application or return or any false statement or return or any false statement or representation in, or in connection with, any such application or return, or to aid or abet another in an attempt to evade payment of the fee or tax, or any part thereof, or for any person to fail to appear and/or testify in response to subpoena issued pursuant hereto, or to testify falsely upon any investigation of the correctness of a return, or upon the hearing of any appeal, or in any manner to hinder or delay the city or any of its officers in carrying out the provisions of this chapter.

3.30.220 Sunset. Once the project referred to in Section 3.30.140 is completed and all outstanding loans, notes or bonds have been paid in full, the utility taxes imposed by Section 3.30.040 shall be repealed, and any residual revenue in the 177th Street Construction Fund shall be transferred to the Street Reserve Fund.

Section 2. Annual Review. The Administration is hereby directed to bring the utility taxes imposed by this Ordinance to the City Council for their consideration, simultaneously with the City Council's annual review of the budget.

Section 3. 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,

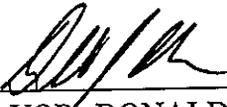
such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4. Effective Date. This ordinance, being an authorization for the levy of taxes, is not subject to referendum and shall take effect and be in full force on June 1, 1998, which is over the sixty day period set forth by RCW 35.21.865. The City Clerk is directed to promptly publish the attached summary of this ordinance, which is hereby approved.

PASSED by the City Council of the City of Woodinville this 9th day of

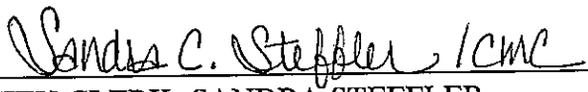
February, 1998.

APPROVED:



MAYOR, DONALD J. BROCHA

ATTEST/AUTHENTICATED:



CITY CLERK, SANDRA STEFFLER

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY 

FILED WITH THE CITY CLERK: 2/9/98
PASSED BY THE CITY COUNCIL: 2/9/98
PUBLISHED: 2/10/98
EFFECTIVE DATE: 2/21/98
ORDINANCE NO. 200