

Ordinance No. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, AMENDING TITLE 5  
OF THE OLYMPIA MUNICIPAL CODE RELATING TO BUSINESS TAXES, LICENSES  
AND REGULATIONS**

**WHEREAS**, the City's business tax code in Title 5 OMC already requires people engaging in business in the City of Olympia to comply with licensing and tax obligations; and

**WHEREAS**, some of the Code's existing licensing and tax requirements can only be understood by reading several code chapters simultaneously; and

**WHEREAS**, historical edits have either introduced or failed to eliminate ambiguity across chapters within Title 5 OMC; and

**WHEREAS**, Title 5 OMC contains Chapters related to business licensing and taxes which the City collects directly from people engaging in business in Olympia, while Title 3 OMC contains Chapters related to tax revenue remitted to the City by the State or County; and

**WHEREAS**, the City wishes to clarify its existing licensing and tax requirements and improve compliance through administrative updates that improve language, ensure consistency and compliance, and remove ambiguity within the Code;

**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:**

**Section 1. Amendments to Title 5 OMC.** Olympia Municipal Code Title 5, Title Contents, is hereby amended to read as follows:

**5.00.000 Title Contents**

**Title 5**

**BUSINESS TAXES, LICENSES AND REGULATIONS**

**Chapters:**

- 5.02 Business Licenses**
- 5.04 Business and Occupations Tax**
- 5.05 Administrative Provisions for Certain Taxes**
- 5.10 Occupational Permits**
- 5.15 Cable Communications Franchises**
- 5.16 Adult Oriented Businesses**
- 5.17 Community Events**
- 5.18 Farmers Market**
- 5.20 Gambling Activities**
- 5.24 Garage Sales**
- 5.32 Admissions Tax**

- 5.48 Occult Arts**
- 5.50 Pet Shops**
- 5.52 Locksmiths**
- 5.55 Security Alarm Businesses**
- 5.60 Secondhand Dealers**
- 5.64 Solicitors**
- 5.68 For-Hire Vehicles**
- 5.72 Towing Services**
- 5.76 Miscellaneous Businesses**
- 5.80 Unfair Housing Practices**
- 5.82 Rental Housing Code**
- 5.84 Utility Services Tax**

**Section 2. Amendment of OMC Chapter 5.02.** Olympia Municipal Code Chapter 5.02, Business Licenses, is hereby amended to read as follows:

## **Chapter 5.02**

### **BUSINESS LICENSES**

5.02.000 Chapter Contents

Sections:

- 5.02.001 Administrative provisions
- 5.02.002 Definitions.
- 5.02.005 License required.
- 5.02.010 License term designated.
- 5.02.015 License fee.
- 5.02.020 Application and renewal.
- 5.02.030 Home occupations.
- 5.02.040 Exemptions.
- 5.02.050 License Denial, Suspension or Revocation.
- 5.02.060 Appeal of License Denial, Suspension or Revocation.
- 5.02.070 Violations -- Civil Infraction.

### **5.02.001 Administrative Provisions**

The administrative provisions contained in OMC Chapter 5.05 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

### **5.02.002 Definitions**

For the purpose of this Chapter, the following terms, phrases, words and their derivations will have the meaning given in this section:

- A. "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.
- B. "Business enterprise" means any entity, person, partnership, association, corporation, limited liability company, trust, society, or club engaged in business within the City of Olympia.
- C. "City" means the City of Olympia.
- D. "Conduct business" See "Engage in business"
- E. "Employee" means any person employed at any business enterprise who performs any part of their duties within the City. All officers, agents, dealers, franchisees, managing members, etc., of a corporation or business trust, limited liability company, and partners of a partnership, except limited partners, are employees within this definition.
- F. "Engage 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 minimis business activities in the City without having to pay a business license fee. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection (1) above. 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.
    - 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 architects, 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.
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.

- 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. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.
- 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.

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, provided that it engages in no other business activities in the City. Such activities do not include those in subsection (4).

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.

G. "Home occupation" means a nonresidential use complying with OMC 18.04.060.L that is clearly incidental and secondary to the use of a dwelling for residential purposes and does not change the character of the dwelling.

H. "Home occupation business" means a business with its physical address in a residence, and the related business activities conducted within the residence.

I. "Licensee" means any business granted a business license.

J. "Nonprofit" means any business enterprise registered as a nonprofit corporation within the state of Washington or granted nonprofit status through the code of the Internal Revenue Service of the United States.

K. "Physical presence" means an address where the business is located.

L. "Place of business" means the physical location of the business.

M. "Business Licensing Service" and "BLS" mean the office within the Washington State Department of Revenue providing business licensing services to the City.

N. "Director": "Director" means the Finance Director-Treasurer of the City or any officer, agent or employee of the City designated to act on the Director's behalf.

#### **5.02.005 License required**

A. No person may conduct business within the City without first obtaining an approved City business license. The license required by this chapter is in addition to any regulatory license that may be required by another chapter within Title 5 OMC. The approved City business license includes the Olympia endorsement addendum to the state business license.

B. The business license is not transferable. A business owner acquiring an existing business in the City must obtain a new, approved license for that business. Each separate physical location operated by a business inside the City must be licensed separately and be approved by the City before business may commence at that location. No fee will be charged for additional locations. A change of physical location of a business inside the City will require approval by the City before business may commence at the new location, and may require the filing of a new State of Washington Business License Application and/or a new City of Olympia Business License Endorsement Addendum Application. If two or more businesses operate at the same physical location, each business must obtain a license.

C. The issuance and renewal of business licenses shall be done by the State of Washington Department of Revenue Business License Service (BLS) in coordination with the City.

D. The business license document issued by the Business License Service must display the active Olympia Endorsement and be posted in a conspicuous place on the premises identified on the license.

E. Each and every person making available for rent or renting one or more rental units within the City limits, shall, in accordance with OMC 5.82.080, obtain and maintain a business license, unless exempt under that section. This obligation to obtain a business license applies to the rental of any rental unit, regardless of the term of the rental. One business license covers all of a person's rental units within the City; however, a separate business license is required for any other business operated by such person, in accordance with this Chapter.

#### **5.02.010 License term designated**

The license required by this chapter shall have a term as established by the State of Washington Department of Revenue Business License Service, in cooperation with the City.

#### **5.02.015 License fee**

The initial fee for the City business license required by this chapter is \$30.00. The renewal fee may be prorated to accommodate the license term established under OMC 5.02.010. The license fees listed in this section are in addition to any other license or handling fee collected by the BLS.

#### **5.02.020 Application and renewal**

A. Application for the business license shall be made by submitting a completed Master Business Application, and any appropriate addenda forms to the BLS, in cooperation with the City. Said application shall be accompanied by payment of all respective license fees due for that application and the BLS application handling fee authorized by RCW 19.02.075.

B. Renewals shall be handled by the Business License Service in coordination with the Finance Director-Treasurer. Renewal shall require payment of all license fees due for that renewal, and the BLS renewal handling fee authorized by RCW 19.02.075.

C. Failure to renew the license on or before the expiration date established by the Business License Service may result in the charge of a delinquent renewal penalty as authorized in RCW 19.02.085. The City shall consider failure to renew the City endorsement as a failure to renew the City license and may terminate the expired City endorsement and charge the delinquent renewal penalty in OMC 4.60.050.

D. Failure to renew the license on or before 120 days after the expiration date established by the Master License Service may result in the cancellation of the license and may require the filing of a new Master Business Application, payment of all appropriate fees, and reapproval by the City in order to continue conducting business in the City.

### **5.02.030 Home occupations**

The purpose of the home occupation provisions of OMC 18.04.060 is to allow for the use of a residential structure for a non-residential use. A business owner intending to conduct business from a residence located within the City shall indicate so during the business license process and provide additional information as requested by the City.

### **5.02.040 Exemptions**

A. Nonprofit organizations recognized by the State of Washington and Federal Government (e.g., 501(c)(3)) are exempted from any fees in this Chapter. However, they are not exempted from registering with the City of Olympia.

B. For the purposes of this Chapter, any person or business whose annual value of products, gross proceeds of sales, or gross income of the business in the City is equal to or less than \$2,000 shall still obtain a business license according to 5.02.005. The \$2,000 threshold does not apply to regulatory license requirements or activities that require a specialized permit. Businesses who meet the criteria described above are exempt from any City of Olympia license fees described in this Chapter.

### **5.02.050 License Denial, Suspension or Revocation**

A. A business license may be denied, suspended or revoked by the Director or designee. The Director, or designee, shall notify the license applicant or licensee in writing of the denial, suspension, or revocation of the license applicant's or licensee's registration and the grounds therefor. A business license may be denied, suspended or revoked for any one or more of the following reasons:

1. the license was procured by fraud or false representation of fact or contains misleading statements or suppression of material facts about the business;
2. the license applicant has applied for a business license for activities that are prohibited by law;
3. the licensee, owner, or operator of the business is currently operating a business in a manner that is prohibited by law;
4. the licensee is in violation of the terms and conditions under which the license was issued;
5. the licensee, owner, operator, or an employee has been convicted of a crime involving the business;
6. it is necessary to deny, suspend, or revoke the license for the protection of the public health, safety, peace, or welfare;
7. the business has become an instrument of or a cover for public disorder, crime, or other danger to public safety, morals, or health.
8. the business has failed to file and pay B&O taxes required by OMC 5.04.060 or other taxes imposed by Title 5 OMC.

B. Upon revocation of any license as provided in this Chapter, no portion of the registration fee shall be returned to the applicant or licensee.

#### **5.02.060 Appeal of License Denial, Suspension or Revocation**

If a business license is denied, suspended, or revoked pursuant to any provision of OMC 5.02.050(1-7), a business owner or license applicant may appeal such decision to the City Manager within thirty (30) days of such denial, suspension, or revocation. In order for an appeal to be considered, the business owner or applicant must state with particularity the reasons why the City's decision was in error and the reasons the City Manager should reverse the denial, suspension, or revocation. The City Manager or designee will review the appeal and issue a written decision to uphold, modify, or reverse the denial, suspension, or revocation within thirty (30) days of receipt of the appeal. The City Manager's or designee's decision is the final decision of the City and may be appealed to the Thurston County Superior Court within thirty (30) days of the date the City Manager or designee issues the decision.

#### **5.02.070 Violations -- Civil Infraction**

A.

It shall be a civil infraction for a person, firm, limited liability company or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, limited liability company or corporation found to have committed a civil infraction shall be assessed a monetary penalty as provided in OMC Chapter 4.44, Uniform Civil Enforcement.

**Section 3. Amendment of OMC Chapter 5.04.** Olympia Municipal Code Chapter 5.04, Business and Occupations Tax, is hereby amended to read as follows:

### **Chapter 5.04**

#### **BUSINESS AND OCCUPATIONS TAX**

5.04.000 Chapter Contents

Sections:

- 5.04.010 Purpose.
- 5.04.020 Exercise of Revenue License Power.
- 5.04.025 License Required.
- 5.04.030 Administrative Provisions.
- 5.04.040 Definitions.
- 5.04.050 Agency – Sales and Services by Agent, Consignee, Bailee, Factor, or Auctioneer.
- 5.04.060 Imposition of the Tax – Tax or Fee Levied.
- 5.04.080 Multiple Activities Credit When Activities Take Place In One or More Cities With Eligible Gross Receipt Taxes.
- 5.04.085 Deductions to Prevent Multiple Taxation of Transactions Involving More Than One City With an Eligible Gross Receipts Tax.
- 5.04.090 Reserved for Any Future Additions.



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| 5.04.100  | Assignment of Gross Income Derived From Intangibles.   |
| 5.04.105a | Allocation and Apportionment of Income When Activities Take Place In More Than One Jurisdiction.                         |
| 5.04.105b | Allocation and Apportionment of Printing and Publishing Income When Activities Take Place In More Than One Jurisdiction. |
| 5.04.110  | Exemptions.  |
| 5.04.120  | Deductions.  |
| 5.04.130  | Tax Part of Overhead.  |
| 5.04.140  | Severability.  |
| 5.04.150  | Miscellaneous.   |

#### **5.04.010 Purpose**

The tax provisions of this chapter are intended to provide a uniform methodology for levying a gross receipts tax on business entities. Nothing in this chapter should be construed as limiting a city's ability to levy and collect a business privilege tax on any other basis, such as a tax on square footage, a tax on annualized full-time equivalents [head tax], graduated annual license tax, or any other tax calculated on a basis other than a gross receipts tax [gross income of the business, gross proceeds of sales, or value of products multiplied by rates].

#### **5.04.020 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.

#### **5.04.025 License required**

It is unlawful for any person, firm or corporation to engage in business in the City without first obtaining a license pursuant to the provisions of OMC Chapter 5.02.

#### **5.04.030 Administrative Provisions**

The administrative provisions contained in OMC Chapter 5.05 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

#### **5.04.040 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.

"Advance" "reimbursement":

1. "Advance" means money or credits received by a taxpayer from a customer or client with which the taxpayer is to pay costs or fees on behalf of the customer or client.
2. "Reimbursement" means money or credits received from a customer or client to repay the taxpayer for money or credits expended by the taxpayer in payment of costs or fees of the customer or client.

"Agricultural product" "farmer":

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

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

"Artistic or cultural organization":

1. "Artistic or cultural organization" means an organization which is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (10) of this section, for viewing or attendance by the general public.
2. The organization must be a not-for-profit corporation under Chapter 24.03 RCW.
3. The organization must be managed by a governing board of not less than eight (8) individuals, none of whom is a paid employee of the organization or by a corporation sole under Chapter 24.12 RCW.
4. No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees, except in the form of services rendered by the corporation in accordance with its purposes and bylaws.
5. Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state.
6. Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a non-profit organization, association, or corporation which also would be entitled to the exemption.
7. The corporation must be duly licensed or certified when licensing or certification is required by law or regulation.
8. The amounts received that qualify for exemption must be used for the activities for which the exemption is granted.
9. Services must be available regardless of race, color, national origin, ancestry, religion, age, sex, marital status, sexual orientation, Vietnam or disable veteran status, or the present of any mental or physical disability.
10. The term "artistic or cultural exhibitions, presentation, or performances or cultural or art education programs" is limited to:
  - a. An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;
  - b. A musical or dramatic performance or series of performances; or
  - c. An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject.

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

"Business and occupation tax": "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.

"By Product": See Product.

"Casual Sale": See Sale.

"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;
2. The manufacturing of products including articles, substances or commodities;

"Company": See Person.

"Competitive Telephone Service": "Competitive telephone service" means the providing by any person or 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.

"Consumer": "Consumer" means the following:

1. Any person who purchases, acquires, owns, holds, or uses any tangible or intangible personal property irrespective of the nature of the person's 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 a consumer other than for the purpose of:
  - a. resale as tangible or intangible personal property in the regular course of business;
  - b. incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers;
  - c. incorporating such property as an ingredient or component of a new product or as a chemical used in processing a new product when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new product; or
  - d. consuming the property 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;
2. Any person engaged in any business activity taxable under Section 5.04.060(G);
3. Any person who purchases, acquires, or uses any competitive telephone service as herein defined, other than for resale in the regular course of business;
4. Any person who purchases, acquires, or uses any personal, business, or professional service defined as a retail sale or retail service in this section, other than for resale in the regular course of business;

5. Any person who is an end user of software;
6. Any person engaged in the business of "public road construction" in respect to tangible personal property when that person incorporates the tangible personal property as an ingredient or component of a publicly-owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of a publicly-owned street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of a publicly-owned mass public transportation terminal or parking facility;
7. Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business;
8. Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;
9. Any person engaged in "government contracting." Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person;

Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer."

"Delivery": "Delivery" means the transfer of possession of tangible personal property between the seller and the buyer or the buyer's representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer's representative first takes physical control of the property or exercises dominion and control over the property. Dominion and control means the buyer has the ability to put the property to the buyer's own purposes. It means the buyer or the buyer's representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer's representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer's representative. It is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property. Delivery terms and other provisions of the Uniform Commercial Code (Title 62A RCW) do not determine when or where delivery of tangible personal property occurs for purposes of taxation.

"Digital Automated Service", "digital code", and "digital goods": "Digital Automated Service", "digital code", and "digital goods" have the same meaning as in RCW 82.04.192.

"Digital products": "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050(2)(g) and (6)(b).

"Director": "Director" is defined in OMC 5.02.002.

"Eligible gross receipts tax": "Eligible gross receipts tax" means a tax which:

1. Is imposed on the act or privilege of engaging in business activities within Section 5.04.060; and

2. Is measured by the gross volume of business, in terms of gross receipts and is not an income tax or value added tax; and
3. Is not, pursuant to law or custom, separately stated from the sales price; and
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 non-local 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 minimis business activities in the City without having to pay a business license fee. 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.
  - 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 architects, 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.
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.
- 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. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.
  - 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.
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, provided that it engages in no other business activities in the City. Such activities do not include those in subsection (4).

The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the tax under the law and the Constitutions of the United States and the State of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus-generating contact or subsequent contacts.

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

"Extractor": "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, or takes, cultivates, or raises 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": "Extractor for hire" means a person who performs under contract necessary labor or mechanical services for an extractor.

"Government contracting": See Sale at Retail.

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

"Gross proceeds of sales": "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services or for other 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.

"In this City" or "within this City": "In this City" or "within this City" includes all federal areas lying within the corporate city limits of the City of Olympia.

"Isolated Sale": See Sale.

"Magazine": See Newspaper.

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

"Manufacturer" "to manufacture" "processing for hire":

1. "Manufacturer" means every person whom, 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 (20%) 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; and
- 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 digital goods or 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.

3. "Processing for hire" means the performance of labor and mechanical services upon materials or ingredients belonging to others so that as a result a new, different or useful product is produced for sale, or commercial or industrial use. A processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon that person's own materials or ingredients. If a person furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to twenty percent (20%) or more of the total value of all materials or ingredients that become a part of the finished product the person will be deemed to be a manufacturer and not a processor for hire.

"Newspaper" "magazine" "periodical": "Newspaper" means a publication offered for sale regularly at stated intervals at least once a week and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind. "Magazine" or "periodical" means any printed publication, other than a newspaper, issued and offered for sale regularly at stated intervals at least once every three (3) months, including any supplement or special edition of the publication. Any publication meeting this definition qualifies regardless of its content.

"Non-profit corporation or non-profit organization": "Non-profit corporation or non-profit organization" means a corporation or organization in which no part of the income can be distributed to its members, directors, or officers and that holds a current tax exempt status as provided under Sec. 501(c)(3) of the Internal Revenue Code, as may hereafter be amended, or is specifically exempted from the requirement to apply for its tax exempt status under Sec. 501(c)(3) of the Internal Revenue Code, or as may hereafter be amended. Where the term "non-profit organization" is used, it is meant to include non-profit corporations.

"Office" "place of business": "Office" or "place of business" means a fixed location or permanent facility where the regular business of the person is conducted and which is either owned by the person or over which the person exercises legal dominion and control. The regular business of the person is presumed conducted at a location:

1. Whose address the person uses as its business mailing address;



2. Where the place of primary use is shown on a telephone billing or a location contains a telephone line listed in a public telephone directory or other similar publication under the business name; and
3. Where the person holds itself out to the general public as conducting its regular business through signage or other means; and
4. Where the person is required to obtain any appropriate state and local business license or registration unless they are exempted by law from such requirement.
5. A vehicle such as a pick-up, van, truck, boat or other motor vehicle is not an office or place of business. A post office box is not an office or place of business. If a person has an office or place of business, the person's home is not an office or place of business unless it meets the criteria for office or place of business above. If a person has no office or place of business, the person's home or apartment within the City will be deemed the place of business.

"Person": "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, social, non-profit, or otherwise and the United States or any instrumentality thereof.

"Precious metal bullion or monetized bullion": "Precious metal bullion" means any precious metal which has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, rhodium, and palladium, and which is in such state or condition that its value depends upon its contents and not upon its form. For purposes of this section, "monetized bullion" means coins or other forms of money manufactured from gold, silver, or other metals and heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United States, or any foreign nation, but does not include coins or money sold to be manufactured into jewelry or works of art.

"Processing for hire": See Manufacturer.

"Product" "Byproduct": "Product" means tangible personal property, including articles, substances, or commodities created, brought forth, extracted, or manufactured by human or mechanical effort.

"Byproduct" means any additional product, other than the principal or intended product, which results from extracting or manufacturing activities and which has a market value, without regard to whether or not such additional product was an expected or intended result of the extracting or manufacturing activities.

"Public road construction": See Sale at Retail.

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

"Retail Sale": See Sale at Retail.

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

1. Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, 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; and
7. The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, Turkish bath services, escort services, and dating services.
8. The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

"Royalties": "royalties" means compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, tradenames, and similar items.

"Sale" "Casual or isolated sale":

1. "Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "sale at retail", "retail sale", or "retail service". It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.
2. "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis.

"Sale at retail" 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 (a), (b), (c), (d), or (e) of this subsection following such use.

f. Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

2. "Sale at retail" or "retail sale" also means every sale of tangible personal property to persons engaged in any business activity that is taxable under OMC 5.04.060 (G).

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 telephone business 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 installing, repairing, altering, or improving of digital goods for consumers;

h. The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), (f) and (g) of this subsection 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 section and nothing contained in subsection (1) of this section 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. a. "Sale at retail" or "retail sale" shall also include the sale of prewritten 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. For purposes of this subsection 5(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser. The term "sale at retail" or "retail sale" does not include the sale of or charge made for:

i. custom software

ii. the customization of prewritten software

b. i. The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

ii. The service described in this subsection 5(b)(i) includes the right to access and use prewritten software to perform data processing.

For purposes of this subsection 5(b)(ii) "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

6. "Sale at retail" or "retail sale" shall also include Public Road Construction, which is 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 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.

7. "Sale at retail" or "retail sale" shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement.

8. "Sale at retail" or "retail sale" shall also include Government Contracting, which is 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.

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

10. "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and services rendered for environmental remedial action. (This is reported under the service and other classification.)

11. "Sale at retail" or "retail sale" shall also include the following sales to consumers of digital goods, digital codes, and digital automated services:

- a. Sales in which the seller has granted the purchaser the right of permanent use;
- b. Sales in which the seller has granted the purchaser a right of use that is less than permanent;
- c. Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and
- d. Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

A retail sale of digital goods, digital codes, or digital automated services under this subsection includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

12. "Sale at retail" or "retail sale" shall also include the installing, repairing, altering, or improving of digital goods for consumers.

"Sale at wholesale" "wholesale sale": "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property, digital goods, digital codes, digital automated services, prewritten computer software, or services described in Subsection 5.b.i, which is not a retail sale, and any charge made for labor and services rendered for persons who are not customers, 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 telephone business to another telecommunications company for the purpose of resale, as contemplated by RCW 35.21.715.

"Service": shall include the sale of or charge for personal, business or professional activities, including amounts designated as internet, rent, fees, admission, and other service emoluments however designated, received by persons engaging in business activities not included in the designation of "retail service," "sale at retail," or "sale at wholesale." By way of example only, "service" includes but is not limited to legal and engineering services, consulting, and appraisal services.

"Software" "prewritten or canned software" "custom software" "customization of canned software" "master copies" "retained rights":

1. "Prewritten or canned software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or enhances computer software of which such persons is not the author or creator, the person shall be deemed to be the author or creator only of the person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; however where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.

2. "Custom software" means software created for a single person.

3. "Customization of canned software" means any alteration, modification, or development of applications using or incorporating canned software to specific individualized requirements of a single person. Customization of canned software includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of canned software does not change the underlying character or taxability of the original canned software.

4. "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license. The software encoded on a master copy and the media upon which the software resides are both ingredients of the master copy.

5. "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensor, or distributor.

6. "Software" means any information, program, or routine, or any set of one (1) or more programs, routines, or collections of information used, or intended for use, to convey information that causes one or more computers or pieces of computer-related peripheral equipment, or any combination thereof, to perform a task or set of tasks. "Software" includes the associated documentation, materials, or ingredients regardless of the media upon which that documentation is provided, that describes the code and its use, operation, and maintenance and that typically is delivered with the code to the consumer. All software is classified as either canned or custom.

"Taxpayer": "Taxpayer" means any "person", as herein defined, required to have a business license under this chapter 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.

"Tuition fee": "Tuition fee" includes library, laboratory, health service and other special fees, and amounts charged for room and board by an educational institution when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution. "Educational institution," as used in this section, means only those institutions created or generally accredited as such by the state and includes educational programs that such educational institution cosponsors with a non-profit corporation or a non-profit organization, as defined by the Internal Revenue Code Section 501(c)(3), as may hereafter be amended, if such educational institution grants college credit for coursework successfully completed through the educational program, or an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW, and in accordance with RCW 82.04.4332 or defined as a degree-granting institution under RCW 28B.85.010(3) and accredited by an accrediting association recognized by the United States secretary of education, and offering to students an educational program of a general academic nature or those institutions which are not operated for profit and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture, but not including specialty schools, business colleges, other trade schools, or similar institutions.

"Value proceeding or accruing": "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.

"Value of products":

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 Director may prescribe rules for the purpose of ascertaining such values.

3. Notwithstanding subsection (2) above, 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.

“Wholesale sale”: See Sale at Wholesale.

“Wholesaling”: “Wholesaling” means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification.

#### **5.04.050 Agency – sales and services by agent, consignee, bailee, factor or auctioneer**

A. Sales in own name – sales or purchases as agent.

1. Every person, including agents, consignees, bailees, factors or auctioneers having either actual or constructive possession of tangible personal property or having possession of the documents of title thereto, with power to sell such tangible personal property in the person’s own name and actually so selling shall be deemed the seller of such tangible personal property within the meaning of this chapter.

2. The burden shall be upon the taxpayer in every case to establish the fact that such taxpayer is not engaged in the business of selling tangible personal property but is acting merely as broker or agent in promoting sales or making purchases for a principal. Such claim will be recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:

a. The books and records of the broker or agent show the transactions were made in the name and for the account of the principal, and show the name of the actual owner of the property for whom the sale was made, or the actual buyer for whom the purchase was made.

b. The books and records show the amount of the principal’s gross sales, the amount of commissions and any other incidental income derived by the broker or agent from such sales. The principal’s gross sales must not be reflected as the agent’s income on any of the agent’s books and records. Commissions must be computed according to a set percentage or amount, which is agreed upon in the agency agreement.

c. No ownership rights may be conferred to the agent unless the principal refuses to pay, or refuses to abide by the agency agreement. Sales or purchases of any goods by a person who has any ownership rights in such goods shall be taxed as retail or wholesale sales.

d. Bulk goods sold or purchased on behalf of a principal must not be co-mingled with goods belonging to another principal or lose their identity as belonging to the particular principal. Sales or purchases of any goods which have been co-mingled or lost their identity as belonging to the principal shall be taxed as retail or wholesale sales.

B. If the above requirements are not met the consignor, bailor, principal or other shall be deemed a seller of such property to the agent, consignee, bailee, factor or auctioneer.

C. Services in own name – procuring services as agent.



1. For purposes of this subsection, an agent is a person who acts under the direction and control of the principal in procuring services on behalf of the principal that the person could not itself render or supply. Amounts received by an agent for the account of its principal as advances or reimbursements are exempted from the measure of the tax only when the agent is not primarily or secondarily liable to pay for the services procured.
2. Any person who claims to be acting merely as agent in obtaining services for a principal will have such claim recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:
  - a. The books and records of the agent show that the services were obtained in the name and for the account of the principal, and show the actual principal for whom the purchase was made.
  - b. The books and records show the amount of the service that was obtained for the principal, the amount of commissions and any other income derived by the agent for acting as such. Amounts received from the principal as advances and reimbursements must not be reflected as the agent's income on any of the agent's books and records. Commissions must be computed according to a set percentage or amount, which is agreed upon in the agency agreement.

#### **5.04.060 Imposition of the tax – tax or fee levied**

Except as provided in OMC 5.04.060(H), there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the City, whether the person's office or place of business be within or without the City. The tax shall be in amounts to be determined by 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:

- A. Upon every person engaging within the City in business as an extractor; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, extracted within the city for sale or for commercial or industrial use, multiplied by the rate of one-tenth of one percent (0.1%). The measure of the tax is the value of the products, including by-products, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the City.
- B. 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 one-tenth of one percent (0.1%). The measure of the tax is the value of the products, including by-products, so manufactured or processed, regardless of the place of sale or the fact that deliveries may be made to points outside the City.
- C. 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 (0.1%).
- D. 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 (0.1%).
- E. 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 one-tenth of one percent (0.1%).

F. Upon every person engaging within the City in the business of making sales of retail services; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales multiplied by the rate of one tenth of one percent (0.1%).

G. 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 two-tenths of one percent (0.2%). 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 rendering any type of service which does not constitute a sale at retail, a sale at wholesale, or a retail service.

H. This section shall not apply to any person whose 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 is less than \$20,000, or is equal to or less than \$5,000 during any quarter if on a quarterly reporting basis.

**5.04.080 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 (2) or more subsections of OMC 5.04.060 shall be taxable under each applicable subsection.

B. Notwithstanding anything to the contrary herein, if the Director finds that the imposition of the City's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the City's tax, 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 and that the taxpayer paid the amount of tax sought to be credited.

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.

#### **5.04.085 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 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 the City. 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.

#### **5.04.090 Reserved for any future additions**

Reserved for any future additions.

#### **5.04.100 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).

#### **5.04.105a Allocation and apportionment of income when activities take place in more than one jurisdiction**

Effective January 1, 2008, gross income, other than persons subject to the provisions of chapter 82.14A RCW, shall be allocated and apportioned as follows:

- A. Gross income derived from all activities other than those taxed as service or royalties under OMC 5.04.060.G shall be allocated to the location where the activity takes place.
- B. In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.
- C. In the case of sales of digital products, the activity takes place where delivery to the buyer occurs. The delivery of digital products will be deemed to occur at:
  1. The seller's place of business if the purchaser receives the digital product at the seller's place of business;
  2. If not received at the seller's place of business, the location where the purchaser or the purchaser's donee, designated as such by the purchaser, receives the digital product, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

3. If the location where the purchaser or the purchaser's donee receives the digital product is not known, the purchaser's address maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

4. If no address for the purchaser is maintained in the ordinary course of the seller's business, the purchaser's address obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and

5. If no address for the purchaser is obtained during the consummation of the sale, the address where the digital good or digital code is first made available for transmission by the seller or the address from which the digital automated service or service described in RCW 82.04.050 (2)(g) or (6)(b) was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

D. If none of the methods in Subsection 5.04.105a (C) for determining where the delivery of digital products occurs are available after a good faith effort by the taxpayer to apply the methods provided in subsections 5.04.105a (C) (1) through (5), then the city and the taxpayer may mutually agree to employ any other method to effectuate an equitable allocation of income from the sale of digital products. The taxpayer will be responsible for petitioning the city to use an alternative method under this subsection 5.04.105a (D). The city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in Subsections 5.04.105a (C) (1) through (5) are not available and the taxpayer and the city are unable to mutually agree on an alternative method to effectuate an equitable allocation of income from the sale of digital products.

E. For purposes of subsections 5.04.105a.C.1 through 5, the following definitions apply:

1. "Digital automated services", "digital codes", and "digital goods" have the same meaning as in RCW 82.02.192.

2. "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050 (2)(g) and (6) (c).

3. "Receive" has the same meaning as in RCW 82.32.730(9)(f).

F. Gross income derived from activities taxed as services and other activities taxed under OMC 5.04.060.G shall be apportioned to the city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service-income factor and the denominator of which is two.

1. The payroll factor is a fraction, the numerator of which is the total amount paid in the city during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the city if:

a. The individual is primarily assigned within the city;

b. The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent or more of the employee's service for the tax period in the city; or

c. The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent or more of the individual's service in any city and the employee resides in the city.

2. The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the city during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the city if the customer location is in the city.

a. Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the service income factor if, in respect to such activity, at least some of the activity is performed in the city, and the gross income is attributable under (b) of this subsection (F) to a city or unincorporated area of a county within the United States or to a foreign country in which the taxpayer is not taxable. For purposes of this subsection (F)(2)(a), "not taxable" means that the taxpayer is not subject to a business activities tax by that city or county within the United States or by that foreign country, except that a taxpayer is taxable in a city or county within the United States or in a foreign country in which it would be deemed to have a substantial nexus with the city or county within the United States or with the foreign country under the standards in RCW 35.102.050 regardless of whether that city or county within the United States or that foreign country imposes such a tax.

b. If the allocation and apportionment provisions of this subsection (F) do not fairly represent the extent of the taxpayer's business activity in the city, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- i. Separate accounting;
- ii. The exclusion of any one or more of the factors;
- iii. The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or
- iv. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

c. The party petitioning for, or the tax administrator requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to subsection (2 (b)) of this subsection must prove by a preponderance of the evidence:

- i. That the allocation and apportionment provisions of this subsection (F) do not fairly represent the extent of the taxpayer's business activity in the city; and
- ii. That the alternative to such provisions is reasonable.

The same burden of proof shall apply whether the taxpayer is petitioning for, or the tax administrator is requiring, the use of an alternative reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income.

d. If the tax administrator requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the tax administrator cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this subsection (F).

e. A taxpayer that has received written permission from the tax administrator to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material

misrepresentation of, the facts provided by the taxpayer upon which the tax administrator reasonably relied in approving a reasonable alternative method.

f. The following definitions apply throughout this section:

- i. "Apportionable income" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.
- ii. "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a city or county within the United States or within a foreign country. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.
- iii. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal internal revenue code.
- iv. "Customer" means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business.
- v. "Customer location" means the following:
  - (a). For a customer not engaged in business, if the service requires the customer to be physically present where the service is performed.
  - (b). For a customer not engaged in business, if the service does not require the customer to be physically present:
    - (1). The customer's residence; or
    - (2). If the customer's residence is not known, the customer's billing/mailling address.
  - (c). For a customer engaged in business:
    - (1). Where the services are ordered from;
    - (2). At the customer's billing/mailling address if the location from which the services are ordered is not known; or
  - (d). At the customer's commercial domicile if none of the above are known.
- vi. "Individual" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.
- vii. "Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.
- viii. "Service-taxable income" or "service income" means gross income of the business subject to tax under either the service or royalty classification.

ix. "Tax period" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

g. Assignment or apportionment of revenue under this Section shall be made in accordance with and in full compliance with the provisions of the interstate commerce clause of the United States Constitution where applicable.

#### **5.04.105b Allocation and apportionment of printing and publishing income when activities take place in more than one jurisdiction**

Notwithstanding RCW 35.102.130, effective January 1, 2008, gross income from the activities of printing, and of publishing newspapers, periodicals, or magazines, shall be allocated to the principal place in this state from which the taxpayer's business is directed or managed. As used in this section, the activities of printing, and of publishing newspapers, periodicals, or magazines, have the same meanings as attributed to those terms in RCW 82.04.280(1) by the department of revenue.

#### **5.04.110 Exemptions**

The provisions of this chapter shall not apply to the following:

A. This chapter shall not apply to non-profit organizations exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as hereafter amended, except with respect to retail sales of such persons; provided, however, that the exemption set forth in the foregoing provision of this OMC 5.04.110(A) shall not apply to medical services, including a hospital, as defined in RCW 70.41, if gross income of the business of the medical service or hospital, net of exemptions and deductions (if any) permitted to be taken under OMC 5.04.110 and OMC 5.04.120, exceeds \$30 million.

B. Certain social and beneficiary organizations. This chapter shall not apply to social benefit societies or social fire insurance associations, as described in Title 48 RCW; nor to beneficiary corporations or societies organized under and existing by virtue of Title 24 RCW, if such beneficiary corporations or societies provide in their bylaws for the payment of death benefits. This exemption is limited, however, to gross income from premiums, fees, assessments, dues or other charges directly attributable to the insurance or death benefits provided by such societies, associations, or corporations.

C. Certain corporations furnishing aid and relief. This chapter shall not apply to the gross sales or the gross income received by corporations which have been incorporated under any act of Congress of the United States of America and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States of America and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same.

D. Operation of sheltered workshops. This chapter shall not apply to income received from the Department of Social and Health Services for the cost of care, maintenance, support, and training of persons with developmental disabilities at non-profit group training homes as defined by Chapter 71A.22 RCW or to the business activities of non-profit organizations from the operation of sheltered workshops. For the purposes of this subsection, "the operation of sheltered workshops" means performance of business activities of any kind on or off the premises of such non-profit organizations which are performed for the primary purpose of:

1. Providing gainful employment or rehabilitation services to the handicapped as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market do not exist; or
2. Providing evaluation and work adjustment services for handicapped individuals.

- E. Credit unions. This chapter shall not apply to the gross income of credit unions organized under the laws of this state, any other state, or the United States.
- F. Health maintenance organization, health care service contractor, certified health plan.
1. This chapter does not apply to any health maintenance organization, health care service contractor, or certified health plan in respect to premiums or prepayments that are taxable under RCW 48.14.0201. However, per RCW 48.14.0201(7), this exemption is not intended to, and shall not, impair the City's ability to impose a tax hereunder upon the health care services directly delivered by the employees of a health maintenance organization under RCW chapter 48.46.
- G. 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 Olympia Municipal Code Chapter 5.84.
- H. 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.
- I. International banking facilities. This chapter shall not apply to the gross receipts of an international banking facility. As used in this subsection, an "international banking facility" means a facility represented by a set of asset and liability accounts segregated on the books and records of a commercial bank, the principal office of which is located in this state, and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, an Edge corporation organized under Section 25(a) of the Federal Reserve Act, 12 United States Code 611-631, or an Agreement corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under Section 25 of the Federal Reserve Act, 12 United States Code 601-604(a), that includes only international banking facility time deposits (as defined in subsection (a)(2) of Section 204.8 of Regulation D (12 CFR Part 204), as promulgated by the Board of Governors of the Federal Reserve System), and international banking facility extensions of credit (as defined in subsection (a)(3) of Section 204.8 of Regulation D).
- J. Insurance business. This chapter shall not apply to amounts received by any person who is an insurer or their appointed insurance producer upon which a tax based on gross premiums is paid to the State pursuant to RCW 48.14.020, and provided further, that the provisions of this subsection shall not exempt any bonding company from tax with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor.
- K. Farmers - agriculture. This chapter shall not apply to any farmer in respect to amounts received from selling fruits, vegetables, berries, butter, eggs, fish, milk, poultry, meats or any other agricultural product that is raised, caught, produced, or manufactured by such persons.
- L. Boxing/Wrestling exhibitions. This chapter shall not apply to any person in respect to the business of conducting boxing contests and sparring or wrestling matches and exhibitions for the conduct of which a license must be secured from the State Department of Licensing.
- M. Racing. This chapter shall not apply to any person in respect to the business of conducting race meets for the conduct of which a license must be secured from the Washington State Horse Racing Commission.
- N. Ride sharing. This chapter does not apply to any funds received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010.



O. 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 may be amended hereafter.

2. A booth renter is an independent contractor for purposes of this chapter.

P. Amounts derived from sale, lease or rental of real estate. This chapter shall not apply to gross proceeds derived from the sale, lease or rental 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 (30) days or longer.

Q. 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.

R. 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 82.38.020 and exempt under RCW 82.38.280, 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.

S. Amounts derived from liquor, and the sale or distribution of liquor. This chapter shall not apply to liquor as defined in RCW 65.04.010 and exempt in RCW 66.08.120.

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

U. Community Events and Farmers Markets. This chapter shall not apply to community events licensed under OMC 5.17, and farmers markets licensed under OMC 5.18, as specified in OMC 5.17 and OMC 5.18.

V. 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 (14) days to reimburse in kind a previous accommodation sale by the buyer to the seller.

W. 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.

X. United States gross income. The gross income received by the United States or any instrumentality thereof and by the state or any municipal subdivision thereof.

**5.04.120 Deductions**

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

A. Membership fees and certain service fees by non-profit youth organization. For purposes of this subsection, "non-profit youth organization" means a non-profit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030. In computing tax due under this chapter, there may be deducted from the measure of tax all amounts received by a non-profit youth organization:

1. As membership fees or dues, irrespective of the fact that the payment of the membership fees or dues to the organization may entitle its members, in addition to other rights or privileges, to receive services from the organization or to use the organization's facilities; or
2. From members of the organization for camping and recreational services provided by the organization or for the use of the organization's camping and recreational facilities.

B. Fees, dues, charges. In computing tax, there may be deducted from the measure of tax amounts derived from bona fide:

1. initiation fees;
2. dues;
3. contributions;
4. donations;
5. tuition fees;
6. charges made by a non-profit trade or professional organization for attending or occupying space at a trade show, convention, or educational seminar sponsored by the non-profit trade or professional organization, which trade show, convention, or educational seminar is not open to the general public; charges made for operation of privately operated kindergartens;
7. and endowment funds.

This subsection shall not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property or upon providing facilities or services for which a special charge is made to members or others. If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the value of such goods or services shall not be considered as a deduction under this section.

C. Artistic and cultural organizations -- income from business activities. In computing tax, there may be deducted from the measure of tax those amounts received by artistic or cultural organizations, as defined in this chapter, which represent:

1. Income derived from business activities conducted by the organization, provided that this deduction does not apply to retail sales made by artistic and cultural organizations;
2. Amounts received from the United States or any instrumentality thereof or from the State of Washington, or any municipal corporation or subdivision thereof as compensation for; or to support artistic or cultural exhibitions, performances, or programs provided by an artistic or cultural organization for attendance or viewing by the general public; or
3. Amounts received as tuition charges collected for the privilege of attending artistic or cultural education programs.

D. Artistic or cultural organization -- Deduction for tax under the manufacturing classification -- Value of articles for use in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs. In computing tax, there may be deducted from the measure of tax by persons subject to payment of the tax under the manufacturing classification, the value of articles to the extent manufacturing activities are undertaken by an artistic or cultural organization, as defined in this chapter, solely for the purpose of manufacturing articles for use by the organization in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs for attendance or viewing by the general public.

E. Day care activities. In computing tax, there may be deducted from the measure of tax amounts derived from day care activities by any organization organized and operated for charitable, educational, or other purposes which is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; provided, however, that amounts derived from selling, altering or repairing tangible personal property shall not be deductible.

F. Compensation from public entities for health or social welfare services -- exception. In computing tax, there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the State of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization (as defined in RCW 82.04.431) or by a municipal corporation or political subdivision, except deductions are not allowed under this subsection for amounts that are received under an employee benefit plan. For purposes of this subsection, "employee benefit plan" includes the military benefits program authorized in 10 USC Sec. 1071 et seq., as amended, or amounts payable pursuant thereto.

G. Interest on investments or loans secured by mortgages or deeds of trust. In computing tax, to the extent permitted by Chapter 82.14A RCW, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on non-transient residential properties.

H. Interest on loans to farmers and ranchers, producers, or harvesters of aquatic products, or their cooperatives. In computing tax, there may be deducted from the measure of tax amounts derived as interest on loans to bona fide farmers and ranchers, producers, or harvesters of aquatic products, or their cooperatives by a lending institution which is owned exclusively by its borrowers or members and which is engaged solely in the business of making loans and providing finance-related services to bona fide farmers and ranchers, producers, or harvesters of aquatic products, their cooperatives, rural residents for housing, or persons engaged in furnishing farm-related or aquatic-related services to these individuals or entities.

I. Interest on obligations of the state, its political subdivisions, and municipal corporations. In computing tax, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest paid on all obligations of the State of Washington, its political subdivisions, and municipal corporations organized pursuant to the laws thereof.

J. Receipts from the sale of tangible personal property and retail services delivered outside the City but within the State of Washington. Effective January 1, 2008, amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property delivered to the buyer or the buyer's representative outside the City but within the State of Washington may be deducted from the measure of tax under the retailing, retail services, or wholesaling classification.

K. 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.

L. 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.

M. Repair, maintenance, replacement, etc., of residential structures and commonly held property - eligible organizations.

1. In computing tax, there may be deducted from the measure of tax amounts used solely for repair, maintenance, replacement, management, or improvement of the residential structures and commonly held property, but excluding property where fees or charges are made for use by the public who are not guests accompanied by a member, which are derived by:

- a. A cooperative housing association, corporation, or partnership from a person who resides in a structure owned by the cooperative housing association, corporation, or partnership; or

- b. An association of owners of property as defined in RCW 64.32.010, as now or hereafter amended, from a person who is an apartment owner as defined in RCW 64.32.010; or

- c. An association of owners of residential property from a person who is a member of the association. "Association of owners of residential property" means any organization of all the owners of residential property in a defined area that all hold the same property in common within the area.

2. For the purposes of this subsection "commonly held property" includes areas required for common access such as reception areas, halls, stairways, parking, etc., and may include recreation rooms, swimming pools and small parks or recreation areas; but is not intended to include more grounds than are normally required in a residential area, or to include such extensive areas as required for golf courses, campgrounds, hiking and riding areas, boating areas, etc.

3. To qualify for the deductions under this subsection:

- a. The salary or compensation paid to officers, managers, or employees must be only for actual services rendered and at levels comparable to the salary or compensation of like positions within the county wherein the property is located;

- b. Dues, fees, or assessments in excess of amounts needed for the purposes for which the deduction is allowed must be rebated to the members of the association; and,

- c. Assets of the association or organization must be distributable to all members and must not inure to the benefit of any single member or group of members.

N. Sales at wholesale or retail of precious metal bullion and monetized bullion. In computing tax, there may be deducted from the measure of tax amounts representing the sale at wholesale or retail of precious metal bullion and monetized bullion. However, no deduction is allowed on amounts received as commissions upon transactions for the accounts of customers over and above the amount paid to other dealers associated in such transactions, and no deduction or offset is allowed against such commissions on account of salaries or commissions paid to salespeople or other employees.

O. Amounts representing rental of real estate for assisted living facilities. In computing tax, there may be deducted from the measure of the tax amounts derived from the value of the rental of real estate for "assisted living facilities." To qualify for the deduction, the assisted living facility must meet the definition

of "assisted living facility" and licensed by the State of Washington under RCW 18.20. The deduction shall be in the amount of twenty-five percent (25%) of the gross monthly billing when the boarder has resided within the assisted living facility for longer than thirty (30) days.

P. Radio and television broadcasting - advertising agency fees - national, regional, and network advertising - interstate allocations. In computing tax, there may be deducted from the measure of tax by radio and television broadcasters amounts representing the following:

1. advertising agencies' fees when such fees or allowances are shown as a discount or price reduction in the billing or that the billing is on a net basis, i.e., less the discount;
2. actual gross receipts from national network, and regional advertising or a "standard deduction" as provided by RCW 82.04.280; and
3. local advertising revenue that represent advertising which is intended to reach potential customers of the advertiser who are located outside the State of Washington. The Director may issue a rule that provides detailed guidance as to how these deductions are to be calculated.

Q. 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.

R. Receipts from the sale of tangible personal property delivered outside the City but within Washington. Effective January 1, 2008, amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property delivered to the buyer or the buyer's representative outside the City but within the State of Washington may be deducted from the measure of tax under the retailing or wholesaling classification. (Note: The cities which tax retail services under the retailing classification, and not the service and other classification, should also include retail services in this deduction (both in the title and in the deduction itself)).

S. Professional employer services. In computing the tax, a professional employer organization may deduct from the calculation of gross income the gross income of the business derived from performing professional employer services that is equal to the portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement.

#### **5.04.130 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.

#### **5.04.140 Severability**

If any provision of this chapter or its application to any person or circumstance is held invalid for any reason, the remainder of the chapter or the application of the provision or chapter to other persons or circumstances shall not be affected.

#### **5.04.150 Miscellaneous**

A. Short title. ~~This~~The provisions of this Chapter 5.04 shall be known as the Olympia Business and Occupations Tax Code.

B. Headings. The headings contained in this ordinance are for convenience only and shall not be deemed to govern, limit, modify or otherwise affect the scope, meaning or intent of the provisions contained herein in any manner.

C. The former provisions of Olympia Municipal Code Chapter 5.04, which are being repealed and replaced with the provisions of this new Code Chapter 5.04 (Ordinance No. 6328), shall remain in full force and effect until the effective date of this new Code Chapter 5.04, which is January 1, 2005 or as may hereafter be amended.

**Section 4. Amendment of OMC Chapter 5.05.** Olympia Municipal Code Chapter 5.05, Administrative Provisions for Certain Taxes, is hereby amended to read as follows:

## **Chapter 5.05**

### **ADMINISTRATIVE PROVISIONS FOR CERTAIN TAXES**

5.05.000 Chapter Contents

Sections:

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5.05.015 Application of Chapter.  
5.05.020 Definitions.  
5.05.021 Definitions -- References to Chapter 82.32 RCW.  
5.05.025 Business license required.  
5.05.030 Suspension or revocation of business license for failure to pay taxes.

#### **II. Payment of Tax, Interest and Penalty**

5.05.040 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.  
5.05.050 Payment methods -- Mailing returns or remittances -- Time extension -- Deposits -- Recording payments -- Payment must accompany return -- NSF checks.  
5.05.060 Records to be preserved -- Examination -- Estoppel to question assessment.  
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### I. General

#### **5.05.010 Purpose**

This Chapter is enacted based upon model administrative provisions developed by a coalition of Washington cities that have enacted a business and occupation tax. By enacting these administrative tax provisions, the City hopes to create greater uniformity and consistency among Washington municipal taxing jurisdictions and, to the extent feasible, make it easier for taxpayers working in multiple Washington taxing jurisdictions. However, the provisions of this Chapter are not intended to be exactly the same as other Washington taxing jurisdictions.

#### **5.05.015 Application of Chapter**

Unless expressly stated to the contrary in each chapter, the provisions of this Chapter 5.05 shall apply with respect to the licenses and taxes imposed under this Title 5.

#### **5.05.020 Definitions**

For purposes of this chapter, the definitions contained in Olympia Municipal Code Chapter 5.04.040 shall apply equally to the provisions of this chapter unless the term is defined otherwise in this chapter. In addition, the following definitions shall apply:

"Code": "Code" shall mean the Olympia Municipal Code.

"Records": "Records" shall include any writing containing information relating to the conduct of business by a person, and prepared, owned, and/or retained by or for a person or business subject to OMC 5.04 or 5.05, regardless of physical form or characteristics. The term includes, but shall not be limited to, books, records, papers, invoices, vendor lists, inventories, stocks of merchandise, and other data in paper, electronic, magnetic or other form including federal income tax and state tax returns and reports.

"Reporting period": "Reporting period" means:

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

"Return": "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.

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

#### **5.05.021 Definitions -- References to Chapter 82.32 RCW**

Where provisions of Chapter 82.32 RCW are incorporated in OMC 5.05.090 of this Title, "Department" as used in the RCW shall refer to the "Director" as defined in OMC 5.02 and "warrant" as used in the RCW shall mean "citation or criminal complaint."

#### **5.05.025 Business license required**

A. On and after the effective date of this chapter, no person, whether subject to the payment of a tax or not, shall engage in any business or activity in the City for which a license fee or tax is imposed by this Title without having first obtained and being the holder of a valid and subsisting license to do so, to be known as a business license, issued under the provisions of this title, as hereinafter provided, and without paying the license fee or tax imposed by this title. The fee or tax for the business license shall be the license fee or tax imposed by this Title, and in addition, a registration fee shall accompany the application for the license as defined in OMC 5.02.015. Such license heretofore issued pursuant to the provisions of any city ordinance, or any such license hereafter issued pursuant to the provisions of this chapter shall be valid, unless suspended or revoked under OMC 5.02.050, as long as the person to whom the same is issued continues in business and pays the license fees and/or tax due pursuant to the provisions of this Title. Applications for the license shall be made to and issued by the State of Washington Department of Revenue Business License Service on forms provided by that person.

B. The license and registration shall be personal and nontransferable. In case business is transacted at two or more separate places by one taxpayer, a separate registration and license for each place at which business is transacted with the public shall be required, but for such additional registration no additional fee shall be required. Each license shall be numbered, shall show the name, place and character of business of the taxpayer, such other information as the Director shall deem necessary, and shall at all times be conspicuously posted in the place of business for which it is issued. Where a place of business of the taxpayer is changed, a new license shall be issued for the new place of business free of charge.

C. No person to whom a license has been issued pursuant to any city ordinance or pursuant to this Title shall suffer or allow any other person for whom a separate license is required to operate under or display the person's license; nor shall such other person operate under or display such license.

D. The registration fee and tax levied in this chapter are additional to any license fee or tax imposed or levied under any law or any other ordinance of the City except as otherwise expressly provided in this chapter.

#### **5.05.030 Suspension or revocation of business license for failure to pay taxes**

A. In addition to the authority set forth in OMC 5.02.050, the Director, or designee, shall have the power and authority to suspend or revoke any business license issued under the provisions of Title 5 of this Code, if the taxpayer is in default of any assessment of any tax under this Code. The Director, or designee, shall notify such taxpayer in writing of the suspension or revocation of the taxpayer's registration and the grounds therefor.



B. Any taxpayer may, within thirty (30) days from the date that the suspension or revocation notice was mailed to the taxpayer, appeal from such suspension or revocation by filing a written notice of appeal with the Tax Hearing Examiner in accordance with the procedures for administrative appeal set forth in this OMC 5.05.200.

C. No suspension or revocation of a license issued pursuant to the provisions of this chapter shall take effect until thirty (30) days after the mailing of the notice thereof by the Department, and if appeal is taken as herein prescribed the suspension or revocation shall be stayed pending final action by the Tax Hearing Examiner. All licenses that are suspended or revoked shall be surrendered to the City on the effective date of such suspension or revocation.

D. Upon revocation of any license as provided in this chapter no portion of the registration fee shall be returned to the taxpayer.

## **II. Payment of Tax, Interest, and Penalty**

### **5.05.040 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. Other than any annual license fee or registration fee assessed under this Title, the tax imposed by this Title or Chapter 5.04 of the Code shall be due and payable in quarterly installments. At the Director's discretion, businesses may be assigned to an annual or monthly reporting period depending on the tax amount owing or type of tax. Until December 31, 2020, 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. Effective January 1, 2021, tax payments are due on or before the time provided in RCW 82.32.045 (1) thru (3).

B. Taxes shall be paid as provided in this chapter and accompanied by a return on forms as prescribed by the Director. 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 full and true.

C. Tax returns must be filed and returned by the due date whether or not any tax is owed. Returns not received on or before the due date are subject to penalties and interest in accordance with this chapter.

D. Notwithstanding subsection (A) of this section, a person shall not owe any tax under Chapter 5.04 of this Code if the following conditions are met:

1. The person's gross income of the business from all activities taxable under Chapter 5.04 of this Code is less than \$20,000 dollars per year or is equal to or less than \$5,000 during any quarter if reporting on a quarterly basis; and
2. The person is not required to collect or pay to the City any other tax or fee which the City is authorized to collect.

Regardless of reporting period assigned, any person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, does not exceed the threshold amount in the current calendar year or calendar quarter, shall file a return, declare no tax due on their return, and submit the return to the Director. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due.

E. A taxpayer who 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 subject to the conditions set forth in subsection D above.

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 Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the Director'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 Director 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.

**5.05.050 Payment methods -- Mailing returns or remittances -- Time extension -- Deposits -- Recording payments -- Payment must accompany return -- NSF checks**

A. Taxes shall be paid to the Director 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 Director. 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 and administrative fees, the same as if such payment had not been tendered. Acceptance of any sum by the Director shall not discharge the tax or fee due unless the amount paid is the full amount due.

B. A return or remittance which 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 Director may allow electronic filing of returns or remittances from any taxpayer. A return or remittance that is transmitted to the City electronically shall be deemed filed or received according to procedures set forth by the Director.

C. If the taxpayer submits a written request detailing the reasons for the requested extension that is received prior to the due date, the Director, for good cause, may grant, in writing, additional time within which to make and file returns.

D. The Director shall keep full and accurate records of all funds received or refunded. The Director 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, or for any payment not accompanied by the return required as by OMC 5.05.040, 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 and in OMC 4.60.

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 "insufficient funds" (also known as NSF check) charge in an amount as established and promulgated in writing by the Director is received by the Director. Any registration certificate issued upon payment with a NSF check will be considered void.

G. The Director 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.

**5.05.060 Records to be preserved -- Examination -- Estoppel to question assessment**

A. Every person liable for any fee or tax imposed by this Title or Chapter 5.04 shall keep and preserve, for a period of five (5) 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, but not be limited to, copies of all federal income tax and state tax returns and reports made by the person. All books, records, papers, invoices, ticket stubs, vendor lists, gambling games, and payout information, inventories, stocks of merchandise, and other data, including federal income tax and state tax returns, and reports needed to determine the accuracy of any taxes due, shall be open for inspection or examination at any time by the Director or a duly authorized agent. Every person's business premises shall be open for inspection or examination by the Director or a duly authorized agent. All records shall be open for examination at any time during normal business hours by the City or its duly authorized agent.

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

C. Any person who fails, or refuses the Director's request, to provide or make available records shall be forever barred from questioning in any administrative or court proceeding or 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. The Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the estimate of the tax or fees due. Such fee or tax assessment shall be deemed prima facie correct and shall be the amount of tax owing the City by the taxpayer. The Director shall notify the taxpayer by mail the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

D. Any person who fails to pay all taxes and fees due to the City may be barred from contracting with the City until such time as all taxes and fees are paid in full.

#### **5.05.070 Accounting methods**

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

B. The taxes imposed and the returns required, hereunder, shall be upon a calendar year basis.

#### **5.05.080 Contracts -- Payment of fee and tax before final payment for work**

The Director may, before issuing any final payment to any person performing work under any contract for the City, including those defined by RCW 39.04.010, require such person to pay in full all license fees or taxes due under this title from such person on account of such contract or otherwise, and may require such taxpayer to file with the Director a verified list of all subcontractors supplying labor and/or materials to the person in connection with said work.

#### **5.05.090 Underpayment of tax, interest, or penalty -- Interest -- Limitations**

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

B. Interest Rate.

1. For tax periods ending December 31, 2004 and before:

a. Interest imposed after the effective date of this ordinance shall be computed from the last day of the month following the end of the reporting period and shall 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.

b. 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. Sec. 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, for the months of January, April, July, and October of the year immediately preceding the calendar year as published by the United States Secretary of the Treasury. The rate shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

2. For tax periods after December 31, 2004 the Director shall compute interest in accordance with RCW 82.32.050 as it now exists or as it may be amended.

3. If 5.05.090.B.2 is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of this ordinance shall apply.

C. The Director 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 Director may issue an assessment:

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

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

OR

3. Against a person that has executed a written waiver of such limitations.

**5.05.100 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 Director determines that the amount of tax, penalty, or interest paid is in excess of that properly due, the excess amount shall be credited to the taxpayer's account or shall be refunded to the taxpayer. 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 (4) years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

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

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

D. Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest, or costs paid by any person shall be paid in the same manner as provided in subsection (C) of this section, upon the filing with the Director a certified copy of the order or judgment of the court.

E. Interest Rate.

1. For tax periods December 31, 2004 and before, for refunds or credits of amounts paid or other recovery allowed to a taxpayer after the effective date of the ordinance, the rate of interest shall be the federal short term interest rate as outlined for assessments under OMC 5.05.090(B)(2) plus two percentage points.
2. For tax periods after December 31, 2004 the Director shall compute interest on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060 as it now exists or as it may be amended.
3. If OMC 5.05.090.B.2 is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of this ordinance shall apply.

**5.05.110 Late Payment -- Disregard of Written Instructions -- Evasion -- Penalties**

- A. If the Director does not receive a return or payment of any tax due on a return to be filed by a taxpayer by the due date, the Director shall add a penalty in accordance with RCW 82.32.090(1), as it now exists or as it may be amended.
- B. If the Director determines that any tax has been substantially underpaid as defined in RCW 82.32.090(2), there shall be added a penalty in accordance with RCW 82.32.090(2), as it now exists or as it may be amended.
- C. If a citation or criminal complaint is issued by the Director for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty in accordance with RCW 82.32.090(3), as it now exists or as it may be amended.
- D. If the Director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the Director a license as required by OMC 5.05.025, the Director shall impose a penalty in accordance with RCW 82.32.090(4), as it now exists or as it may be amended. No penalty shall be imposed under this subsection (D) if the person who has engaged in business without a license obtains a license prior to being notified by the Director of the need to be licensed.
- E. If the Director determines that all or any part of a deficiency resulted from the taxpayer's failure to follow specific written tax reporting instructions, there shall be assessed a penalty in accordance with RCW 82.32.090(5), as it now exists or as it may be amended.
- F. If the Director finds that all or any part of the deficiency resulted from an intent to evade the tax payable, the Director shall assess a penalty in accordance with RCW 82.32.090(6), as it now exists or as it may be amended.
- G. The penalties imposed under subsections (A) through (E) above 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 Director shall not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.
- I. For the purposes of this section, "return" means any document a person is required by the City of Olympia 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.
- J. If incorporation into the City of Olympia code of future changes to RCW 82.32.090 is deemed invalid, then the provisions of RCW 82.32.090 existing at the time this ordinance is effective shall apply.

#### **5.05.120 Cancellation of penalties**

A. The Director may cancel any penalties imposed under subsections 5.05.110(A) and (B) if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not willful neglect, or if no tax was due. Willful neglect is presumed unless the taxpayer shows that it exercised ordinary business care and prudence in making arrangements to file the return and pay the tax but was, nevertheless, due to circumstances beyond the taxpayer's control, unable to file or pay by the due date. The Director has no authority to cancel any other penalties or to cancel penalties for any other reason except as provided in subsection C of this section.

B. A request for cancellation of penalties must be received by the Director within 30 days after the date the Department mails the notice that the penalties are due. The request must be in writing and contain competent proof of all pertinent facts demonstrating that the failure to timely file or pay the tax was due to reasonable cause and not to the taxpayer's willful neglect. In all cases the burden of proving the facts rest upon the taxpayer.

C. The Director may cancel the penalties in OMC 5.05.110(A) and (B) one time if a person:

1. is not currently licensed and filing returns; and,
2. had a good faith unawareness of its responsibility to file and pay tax; and,
3. obtained business licenses and filed past due tax returns within 30 days after being notified by the Department.

D. The Director shall not cancel any interest charged upon amounts due.

#### **5.05.130 Taxpayer quitting business -- Liability of successor**

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

B. Any person who becomes a successor shall become liable for the full amount of any tax owing. The successor shall withhold from the purchase price a sum sufficient to pay any tax due to the city from the taxpayer until such time as: 1) the taxpayer shall produce a receipt from the City showing payment in full of any tax due or a certificate that no tax is due, or 2) more than six (6) months has passed since the successor notified the Director of the acquisition and the Director has not issued and notified the successor of an assessment.

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

D. Notwithstanding the above, if a successor gives written notice to the Director of the acquisition, and the Department does not within six (6) 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.

#### **5.05.140 Tax declared additional**

The fee and tax levied under OMC 5.04 shall be additional to any other fee or tax imposed or levied under any law or any other ordinance of the City of Olympia except as otherwise expressly provided.

#### **5.05.150 Public disclosure -- Confidentiality -- Information sharing**

A. The City shall not disclose any tax information that is exempt from disclosure under the Washington state Public Disclosure Act (Chapter 42.17 of the Revised Code of Washington) or where

disclosure would violate any other law prohibiting disclosure of tax information, as that term may be defined by law.

B. For purposes of this section, defined terms shall be as set forth below and in OMC Section 5.04.040.

1. "Disclose" means to make known to any person in any manner whatsoever a return or tax information.
2. "Tax information" means:
  - a. A taxpayer's identity;
  - b. The nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemption, credits, assets, liability, net worth, tax liability deficiencies, over assessments, or tax payments, whether taken from the taxpayer's records or any other source;
  - c. Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or
  - d. Other records and/or data received by, recorded by, prepared by, or provided to the City with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under OMC Title 5 for a tax penalty, interest, fine, forfeiture, or other imposition or offense. However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this Section. Nothing in this Chapter requires any person possessing data, material, or documents made confidential and privileged by this Section to delete information from such data, material, or documents so as to permit its disclosure.
3. "City agency" means every City office, department, division, bureau, board, commission, or other City agency.
4. "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer.
5. "Department" means the City of Olympia Department of Administrative Services (Clerk/Treasurer).

C. Returns and tax information are confidential and privileged, and except as authorized by this section, neither the Director nor any other person may disclose any return or tax information.

D. This section does not prohibit the Director from:

1. Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:
  - a. In respect of any tax imposed under OMC Title 5 if the taxpayer or its officer or other person liable under this title is a party in the proceeding; or
  - b. In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding.
2. Disclosing, subject to such requirements and conditions as the Director prescribes by rules adopted pursuant to OMC Title 5, Chapters 5.04 and 5.05, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent

necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the Director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

3. Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;
4. Disclosing such return or tax information, for official purposes only, to the mayor or city attorney, or to any City agency, or to any member of the city council or authorized designees dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;
5. Permitting the City's records to be audited and examined by the proper state officer, the state officer's agents and employees;
6. Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought or where otherwise allowed to be disclosed under this Section;
7. Disclosing any such return or tax information to the proper officer of the Internal Revenue Service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of the City;
8. Disclosing any such return or tax information to the United States Department of Justice, including the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Department of Defense, the Immigration and Customs Enforcement and the Customs and Border Protection agencies of the United States Department of Homeland Security, the United States Coast Guard, the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury, and the United States Department of Transportation, or any authorized representative of these federal agencies or their successors, for official purposes;
9. Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent;
10. Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers and the active/closed status of such registrations, state or local business license registration identification and the active/closed status and effective dates of such licenses, reseller permit numbers and the expiration date and status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. Except that this subsection may not be construed as giving authority to the City or any recipient to give, sell, or provide access to any list of taxpayers for any commercial purpose;



11. Disclosing such return or tax information that is also maintained by another beneficiary Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;
12. Disclosing such return or tax information to the United States Department of Agriculture, or successor department or agency, for the limited purpose of investigating food stamp fraud by retailers;
13. Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the City for a filed tax warrant, judgment, or lien against the real property;
14. Disclosing to a person against whom the department has asserted liability as a successor under OMC 5.05.130 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;
15. Disclosing real estate excise tax affidavit forms filed under OMC 3.52 in the possession of the City, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;
16. Disclosing such return or tax information to the court or hearing examiner in respect to the City's application for a subpoena if there is probable cause to believe that the records in possession of a third party will aid the Director in connection with its official duties under this title or a civil or criminal investigation.

E. 1. The Director may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection E. The disclosure must be in connection with the department's official duties under this Title, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

2. Before disclosure of any tax return or tax information under this subsection (E), the Director must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The Director may not disclose any tax return or tax information under this subsection E until the time period allowed in (3) of this subsection has expired or until the court has ruled on any challenge brought under (3) of this subsection.

3. The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (2) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court must limit or deny the request of the Director if the court determines that:

- a. The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

b. The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

c. The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

4. The Director must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

5. Requesting information under (2) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

F. Service of a subpoena issued by the court or under OMC 5.05.270 does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena issued by the court or under OMC 5.05.270 may disclose the existence or content of the subpoena to that person's legal counsel.

G. Any person acquiring knowledge of any return or tax information in the course of the person's employment with the City and any person acquiring knowledge of any return or tax information as provided under subsection (D) (4), (5), (6), (7), (8), (9), or (11) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person must forfeit such office or employment and is incapable of holding any public office or employment in this City for a period of two years thereafter.

H. RCW 82.32.330(3)(i), as currently enacted, allows disclosure of taxpayer information to other certain designated governmental entities for official purposes but only if those governmental entities grant substantially similar disclosure privileges to the City of Olympia. Accordingly, this subsection grants reciprocity to those governmental entities identified in RCW 82.32.330(3)(i), as that section is currently enacted or as it may hereafter be modified, that grant reciprocity to the City of Olympia, provided that those governmental entities shall not further disclose the tax information except as authorized by law.

#### **5.05.160 Tax constitutes debt**

Any fee or tax due and unpaid under Title 4 and Title 5, and all interest and penalties thereon, shall constitute a debt to the City of Olympia 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. If a warrant is issued by the Director for the collection of taxes, increases, and penalties, there is added thereto a penalty of ten percent of the amount of the tax, but not less than ten dollars.

#### **5.05.170 Unlawful actions -- Violation -- Penalties**

A. It shall be unlawful for any person under this Code:

1. To violate or fail to comply with any of the provisions of this chapter or any other lawful rule or regulation adopted by the Director; or,
  2. To make any false statement on any license application or tax return; or,
  3. To aid or abet any person in any attempt to evade payment of a fee or tax; or,
  4. To fail to appear or testify in response to a subpoena issued pursuant to OMC 5.05.270; or,
  5. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this Chapter;
- or

6. To continue to engage in any business activity, profession, trade, or occupation after the revocation of or during a period of suspension of a business license.
8. In any manner, to hinder or delay the City or any of its officers in carrying out the provisions of this Title.

B.

It shall be a civil infraction for a person, firm, limited liability company or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, limited liability company or corporation found to have committed a civil infraction shall be assessed a monetary penalty as provided in OMC Chapter 4.44, Uniform Code Enforcement.

**5.05.180 Closing agreement provisions**

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

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

B. In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

**5.05.190 Charge-off of uncollectible taxes**

The Director or designee may charge off any tax, penalty, or interest that is owed by a taxpayer, if the Director or designee ascertains that the cost of collecting such amounts would be greater than the total amount that is owed or likely to be collected from the taxpayer. Any charge off greater than \$15,000 must receive prior City Council approval.

**III. Appeals**

**5.05.200 Administrative Appeal**

A. Filing of Appeal. Any taxpayer, except one who has failed to comply with section 5.05.060 of this Code, who feels aggrieved by the amount of the fee, tax or penalty determined by the Director to be required under the provisions of this chapter, or who was aggrieved by the Director's determination to suspend or revoke a business license under section 5.05.030, may appeal from such determination by filing a written notice of appeal with the City Clerk/Treasurer within thirty (30) days from the time such taxpayer was given notice of such determination. A filing fee determined by the Director shall be submitted with the appeal, which filing fee is required to process the appeal. The taxpayer must pay the amount assessed, or cause the same to be paid, before the appeal may be heard. The Clerk/Treasurer shall forward a copy of the appeal to the Tax Hearing Examiner.

B. Basis of Appeal and Relief Sought. Every appeal shall state in writing:

1. How the appellant is or is likely to be harmed or prejudiced by the decision appealed from;
2. How or in what particular factual and/or legal respect the Director erred in determining the amount of fee, tax or penalty, or in suspending or revoking the business license; and
3. What relief or ruling is sought, including the amount of fee, tax or penalty the appellant contends is correctly due, and how such ruling would eliminate or reduce harm to the appellant.

C. Dismissal. Failure to comply with the requirements of subsection (B)(1) - (3) above shall subject the appeal to dismissal without a hearing. The city staff or any party may request dismissal of an appeal at any time with notice to all parties, or the Tax Hearing Examiner may sua sponte determine that the appeal fails to comply with subsection (B)(1) - (3) above. If the Tax Hearing Examiner so determines, the Tax Hearing Examiner shall dismiss the appeal, and shall state whether such dismissal is with or without prejudice, as appropriate, depending upon whether the errors can be corrected within the appeal period set forth in subsection (A) above.

#### **5.05.210 Administrative Appeal Hearing**

A. Notice and Record. Upon concluding that an appeal complies with OMC 5.05.200(B)(1)-(3), the Tax Hearing Examiner shall set the time and place at which the appeal will be heard, and shall cause a notice of the time and place to be delivered or mailed to the parties and to the Director at least ten (10) days in advance of the hearing date. The Director shall transmit to the Hearing Examiner a copy of all of the records pertaining to the decision being appealed, together with written reports as the Hearing Examiner deems pertinent.

B. Appeal Hearing Postponement or Waiver. After written notice of the public hearing date has been mailed to interested parties, such hearing shall not be postponed except for good cause as determined by the Tax Hearing Examiner. Any request for such postponement shall be for a specific period and be submitted in writing to the Tax Hearing Examiner and to the Director. If after considering the request and any response from the Director, the Tax Hearing Examiner determines that good cause is presented, the Examiner shall postpone such hearing to a date certain and shall order that all costs of new notice of such hearing shall be paid to the City by the party requesting that the hearing be postponed. By agreement of all parties thereto, the appeal hearing may be waived, with the appeal decided by the Examiner on the basis of written briefs or memoranda.

C. Appeal Hearing. The hearing shall be conducted in accordance with the rules adopted by the Tax Hearing Examiner under OMC 5.05.270. During the hearing, the Tax Hearing Examiner may hear any relevant testimony and receive and consider any other evidence that the Tax Hearing Examiner determines is relevant and bears on the issues to be decided. City staff shall keep a record of the appeal proceedings, which shall consist of the following: (1) a sound recording of the appeal hearing, including all testimony given under oath and oral argument during the appeal hearing, or a written verbatim transcript of the same; (2) all documentary or non-testimonial evidence or exhibits admitted by the Tax Hearing Examiner; and (3) a sound recording or written verbatim transcript of any other proceedings such as prehearing conferences, motion hearings, and the like.

#### **5.05.220 Decision on Administrative Appeal**

A. Standard of Review. After giving the Director's decision substantial weight, the Tax Hearing Examiner shall grant the relief requested by the appellant only upon finding that the appellant has established that:

1. The Director engaged in unlawful procedures or failed to follow a prescribed procedure;
2. The Director's determination was an erroneous interpretation of the law;

3. The Director's determination is not supported by substantial evidence within the context of the whole record made during the appeal hearing or via written memoranda or briefs if a hearing was waived;
4. The Director's determination is a clearly erroneous application of the law to the facts;
5. The Director's determination was outside the Director's authority or jurisdiction;

B. Decision.

1. Contents. Within fourteen (14) days of the conclusion of the appeal hearing, unless a longer period is agreed to in writing by the appellant and the Director, the Hearing Examiner shall render a written decision which shall include at least the following:

- a. Findings of fact based upon the record and conclusions of law therefrom, which support a decision indicating the correct amount of the fee or tax owing. Such findings and conclusions shall address any and all specific issues raised by the appellant, the Director, or any party of record. In lieu of original findings and conclusions regarding uncontested matters, the Examiner may adopt findings and conclusions recommended by the appellant, the Director, or any party of record. In adopting findings of fact, conclusions of law and a decision, the Tax Hearing Examiner is authorized to take judicial notice of all duly-adopted rules, ordinances, regulations, laws and policies of the City of Olympia and other public agencies.

- b. A decision on the appeal, which may be to grant or deny the appeal.

- c. A statement that the decision will become final in twenty-one (21) days unless appealed to the Thurston County Superior Court under section 5.05.230, along with a description of the appeal process provided thereunder.

2. Limitations. The decision of the Tax Hearing Examiner shall be limited to those issues timely raised on appeal. The Tax Hearing Examiner may not reconsider or modify aspects of a project previously considered and settled by another final decision of the City. In exercising the powers granted herein, the Tax Hearing Examiner may, in conformity with this title, reverse or affirm, wholly or in part, or may modify the order, requirements, decision or determination appealed, and may make such order, requirement, decision or determination as should be made, and, to that end, shall have all the powers of the Director from whom the appeal is being taken, insofar as the decision on the particular issue is concerned.

3. Reconsideration / Clarification. Decisions of the Tax Hearing Examiner, either on prehearing matters or resolving an appeal, shall not be reconsidered. Decisions may be clarified as provided below.

- a. Any interested party believing that the decision of the Tax Hearing Examiner is ambiguous, vague, or internally inconsistent may within twenty-one (21) days of the date of issue request clarification of the decision by the Tax Hearing Examiner. Such shall set forth the specific provision for which clarification is sought, along with any factual or legal support justifying the request. A copy of the request shall be submitted to the Director.

- b. A request for clarification shall not provide an opportunity for reconsideration of a decision nor for introduction of new evidence. Except as ordered by the Examiner, the filing of a request for clarification shall not toll the appeal period under Section 5.05.230.

- c. If, after allowing a reasonable time for response by the Director, the Tax Hearing Examiner determines that a clarification is warranted, the Tax Hearing Examiner may issue a

supplemental or clarified decision, which may be subject to appeal under Section 5.05.230 if so indicated by the Tax Hearing Examiner.

#### **5.05.230 Judicial Review of Administrative Appeal Decision**

The City, or any taxpayer (except one who has failed to comply with Section 5.05.060 of this Code) who has paid any tax as required, who feels aggrieved by a decision of the Tax Hearing Examiner and has first exhausted the right of administrative appeal set forth in this chapter, may seek judicial review via a petition for statutory writ of review in the Thurston County Superior Court within 21 days of the entry of the City's final administrative decision. The taxpayer shall set forth the amount of the tax imposed upon the taxpayer that the taxpayer concedes to be the correct amount of tax and the reason why the tax imposed should be reduced or abated. The appealing party shall serve a copy of the application for writ upon the opposing party within the time herein specified and shall file proof of service thereof with the Thurston County Superior Court Clerk. Proceedings in the Superior Court on appeal shall be based upon the administrative record compiled by the Tax Hearing Examiner. The burden shall rest upon the taxpayer to prove that the Tax Hearing Examiner's decision and the tax as paid by the taxpayer are incorrect, either in the whole or in part, and to establish the correct amount of the tax.

The cost of preparing and certifying the administrative record of the Tax Hearing Examiner shall be borne by appellant.

#### **5.05.240 Tax Hearing Examiner Selection**

The Tax Hearing Examiner shall be selected by the Council. The Tax Hearing Examiner may be retained on a professional service contract for a term and on conditions determined appropriate by the Council. Such contract may provide that the Tax Hearing Examiner may retain the services of officials to hold hearings as are needed to render aid and advice regarding technical or specialized issues that may be presented. Said contract may also provide for a Tax Hearing Examiner(s) pro tem to serve in the absence of the Tax Hearing Examiner on such terms and conditions deemed appropriate by the Council.

#### **5.05.250 Qualification and removal of Tax Hearing Examiner**

The Tax Hearing Examiner shall be appointed solely with regard to the Tax Hearing Examiner's training and experience in conducting administrative or quasi-judicial hearings on tax and license-related matters, and in discharging the other functions conferred upon the Tax Hearing Examiner by ordinance. The Tax Hearing Examiner shall hold no other elective or appointive office or position with the City of Olympia. A Tax Hearing Examiner may be removed from office for cause by majority vote of the Council.

#### **5.05.260 Improper influence, conflict of interest and appearance of fairness**

A. No City official, elective or appointive, shall attempt to influence the Hearing Examiner in any matter officially before that Tax Hearing Examiner so as to constitute misconduct of a public office under RCW 42.20 or a violation of the Appearance of Fairness Doctrine.

B. The Hearing Examiner shall conduct all proceedings in a manner to avoid conflicts of interest or other misconduct and to avoid violations of the Appearance of Fairness Doctrine. If such conflicts or violations cannot be avoided in a particular case, the Hearing Examiner shall assign a Hearing Examiner pro tem to act in the Hearing Examiner's absence.

#### **5.05.270 Organization, Rules**

A. The Office of the Tax Hearing Examiner shall be under the administrative supervision of the Tax Hearing Examiner and shall be separate from the Director.

B. The Tax Hearing Examiner shall be empowered to adopt rules for the scheduling and conduct of hearings and other procedural matters related to the duties of the office. Such rules may provide for cross examination of witnesses. Further, such rules shall provide for recording of the proceedings and for compliance with the State, Federal and City laws which may govern such a proceeding. The Tax Hearing Examiner shall also be empowered to issue subpoenas, at the request of a party, to compel testimony from a witness as part of an appeal hearing.

#### **IV. Director's Authority**

##### **5.05.280 Director to make rules**

The Director shall have the power, from time to time, to adopt, publish and enforce rules and regulations not inconsistent with this chapter and title or with law for the purpose of carrying out the provisions of this chapter and title, and it shall be unlawful to violate or fail to comply with, any such rule or regulation.

##### **5.05.290 Ancillary allocation authority of Director**

The Director is authorized to enter into agreements with other Washington cities which impose an "eligible gross receipts tax," as defined in OMC 5.04.040, to do any of the following:

- A. Conduct a joint audit of a taxpayer by using an auditor employed by the City of Olympia, another city, or a contract auditor;
- B. Allocate or apportion 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. 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.

##### **5.05.295 Enforcement Duties of Director and Agents**

It is the duty of the Director and agents under the direction and supervision of the Director to assist in the enforcement of the provisions of the license and business tax laws of the City, including the apprehension and assistance in the prosecution of violators of the license and business tax laws of the City and the performance of such other duties as the Director may from time to time require to assist in the enforcement of the provisions of these laws of the City.

#### **V. Miscellaneous**

##### **5.05.300 Severability**

If any provision of this chapter or its application to any person or circumstance is held invalid for any reason, the remainder of the chapter or the application of the provision or chapter to other persons or circumstances shall not be affected.

##### **5.05.310 Mailing of Notices**

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

**Section 4. Amendment of OMC Chapter 5.10.** Olympia Municipal Code Chapter 5.10, Occupational Permits, is hereby amended to read as follows:

## **Chapter 5.10**

### **OCCUPATIONAL PERMITS**

#### **5.10.000 Chapter Contents**

##### **Sections:**

- 5.10.001 Administrative provisions.
- 5.10.002 Business and occupations tax applies.
- 5.10.010 License and Occupational Permit -- Required.
- 5.10.020 Definitions.5.10.030 General Requirements -- Application Procedure.
- 5.10.040 General Occupational Permit -- Review of Applicants.
- 5.10.045 General Occupational Permit -- Background Checks.
- 5.10.050 General Issuance, Fee and Term of Occupational Permit.
- 5.10.060 General Occupational Permit -- Revocation, Suspension, or Denial.
- 5.10.070 Reciprocity.
- 5.10.100 For-Hire Driver Occupational Permit -- Additional Requirements.
- 5.10.110 For-Hire Driver's Occupational Permit -- Other Violations.
- 5.10.120 For-Hire Vehicle Rates to be Filed and Posted.
- 5.10.130 For-Hire Vehicle Passenger Complaints.
- 5.10.200 Solicitor Occupational Permit -- Additional Requirements.
- 5.10.210 Occupational Permit to be carried.
- 5.10.220 Exemptions.
- 5.10.300 Violations -- Civil Infraction.

#### **5.10.001 Administrative Provisions**

The administrative provisions contained in OMC Chapter 5.05 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

#### **5.10.002 Business and Occupations Tax Applies**

The provisions contained in OMC Chapter 5.04 shall be fully applicable to businesses required to obtain occupational permits.

#### **5.10.010 License and Occupational Permit Required**

This ordinance is enacted to regulate the practice of certain occupations that, by their nature, present a heightened public safety risk to the public

It is unlawful for any person, firm or corporation to engage in business in the City without first obtaining a license pursuant to the provisions of OMC 5.02. Any additional licensing or permitting requirements of this Chapter 5.10 shall also apply.

A. For-Hire Vehicle Driver/Operator – It is unlawful for any person to drive a for-hire vehicle and pick up any passenger within the City without first obtaining an occupational permit therefore in the manner provided by this chapter.

B. Locksmith – It is unlawful for any person, to act as a locksmith in the City without first obtaining an occupational permit pursuant to the provisions of this chapter. This chapter does not apply to those exempted under OMC 5.52.100.

C. Solicitor – It is unlawful for any person to act as a solicitor, within the meaning and application of this chapter, without first obtaining an occupational permit in the manner provided by this chapter.



### **5.10.020 Definitions**

For the purpose of this chapter, the following definitions apply:

- A. "Chief of Police" means the City of Olympia Chief of Police.
- B. "City" means the City of Olympia.
- C. "Department" or "Police Department" means the Olympia Police Department.
- D. "Driver" or "Operator" means the person physically engaged in driving a for-hire vehicle, whether or not said person is the owner of or has any financial interest in said vehicle.
- E. "For-hire vehicle" includes all vehicles used for the transportation of passengers for compensation, except chartered and scheduled buses, vehicles not for hire by the general public (such as vans operated by hotels, employers, churches, schools and retirement facilities) and ride share vehicles, and transportation network company vehicles. The term refers primarily to taxicabs and limousines.
- F. "Limousine" means a chauffeur-driven, unmetered, unmarked luxury motor vehicle pre-arranged for transportation meeting the definition in RCW 46.04.274. Limousines differ from "taxis" in that they are for the exclusive use of the person(s) paying the pre-arranged fare, are unmetered, unmarked, and are not available for spontaneous hire.
- G. "Locksmith" means any person who, for hire, is engaged in the installation, removal, adjustment or repair of any locking or security device of any type used for doors, safes, windows or other similar purpose, and performs such service on a customer's premises.
- H. "New application" means an application submitted by a person who did not possess a permit for the same occupation issued by the City in the immediate prior year.
- I. "Person" means any natural person of either sex, firms, corporations, partnerships and associations either acting by themselves or by servant, agent or employee. The singular shall include the plural and words referring to a specific gender may be extended to any other gender.
- J. "Renewal application" means an application submitted by a person who possessed a permit for the same occupation issued by the City in the immediate prior year.
- K. "Solicitor" within the meaning of this chapter, is any person who, either as a principal or agent, goes from door to door, or from place to place and enters upon any private property within the City and thereon engages in any of the following activities:
  - 1. Sells, takes orders for, or offers to sell or take orders for, any goods, wares or merchandise whether or not collecting in advance for such goods, wares or merchandise; and/or
  - 2. Sells, takes orders for, or offers to sell or take orders for services, whether or not collecting in advance for the performance of such services; and/or
  - 3. Sells, takes orders for, or offers to sell or take orders for the making, manufacturing, or repairing of any article or thing whatsoever, whether or not collecting in advance for the performance of such services; and/or
  - 4. Seeks contributions or donations.
- L. "Taxicab," "Taxi" or "Cab" means a vehicle used for the transportation of passengers for-hire, where the route traveled, destination and number of passengers is controlled by the customer(s) and the fare is based on an amount recorded and indicated on a taximeter, or on a special fare rate or contracted agreement.

M. "Taximeter" means any instrument or device by which the charge for hire of a passenger carrying vehicle is measured or calculated either for the distance traveled by such vehicle or for waiting time, or for both, and upon which such calculated charges are indicated by means of figures.

#### **5.10.030 General Requirements -- Application Procedure**

The following are the basic general requirements for all occupational permits required under this chapter. The individual permits may have additional requirements.

A. Applications for an occupational permit shall be made to the City Police Department on forms provided by the City. The applicant shall attest to the truthfulness of the application, and shall complete the application in full, as directed.

B. The required application information includes, but is not limited to, the following:

1. The full legal name of the person applying for the occupational permit.
2. Any other name(s) or alias(es) used by the applicant.
3. The applicant's current legal residence address (no post office box).
4. The applicant's current mailing address, if different from the legal residence address (post office box is acceptable).
5. The applicant's prior legal residences for the past five (5) years (no post office box).
6. The applicant's employment history for the past five (5) years.
7. The applicant's business information (the licensed business for which the applicant will be engaging in the permitted occupation).
8. The applicant's social security number.
9. The applicant's place and date of birth.
10. The applicant's physical description.
11. Signature of applicant.

C. Applicants must, at the time of application, submit the following documents and materials:

1. A completed and signed application form.
2. A copy of a valid driver's license or other government-issued photo identification.
3. If not a U.S. citizen, proof of authority to legally work in the U.S.
4. Payment in full of all permit fees.
5. For renewal applications, a copy of the occupational permit issued for the prior year.
6. Other application documents as required in this chapter.

D. By affixing the applicant's signature to the permit application form, each applicant shall swear, under penalty of perjury, that the information contained in the application is true, complete and correct to the best of the applicant's knowledge, and shall grant permission for the Police Department to use reasonable means to verify the information contained in the application.

#### **5.10.040 General Occupational Permit -- Review of Applicants**

A. The Chief of Police (or designee) shall cause all applications for permits to be reviewed. The purpose of this review shall be as follows:

1. To determine the genuineness of all credentials and documents presented by the applicant; and
2. To determine if the applicant meets the fitness requirements set forth in OMC 5.10.040(C) or (D) and, if applicable, the requirements set forth in 5.10.100.

B. The Police Department shall endeavor to complete its review within ten (10) working days after receipt of completed applications.

C. The presence of any outstanding warrant for the applicant, regardless of jurisdiction or severity of offense, is cause for denial of an occupational permit under this section.

D. Prior conviction of a felony may be considered, along with other factors, in determining whether an occupational permit should be issued. However, conviction of a felony shall not be the sole reason for denying a permit unless such conviction was within the past ten (10) years and directly relates to the specific occupation, trade, vocation, or business for which the application is made.

E. Prior revocation of an occupational permit may be cause for denial of an occupational permit under this chapter.

#### **5.10.045 General Occupational Permit -- Background Checks**

A. All applicants for a permit under this chapter or a license under Chapter 5.16 OMC must consent to be fingerprinted for a criminal background check. Pursuant to RCW 35A.21.370, the Chief of Police (or designee) shall cause to have performed a state and nationwide background check of each applicant at the time of initial application and every third year thereafter, provided the applicant maintains the applicant's occupational permit continuously during that time.

B. The applicant shall be fingerprinted by the Police Department, which will forward the fingerprints to the Washington State Patrol (WSP) for processing. WSP will conduct a State background check and forward the fingerprints to the Federal Bureau of Investigation (FBI) for a nationwide background check.

C. The application fees for permits shall include the current charges for both State and national background checks and a charge for fingerprinting service. Background check and fingerprinting fees are non-refundable.

D. Upon receipt of the fingerprints and the appropriate fees from the Police Department, the WSP, pursuant to RCW 35A.21.370, will compare the applicant's fingerprints against its criminal database and submit the fingerprints to the FBI for a comparison with nationwide records. WSP will deliver the results of the State and national background checks to the Chief of Police (or designee) for use in determining the fitness of permit applicants, as specified in this chapter.

E. In those permit years in which State and nationwide background checks are not required, applicants shall certify as part of their renewal applications, under penalty of perjury, that they have no conditions or offenses which would disqualify or potentially disqualify them from holding a permit under this section.

F. The City reserves the right to cause to have conducted, at its own expense, at will, random spot checks of the backgrounds of permit holders at any time. Applicants are required to consent to such State and nationwide background checks, including the initial and any subsequent at will, random spot checks, as a condition of their application.

G. Applicants may request and receive a copy of the criminal history record information used by the City to determine fitness for a permit under this section, provided such request is made at the time of application. Criminal history record information that is used by the City to determine fitness for permits is not retained after the decision has been made to issue or deny a permit.

H. In rendering a fitness determination, the City will decide whether the record subject has been convicted of (or is under pending indictment for) (a) a crime which bears upon the subject's ability or fitness to serve in that capacity; (b) any felony or a misdemeanor which involved force or threat of force, controlled substances, or was a sex-related offense; or (c) enumerated disqualifiers.

I. The city shall not be responsible for correcting errors or otherwise amending criminal history record data it obtains from the Washington State Patrol or the Federal Bureau of Investigation for the purpose of making permit fitness decisions. Applicants who seek to amend or correct a criminal history record must contact the Washington State Patrol for a Washington State record or the Federal Bureau of Investigation for records from other jurisdictions maintained in its file.

#### **5.10.050 General Issuance, Fee and Term of Occupational Permit**

A. The City shall issue an occupational permit to the applicant on confirmation that all fitness requirements have been satisfied and the required fees paid.

B. Occupational permits issued under this chapter are valid for the calendar year of issue only and may be renewed in consecutive one-year increments.

C. The city manager shall set the fee for occupational permits under this chapter. The fee shall be based on the cost of administering the permit process; the cost of obtaining criminal history and other background data; and the cost of providing fingerprinting service.

D. If an applicant does not qualify for an occupational permit, the City shall promptly notify the applicant of the denial and refund the pre-paid permit fee. Background check and fingerprinting fees are not refundable.

E. Occupational permit cards shall include a color photo provided by the applicant of the size specified by the City and a location for renewal stickers. New permit cards shall be issued to renewal applicants every three (3) years.

F. Occupational permits are non-transferable.

G. Fees are for the calendar year of issue and are not prorated.

H. Permit holders may renew permits for the following year any time after October 1st of each year.

I. All occupational permits issued or renewed under this chapter prior to October 1st expire at midnight on December 31st of the calendar year of issue. Permits issued or renewed after October 1st are valid from the date of issue through December 31st of the following calendar year.

J. Renewal is solely the responsibility of the holder of a permit. The City does not seek renewals or issue renewal reminders.

K. A new application is required if renewal of a current permit is not completed before its expiration.

L. A new application is required if an applicant's prior year permit was suspended or revoked.

#### **5.10.060 General Occupational Permit -- Revocation, Suspension, or Denial**

A. An occupational permit issued hereunder may be revoked, suspended or denied by the Chief of Police for any of the following reasons:

1. Failure to meet or maintain any of the requirements or qualifications set forth in this chapter for obtaining an occupational permit.
2. Falsification of any record, document or information required to be kept or submitted to the City by this chapter.
3. Repeated or aggravated violations of OMC Section 5.68.110.
4. Repeated or aggravated violations of OMC Section 5.10.110 or 5.10.210.
5. Violation of OMC Section 5.10.120 or 5.10.130.

B. Prior to any revocation, suspension or denial of an occupational permit, the City shall inform the applicant of the applicant's right to a hearing thereon. Such hearing, if requested, shall be conducted before the City prior to the implementation of any revocation, suspension or denial.

#### **5.10.070 Reciprocity**

The City of Olympia honors for-hire driver, locksmith and solicitor permits issued by the cities of Lacey, Tumwater and Yelm. A person holding a valid occupational permit from any of the named jurisdictions is authorized to conduct the permitted business within the City in exactly the same manner and subject to the same rules and regulations as a person holding a permit from the City itself.

#### **5.10.100 For-Hire Driver Occupational Permit -- Additional Requirements**

All applicants must meet the following further requirements:

- A. Have no physical or mental infirmity which jeopardizes the ability to operate a for-hire vehicle.
- B. Be at least twenty-one (21) years of age.
- C. Have a valid Washington driver's license that permits operation of a for-hire vehicle and be continuously licensed as a driver by the State of Washington and/or another state for at least the two (2) years immediately prior to the date of application for a occupational permit.
- D. Not have been convicted of operating a motor vehicle while under the influence of intoxicating liquor or drugs or of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs, or of reckless driving or negligent driving, or of vehicular homicide or vehicular assault, within five (5) years preceding the date of application for a occupational permit.
- E. Not have been convicted of three or more moving violations during any twelve (12) month period during the five (5) years preceding the date of the application for an occupational permit.
- F. Not be a person who is required to register as a sex offender in any state.

#### **5.10.110 For-Hire Driver's Occupational Permit -- Other Violations**

In addition to the other provisions of this chapter, it is a violation for anyone holding a for-hire occupational permit to:

- A. Permit any person to alight from a for-hire vehicle while it is in motion.
- B. Operate or be in physical control of any vehicle while under the influence of intoxicating liquors or drugs.
- C. Allow passenger consumption of illegal drugs in any for-hire vehicle, or consumption of intoxicating liquor in any for-hire vehicle, except a limousine (RCW 46.61.519).

- D. Willfully carry any passenger to a destination by a route that is not the most direct route, unless a customer specifically authorizes a deviation or alternate route.
- E. Pick up additional passengers in a for-hire vehicle without the express consent of the original passenger.
- F. Activate a taximeter when a for-hire vehicle is not employed or activate any equipment which indicates that the for-hire vehicle is carrying a passenger when it is not.

#### **5.10.120 For-Hire Vehicle Rates to be Filed and Posted**

Upon receipt of a vehicle for-hire license, the licensee shall immediately file with the City a schedule of for-hire vehicle rates charged to the public. This schedule shall include rates for the following:

- A. Minimum charge.
- B. Rate per mile or fraction thereof above the minimum.
- C. Charges for each additional passenger above one.
- D. Charge for vehicle waiting time.
- E. Additional charge for baggage or suitcases.
- F. Any separate rate for service between the hours of midnight to six a.m.

The rate schedule shall be on file with the City for inspection by the public during normal city business hours. In addition, each for-hire permittee hereunder, except limousine operators, shall conspicuously display in the interior of the vehicle the rates of fare as required to be filed above. This posting must be located in the passenger compartment in a typewritten notice so as to be easily read by a passenger.

When the permittee changes rates, in total or in part, the permittee shall file a schedule of new rates with the City at least ten days before said new rates become effective. Likewise, the new rates shall be posted within the interior of the vehicle prior to the effective date of the new rates.

The permittee shall charge only those rates set forth in the schedule of rates required under this section.

#### **5.10.130 For-Hire Vehicle Passenger Complaints**

Upon receipt of a passenger complaint, the City shall evaluate the same and, if deemed appropriate, send written notice to the licensee, either personally, or by mail with a certificate of mailing attached. The notice shall specify the vehicle license number, the nature of the complaint received and the date upon which the complaint was conveyed. If the complaint alleges a vehicle defect, the notice will require that the permittee or his agent present the vehicle for inspection to the Chief of Police (or designee) within five days of receipt of the notice or be subject to permit revocation proceedings under this chapter.

#### **5.10.200 Solicitor Occupational Permit -- Additional Requirements**

In addition to the information required in OMC 5.10.030, the following application information is required:

- A. The nature of the goods, wares, merchandise, repair, manufacturing or services to be offered by the solicitor, or the purpose for which contributions or donations will be sought.
- B. A description of any vehicle(s) used in the conduct of solicitation.
- C. The applicant for such permit, if any scales, weights or measures are used in selling of goods, wares, merchandise or services, shall present and file with the application a certificate from the State Department of Weights and Measures showing that all scales, weights or measures to be used by the

applicant in the licensed activity have been tested and found accurate and correct immediately prior to the filing of the application.

#### **5.10.210 Occupational Permit to be carried**

Such occupational permit shall be exhibited at all times in plain view by each solicitor for whom issued, when soliciting or canvassing in the City, and shall be provided for examination by any such solicitor wherever the solicitor shall be requested to do so by any police officer or any person solicited.

#### **5.10.220 Exemptions**

A. The following persons are exempt from obtaining a solicitor's permit:

1. Persons engaged in solicitor activities who contact customers via appointments set in advance at the request of the customer.
2. Persons engaged in fund-raising for bona fide school, church, political or non-profit activities, where no compensation is provided to the persons doing the solicitation.
3. Youth under the age of 18 seeking lawn, child care or other occasional part-time work.
4. Persons and/or entities registered pursuant to Chapter 19.09 RCW as charitable organizations, independent fund raisers, or nonprofit fund raisers; provided, that such persons or entities, in order to qualify for this exemption, must have on file with the City Clerk a current copy of their state registration under Chapter 19.09 RCW, or be soliciting or canvassing for or on behalf of an organization that is so registered.

B. Nothing in this chapter shall prevent persons from soliciting alms, other contributions or donations or employment in public places, as permitted by law.

#### **5.10.300 Violations -- Civil Infraction**

A. . It shall be a civil infraction for a person, firm, limited liability company or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, limited liability company or corporation found to have committed a civil infraction shall be assessed a monetary penalty as provided in OMC Chapter 4.44, Uniform Code Enforcement.

**Section 5. Amendment of OMC Chapter 5.16.** Olympia Municipal Code Chapter 5.16, Adult Oriented Businesses, is hereby amended to read as follows:

### **Chapter 5.16**

#### **ADULT ORIENTED BUSINESSES**

5.16.000 Chapter Contents

Sections:

- 5.16.001 Administrative provisions.
- 5.16.002 Business and occupations tax applies.
- 5.16.010 Purpose.
- 5.16.020 Scope.
- 5.16.030 Definitions.
- 5.16.040 License required.
- 5.16.050 License prohibited to certain persons.
- 5.16.060 Application for license.

- 5.16.070 Investigation and application.
- 5.16.080 Issuance of licenses.
- 5.16.090 Appeal.
- 5.16.100 License Term - Assignment - Renewals.
- 5.16.110 Building and operation specifications –Adult cabarets.
- 5.16.120 Standards of conduct and operation applicable to adult oriented businesses
- 5.16.130 Regulations applicable to adult arcades, adult bookstores, adult motion picture theaters and other adult oriented businesses.
- 5.16.140 Regulations applicable to video stores not qualifying as adult oriented businesses.
- 5.16.150 Dramatic works and obscenity.
- 5.16.160 Inspections.
- 5.16.170 Hours of operation.
- 5.16.180 Record keeping requirements.
- 5.16.190 Suspension or revocation of licenses and appeal procedure.
- 5.16.200 Suspension or revocation of license - Duration.
- 5.16.210 Signs.
- 5.16.220 Violations -- Civil Infraction.
- 5.16.230 Public nuisance declared.

#### **5.16.001 Administrative Provisions**

The administrative provisions contained in OMC Chapter 5.05 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

#### **5.16.002 Business and Occupations Tax Applies**

The provisions contained in OMC Chapter 5.04 shall be fully applicable to businesses regulated under this chapter.

#### **5.16.010 Purpose**

It is the intended purpose of this chapter to establish reasonable regulations for adult oriented businesses, as defined herein, with the goal that criminal activity and antisocial activity not protected by the United States Constitution which is typically committed in conjunction with the operation of adult oriented businesses be prevented. It is not the purpose of this ordinance to prohibit or improperly curtail expression protected by the Washington State Constitution and the United States Constitution or to curtail activity or conditions which, although disapproved of by many, do not endanger the public health, safety, and welfare.

#### **5.16.020 Scope**

This chapter is intended to apply to the licensing and operation of adult oriented businesses in the City. Provisions governing the location and setting of such businesses is governed by zoning regulations contained in the City of Olympia Unified Development Code. Lewd acts and the display of erotic material in public places generally are covered by Chapter 9.24 of the Olympia Municipal Code, Offenses Against Public Decency.

#### **5.16.030 Definitions**

For the purposes of this ordinance the terms listed below have the following definitions:

##### **A. "Adult oriented business" (AOB) shall mean the following businesses:**

1. Adult arcade. An establishment containing any individual viewing areas or booths, where, for any form of consideration, including a membership fee, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines are used to show films, motion pictures, video cassettes, slides, or other photographic reproduction of sexual conduct, or adult entertainment.



2. Adult cabaret. A night club, bar, restaurant, theater, or auditorium, or similar commercial establishment, whether or not alcoholic beverages are served, which presents adult entertainment.
  3. Adult motel. A hotel, motel, or similar commercial establishment which:
    - a. Offers sleeping accommodation to the public for any form of consideration and, as a significant purpose of its business, provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction of or description of sexual conduct or adult entertainment and are not rated G, PG, PG-13, NC-13, NC-17, or R by the Motion Picture Association of America; or
    - b. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
    - c. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.
  4. Adult motion picture theater. A commercial establishment or drive-in theater where a significant portion of the films, motion pictures, video cassettes, slides, or similar photographic reproductions are characterized by the depiction or description of adult entertainment or sexual conduct and are not rated G, PG, PG-13, NC-13, NC-17, or R by the Motion Picture Association of America and are shown for any form of consideration.
  5. Adult book store. A business having a significant portion of its volume of trade the display, barter, rental and/or sale of books, printed matter, video tapes, discs or cassettes, films, pictures or other material or paraphernalia distinguished or characterized by an emphasis on matters depicting, describing or relating to sexual conduct or adult entertainment, as defined herein. For purposes of this ordinance, "portion of its volume or trade" means that portion of the store's display space devoted to such material, or that portion of its gross receipts received from the sale of such material, whichever is greater.
  6. Other adult entertainment facility. Any commercial establishment to which any patron is invited or admitted and where adult entertainment is presented as a substantial part of the premises activity, including but not limited to escort agencies, seminude or nude modeling studios, or similar establishments.
- B. Adult cabaret performance area. That portion of an adult cabaret comprising of the live entertainment stage and an area external to the stage six (6) feet in all directions.
- C. Adult entertainment.
1. Any exhibition, performance, or dance of any type conducted in a premises where such exhibition, performance, or dance involves a person who is unclothed or in such costume, attire, or clothing as to expose any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva, or genitals, or human male genitals in a discernibly turgid state, or wearing any device or covering exposed to view which simulates the appearance of any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva, or genitals, or human male genitals in a discernibly turgid state, even if completely opaquely covered; or
  2. Any exhibition, performance, or dance of any type conducted in a premises where such exhibition, performance, or dance is distinguished or characterized by a predominant emphasis on the depiction, description, simulation of, or relation to, the following specified sexual activities:
    - a. Human genitals in a state of sexual stimulation or arousal;

- b. Acts of human masturbation, sexual intercourse, or sodomy; or
  - c. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast; provided, adult entertainment and specifically the "depiction, description, simulation of, or relation to" sexual activities described above, shall not be construed to include any form of actual sexual conduct as defined in this section.
3. Any exhibition, performance, or dance intended to sexually stimulate any patron and conducted in a premises where such exhibition, performance, or dance is performed for, arranged with, or engaged in with fewer than all patrons on the premises at that time, with separate consideration paid, either directly or indirectly, for such performance exhibition or dance. For purposes of example and not limitation, such exhibitions, performances, or dances are commonly referred to as table dancing, couch dancing, taxi dancing, lap dancing, private dancing, or straddle dancing.
- D. Entertainer. Any person who provides live adult entertainment in an adult oriented business, whether or not the person is an employee of the business and whether or not a fee is charged or accepted for such entertainment, and whether or not nude, seminude, or clothed.
- E. Employee. Any and all persons, including managers, entertainers, independent contractors, renters, lessees, or sublessees who work in or at or render any services directly related to the operation of any adult oriented business whether or not any such person is paid compensation by the operator of said business.
- F. City. City of Olympia, Washington.
- G. Director. City of Olympia's Director of Administrative Services, or designee.
- H. Manager. Any person who manages, directs, administers, or is in charge of the affairs and/or the conduct of an adult oriented business.
- I. Operator. The owner, significant stockholder, or significant owner of interest, permit holder, custodian, manager, or person in charge of any permits or licenses for adult oriented business.
- J. Person. Any individual, firm, joint venture, copartnership, association, social club, social organization, corporation, estate, trust, business trust, receiver, or any other group or a combination acting as a unit.
- K. Nude. The appearance or less than complete and opaque covering of the human anus, male genitals, female genitals, or the areola or nipple of the female breast. The opaque covering shall be made of material or fabric, but shall not include any liquid substance, including mud, water, lotion, whipping cream, or other such substances that are easily broken down or removed and do not offer the covering intended for an "opaque covering."
- L. Seminude. A state of dress in which clothing completely and opaquely covers only the genitals, pubic region, and areola and nipple of the female breast, as well as portions of the body covered by supporting straps or devices.
- M. Sexual conduct.
- 1. Sexual intercourse within its ordinary meaning, occurring upon any penetration, however slight; or
  - 2. Any penetration of the vagina or anus, however slight, by an object; or

3. Any contact between persons involving the sex organs of one person and the mouth or anus of another; or
4. Masturbation, manual or instrumental, of oneself or of one person by another; or
5. Direct touching of the sex organs or anus, whether clothed or unclothed, of oneself or of one person by another; or
6. Flagellation or torture in the context of a sexual relationship; or
7. Sodomy.

#### **5.16.040 License required**

It is unlawful for any person, firm or corporation to engage in business in the City without first obtaining a license pursuant to the provisions of OMC 5.02. Any additional licensing or permitting requirements of this Chapter 5.16 shall also apply.

- A. It shall be a condition of the issuance or continuation of a business license that all requirements of this chapter be met.
- B. It is unlawful for any entertainer, employee, or manager to knowingly work in or about or to knowingly perform any service or entertainment directly related to the operation of an unlicensed adult oriented business.
- C. It is unlawful for any entertainer to perform in an adult oriented business unless such person is the holder of a valid license from the City to do so.
- D. It is unlawful for any manager to work in an adult oriented business unless such person is the holder of a valid license from the City to do so. It is unlawful for any owner or manager to allow any entertainer to perform in an adult oriented business without a valid license from the city to do so.

#### **5.16.050 License prohibited to certain persons**

No license shall be issued to:

- A. A natural person who has not attained the age of 21 years, except that licenses may be issued to persons who have attained the age of 18 years with respect to adult cabarets or adult book stores or motion picture theaters where no intoxicating liquors are served or provided.
- B. A person whose place of business is operated by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee, or in the case of a manager of an adult cabaret/theater, the manager has obtained a manager's license.
- C. A copartnership, unless all the members thereof are qualified to obtain a license as provided in this chapter. Such license shall be issued to the manager or agent thereof.
- D. A corporation, unless all the officers and directors thereof are qualified to obtain a license as provided herein. Such license shall be issued to the manager or agent thereof.

#### **5.16.060 Application for license**

A. Adult oriented business. Any application for an adult oriented business shall be made on a form provided by the Director and shall contain the following information and be accompanied by the following documents, which shall be submitted to the Director:

1. If the applicant is:

- a. An individual/sole proprietor, the individual/owner shall state the individual's/owner's legal name and any aliases, stage names, or previous names, date of birth, and social security number and submit satisfactory proof that the individual/owner is eighteen (18) years or twenty-one (21) years of age or older, whichever is applicable.
  - b. A partnership, the partnership shall state its complete name, and the legal names of all partners, including their dates of birth, social security numbers, and whether the partnership is general or limited, and a copy of the partnership agreement, if any.
  - c. A corporation, including a limited liability organization, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of the State of Washington, the legal names, dates of birth, social security numbers of all directors, or principal stockholders, and the capacity of all officers, directors, and principal stockholders; the name of the registered corporate agent, and the address of the registered officer for service of process.
  - d. As part of the application process, each officer, director, or principal stockholder, as defined above, shall provide the Director with an affidavit attesting to their identity and relationship to the corporation. Principal stockholder shall mean those persons who own ten percent (10%) or greater interest in the adult entertainment facility.
2. Whether the applicant or any other individuals listed pursuant to Subsection A.(1)(a), (b), and (c) above within a four (4) year period immediately preceding the date of the application has been convicted of a crime and, if so, the specific criminal act involved, the date of conviction and the place of conviction.
3. Whether the applicant or any of the other individuals listed pursuant to this section has, within the last four (4) years, had a previous permit or license under this chapter or other similar ordinances from another city or county denied, suspended, or revoked, including the name and location of the adult facility for which the permit or license was denied, suspended, or revoked, the entity denying the same, as well as the date of the denial, suspension, or revocation.
4. Whether the applicant or any other entity listed pursuant to this section holds any other permits and/or licenses under this chapter, or other similar adult oriented business, including a sexually oriented business license from another city or county, and if so, the names and locations of such other permitted businesses.
5. The classification of license for which the applicant is filing.
6. The location of the proposed adult oriented business, including a legal description of the property, street address, and telephone number(s), if any.
7. The applicant's valid mailing address and residential address, phone number and email address.
8. Two (2) two-inch by two-inch color photographs of the applicant, including any corporate applicants, taken within six (6) months of the date of the application, showing only the full face of the same. The photographs shall be provided at the applicant's expense. The license, when issued, shall have affixed to it one such photograph of the applicant.
9. The applicant and/or each corporate applicant's driver's license number, social security number, and/or the applicant's state or federally issued tax identification number.
10. Each application shall be accompanied by a complete set of fingerprints of each person required to be a party to the application, including all corporate applicants as defined above, utilizing

fingerprint forms as prescribed by the Chief of Police or the Chief of Police's designee. A designee may include a contracted third party entity.

11. In the case of all adult oriented businesses, a sketch or diagram must be professionally prepared and submitted to and accepted by the City, and it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

12. Applicants for a license under this chapter shall have a continuing duty to promptly supplement application information required in the event that said information changes in any way from what is stated on the application. The failure to comply with said continuing duty within thirty (30) days from the date of such change by supplementing the application on file with the Director or the Director's designee, shall be grounds for suspension of a license.

13. In the event the Director or the Director's designee determines or learns at any time that the applicant has improperly completed the application for a proposed adult oriented business permit or license, the Director shall promptly notify the applicant of such fact and allow the applicant ten (10) days to properly complete the application. (The time period for granting or denying a permit shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.)

14. The applicant must be qualified according to the provisions of this section, and the premises must be inspected and found to be in compliance with health, fire, and building codes of the City.

15. The applicant shall be required to pay a nonrefundable initial application fee of \$2,400.00 and an annual application fee of \$750.00. In addition, applicants shall also be responsible for background check fees.

16. The fact that a person possesses other types of state or city permits and/or licenses does not exempt that person from the requirement of obtaining an adult oriented business permit.

17. The application form for licenses and permits issued under this chapter shall contain a provision providing that under penalty of perjury the applicant verifies that the information contained therein is true to the best of the applicant's knowledge.

**B. Adult Cabaret Manager and Entertainer Licenses.**

1. No person shall work as a manager, assistant manager, or entertainer at an adult cabaret without an entertainer's or manager's license from the City. Each applicant for a manager's or entertainer's license shall complete an application or forms provided by the Director containing the information identified below and submit same to the Director. A nonrefundable application fee of \$150.00 shall accompany the application. In addition, applicants shall also be responsible for background check fees. A copy of the application shall be provided to the police department for its review, investigation, and recommendation. All applications for a manager's or entertainer's license shall be signed by the applicant and certified to be true under penalty of perjury. The manager's or entertainer's license application shall require the following information:

- a. The applicant's name, home address, home telephone number, date and place of birth, social security number, and any stage names or nicknames used in entertaining.
- b. The name and address of each business at which the applicant intends to work.
- c. Documentation that the applicant has attained the age of eighteen (18) or twenty-one (21) years, whichever is applicable. Any two of the following shall be accepted as documentation of age:

- i. A motor vehicle operator's license issued by any state bearing the applicant's photograph and date of birth;
  - ii. A state issued identification card bearing the applicant's photograph and date of birth;
  - iii. An official passport issued by the United States of America;
  - iv. An immigration card issued by the United States of America;
  - v. Any other identification that the City determines to be acceptable.
- d. A complete statement of all convictions of the applicant for any misdemeanor or felony violations in this or any other city, county, or state within five (5) years immediately preceding the date of the application, except parking violations or minor traffic infractions.
  - e. A description of the applicant's principal activities or services to be rendered.
  - f. Two two-inch by two-inch color photographs of applicant, taken within six (6) months of the date of application showing only the full face.
  - g. Authorization for the City, its agents, and employees to investigate and confirm any statements set forth in the application.
  - h. For managers and assistant managers, fingerprints shall be provided as prescribed by the Olympia Police Department or designee. A designee may include a contracted third party entity.
2. Every adult entertainer shall provide the adult entertainer's license to the adult cabaret manager on duty on the premises prior to the adult entertainer's performance. The manager shall retain the licenses of the adult entertainers readily available for inspection by the City at any time during the hours that the entertainer is performing. The license shall be returned to the entertainer at the end of the entertainer's shift.
  3. The Director may request additional information or clarification when necessary to determine compliance with this chapter.
  4. The application form for licenses and permits issued under this chapter shall contain a provision providing that under penalty of perjury the applicant verifies that the information contained therein is true to the best of the applicant's knowledge.

#### **5.16.070 Investigation and application**

A. Upon receipt of an application properly filed with the Director, and upon payment of the nonrefundable license fee, the Director or the Director's designee shall immediately stamp the application as received and shall immediately thereafter send copies of the application to the city departments or other agencies responsible for enforcement of health, fire, criminal, and building codes and laws. Each department or agency shall promptly conduct an investigation of the application and the proposed adult oriented business. For owners, managers and assistant managers, the Police Department shall seek criminal history background information from Washington State and other states and may accept a reliable FBI criminal history provided by an applicant if authorized by the Director. For entertainers, the Olympia Police Department will review publicly available criminal history background information from Washington State and may require additional criminal background information if determined appropriate. At the conclusion of its investigation, each department or agency shall indicate on the copy of the application its recommendation as to approval or disapproval of the application, date it, sign it, and in the event it recommends disapproval, state the specific reasons therefor, citing applicable laws or regulations.

B. A department or agency shall recommend disapproval of an application if it finds that the proposed adult oriented business will be in violation of any provision of any statute, code, ordinance, regulation, or other law in effect in the City, or if the applicant does not meet the conditions as specified in this chapter. After its indication of approval or disapproval, each department or agency shall immediately return the copy of the application to the Director or the Director's designee.

#### **5.16.080 Issuance of licenses**

A. Adult oriented business license. The Director shall grant or deny an application for an adult oriented business within thirty (30) days from the date of its filing unless the City or applicant establishes a good reason for up to a thirty (30) day extension. The Director shall grant the application unless one or more of the criteria set forth below is present. The license, if granted, shall state on its face the name of the person(s) to whom it is granted, the expiration date, and the name and address of the adult oriented business. The license shall be posted in a conspicuous place, at or near the entrance to the adult oriented business, so that it can be easily read at any time. The license shall be valid for one year after which it was granted. The City may also conditionally approve the license, subject to the City's additional investigation as to whether the applicant meets the criteria set forth below. The Director shall deny an application for an adult oriented business for any of the following reasons:

1. An applicant is under eighteen (18) or twenty-one (21) years of age or will be employing a person under eighteen (18) or twenty-one (21) years of age, whichever is applicable under Section 5.16.050 of this chapter.
2. An applicant is overdue on the applicant's payment to the City of taxes, fees, fines, assessments, or penalties assessed against that applicant or imposed upon that applicant in relation to an adult oriented business.
3. An applicant has failed to provide information required by this chapter for application for the license, or has falsely answered a question or request for information on the application form.
4. The applicant has failed to comply with any provision or requirement of this chapter.
5. The applicant has failed to comply with any city codes or zoning regulations, or other state or federal regulations or court order applicable to an adult oriented business.
6. The applicant has been convicted of a felony involving adult oriented businesses including, but not limited to, prostitution, promoting prostitution, violation of RCW 9A.40.100 and RCW 9.68A.100-103, and/or controlled substances as that term is defined in Chapter 69.50 RCW, within the last ten (10) years.

B. Adult cabaret managers or adult entertainer's license.

1. An adult cabaret manager's or entertainer's license shall be issued by the Director within thirty (30) days from the date the complete application and fee are received unless the Director determines that the applicant has failed to provide all information required to be supplied according to this chapter, has made any false, misleading, or fraudulent statement of material fact in the application, or has failed to meet any of the requirements for issuance of a license under this chapter. The Director may extend the application review time for an additional twenty (20) days if more time is needed for investigation. If the Director determines that the applicant has failed to qualify for the license applied for, the Director shall deny the application in writing and shall cite the specific reasons therefor, including applicable laws. An adult cabaret manager and entertainer's license shall be denied for the same reasons that are set forth in subsection A of this section.
2. If the Director has failed to approve or deny an application for an adult cabaret manager's license within thirty (30) days of filing a complete application, the Director may conditionally approve

the license, subject to the City's additional investigation as to whether the applicant meets the criteria set forth below.

3. An applicant for an adult entertainer's license shall be issued a temporary license upon receipt of a complete license application and fee. Said temporary license will automatically expire on the thirtieth (30th) day following the filing of the complete application and fee, unless the Director has failed to approve or deny the license application in which case the temporary license shall be valid until the Director approves or denies the application, or until the final determination of any appeal from a denial of the application.

#### **5.16.090 Appeal**

A. Denial of license. Any person aggrieved by the action of the Director in refusing to issue or renew any license issued under this chapter shall have the right to appeal such action to the Hearing Examiner, or to such other hearing body as may hereafter be established by the City Council for the hearing of license appeals, by filing a notice of appeal with the Director within ten (10) days of notice of the refusal to issue or renew. The Hearing Examiner or other hearing body shall set a date for the open record hearing on such appeal, to take place within forty-five (45) days of the date of receipt of the notice of appeal. At such hearing the appellant and other interested persons may appear and be heard, subject to rules and regulations of the Hearing Examiner or other hearing body. The Hearing Examiner shall uphold the Director's decision unless it finds the decision is not supported by substantial evidence. The Hearing Examiner or other hearing body shall render its decision on the appeal within fifteen (15) days following the close of the appeal hearing.

B. Appeal to Superior Court. Any person aggrieved by the decision of the Hearing Examiner or hearing body may appeal to the Superior Court as authorized by law.

#### **5.16.100 License term –Assignment –Renewals**

A. All licenses shall expire one year after the license was granted. Licenses issued under this chapter shall not be assignable.

B. Application for renewal of licenses issued hereunder shall be made to the Director no later than thirty (30) days prior to the expiration of adult oriented business licenses, and no later than fourteen (14) days prior to the expiration of adult cabaret manager and entertainer licenses. The renewal license shall be considered and issued in the same manner and on payment of the same fees as for an original application under this chapter.

C. The Director shall renew a license upon application unless the Director is aware of facts that would disqualify the applicant from being issued the license for which the applicant seeks renewal, and further provided that application complies with all provisions of this chapter as now enacted or as the same may hereafter be amended.

#### **5.16.110 Building and operation specifications –Adult cabarets**

A. Separation of Adult Entertainment Performance Area. The live entertainment stage shall be a platform at least twenty four (24) inches in elevation above the level of the patron seating areas, and shall be separated by a distance of at least six (6) feet from all areas of the premises to which patrons have access. A continuous fixed barrier railing, of sufficient construction to prevent encroachment by patrons into the adult cabaret performance area, shall be installed and maintained at least three (3) feet in height and be located on the perimeter of the performance area.

B. Lighting. Sufficient lighting shall be provided and equally distributed in and about the parts of the premises which are open to and used by patrons so that all objects are plainly visible at all times, and that on any part of the premises which are open to and used by patrons a program, menu, or list printed in 8 point type will be readable by the human eye with 20/20 vision from two (2) feet away.



C. Submittal of Plans. Building plans and lighting calculations showing conformance with the requirements of this section shall be included with any license application for an adult oriented business that features adult entertainment. Building plans must be in compliance with all building, planning, and other applicable state, local, and federal regulations.

D. All areas of an adult cabaret/theater which are open to the public shall be visible from a manager's station and shall not be obscured by any curtain, door, wall, or other enclosure.

**5.16.120 Standards of conduct and operation applicable to adult oriented businesses**

A. Standards for Patrons, Employees, Entertainers. The following standards of conduct must be adhered to by patrons, entertainers, and/or employees of adult cabarets or of other adult oriented businesses at any time adult entertainment is provided.

1. No manager, employee, or entertainer may engage in adult entertainment, except for that described in Section 5.16.030(C)(3), on any part of an adult cabaret unless performed on the live entertainment stage as described in Section 5.16.110(A) above and removed at least six (6) feet from the nearest patron.
2. No patron or customer shall go into or upon the adult cabaret performance area at any time adult entertainment is being performed on the stage therein.
3. No member of the public, manager, employee or entertainer shall allow, encourage, or knowingly permit any person(s) upon the premises to touch, caress, or fondle the breasts, buttocks, anus, pubic area, or genitals of themselves or another, whether or not the person(s) is clothed.
4. No member of the public, manager, employee, or entertainer shall allow, encourage, or permit physical contact between an employee or entertainer and any member of the public, whether or not the person(s) is clothed.
5. No person shall perform any act of sexual conduct as defined in this chapter.
6. No manager, employee, or entertainer shall use artificial devices or inanimate objects to depict any of the prohibited activities described in this subsection.
7. No entertainer shall be visible from any public place outside the premises during the actual or apparent hours of the entertainer's employment or performance on the premises.
8. No manager, entertainer, or other employee employed or otherwise working at an adult oriented business shall solicit, demand, accept, or receive either directly or indirectly any gratuity or other payment from a patron, customer, or member of the public except an initial entrance fee or except as provided below.
9. It is unlawful for any manager, entertainer, employee, or wait person to perform more than one such function at an adult cabaret on the same business day.
10. No manager, employee, or entertainer mingling with or performing for patrons, except on the live entertainment stage, shall be unclothed or in less than opaque and complete attire, costume, or clothing so as to expose to view any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva, or genitals, nor shall any male employee or entertainer at any time appear with the male employee's or entertainer's genitals in a discernibly turgid state, even if completely or opaquely covered, or wear or use any device or covering which simulates the same.
11. No manager, employee, or entertainer shall sit on a patron's lap or separate a patron's legs.

12. When not performing, entertainers are prohibited from being present in areas of the establishment that are open to the patrons on the establishment. This shall be only during working hours. Entertainers are required to use separate rest room facilities.

13. At least two signs in English, of sufficient size to be readable with 20/20 vision at twenty (20) feet shall be conspicuously displayed in the public area of the establishment stating the following:

THIS ADULT CABARET OR ADULT THEATER IS REGULATED BY THE CITY OF OLYMPIA. ENTERTAINERS ARE:

- a. Not permitted to engage in any type of sexual conduct;
- b. Not permitted to appear nude or seminude except on stage;
- c. Not permitted to accept tips or gratuities directly or in advance of their performance.

14. No manager, employee, or entertainer mingling with patrons shall conduct any dance, performance, or exhibition, including but not limited to that described in 5.16.030(C)(3), unless that dance, performance, or exhibition is performed at a torso-to-torso distance of no less than four (4) feet from the patron(s) for whom dance, performance, or exhibition is performed.

15. No tip or gratuity offered to or accepted by an entertainer may be offered or accepted prior to any performance, dance, or exhibition provided by the entertainer. No entertainer performing upon any stage area shall be permitted to accept any form of gratuity offered directly to the entertainer by any patron. Any gratuity offered to any entertainer performing upon any stage area must be placed into a receptacle provided for receipt of gratuities by an adult oriented business or provided through a manager on duty on the premises. Any gratuity or tip offered to any adult entertainer conducting any performance, dance, or exhibition, outside the adult entertainment performance area of the adult cabaret shall be placed only into a receptacle provided by the entertainer, and not upon the person or into the clothing of the entertainer.

16. There must be at least one manager who is not an entertainer on duty and situated in any public area at all times that any patron, member, or customer is present inside the premises.

17. Doors to areas on the premises which are available for use by persons other than the owner, manager, operator, or their agents or employees may not be locked during business hours.

18. No person may operate or maintain any warning system or device, of any nature or kind, for the purpose of warning or aiding and abetting the warning of patrons, members, customers, or any other persons that police officers or health, fire, or building inspectors are approaching or have entered the premises.

19. Admission must be restricted to persons of the age of eighteen (18) years or more pursuant to RCW 9.10A.150; and the identification of all patrons must be checked by the employees of the premises.

**5.16.130 Regulations applicable to adult arcades, adult bookstores, adult motion picture theaters and other adult oriented businesses**

All adult arcades, adult bookstores, adult motion picture theaters, and other adult oriented businesses having facilities for customer viewing of depiction of human nudity and/or sexual conduct as herein defined, shall comply with the following regulations:

- A. Construction/Maintenance:

1. All viewing booths shall be constructed or reconstructed so that the interior of the viewing booth is observable by persons in the aisles or other open areas of the establishment and the lower 36" of the door shall be open to public view.

2. All such areas shall be maintained in a clean and sanitary condition at all times.

B. Signs. Signs shall be conspicuously posted on the premises advising customers using viewing booths that:

1. Masturbation in such booths is prohibited and unlawful.
2. That it is unlawful for more than one (1) customer to occupy a viewing booth at any time.
3. There shall be no physical contact between patrons and employees.
4. Violations are subject to criminal prosecution.

C. Unlawful conduct. The following conduct or activity is unlawful within any adult bookstore, adult arcade, adult motion picture theater or other adult oriented businesses:

1. Masturbation or sexual conduct within or without viewing booths.
2. Two (2) or more customers in a viewing booth at the same time.
3. Physical contact between patrons and employees.
4. For the owner or manager to knowingly allow the above conduct.
5. Noncompliance with any other regulation set forth in this chapter.

D. All areas shall be maintained at all times with sufficient lighting so that all objects are plainly visible at all times or listed printed in 8-point type will be readable by the human eye with 20/20 vision from two (2) feet away.

E. Rest rooms may not contain video recording equipment.

F. No steps or risers are allowed in any adult arcade booth or station.

G. No adult arcade station or booth shall have more than one stool type seat. In order to prevent obscuring the occupant of an adult arcade station or booth from view, no stool for seating within an adult arcade station or booth shall have any seat back or sides.

H. All ventilation devices between the adult arcade booths must be covered by a permanently affixed ventilation cover. Ventilation holes may only be located one (1) foot from the top of the booth walls or one (1) foot from the bottom of the booth walls. There may not be any other holes or openings in the booths.

I. No person may operate any kind of warning device or system for the purpose of warning or aiding or abetting the warning of any patron, employee or other persons that the police, health, fire, or building inspector or other public officials are approaching or entering the premises.

J. The licensee shall not permit any doors to public areas on the premises to be locked during business hours, in violation of the applicable provisions of the Olympia Building Code, Uniform Fire Code, and National Fire Protection Association Code.

**5.16.140 Regulations applicable to video stores not qualifying as adult oriented businesses**

Video stores that sell or otherwise distribute films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction or description of adult entertainment or sexual conduct, and less than ten percent (10%) of their stock-in-trade or revenues comes from the rental or sale of such items shall be subject to the following regulations:

- A. All such items as are described above shall be physically segregated and closed off from other portions of the store such that these items are not visible and/or accessible from other portions of the store.
- B. No advertising for such items shall be posted or otherwise visible, except where such items are authorized for display.
- C. Signs readable at a distance of twenty (20) feet in both English and Spanish shall be posted at the entrance to the area where such items are displayed.
- D. The manager or attendant shall take reasonable steps to monitor the area where such items are displayed to ensure that person under eighteen (18) years of age do not access the age-restricted area.
- E. Rental or sale of obscene material (as defined by state law) or material harmful to minors (as defined by state law) to persons under eighteen (18) years of age is prohibited.
- F. Employees of such video stores shall check identification of persons appearing to be eighteen (18) or under to ensure that such items are not rented or sold to persons under the age of eighteen.

**5.16.150 Dramatic works and obscenity**

- A. This chapter shall not be construed to prohibit:
  - 1. Plays, operas, musicals, or other dramatic works that are not obscene;
  - 2. Classes, seminars, and lectures which are held for serious scientific or educational purposes and which are not obscene; or
  - 3. Exhibitions, performances, expressions, or dances that are not obscene.
- B. Whether or not activity is obscene shall be judged by consideration of the following factors:
  - 1. Whether the average person, applying contemporary community standards, would find that the activity taken as a whole appeals to a prurient interest in sex; and
  - 2. Whether the activity depicts or describes in a patently offensive way, as measured against community standards, sexual conduct as described in RCW 7.48A.010(2)(b); and
  - 3. Whether the activity taken as a whole lacks serious literary, artistic, political, or scientific value.

**5.16.160 Inspections**

- A. All books and records required to be kept pursuant to this chapter shall be open to inspection by the Police Chief of the City of Olympia, or designee, during the hours when the licensed premises is open for business upon two (2) days' written notice to the licensee. The purpose of such inspection shall be to determine if the books and records meet the requirements of this chapter.
- B. The licensed premises shall be (as an implied condition of receiving an AOB license) open to inspection by the Police Chief during the hours which the adult oriented business premises is open for business. The purpose of such inspection shall be to determine if the licensed premises is operated in accordance with the requirements of this chapter. It is hereby expressly declared that unannounced inspections are necessary to ensure compliance with this chapter.

**5.16.170 Hours of operation**

It is unlawful for any adult oriented business premises, except adult motels, to be conducted, operated, or otherwise open to the public between the hours of 2:00 a.m. and 11:30 a.m.

**5.16.180 Record keeping requirements**

A. Within thirty (30) days following each calendar quarter, each adult oriented business licensee shall file with the Director a verified report showing the licensee's gross receipts and amounts paid to entertainers, models, or escorts, if applicable, for the preceding calendar quarter.

B. Each adult oriented business licensee shall maintain and retain for a period of two (2) years the names, address, and ages of all persons employed or otherwise retained as entertainers, models, and escorts by the licensee.

**5.16.190 Suspension, or revocation of licenses and appeal procedure**

A. When the Director suspends or revokes a license hereunder, the Director shall notify the applicant in writing of the same, describing the reasons therefor, and shall inform the applicant of the applicant's right to appeal to the Hearing Examiner within ten (10) days of the date of the written notice by filing a written notice of appeal with the Director containing a statement of the specific reasons for the appeal and a statement of the relief requested. The Hearings Examiner shall be the Hearings Examiner appointed under OMC 5.05.

B. Whenever the Director has found or determined that any violation of this chapter has occurred, the Director shall issue a Notice of Violation and Suspension or Revocation ("Notice") to the licensee. In addition, the Director shall issue a Notice of Suspension or Revocation to the licensee or permit holder under the following circumstances:

1. Where such license was obtained by fraud or false representation of fact;
2. For the violation of, or failure to comply with, the provisions of this chapter or any other similar local or state law by the licensee or by any of its agents, employees, or representatives; when the licensee knew or should have known of the violations committed by its agents, employees, or representatives;
3. For the conviction of the licensee of any crime or offense involving prostitution, promoting prostitution, violation of RCW 9A.40.100 and RCW 9.68A.100-103, or controlled substances (as that term is defined in chapter 69.50 RCW) committed on the premises, or the conviction of the licensee's employees, agents, or representatives of any crime or offense involving prostitution, violation of RCW 9A.40.100 and RCW 9.68A.100-103, or controlled substances (as that term is defined in Chapter 69.50 RCW) committed on the licensed premises.
4. Failure to pay City taxes.

C. The notice shall include the following:

1. Name(s) of person(s) involved.
2. Description of the violation(s), including date and section of this chapter violated.
3. Description of the administrative action taken.
4. Rights of appeal as set forth above.

The notice shall be served either personally or by mailing a copy of the notice by certified mail, postage prepaid, return receipt requested, to the licensee at the licensee's last known address. Proof of service shall be made at the time of service by a written declaration under penalty of perjury, executed by the person effecting the service, declaring the time, date, and the manner by which service was made. The

decision may be appealed to the Hearing Examiner if request for appeal is properly filed with the Director within ten (10) calendar days of receipt of the notice. Said request shall be in writing, state specific reasons for the appeal, and the relief requested.

D. The suspension or revocation of a license shall be effective at the end of the expiration of any appeal period, unless there is a written request for an appeal properly filed by the licensee. If there is an appeal so requested, then the revocation or suspension shall be stayed pending the outcome of the appeal. This effective date of suspension shall not apply to any fire code violation or building code violation deemed by the appropriate officials to be a serious risk to health and welfare.

E. Within ten (10) working days of receiving a timely appeal, the Director shall forward the administrative record of the licensing decision to the Hearing Examiner.

F. When an applicant has appealed the Director decision according to the procedures herein, the Hearing Examiner shall review the administrative record as soon as possible, but no later than thirty (30) working days after the City receives the appeal. Written notice of the date, time, and place of the scheduled open record hearing will be given to the applicant by the Director by mailing the same, postage prepaid, to the applicant at the address shown on the license or permit application, at least five (5) days prior to the hearing, which take place within forty five (45) days of the date of the receipt of the notice of appeal.

G. If the licensee appeals the notice to the Hearing Examiner, the licensee shall be afforded a reasonable opportunity to be heard as to the violation and action taken. The applicant and Director or the Director's representative shall be given an opportunity to argue the merits of the appeal before the Hearing Examiner.

H. The Hearing Examiner shall uphold the Director's decision unless it finds the decision is not supported by substantial evidence.

I. The Hearing Examiner shall issue a written decision within ten (10) working days of hearing the appeal. The Hearing Examiner may uphold the Director's decision and deny the permit, overrule the Director's decision and grant the permit, or remand the matter to the Director for further review and action. The Director shall complete further action or review within thirty (30) working days of receiving any remand.

J. Decision by the Hearing Examiner shall constitute final administrative review. The applicant shall be responsible for the cost of any preparation of the record for appeal.

#### **5.16.200 Suspension or revocation of license –Duration**

A license procured by fraud or misrepresentation shall be revoked. Where other violations of this chapter or other applicable ordinances, statutes, or regulations are found, the license shall be suspended for a period of thirty (30) days upon the first such violation, ninety (90) days upon the second violation within a twenty-four (24) month period and revoked for a third and any subsequent violations within a twenty-four (24) month period, not including periods of suspension.

#### **5.16.210 Signs**

No photograph, drawing, sketch, or pictorial or graphic representation of any portion of the breast below the top of the areola or any portion of the pubic area, buttocks, genitals, and or anus may be visible outside of the adult oriented facility.

#### **5.16.220 Violations -- Civil Infraction**

A.

It shall be a civil infraction for a person, firm, limited liability company or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm,

limited liability company or corporation found to have committed a civil infraction shall be assessed a monetary penalty as provided in OMC Chapter 4.44, Uniform Civil Enforcement.

#### **5.16.230 Public nuisance declared**

A. Public Nuisance. Any adult oriented business operated, conducted, or maintained in violation of this chapter or any law of the City of Olympia or the State of Washington shall be, and the same is, declared to be unlawful and a public nuisance. The City Attorney may, in addition to or in lieu of any other remedies set forth in this chapter, commence an action to enjoin, remove, or abate such nuisance in the manner provided by law and shall take such other steps and apply to such court or courts as may have jurisdiction to grant such relief as well as abate or remove such public nuisance, and restrain and enjoin any person from operating, conducting, or maintaining an adult cabaret/theater to the provisions of this chapter.

B. Moral Nuisance. Any adult oriented business operated, conducted, or maintained contrary to the provisions of Chapter 7.48A RCW, Moral Nuisance, shall be, and the same is declared to be, unlawful and a public and moral nuisance and the City Attorney may, in addition to or in lieu of any other remedies set forth herein, commence an action or actions, to abate, remove, and enjoin such public and moral nuisance, or impose a civil penalty, in the manner provided by Chapter 7.48A RCW.

**Section 6. Amendment of OMC Chapter 5.17.** Olympia Municipal Code Chapter 5.17, Community Events, is hereby amended to read as follows:

### **Chapter 5.17**

#### **COMMUNITY EVENTS**

5.17.000 Chapter Contents

Sections:

5.17.010 Permit required--Fee.

5.17.020 Community event defined.

5.17.030 Exemption from taxes and regulations.

5.17.040 Permit application.

#### **5.17.010 Permit required –Fee**

No person, firm or organization shall conduct or sponsor a community event within the city without having first procured a permit therefor from the city. The fee for such license shall be fifty dollars for each event.

#### **5.17.020 Community event defined**

For purposes of this chapter, the term "community event" means and includes any festival, celebration, fair or other similar event held in the city with local participation and sponsorship, which event is open to the public and does not exceed seven days in duration during any calendar year.

#### **5.17.030 Exemption from taxes and regulations**

All activities including, but not limited to, concessions, food counters, booths for the sale of crafts, memorabilia, souvenirs or other similar items, carnivals, demonstrations or public shows held as part of a community event licensed pursuant to this chapter, which event is sponsored by a nonprofit organization

shall be exempt from all licenses, taxes, fees and regulations of Title 5 of this code for the duration of said event. Provided, that amusement devices, as defined in Chapter 5.12 of this code shall not be eligible for exemption hereunder. The term "sponsored" shall, in the case of carnivals, have the same meaning as that term has in Section 3.32.020 of this code, as amended.

#### **5.17.040 Permit application**

Each sponsor of a community event shall make application for a community event permit on a form provided by the city. In addition, at least fifteen days prior to the start of the community event, the sponsor shall submit a list of all organizations involved in revenue generating activities which are a part of the event. Only those activities and organizations which are included on said list shall qualify for the tax, fee and license exemption provided by this chapter; provided, that nothing in this chapter prohibits a person or organization not included in said list(s) from conducting business during any such event so long as they comply with this title.

**Section 8. Amendment of OMC Chapter 5.20.** Olympia Municipal Code Chapter 5.20, Gambling Activities, is hereby amended to read as follows:

### **Chapter 5.20**

#### **GAMBLING ACTIVITIES**

##### **5.20.000 Chapter Contents**

###### **Sections:**

- 5.20.001 Administrative provisions.
- 5.20.002 Business and occupations tax applies.
- 5.20.005 License required.
- 5.20.010 Tax levied--Authority.
- 5.20.030 Tax payable quarterly--Penalty for late payment.
- 5.20.050 Administration and collection.
- 5.20.070 Violations--Civil Infraction.

##### **5.20.001 Administrative Provisions**

The administrative provisions contained in OMC Chapter 5.05 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

##### **5.20.002 Business and Occupations Tax Applies**

The provisions contained in OMC Chapter 5.04 shall be fully applicable to businesses regulated under this chapter.

##### **5.20.005 License required**

It is unlawful for any person, firm or corporation to engage in business in the City without first obtaining a license pursuant to the provisions of OMC 5.02. Any additional licensing or permitting requirements of this Chapter 5.20 shall also apply.

##### **5.20.010 Tax levied--Authority**

In accordance with RCW 9.46, there is levied upon all persons, associations and organizations who have been duly licensed by the Washington State Gambling Commission:

- A. To conduct or operate any card games, a tax of three percent of the gross receipts received therefrom less the amount awarded as cash or merchandise prizes; to conduct or operate any bingo



games or raffle games, a tax of five percent (5%) of the gross receipts received therefrom less the amount awarded as cash or merchandise prizes; and to conduct or operate any amusement games, a tax of two percent of the gross receipts received therefrom less the amount awarded as cash or merchandise prizes; provided, however, that any bona fide charitable or nonprofit organization, as defined in RCW 9.46.0209, which has no paid operating or management personnel and has gross income from bingo or amusement games, or both, not exceeding five thousand dollars (\$5,000) per year less the amount awarded as cash or merchandise prizes, shall pay a declaration fee of ten dollars (\$10.00) only and shall be exempt from any further excise or tax or payment of any additional fee; and provided further, no tax under this chapter shall be imposed on the first ten thousand dollars (\$10,000) of gross receipts less the amount awarded as cash or merchandise prizes from raffles conducted by any bona fide charitable or nonprofit organization; and

B. To utilize punchboards or pull tabs pursuant to RCW Chapter 9.46, an excise tax or tax computed at the rate of three percent based upon the gross receipts received in the conduct of such activity when used as a commercial stimulant, as defined in RCW 9.46.0217, and at the rate of seven percent based upon the gross receipts, less the amount awarded as cash or merchandise prizes, received in the conduct of such activity by any bona fide charitable or nonprofit organization; the gross receipts in either case shall be computed by multiplying the number of chances played on such board or pull tab times the price or value of each individual chance per play.

#### **5.20.030 Tax payable quarterly--Penalty for late payment**

A. The tax imposed by this chapter shall be due and payable in quarterly installments, and remittance therefor shall accompany each return and be made on or before the last day of the month next succeeding the quarterly period in which the tax accrued.

B. Late returns shall be penalized as per OMC 5.05.

#### **5.20.050 Administration and collection**

The administration and collection of the tax imposed by this chapter shall be by the Director, as defined by OMC 5.02.002, and pursuant to rules and regulations as may be adopted by the Washington State Gambling Commission.

#### **5.20.070 Violations--Civil Infraction**

A.

It shall be a civil infraction for a person, firm, limited liability company or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, limited liability company or corporation found to have committed a civil infraction shall be assessed a monetary penalty as provided in OMC Chapter 4.44, Uniform Civil Enforcement.

**Section 9. Amendment of OMC Chapter 5.32.** Olympia Municipal Code Chapter 5.32, Admissions Tax, is hereby adopted to read as follows:

### **Chapter 5.32**

#### **ADMISSION TAX**

5.32.000 Chapter Contents

Sections:

5.32.001 Administrative provisions.

5.32.002 Business and occupations tax applies.

- 5.32.005 License required.
- 5.32.010 Definitions.
- 5.32.020 Tax Imposed.
- 5.32.030 Price to be printed on ticket.
- 5.32.040 Duty to collect and remit--Reports.
- 5.32.100 Power to adopt regulations for administration and enforcement.
- 5.32.120 Violations -- Civil Infraction.

#### **5.32.001 Administrative Provisions**

The administrative provisions contained in OMC Chapter 5.05 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

#### **5.32.002 Business and Occupations Tax Applies**

The provisions contained in OMC Chapter 5.04 shall be fully applicable to businesses regulated under this chapter.

#### **5.20.005 License required**

It is unlawful for any person, firm or corporation to engage in business in the City without first obtaining a license pursuant to the provisions of OMC 5.02. Any additional licensing or permitting requirements of this Chapter 5.32 shall also apply.

#### **5.32.010 Definitions**

For the purposes of this chapter, words and phrases shall have the following meanings:

A. "Admissions charge," in addition to its usual and ordinary meaning, includes but is not limited in meaning to the following:

1. A charge made for season tickets or subscriptions;
2. A cover charge, or a charge made for use of seats and tables reserved or otherwise, and other similar accommodations;
3. A charge made for food and refreshment in any place where free entertainment, recreation, or amusement is provided;
4. A charge made for admission to any place defined in this section;
5. A charge made for rental or use of equipment or facilities for purposes of recreation or amusement; if the rental of the equipment or facilities is necessary to the enjoyment of the privilege for which a general admission is charged, the combined charges shall be considered as the admission charge;
6. If a general admission fee is charged for entry onto the premises where an activity occurs (such as, and without limitation, a bowling alley or ice skating rink) and if the activity charge is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge; provided, however, that a general admission fee must be charged for entry onto the premises where an activity occurs before the activity charge can be taxed under this chapter.

7. Automobile parking charges if the amount of the charge is determined according to the number of passengers in the automobile.

8. If the ticket price is accompanied by a service charge, mailing fee, or other ancillary payment, per ticket and/or per order, whether or not they are printed on the ticket, the admission tax shall be based upon the total sum of the admission price plus any such surcharge(s).

9. Any other charge for entrance and observation.

B. "Nonprofit organization" means an organization, corporation, or association organized and operated for the advancement, appreciation, public exhibition or performance, preservation, study and/or teaching of the performing arts (music, drama, opera, dance or like activity), visual arts, history or science, which for reason of its nonprofit status is considered exempt by the United States government from federal income taxation pursuant to Section 501(C) (3) of the Internal Revenue Code of 1954, 26 U.S.C. Section 501, as now existing or hereafter amended; or a nonprofit organization which sponsors community-wide festival events.

C. "Person" means any individual, receiver, assignee, firm, copartnership, joint venture, corporation, company, joint stock company, association, society or any group of individuals acting as a unit, whether mutual, cooperative, social, nonprofit or otherwise.

D. "Place" can be either indoors or outdoors and includes, but is not restricted to, theaters, dance halls, taverns, cabarets, amphitheaters, auditoriums, stadiums, athletic pavilions and fields, bowling alleys, skating rinks, circuses, sideshows, swimming pools, outdoor amusement parks, and such attractions as merry-go-rounds, ferris wheels, dodge 'ems, roller coasters, observation towers, and private clubs.

E. "Director" is as defined by OMC 5.02.002.

### **5.32.020 Tax Imposed**

There is levied and imposed a tax at the rate of one cent per twenty cents or fraction thereof, paid as an admission charge, upon any person who pays to any place such admission charge, as those terms are defined in Section 5.32.010. Any fraction of tax \$0.005 or more shall result in a tax at the next highest full cent.

### **5.32.025 Exemptions**

No tax shall be imposed under the authority of this chapter on the following:

A. Admission charges for any activity of any elementary or secondary school, any governmental entity, or any Nonprofit organization.

B. Events sponsored by nonprofit organizations if the nonprofit organization publicly sponsors and promotes the event, and the nonprofit organization receives the use and benefit of the admission charges collected. For the purposes of this exemption for carnivals, "sponsored" means held pursuant to an agreement between the nonprofit organization and the carnival company whereby the nonprofit

organization shall receive an amount equal to at least fifteen percent of the gross admission charges collected during the carnival event.

C. Events sponsored by the City, or where the net proceeds are contributed to a City program.

#### **5.32.030 Price to be printed on ticket**

The price, exclusive of the tax to be paid by the person paying for admission, at which every admission ticket or card is sold shall be conspicuously and indelibly printed or written on the face or back of that part of the ticket which is to be taken up by the management of the place to which admission is gained; and it is unlawful for any person to sell an admission ticket or card on which the name of the vendor or the price is not so printed, stamped, or written, or to sell an admission ticket or card at a price in excess of the price printed, stamped, or written thereon.

#### **5.32.040 Duty to collect and remit –Reports**

A. Every person receiving any payment for admissions on which a tax is levied under this chapter shall collect the amount of the tax imposed from the person making the admission payment. The tax required to be collected under this chapter shall be deemed to be held in trust by the person required to collect the same until paid to the City as provided. Any person required to collect the tax imposed under this chapter who fails to collect the same or, having collected the same, fails to remit the same to the City in the manner prescribed by this chapter, whether such failure is the result of the person's own act or the result of acts or conditions beyond the person's control, shall nevertheless be personally liable to the City for the amount of such tax and shall, unless the remittance is made as required, be guilty of a violation of this chapter.

B. The tax imposed under this chapter shall be collected at the time the admission charge is paid by the person seeking admission to any place and shall be reported and remitted by the person receiving the tax to the City in quarterly installments. The person receiving any payment for admissions shall make out a return upon such forms and setting forth such information as the City may require, showing the amount of the tax upon admissions for which the person is liable for the preceding quarterly period, and shall sign and transmit the same to the City with a remittance for said amount; provided, that the Finance Director may in their discretion require verified annual returns from any person receiving admission payments setting forth such additional information as the Finance Director may deem necessary to determine correctly the amount of tax collected and payable.

C. Whenever any theater, circus, show, exhibition, entertainment or amusement makes an admission charge which is subject to the tax levied under this chapter, and the same is of a temporary or transitory nature, of which the City shall be the judge, the Finance Director may require the report and remittance of the admission tax immediately upon the collection of the same, at the conclusion of the performance or exhibition, or at the conclusion of the series of performances or exhibitions or at such other times as the City shall determine; and failure to comply with any requirement of the City as to report and remittance of the tax as required shall be a violation of this chapter. The books, records and accounts of any person collecting a tax levied under this chapter shall, as to admission charges and tax collections, be at all reasonable times subject to examination and audit by the City.

**5.24.050 Tax payable quarterly--Penalty for late payment**

A. Remittance of the tax imposed by this chapter shall be due and payable in quarterly installments. Remittance therefor shall accompany each return and be made on or before the last day of the month next succeeding the quarterly period in which the tax accrued.

B. Late remittances shall be penalized as per OMC 5.05.

**5.32.100 Power to adopt regulations for administration and enforcement**

The Finance Director shall have power to adopt rules and regulations not inconsistent with the terms of this chapter for carrying out and enforcing the payment, collection and remittance of the tax levied under this chapter; and a copy of such rules and regulations shall be on file and available for public examination. Failure or refusal to comply with any such rules and regulations shall be deemed a violation of this chapter.

**5.32.120 Violations -- Civil Infraction**

A.

. It shall be a civil infraction for a person, firm, limited liability company or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, limited liability company or corporation found to have committed a civil infraction shall be assessed a monetary penalty as provided in OMC Chapter 4.44, Uniform Civil Enforcement.

**Section 10. Amendment of OMC Chapter 5.48.** Olympia Municipal Code Chapter 5.48, Occult Arts, is hereby amended to read as follows:

**Chapter 5.48**

**OCCULT ARTS**

5.48.000 Chapter Contents

Sections:

- 5.48.001 Administrative provisions.
- 5.48.002 Business and occupations tax applies
- 5.48.010 License – Required.
- 5.48.120 Violations -- Civil Infraction.

**5.48.001 Administrative Provisions**

The administrative provisions contained in OMC Chapter 5.05 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

#### **5.48.002 Business and Occupations Tax Applies**

The provisions contained in OMC Chapter 5.04 shall be fully applicable to businesses regulated under this chapter.

#### **5.48.010 License – Required**

It is unlawful for any person, firm or corporation to engage in business in the City without first obtaining a license pursuant to the provisions of OMC 5.02. Any additional licensing or permitting requirements of this Chapter 5.20 shall also apply.

It is unlawful for any person or organization to engage in or hold oneself out as a practitioner of palm reading, phrenology, card reading or other means whereby the future or fortune of persons is predicted for money or other consideration unless the person or person's employer has first secured a license therefor in a manner provided by chapter 5.02.

#### **5.48.120 Violations -- Civil Infraction**

A.

It shall be a civil infraction for a person, firm, limited liability company or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, limited liability company or corporation found to have committed a civil infraction shall be assessed a monetary penalty as provided in OMC Chapter 4.44, Uniform Civil Enforcement.

**Section 11. Amendment of OMC Chapter 5.50.** Olympia Municipal Code Chapter 5.50, Pet Shops, is hereby amended to read as follows:

### **Chapter 5.50**

#### **PET SHOPS**

5.50.000 Chapter Contents

Sections:

- 5.50.001 Administrative provisions.
- 5.50.002 Business and occupations tax applies
- 5.50.010 License required.
- 5.50.040 Definitions.
- 5.50.050 Facility requirements.
- 5.50.060 Operational requirements.
- 5.50.070 Inspection.
- 5.50.080 Correction notice.
- 5.50.090 Impoundment.
- 5.50.100 Violations – Civil infraction.

#### **5.50.001 Administrative Provisions**

The administrative provisions contained in OMC Chapter 5.05 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

#### **5.50.002 Business and Occupations Tax Applies**

The provisions contained in OMC Chapter 5.04 shall be fully applicable to businesses regulated under this chapter.

#### **5.50.010 License required**

It is unlawful for any person, firm or corporation to engage in business in the City without first obtaining a license pursuant to the provisions of OMC 5.02. Any additional licensing or permitting requirements of this Chapter 5.50 shall also apply.

#### **5.50.040 Definitions**

The following words and phrases shall have the following meanings for purposes of this chapter:

- A. "Pet animal" means dogs, cats, monkeys and other primates, rabbits, birds, guinea pigs, hamsters, mice, snakes, iguanas, turtles, fish and any other species of animal sold or retained for the purpose of being kept as a household pet.
- B. "Pet shop" means any store, place or establishment within the city limits of the City where pet animals are held for sale either at wholesale or retail with the intent of making a profit. The term shall not include hobby kennels as defined by this code.

#### **5.50.050 Facility requirements**

Any building used for a pet shop shall meet the following requirements:

- A. Animal housing shall be structurally sound and designed to prevent the pet animals from injury and shall provide sufficient security to contain the pet animals while preventing entry of unwanted pets.
- B. The facilities shall include a washroom with sinks for hot and cold running water.
- C. Heating, air cooling and shade shall be provided to protect the pet animals from temperatures to which they are not acclimated.
- D. Adequate ventilation shall be provided.
- E. A smoke and/or fire detection and alarm system shall be required; provided that any pet shop operating prior to adoption of the ordinance codified in this chapter shall have until April 30, 1992, to comply with this requirement.

#### **5.50.060 Operational requirements**

Any person, firm or corporation owning, operating or maintaining a pet shop shall do so in accordance with the following requirements, which are in addition to the tax and license requirements of this Title:

- A. Upon request, provide the city verification of the general maintenance, care and nutritional procedures used for all animals for sale at the pet shop;
- B. No species of pet animals shall be sold or maintained on the premises which are prohibited from such sale or possession by state or federal law;
- C. Suitable food and bedding and adequate potable water shall be provided. The food shall be free from contamination, wholesome, palatable and of sufficient quantity and nutritive value to meet the normal daily requirements for the condition, use and size of the animal. The animal feeding schedule shall be posted on the pet shop premises;

- D. Food shall be stored in a manner which prevents contamination or infestation;
- E. Provision shall be made for the timely removal of animal excreta, food wastes, soiled bedding, dead animals and debris. Disposal facilities shall be maintained so as not to be a health hazard;
- F. Sick animals shall be separated from those appearing healthy and normal and shall be removed from display and sale. Timely veterinary care shall be provided for sick or injured animals;
- G. There shall be an employee on duty at all times during any hours a pet shop is open whose responsibilities shall include the care and welfare of the animals in the facility. An employee or owner shall feed, water and perform the necessary cleaning of pet animals on each day that the pet shop is closed;
- H. Pet animals shall be immunized from disease as is usual and customary for the animal's age and species. Records of vaccination shall be subject to inspection and shall be provided to a buyer;
- I. Reasonable care shall be taken not to place for sale, trade or adoption any pet animal which is diseased or injured.

#### **5.50.070 Inspection**

It shall be a condition of the issuance or continuation of a business license that animal control officers shall be permitted to inspect all animals and the premises where the animals are kept at reasonable times to protect the health and safety of the animals and the community. Such right of inspection shall extend not only to the pet shop, but to any place within the joint animal control's jurisdiction where pet animals held for sale through said pet shop are located or kept. If permission for such inspection is refused, a correction notice shall be issued.

#### **5.50.080 Correction notice**

If an animal control officer determines that a licensee has violated any provision of this chapter the officer shall issue a correction notice requiring such violation to be remedied within seven days; provided that, if such violation endangers the immediate health or safety of an animal in the possession or under the control of the licensee, such correction shall be required within twenty-four hours. If the violation identified in the inspection notice is not timely corrected, the license may be revoked under the procedures of OMC 5.02 and 5.05.

#### **5.50.090 Impoundment**

An animal control officer may impound any animal if a licensee fails to comply with a correction notice issued under Section 5.50.080 and said animal control officer determines that any animal in the possession or under the control of the licensee to be disabled or diseased due to the neglect or abuse, or the condition of any animal that constitutes a threat or danger to the public health or safety. The animal being impounded shall be taken to a veterinarian designated in the licensee's application for treatment. The licensee shall be responsible for the veterinary bill.

#### **5.50.100 Violations – Civil infraction**

A.

It shall be a civil infraction for a person, firm, limited liability company or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, limited liability company or corporation found to have committed a civil infraction shall be assessed a monetary penalty as provided in OMC Chapter 4.44, Uniform Civil Enforcement.

**Section 13. Amendment of OMC Chapter 5.52.** Olympia Municipal Code Chapter 5.52, Locksmiths, is hereby amended to read as follows:



## **Chapter 5.52**

### **LOCKSMITHS**

#### **5.52.000 Chapter Contents**

##### **Sections:**

- 5.52.001 Administrative provisions.
- 5.52.002 Business and occupations tax applies
- 5.52.010 Definitions.
- 5.52.020 License required.
- 5.52.050 Occupational permit required.
- 5.52.070 Exemptions.
- 5.52.080 Violations – Civil infraction.

#### **5.52.001 Administrative Provisions**

The administrative provisions contained in OMC Chapter 5.05 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

#### **5.52.002 Business and Occupations Tax Applies**

The provisions contained in OMC Chapter 5.04 shall be fully applicable to businesses regulated under this chapter.

#### **5.52.010 Definitions**

The following terms, for the purposes of this chapter, shall have the following meanings:

- A. “Locksmith” means any person who, for hire, is engaged in the installation, removal, adjustment or repair of any locking or security device or any type used for doors, safes, windows or other similar purpose, and performs such service on the customer’s premises.
- B. “Locksmith business” means any person, firm or corporation who holds that person or itself out as a business providing the services of a locksmith.

#### **5.52.020 License required**

It is unlawful for any person, firm or corporation to act as a locksmith or to engage in business as a locksmith business in the City without first obtaining a license pursuant to the provisions of OMC 5.02. Any additional licensing or permitting requirements of this Chapter 5.52 shall also apply.

#### **5.52.050 Occupational permit required**

Every locksmith and employee of a locksmith business shall at all times have in the locksmith’s and employee’s possession an occupational permit issued by the Police Department. Upon the revocation, suspension or expiration of any such license, such identification card shall be surrendered to the chief of police.

#### **5.52.070 Exemptions**

The provisions of this chapter shall not apply to any officer or employee of any department or agency of the United States or of any state, county, city or other municipal corporation while engaged in the performance of the officer’s or employee’s official duties.

#### **5.52.080 Violations – Civil infraction**

- A. It shall be a civil infraction for a person, firm, limited liability company or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A

person, firm, limited liability company or corporation found to have committed a civil infraction shall be assessed a monetary penalty as provided in OMC Chapter 4.44, Uniform Code Enforcement.

**Section 14. Amendment of OMC Chapter 5.55.** Olympia Municipal Code Chapter 5.55, Security Alarm Businesses, is hereby amended to read as follows:

## **Chapter 5.55**

### **SECURITY ALARM BUSINESSES**

5.55.000 Chapter Contents

Sections:

- 5.55.001 Administrative provisions.
- 5.55.002 Business and occupations tax applies
- 5.55.010 Purpose.
- 5.55.011 Definitions.
- 5.55.020 License Required.
- 5.55.025 Additional licensing process.
- 5.55.030 License renewal.
- 5.55.040 Control number.
- 5.55.050 Installation standards.
- 5.55.060 Monitoring standards.
- 5.55.070 Public disclosure requirements.
- 5.55.080 Penalties for non-compliance.
- 5.55.090 Appeals.

#### **5.55.001 Administrative Provisions**

The administrative provisions contained in OMC Chapter 5.05 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

#### **5.55.002 Business and Occupations Tax Applies**

The provisions contained in OMC Chapter 5.04 shall be fully applicable to businesses regulated under this chapter.

#### **5.55.010 Purpose**

To assure that responses to false alarms do not diminish the availability of police services to the general public and to assure that citizens who cannot afford or do not choose to operate security alarm systems are not penalized for their choice or condition, the City regulates alarm businesses and encourages the reduction or elimination of Department response to false alarms by requiring such businesses to be licensed and requiring them to comply with reasonable service quality and truth in advertising standards. (See also OMC Chapter 16.46.)

#### **5.55.011 Definitions**

The definitions in OMC 16.46.011 apply throughout this Chapter, unless the context clearly requires otherwise.

#### **5.55.020 License Required**

It is unlawful for any person, firm or corporation to engage in business in the City without first obtaining a license pursuant to the provisions of OMC 5.02. Any additional licensing or permitting requirements of this Chapter 5.55 shall also apply.

A. It is unlawful for any alarm business to sell, lease, maintain, service, repair, alter, replace, move, install, respond to, or monitor security alarm systems located in the City without first obtaining an alarm business license pursuant to the provisions of this Chapter.

B. It is unlawful for any retail businesses to engage in the selling of security alarm systems or devices designed for "do-it-yourself" installation without first obtaining an alarm business license pursuant to the provisions of this Chapter.

C. Alarm businesses engaged in the installation, maintenance, and servicing of security alarm systems may also be required to have additional professional and technical licenses and to comply with other applicable codes.

#### **5.55.025 Additional licensing process**

A. Applications for an additional license under this Chapter must be available from and be submitted to the City Clerk (or designee).

B. The license application must include, but is not limited to, the following:

1. An affidavit signed by a person authorized to act on behalf of the business committing the alarm business to comply with the provisions of this Chapter and OMC Chapter 16.46.
2. If the alarm business has had its license revoked under this Chapter, and is reapplying for a new license, an affidavit signed by a person authorized to act on behalf of the business detailing the corrective steps taken to restore eligibility for a license.

C. The City Clerk (or designee) shall issue a license under this Chapter to an alarm business that meets the following requirements:

1. The alarm business has submitted the application materials specified in OMC 5.55.025(B);
2. The alarm business has remitted the required license fee.
3. The alarm business is in compliance with the provisions of this Chapter and OMC Chapter 16.46.

#### **5.55.030 License renewal**

Renewal of the licenses for an alarm business is contingent on the following conditions:

A. The alarm business has remained in compliance with the provisions of this Chapter and OMC Chapter 16.46 during the previous calendar year, and such compliance has been confirmed by the Alarm Administrator.

B. The alarm business has no outstanding penalty fees and is not in a license suspension period.

#### **5.55.040 Control number**

A. On receipt of confirmation from the City Clerk (or designee) that an alarm business has been issued an additional license under this Chapter, the Alarm Administrator shall assign the licensee a unique control number.

B. The assigned control number remains valid for as long as the alarm business to which it is assigned remains licensed under this Chapter.

C. To register security alarm systems at security alarm sites in the City or make alarm dispatch requests to alarm sites in the City, the alarm business may be required to provide the Department (or designee) with its valid control number in the manner prescribed by the Alarm Administrator.

D. No alarm business shall presume, anticipate, or expect the registration of a security alarm system or police response to an alarm dispatch request in any circumstance where the alarm business has not been issued a valid control number, as specified in OMC 5.55.040(C).

#### **5.55.050 Installation standards**

A. All security alarm systems that are installed or replaced in the City must have alarm panels that comply with the current ANSI Standard on security control panels, or must have real-time video or audio monitoring capability.

B. All robbery alarms designed to initiate an alarm dispatch request that are installed or replaced in the City must have at least two actions to activate.

C. All businesses installing or replacing security alarm systems in the City shall, prior to securing registration for and activating the system, complete both an Installer False Alarm Prevention Checklist and a Customer Training and False Alarm Prevention Checklist verifying that the alarm user has been properly prepared for use of the system and has been apprised of the rules and regulations governing the operation of alarm systems in the City.

D. No alarm business installing, replacing, or re-programming security alarm systems in the City may program a security alarm system to do any of the following:

1. Have an entry/exit delay of less than 45 seconds;
2. Have a siren, bell, or other signal audible from any property adjacent to the alarm site that sounds for more than five (5) consecutive minutes or three (3) repetitions of the five minute cycle without resetting.
3. Accept alarm inputs for the first sixty (60) seconds following a power restoration.

#### **5.55.060 Monitoring standards**

A. Any security alarm monitoring business monitoring burglary alarm systems located in the City shall, prior to making an alarm dispatch request, do the following:

1. Attempt a verification call to the security alarm site;
2. If no responsible party is located on the initial verification call, attempt a second verification call to a cell phone or other alternate contact number designated by the alarm user.
3. This section does not apply to robbery alarms or to public schools on certain days and hours, as described in OMC 16.46.181(A)(1).

B. A security alarm monitoring business shall not initiate an alarm dispatch request when it knows, or reasonably should know, that the request relates to a security alarm site that is unregistered or that has had its registration suspended or revoked.

C. A security alarm monitoring business shall not initiate an alarm dispatch request to any security alarm site that it knows, or reasonably should know, is fitted with a protective-reactive device until a person responsible for the security alarm site has been contacted and has confirmed that the person responsible is en route to the security alarm site to disarm the security alarm system. In all cases where a protective-reactive device is present at a security alarm site, the alarm dispatch request must include a warning for officers not to enter the security alarm site until the responsible person is present and has disarmed the security alarm system.

#### **5.55.070 Public disclosure requirements**

A. Any alarm business entering into a contract with an alarm user for the purchase and installation of a new security alarm system at an alarm site in the City shall, prior to final acceptance of that contract by

the alarm user, provide the alarm user with a copy of the City's Public Disclosure Statement For Security Alarm Users.

B. Any security alarm monitoring business entering into a contract with an alarm user for the monitoring of a new or existing security alarm system at an alarm site in the City shall, prior to final acceptance of that contract by the alarm user, provide the alarm user with a copy of the City's Public Disclosure Statement For Security Alarm Users. If one alarm business contracts with a customer concurrently for installation and monitoring, only one disclosure statement is required.

C. Any retail business in the City offering security alarm systems or devices to the general public for "do-it-yourself" installation shall, at the time of sale, provide customers purchasing such systems or devices with a copy of the City's Public Disclosure Statement For Security Alarm Users.

D. Proof of compliance with the public disclosure requirement is a precondition of initial alarm system registration (OMC 16.46.031). Receipt by the Alarm Administrator of a copy of the disclosure statement signed by the alarm user is appropriate proof of compliance.

E. The Alarm Administrator determines the content of the Public Disclosure Statement For Security Alarm Users and assures that all alarm businesses licensed under this Chapter are provided with a current, replicable version of the Statement.

#### **5.55.080 Penalties for non-compliance**

A. An alarm business that does not comply with any standard or requirement specified this Chapter or OMC Chapter 16.46, or a security alarm monitoring business that does not comply with any standard or requirement specified in this Chapter or OMC chapter 16.46 will:

1. On the first offense, receive a written warning from the Alarm Administrator stating the nature of the violation and the consequences for future violations;
2. On the second offense, be assessed a penalty fee of \$500 by the Alarm Administrator.
3. On the third offense, be assessed a penalty fee of \$1,000 by the Alarm Administrator and receive a written warning of suspension.
4. On the fourth offense, have its security alarm business license suspended for one (1) year.
5. Any alarm business that has its security alarm business license suspended two or more times may have its license permanently revoked by the Alarm Administrator.

B. An alarm business licensed under this Chapter to engage in the sale of security alarm systems or devices that does not comply with OMC 5.55.070(C) will:

1. On the first offense, receive a written warning from the Alarm Administrator stating the nature of the violation and the consequences for future violations;
2. On the second offense, be assessed a penalty fee of \$250 by the Alarm Administrator.
3. On the third and each subsequent offense, be assessed a penalty fee of \$500 by the Alarm Administrator.

C. The Alarm Administrator shall notify an alarm business of any written warning, imposition of penalty fees, or license suspension or revocation involving that business. Such notification must include suspension starting and ending dates (when applicable) or revocation starting date (when applicable) and a description of appeal options and processes. The date a suspension or revocation starts must be no less than twenty (20) business days from the date notification is provided to the alarm business, to allow the business to notify its customers and make arrangements for the cessation of service.

D. The Alarm Administrator shall, after the date for appeal has passed, notify the public in a timely manner of any instance in which an alarm business has its license suspended or revoked. Such notification must be in a newspaper of general circulation and on the Department web site and must include the alarm business name, the reason for the action, and the dates the suspension begins and ends, or the date the revocation begins. In cases where an appeal is requested, public notification must take place after a decision is reached on the appeal. The alarm business is responsible for the actual cost of public notification.

#### **5.55.090 Appeals**

An alarm business that is assessed penalty fees or whose license is suspended or revoked may appeal such action as follows:

A. An alarm business initiates the appeal process by sending an appeal request, in the form of a letter to the Alarm Appeals Officer, requesting an appeal conference and specifying the reasons for the appeal. The appeal request must be received by the Alarm Appeals Officer within ten (10) business days after receipt of the certified letter notifying the business of the penalty fee or license suspension or revocation.

B. An alarm business may initiate an appeal under this section only on the grounds that the offense cited as the basis for a penalty fee or license suspension or revocation did not occur. The alarm business must, in its appeal request, describe credible evidence that it can produce to the Alarm Appeals Officer that supports its appeal.

C. The Alarm Appeals Officer may reject, without further process, an appeal request that is not supported by credible evidence. The Alarm Appeals Officer shall send written notice of rejection of an appeal request to the appellant within five (5) business days following receipt of the request by the Alarm Appeals Officer.

D. The filing of an appeal request with the Alarm Appeals Officer stays any pending penalty fee or license suspension or revocation until the Alarm Appeals Officer rejects the appeal, as described in 5.55.090(C), or renders a final decision.

E. The Alarm Appeals Officer shall conduct an appeal conference at a location within the City within fifteen (15) business days after receiving the appeal request.

F. At the appeal conference, the Alarm Appeals Officer shall consider evidence presented by any interested person(s). The alarm business has the burden to establish, based on credible evidence, that the violation(s) that it is the basis for the penalty fee or license suspension or revocation did not occur. The Alarm Appeals Officer shall make the appeal decision on the basis of the preponderance of evidence presented at the appeal conference.

G. The Alarm Appeals Officer shall issue a written appeal decision and shall provide the appellant and the Alarm Administrator a copy of the decision within ten (10) business days after the appeal conference is completed. The Alarm Appeals Officer may affirm, cancel, or modify the penalty fee or license suspension or revocation that is the subject of the appeal.

H. The official decision of the Alarm Appeals Officer is final, and no further appeals or remedies are available, except those provided by law.

I. The provisions of OMC 16.46.171 through .175, applicable to the Alarm Appeals Officer, are applicable to appeals heard under this Chapter.

**Section 16. Amendment of OMC Chapter 5.60.** Olympia Municipal Code Chapter 5.60, Business Licenses, is hereby amended to read as follows:

## **Chapter 5.60**

### **SECONDHAND DEALERS**

#### 5.60.000 Chapter Contents

##### Sections:

- 5.60.001 Administrative provisions.
- 5.60.002 Business and occupations tax applies
- 5.60.010 Definitions.
- 5.60.015 License required.
- 5.60.020 Exemptions.
- 5.60.070 Recordkeeping requirements.
- 5.60.080 Access to records and property for inspection.
- 5.60.090 Pawn tickets.
- 5.60.100 Daily report of transactions to chief of police.
- 5.60.110 Redemption of pawned goods.
- 5.60.120 Limitations on receiving property.
- 5.60.160 Violations – Civil infraction.

#### **5.60.001 Administrative Provisions**

The administrative provisions contained in OMC Chapter 5.05 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

#### **5.60.002 Business and Occupations Tax Applies**

The provisions contained in OMC Chapter 5.04 shall be fully applicable to businesses regulated under this chapter.

#### **5.60.010 Definitions**

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

- A. "Secondhand dealer" means any person, firm, corporation, partnership or association that, within the City, shall solicit for or, as a business, engage in the purchase, sale, trade, barter or exchange of secondhand goods, wares or merchandise.
- B. A "pawnbroker" includes any person engaged in the business of receiving property in pledge for loans.
- C. An "Employee" includes any person who purchases or accepts in trade any goods from customers on behalf of the business.

#### **5.60.015 License required**

It is unlawful for any person, firm or corporation to engage in business in the City without first obtaining a license pursuant to the provisions of OMC 5.02. Any additional licensing or permitting requirements of this Chapter 5.60 shall also apply.

#### **5.60.020 Exemptions**

The provisions of this chapter shall not apply to:

- A. Any officer or employee of any department or agency of the United States or of any state, county, city or other municipal corporation while engaged in the performance of the officer's or employee's official duties;
- B. Any licensed used car dealers;

- C. Any duly licensed appliance, furniture, auto parts and accessory dealer, service station, auction, wrecking yard, recycling center and junk dealer;
- D. Any non-profit organization;
- E. Any business in which the amount of used goods purchased, is less than twenty-five percent of the total business conducted;
- F. Any employee of the exempted businesses.

Any business that is exempted in this chapter is still subject to licensing as per Chapter 5.02.

#### **5.60.070 Recordkeeping requirements**

It shall be the duty of every pawnbroker and secondhand dealer to maintain in the pawnbroker's and secondhand dealer's place of business a book or other permanent record in which shall be legibly written in the English language, at the time of each loan, purchase or sale, a record thereof, containing:

- A. The date of the transaction;
- B. The name of the person or employee conducting the same;
- C. The name, signature, sex, age, street and house number, and a general description of the dress, complexion, color of hair, and facial appearance of the person with whom the transaction is had;
- D. The name and street and house number of the owner of the property bought or received in pledge;
- E. The street and house number of the place from which the property bought or received in pledge was last removed;
- F. A description of the property bought or received in pledge, which, in the case of watches, shall contain the name of the maker and the number of both the works and the case, and, in the case of jewelry, shall contain a description of all letters and marks inscribed thereon; provided, that when the article bought or received is furniture, or the contents of any house or room actually inspected on the premises, a general record of the transaction shall be sufficient;
- G. The price paid or the amount loaned;
- H. The name and street and house numbers of all persons witnessing the transaction; and
- I. The number of any pawn ticket issued therefor.

#### **5.60.080 Access to records and property for inspection**

The record provided for by Section 5.60.070 and the property purchased, shall be open for inspection at all hours to law enforcement officers.

#### **5.60.090 Pawn tickets**

Every pawnbroker shall issue numbered pawn tickets for all goods or property received by that pawnbroker as pledges for loans, which tickets shall be considered receipts for such goods or property. Tags shall be attached to all such goods or property and upon each tag shall be written in legible figures a number which shall correspond to the number on the pawn ticket issued for such article or articles.

#### **5.60.100 Daily report of transactions to chief of police**

Every pawnbroker and secondhand dealer in the City shall, before noon of each day, furnish to the chief of police, at the chief of police's office, on such forms as the chief of police may provide therefor, a full, true and correct transcript of the record of all transactions had on the previous day; and if such pawnbroker or secondhand dealer shall have reason or cause to believe that any property in the



pawnbroker's or secondhand dealer's possession has been previously lost or stolen, the pawnbroker or secondhand dealer shall forthwith report such fact to the chief of police, together with the name of the owner, if known, and the date when, and the name of the person from whom, the same was received by that pawnbroker or secondhand dealer. The daily report provided for in this section may be made by mailing at the close of the business day. Such record and all articles received shall at all times be open to the inspection of the chief of police or any police officer of the City, and no entry made in the record shall be erased or in any manner obliterated.

#### **5.60.110 Redemption of pawned goods**

No pawnbroker shall sell any property held by that pawnbroker for redemption within ninety days after the period of redemption shall have expired; nor shall any pawnbroker or secondhand dealer, except in the case of a pawnbroker upon redemption thereof by the owner, remove or permit to be removed from the pawnbroker's or secondhand dealer's place of business any property received by that pawnbroker or secondhand dealer within seven working days after the receipt thereof shall have been reported to the chief of police, unless the property has, within the time period, been inspected and approved for release by the Police Department. Likewise, for good cause shown, and while any investigation is pending, the Police Department may require the licensee to hold the item for more than the seven-day period but not to exceed thirty days.

#### **5.60.120 Limitations on receiving property**

No pawnbroker or secondhand dealer shall receive any goods, merchandise or property from any person under eighteen years of age, any person under the influence of intoxicating liquor or from any person who has been convicted of larceny, burglary, or receiving stolen goods if the dealer has previously been advised by the Police Department of the conviction.

#### **5.60.160 Violations – Civil infraction**

A. It shall be a civil infraction for a person, firm, limited liability company or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, limited liability company or corporation found to have committed a civil infraction shall be assessed a monetary penalty as provided in OMC Chapter 4.44, Uniform Civil Enforcement.

**Section 17. Amendment of OMC Chapter 5.64.** Olympia Municipal Code Chapter 5.64, Business Licenses, is hereby amended to read as follows:

### **Chapter 5.64**

### **SOLICITORS**

5.64.000 Chapter Contents

#### Sections:

5.64.001 Administrative provisions.  
5.64.002 Business and occupations tax applies.  
5.64.010 Defined.  
5.64.020 License Required.  
5.64.025 Occupational permit – Required.  
5.64.060 Violations – Civil Infraction.

#### **5.64.001 Administrative Provisions**

The administrative provisions contained in OMC Chapter 5.05 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

#### **5.64.002 Business and Occupations Tax Applies**

The provisions contained in OMC Chapter 5.04 shall be fully applicable to businesses regulated under this chapter.

#### **5.64.010 Defined**

A "solicitor," within the meaning of this chapter, is any person who goes from house to house, or place to place, in the City, selling or taking orders for or offering to sell or take orders for goods, wares or merchandise, for present or future delivery, or for the making, manufacturing, or repairing of any article or thing whatsoever, for present or future delivery except those selling to merchants for resale; providing, however, that this section and chapter shall not apply to persons soliciting goods to be shipped from one state to another in interstate commerce.

#### **5.64.020 License Required**

It is unlawful for any person, firm or corporation to engage in business in the City without first obtaining a license pursuant to the provisions of OMC 5.02. Any additional licensing or permitting requirements of this Chapter 5.64 shall also apply. **5.64.025 Occupational permit – Required**

It is unlawful for any person to act as a solicitor, within the meaning and application of this chapter, unless they have first secured an occupational permit in the manner provided by Chapter 5.10.

#### **5.64.060 Violations -- Civil Infraction**

A.

It shall be a civil infraction for a person, firm, limited liability company or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, limited liability company or corporation found to have committed a civil infraction shall be assessed a monetary penalty as provided in OMC Chapter 4.44, Uniform Civil Enforcement.

**Section 19. Amendment of OMC Chapter 5.68.** Olympia Municipal Code Chapter 5.68, For-hire Vehicles, is hereby amended to read as follows:

### **Chapter 5.68**

### **FOR-HIRE VEHICLES**

5.68.000 Chapter Contents

Sections:

- 5.68.001 Administrative provisions.
- 5.68.002 Business and occupations tax applies.
- 5.68.010 Purpose.
- 5.68.020 Definitions.
- 5.68.030 License required.
- 5.68.032 Occupational permit – Required.
- 5.68.035 Exemptions.
- 5.68.090 Complaint inspection.
- 5.68.100 Revocation, suspension or denial of vehicle for-hire license.
- 5.68.110 Prohibited acts.
- 5.68.160 Refusal to pay fare.
- 5.68.170 Violations – Civil infraction.

#### **5.68.001 Administrative Provisions**

The administrative provisions contained in OMC Chapter 5.05 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

#### **5.68.002 Business and Occupations Tax Applies**

The provisions contained in OMC Chapter 5.04 shall be fully applicable to businesses regulated under this chapter.

#### **5.68.010 Purpose**

Under the police power of the City, this chapter is intended to enact reasonable regulations governing the operation of taxicabs (for-hire vehicles) within the City. These regulations are necessary to protect the health, safety and welfare of the citizens of the City who use these vehicles as transportation.

#### **5.68.020 Definitions**

For purposes of this chapter, the terms set forth below shall have the following meanings:

- A. "Director" is as defined in OMC 5.05.002.
- B. "Driver and operator" means the person physically engaged in driving a for-hire vehicle, whether or not said person is the owner of or has any financial interest in said vehicle.
- C. "For-hire vehicle" includes all vehicles used for the transportation of passengers for compensation, except auto stages, buses and ride share vehicles. The term primarily includes taxicabs.
- D. "Limousine" wherever used in this chapter means a vehicle operated at a specified cost per hour or trip, and used for the transportation of passengers who have arranged for their transportation through the business office of the operator.
- E. "Person" means any natural person of either sex, firms, corporations, partnerships and associations either acting by themselves or by servant, agent or employee. The singular shall include the plural and words referring to a specific gender may be extended to any other gender.

#### **5.68.030 License required**

It is unlawful for any person, firm or corporation to engage in business in the City without first obtaining a license pursuant to the provisions of OMC 5.02. Any additional licensing or permitting requirements of this Chapter 5.68 shall also apply.

#### **5.68.032 Occupational permit – Required**

It is unlawful for any person to operate a for-hire vehicle within the meaning and application of this chapter, unless they have first secured an occupational permit in the manner provided by Chapter 5.10.

#### **5.68.035 Exemptions**

Auto stages, school buses operating exclusively under a contract to a school district, ride-sharing vehicles under Chapter 46.74 RCW, limousine carriers licensed under Chapter 46.72A RCW, vehicles used by nonprofit transportation providers for elderly or handicapped persons and their attendants under Chapter 81.66 RCW, vehicles used by auto transportation companies licensed under Chapter 81.68 RCW, vehicles

used to provide courtesy transportation at no charge to and from parking lots, hotels, and rental offices, and vehicles used by charter party carriers of passengers and excursion service carriers licensed under Chapter 81.70 RCW.

#### **5.68.090 Complaint inspection**

A. Upon receipt of a passenger complaint, the City shall evaluate same and, if deemed appropriate, send written notice to the licensee, either personally or by mail with a certificate of mailing attached. The notice shall specify the vehicle license number, the nature of the complaint received and the date upon which the complaint was conveyed. If the complaint alleges a vehicle defect, the notice will require that the licensee or the licensee's agent present the vehicle for inspection to the Olympia chief of police or the chief of police's designee within five days of receipt of the notice or be subject to license revocation proceedings under this chapter.

B. If upon inspection the vehicle is determined to be in violation of the standards promulgated pursuant to this chapter, the chief of police will notify the Director of said violation.

#### **5.68.100 Revocation, suspension or denial of business license**

A. Renewal or continuation of the business license for a for-hire business is contingent on the following additional conditions:

1. The applicant/licensee has failed to comply with the inspection requirements of this chapter;
2. A for-hire vehicle is being operated in an unsafe condition which constitutes a danger to the safety and welfare of passengers or the public;
3. The licensee has failed to comply with the State of Washington current laws and rules for Taxis and for-hire vehicles;
4. The licensee has charged rates which exceed those set forth in the posted or filed rate schedule;
5. The licensee has failed to procure and maintain liability insurance ;
6. The licensee has violated Section 5.68.110 of this chapter.

B. Prior to the revocation, suspension or denial of a business license hereunder, the city shall notify the licensee/applicant at least five days prior to such suspension, revocation or denial. Said notice shall advise the licensee/applicant that the licensee/applicant has the right to a hearing prior to the effective date of any such suspension, revocation or denial.

#### **5.68.110 Prohibited acts**

In addition to other provisions of this chapter, it is a violation for any licensee to:

- A. Falsify any record, document or information required to be kept or submitted to the City by this chapter;
- B. Drive or authorize any person to drive a for-hire vehicle which is not properly equipped and is safe condition as required by provisions of this chapter, as now or hereafter amended;
- C. Drive or authorize any person to drive a for-hire vehicle which is not equipped with seat belts for all passengers;
- D. Allow the operation of any for-hire vehicle by a driver who is not licensed under the provisions of this chapter or who is under the influence of intoxicating liquor or drugs while operating the for-hire vehicle.

#### **5.68.160 Refusal to pay fare**

It is unlawful for any person to refuse to pay the posted fare for a for-hire service after the service has been rendered.

#### **5.68.170 Violations – Civil infraction**

A. It shall be a civil infraction for a person, firm, limited liability company or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, limited liability company or corporation found to have committed a civil infraction shall be assessed a monetary penalty as provided in OMC Chapter 4.44, Uniform Civil Enforcement.

**Section 20. Amendment of OMC Chapter 5.72.** Olympia Municipal Code Chapter 5.72, Towing Services, is hereby amended to read as follows:

### **Chapter 5.72**

#### **TOWING SERVICES**

##### **5.72.000 Chapter Contents**

##### **Sections:**

- 5.72.001 Administrative provisions.
- 5.72.002 Business and occupations tax applies
- 5.72.010 Operator defined.
- 5.72.020 License required.
- 5.72.090 Operator at scene of accident.
- 5.72.100 Intercepting police calls prohibited.
- 5.72.110 Gratuity for information prohibited.
- 5.72.120 Grounds for revocation of license.
- 5.72.125 Complaint investigation.
- 5.72.140 Violations – Civil infraction.

##### **5.72.001 Administrative Provisions**

The administrative provisions contained in OMC Chapter 5.05 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

##### **5.72.002 Business and Occupations Tax Applies**

The provisions contained in OMC Chapter 5.04 shall be fully applicable to businesses regulated under this chapter.

##### **5.72.010 Operator defined**

For the purpose of this chapter a wrecker or towing operator hereinafter referred to as "operator" means any person who engages in the impounding, transporting or storage of unauthorized vehicles or the disposal of abandoned vehicles.

For purposes of this section, "unauthorized vehicle" means a vehicle that is subject to impoundment after being left unattended in one of the following public or private locations for the indicated period of time:

Subject to removal after:

- A. Public locations:

- |                       |   |             |
|-----------------------|---|-------------|
| 1.                    | Constituting an accident or a traffic hazard as defined in RCW 46.55.113                | Immediately |
| 2.                    | On a highway and tagged as described in RCW 46.55.085                                   | 24 hours    |
| 3.                    | In a publicly owned or controlled parking facility, properly posted under RCW 46.55.070 | Immediately |
| B. Private locations: |   |             |
| 1.                    | On residential property   | Immediately |
| 2.                    | On private, nonresidential property, properly posted under RCW 46.55.070                | Immediately |
| 3.                    | On private, nonresidential property, not posted   | 24 hours    |

### **5.72.020 License required**

It is unlawful for any person, firm or corporation to engage in business in the City without first obtaining a license pursuant to the provisions of OMC 5.02. Any additional licensing or permitting requirements of this Chapter 5.72 shall also apply.

It is unlawful for any tow company to operate or cause to operate within Olympia city limits any tow truck for the purpose of providing towing services unless the tow company has a current registration certificate required by RCW 46.55.020.

### **5.72.090 Operator at scene of accident**

It is unlawful for the operator or driver of any wrecker or towing car to go to any place where a vehicular accident has occurred unless called by the owner of a disabled vehicle or the owner's authorized representative or by a police officer. If any wrecker or towing car is called to the scene of a vehicular accident by someone other than a police officer, the operator shall as soon as reasonably practical notify the Police Department.

### **5.72.100 Intercepting police calls prohibited**

It is unlawful for the operator or driver of any wrecker or towing car to intercept or monitor police calls by shortwave radio or otherwise, for the purpose of going to the scene of a disabled motor vehicle.

### **5.72.110 Gratuity for information prohibited**

It is unlawful for the operator, agent or driver or any wrecker or towing car to offer or pay a gratuity or reward to anyone for furnishing information as to the location of a disabled vehicle, or for anyone to accept or receive such gratuity or reward.

### **5.72.120 Revocation, suspension or denial of business license**

Renewal or continuation of the business license for a towing business is contingent on the following additional conditions:

- A. The license was procured by fraudulent conduct or false statement of a material fact, or that a material fact concerning the applicant was not disclosed at the time of the applicant's making application.
- B. The licensee, the licensee's agent or representative has offered to pay or has paid directly or indirectly a gratuity or reward to any person not a bona fide employee of the operator for furnishing information as to the location of a disabled vehicle.

C. The licensee has violated any provisions of Section 5.72.070 or any of the rules and regulations as established under Section 5.72.080.

D. If any employee of the City or any of its departments has any interest, whether as an owner, operator, partner, employee or otherwise, either directly or indirectly, in the business of an operator licensed under this chapter.

#### **5.72.125 Complaint investigation**

A. Upon receipt of a complaint, the City shall evaluate same and, if deemed appropriate, send written notice to the licensee, either personally or by mail with a certificate of mailing attached. The notice shall specify the vehicle license number, the nature of the complaint received and the date upon which the complaint was conveyed. If the complaint alleges a vehicle defect, the notice will require that the licensee or the licensee's agent present the vehicle for inspection to the Olympia chief of police or the chief of police's designee within five days of receipt of the notice or be subject to license revocation proceedings under this chapter.

B. If upon investigation the business is determined to be in or have been in violation of the standards promulgated pursuant to this chapter, the chief of police or code enforcement officer will notify the Director of said violation.

#### **5.72.140 Violations – Civil infraction**

A. It shall be a civil infraction for a person, firm, limited liability company or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, limited liability company or corporation found to have committed a civil infraction shall be assessed a monetary penalty as provided in OMC Chapter 4.44, Uniform Civil Enforcement.

**Section 21. Amendment of OMC Chapter 5.76.** Olympia Municipal Code Chapter 5.76, Miscellaneous Business, is hereby amended to read as follows:

### **Chapter 5.82**

#### **RENTAL HOUSING CODE**

5.82.000 Chapter Contents

##### **Sections:**

5.82.010 Purpose and Intent.  
5.82.020 Definitions.  
5.82.040 Rent Increase Notification.  
5.82.050 Pet Damage Deposits.  
5.82.060 Limits to Move in Fees.  
5.82.070 Registration of Rental Units.  
5.82.080 Business License Required for Rental Housing Units.  
5.82.090 Periodic Inspections Required for Rental Properties.  
5.82.100 Prohibition on Passing Charges to a Tenant to Comply with a Program.  
5.82.110 Rent Increases Prohibited if Rental Unit has Defective Conditions.  
5.82.120 Retaliation Prohibited.  
5.82.130 Violations.

#### **5.82.010 Purpose and Intent**

The purpose of this Chapter is to establish regulations supporting housing security to reduce homelessness and to establish standards and enforcement mechanisms as they relate to rental housing within the municipal boundaries of the City of Olympia. It is the intent of the Olympia City Council to

continue its long-term commitment to maintain healthy, vibrant, and diverse neighborhoods within the City of Olympia. The regulations contained in this Chapter balance the needs of the landlord, tenant, and the City of Olympia to ensure safe, healthy, and thriving rental housing within the City's municipal boundaries. The City recognizes that the renting of residential property is a commercial venture where owners and landlords must evaluate risk, profit, and loss. Providing housing for Olympia's residents directly impacts quality of life at the most basic level, and therefore requires regulations to ensure that this commercial venture is equitably undertaken. This Chapter ensures housing security for current and future residents within the City of Olympia.

#### **5.82.020 Definitions**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this Chapter:

- A. "Affordable housing" means residential housing that is rented by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household's monthly income.
- B. "Affordable housing provider" means a rental housing property owner that is funded or otherwise contractually obligated to provide housing that is affordable to low-income households. This includes nonprofit organizations, public agencies, or private owners receiving a tax credit to provide affordable housing to low-income households.
- C. "Building" means a structure having a roof supported by columns or walls used for supporting or sheltering of any kind.
- D. "Building code" means all code provisions adopted in and throughout Chapter 16.04 OMC.
- E. "Business license" means a business license as required by this Chapter and by Chapter 5.02 OMC.
- F. "Certificate of compliance" means a statement signed and dated by the City that certifies that each rental unit complies with the requirements and standard of this Chapter.
- G. "Certificate of inspection" means the form created by the City and completed and issued by a qualified rental housing inspector following an inspection that certifies that each rental unit that was inspected passed inspection.
- H. "Days" means calendar days unless otherwise provided.
- I. "Declaration of compliance" means a statement submitted to the City by a rental property owner or landlord that certifies that, to the best of such person's knowledge, each rental unit complies with the requirements and standards of this Chapter and Chapter 59.18 RCW, and that there are no conditions presented in any rental unit that endanger or impair the health or safety of a tenant.
- J. "Landlord" means a landlord as defined in and within the scope of RCW 59.18.030 and RCW 59.18.040 of the Residential Landlord Tenant Act of 1973 ("RLTA") in effect at the time the rental agreement is executed or occurs. As of the effective day of this ordinance, the RLTA defines "landlord" as "the owner, lessor, or sub-lessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the owner, lessor, or sub-lessor including, but not limited to, an agent, a resident manager, or a designated property manager."
- K. "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 80 percent of the median family income adjusted for family size, for Thurston County, as reported by the United States Department of Housing and Urban Development.



L. "Mobile home" or "manufactured home" means a mobile home or a manufactured home as defined in Chapter 59.20 RCW.

M. "Owner" or "rental property owner" means the owner of record as shown on the last Thurston County tax assessment roll, or such owner's authorized agent.

N. "Qualified rental housing inspector" mean a private inspector who possesses at least one of the following credentials and who has been approved by the City as a qualified rental housing inspector based on a process developed by the City consistent with the intent of this Chapter:

1. American Association of Code Enforcement Property Maintenance and Housing Inspector certification;
2. International Code Council Property Maintenance and Housing Inspector certification;
3. International Code Council Residential Building Code Inspector;
4. Washington State licensed home inspector; or
5. Other acceptable credential as determined by the City.

O. "Rent" or "rental amount" means recurring and periodic charges identified in the rental agreement for the use and occupancy of the premises, which may include charges for utilities. These terms do not include nonrecurring charges for costs incurred due to late payment, damages, deposits, legal costs, or other fees, including attorneys' fees. PROVIDED, however, that if, at the commencement of the tenancy, the landlord has provided an installment payment plan for nonrefundable fees or deposits for the security of the tenant's obligations and the tenant defaults in payment, the landlord may treat the default payment as rent owing.

P. "Rental agreement" means any agreement that establishes or modifies the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a rental unit.

Q. "Rental property" means a single parcel with one or more rental units made available for rent or rented by the same landlord.

R. "Rental property complex" means contiguous parcels with rental units rented by the same landlord as a single rental complex.

S. "Rental unit" means a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including single-family residences and units of multiplexes, apartment buildings, and mobile homes and which is made available for rent or rented.

T. "Residential rental housing registration" means registration of one or more rental units as required by this Chapter.

U. "Shelter" means a facility with overnight sleeping accommodations, owned, operated, or managed by a nonprofit agency or governmental entity, the primary purpose of which is to provide temporary shelter for persons experiencing homelessness in general or for specific populations of such persons and includes a homeless shelter, an emergency shelter, and an emergency housing facility as defined in OMC 18.02.180.

V. "Single-family dwelling" means a single unit providing complete, independent living facilities for a household, including permanent provisions for living, sleeping, cooking, and sanitation.

W. "Tenant" means any person who is entitled to occupy a rental unit primarily for living or dwelling purposes under a rental agreement.

X. "Transitional housing" means housing that provides stability for residents for a limited time period, usually two weeks to 24 months, to allow them to recover from a crisis such as homelessness or domestic violence before transitioning into permanent housing. Transitional housing often offers supportive services, which enable a person to transition to an independent living situation.

Y. "Unit not available for rent" means a rental unit that is not currently offered or available for rent as a rental unit.

#### **5.82.040 Rent Increase Notification**

A. A landlord may not increase a tenant's rent by more than five percent of the rent unless the landlord has provided the tenant with notice of the rent increase at least 120 days before such increase takes effect.

B. A landlord may not increase the rent of a tenant by 10 percent or more of the rent unless the landlord has provided the tenant with notice of the rent increase at least 180 days before such increase takes effect.

C. Pursuant to RCW 59.18.140, if the rental agreement governs a subsidized tenancy where the amount of rent is based on the income of the tenant or circumstances specific to the subsidized household, a landlord shall provide a minimum of 30 days' prior written notice of an increase in the amount of rent to each affected tenant.

D. Any notice of a rent increase required by this section must be served in accordance with RCW 59.12.040. Notice of any rental increase of five percent or less may be served in accordance with RCW 59.12.040.

#### **5.82.050 Pet Damage Deposits**

A. Except as provided in subsection B of this section, a landlord may require payment of a pet damage deposit that may not exceed 25 percent of one month's rent, regardless of the time when the pet damage deposit is paid.

B. Exceptions

1. A landlord may not require a pet damage deposit for an animal that serves as an assistance animal for the tenant. This prohibition does not prohibit a landlord from bringing an action for damages resulting from damage to the landlord's property caused by the tenant's assistance animal. For purposes of this subsection, "assistance animal" means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or that provides emotional support that alleviates one or more identified effects of a person's disability.

2. A landlord may not charge a pet damage deposit in that type of subsidized housing where the amount of rent is set based on the income of the tenant. This exception for subsidized housing does not include tenancies regulated under Section 8 of the Housing Act of 1937, 42 U.S.C. Sec. 1437 f, commonly known as the choice voucher program.

C. If the tenant's pet's occupancy begins at the beginning of tenancy, the amount of the pet damage deposit must be specified in a rental agreement. If the tenant's pet's occupancy begins after the beginning of the tenancy, the amount of the pet damage deposit must be specified in an addendum to the rental agreement. The tenant may elect to pay the pet damage deposit in three consecutive, equal monthly installments that begin when the tenant's pet first occupies the rental unit or the tenant may propose an alternative installment schedule. If the landlord agrees to the tenant's alternative installment schedule the schedule must be described in the rental agreement.

D. A landlord may not keep any portion of the pet damage deposit for damage that was not caused by a pet for which the tenant is responsible. Not later than 30 days from the end of the tenancy, consistent with RCW 59.18.280(1)(a), the landlord shall return to the tenant any portion of the pet damage deposit not applied to the costs of remediating damage caused by a pet for which the tenant is responsible, or the landlord shall provide to the tenant an itemized list of damages if a portion or the entirety of the deposit is retained for damage caused by a pet for which the tenant is responsible.

E. Other than the pet damage deposit authorized by subsection A of this section, a landlord may not charge the tenant any fee for keeping a pet.

#### **5.82.060 Limits to Move in Fees**

A refundable security deposit or last month's rent may be charged by a landlord before a tenant takes possession of a rental unit. Landlords are prohibited from charging tenants any other non-refundable fees or one-time fees at the beginning of the tenancy, including a fee to hold a rental unit prior to the tenant taking possession. The amount of the refundable security deposit or last month's rent may not exceed one month's rent, except in that type of subsidized housing where the amount of rent is set based on the income of the tenant. The exception for subsidized housing does not include tenancies regulated under Section 8 of the Housing Act of 1937, 42 U.S.C. Sec. 1437 f, commonly known as the choice voucher program. A landlord is prohibited from charging or accepting any move in fee in excess of that allowed in this section. Nothing in this section prohibits a landlord from charging a pet damage deposit, as allowed in OMC 5.82.050.

#### **5.82.070 Registration of Rental Units**

A. Registration required for rental units.

1. Any person who makes available for rent, or rents, any rental unit not exempt under subsection B of this section shall, prior to making such unit available for rent or renting such unit, register the rental unit with the City, and shall maintain the registration throughout the term of the rental of such unit.
2. A residential rental housing registration is good for one calendar year and expires on December 31st of the calendar year of registration or renewal.
3. The residential rental housing registration for a rental unit is transferable to any person who acquires ownership of a registered rental unit for the unexpired portion of the one-year term for which it was issued.

B. Exempt rental units. This section does not apply to the following types of rental units:

1. A unit within an owner-occupied single-family dwelling where the tenant shares the dwelling with the owner;
2. A unit not available for rent; provided that a unit must be registered under this section before being made available for rent or rented;
3. An owner-occupied mobile home or manufactured home, both as defined in Chapter 59.20 RCW;
4. A living arrangement exempted under RCW 59.18.040;
5. A transient dwelling as defined in OMC 18.02.180, which includes a short-term rental;
6. An assisted living dwelling defined in OMC 18.02.180.

C. Application. A landlord registering a rental unit or units pursuant to this section shall follow the process and shall utilize the form established by the City. The landlord shall pay the required registration

fee, submit a declaration of compliance and such other information as required by the City, and shall provide a mailing address to which the City will send any notice required under this Chapter.

D. Renewal. A landlord shall renew a residential rental registration for the ensuing year on or before the date of the expiration of the current registration by submitting a renewal application on a form and through a process established by the City, updating the information contained in the original application as necessary, and paying the required annual registration fee.

E. Landlord shall provide and update mailing address. Each landlord registering a rental unit or units under this section or renewing a registration shall provide the City with a mailing address and shall notify the City of any change in the landlord's mailing address. Any notice required to be provided to a landlord or rental property owner by the City that the City mails to the address provided through the registration or renewal process must be deemed received three days after mailing.

F. Posting of program information. At each rental unit registered under this section, or in a common area of the rental property, the landlord shall post information regarding the City's rental housing and safety inspection program; provided, that the City may establish one or more alternative or additional methods for conveying the information to tenants. Upon request by a landlord, the City shall provide a form with the information required in this subsection.

G. Fees Established. A landlord of a rental unit subject to the registration requirements under this section shall pay an annual registration fee of \$35 per rental housing unit. An affordable housing provider may request an exemption from registration fees and the City may grant such a request at its discretion.

H. Penalty. Any person who fails to properly register any rental unit or fails to submit the required documentation for renewal of such registration on or prior to the expiration date of the registration is in violation of this chapter and is subject to the penalty provisions of OMC 5.82.130.

#### **5.82.080 Business License Required for Rental Housing Units**

A. Unless exempt under subsection B below, each and every person making available for rent or renting one or more rental units within the City limits shall, in accordance with Chapter 5.02 OMC, obtain and maintain a business license. One business license covers all of a person's rental units within the City; however a separate business license is required for any other business operated by such person, in accordance with OMC 5.02.005.

B. Exemptions. A landlord is exempt from the requirement to obtain a business license under this section if the landlord rents only the following types of rental units:

1. A single rental unit located on the same property as an owner-occupied residence;
2. Rental units exempt from the residential rental housing registration requirements under OMC 5.82.070(B). The operation of dwelling or lodging types such as hotels, motels, short-term rentals, shelters, transitional housing, and housing accommodations at an institution does not fall under this Chapter and this exemption. Such business activities require an Olympia business license under a different Olympia Municipal Code provision.

C. Certificate of compliance. As a condition of the issuance or renewal of a business license, a landlord shall, prior to the renewal of the business license, possess a certificate of compliance issued by the City, certifying that each rental unit made available for rent or rented by the landlord has been inspected as required by OMC 5.82.090.

D. Declaration of compliance. As a condition of the issuance or renewal of a business license, a landlord shall, prior to the issuance of the business license, provide to the City a valid declaration of compliance declaring that each rental unit made available for rent or rented by the landlord complies with

the requirements of this Chapter and RCW Chapter 59.18 and that there are no conditions present in the rental unit or units that endanger or impair the health or safety of any tenant.

E. Denial, suspension, or revocation of license – Appeal

1. Denial or revocation of business license. A landlord may be denied a business license, or a landlord's business license may be suspended or revoked, for any of the following reasons:
  - a. The landlord fails to obtain a certificate of compliance as required by this section;
  - b. The certificate of compliance or business license was procured by fraud or false representation of fact;
  - c. The landlord has failed or fails to comply with any of the provisions of this Chapter;
  - d. The landlord fails to pay any fee due to the City under this Chapter;
  - e. The landlord's rental unit or units is subject to a notice of violation for a municipal code violation which has been deemed committed or found to have been committed;
  - f. Any reason set forth in OMC 5.02.050.
2. Process – Appeal. The denial, suspension, or revocation of a landlord's business license must comply with the business license denial, suspension, or revocation procedures set forth in Chapter 5.02.050 OMC. A landlord may appeal the denial, suspension, or revocation of a business license as provided in OMC 5.02.060.
3. Reinstatement of business license. If a landlord's business license is suspended or revoked, or an application for a license is denied, the City may grant the landlord a business license only after:
  - a. Any and all deficiencies on which the denial, suspension, or revocation was based have been corrected;
  - b. In the event an inspection has been required, an inspection has been completed and the landlord has provided to the City a valid certificate of inspection that meets the requirements of this Chapter;
  - c. The landlord pays the registration and license fee as set forth in this Code; and
  - d. The landlord reimburses the City in full for any applicable tenant relocation assistance costs under OMC 5.82.090 and RCW 59.18.085 paid by the City on the Landlord's behalf.

F. Penalty for not obtaining license. In addition to the penalties set forth in Chapter 5.02 OMC, a landlord who makes available for rent or rents a rental unit without having a valid and current business license is in violation of this Chapter and is subject to the penalty provision of OMC 5.82.130, below.

**5.82.090 Periodic Inspections Required for Rental Properties<sup>1</sup>**

A. Inspection and certificate of inspection required.

1. Unless exempt under subsection B(1) below, each and every rental property in the City must be inspected at least once every five years by a qualified rental housing inspector and a certificate of inspection, reflecting the completed inspection, must be provided to the City. A required inspection is complete only after a qualified rental housing inspector has performed an in-person inspection as required by this section and has issued a certificate of inspection on the form provided by the City and the certificate of inspection is received by the City.

2. Nothing in this section precludes inspection of a rental property or one or more units thereof under RCW 59.18.115, RCW 59.18.150, or other applicable law, pursuant to a valid search warrant, or at the request or consent of a tenant.

B. Exemptions; certain inspection reports accepted in lieu of certificate of inspection.

1. The following rental properties are exempt from the inspection requirements of this section:

- a. A rental property consisting of a single rental unit located on the same property as an owner-occupied residence.
- b. A rental property consisting only of a rental unit or units exempt from the residential rental housing registration requirements of OMC 5.82.070(B).
- c. A rental property that received a certificate of occupancy within the previous 10 years and for which the City has not during that period received any report of any municipal code violation or violations at the rental property or of conditions at the rental property that endanger or impair the health or safety of a tenant.

2. In lieu of a certificate of inspection provided by a qualified rental housing inspector following an inspection under this section, the City may accept an alternate inspection report from an affordable housing provider that is required to complete a periodic inspection if the report reflects that inspection performed was substantially equivalent to the City's inspection standards. This includes an inspection report for a privately owned rental housing property rented to a voucher recipient if the rental property has passed inspection by Housing Authority of Thurston County.

C. City Administration.

1. The City shall create and make available a rental unit inspection checklist to be utilized by qualified rental housing inspectors conducting inspections of a rental properties under this section. The checklist must consist, at a minimum, of a number of health and safety elements, and such other elements as the City may elect to include, that a rental unit subject to inspection either meets or fails.

2. The City shall create and make available a certificate of inspection form to be used by a qualified rental housing inspector in conducting an inspection of rental properties under this section.

3. The City shall create and make available a notice of failed inspection form to be used by a qualified rental housing inspector in conducting an inspection of rental properties under this section.

4. The City shall create and make available a tenant notice form to be utilized by rental property owners in informing tenants of the impending inspection of a rental property and individual rental units, as required by RCW 59.18.125(7)(a) and subsection E(2), below. Such notice must comply with RCW 59.18.125(7)(a) and must state that a tenant with a disability who may be negatively affected by entry into their rental unit by the inspector may request a reasonable accommodation by the City, including the City selecting an alternate unit for inspection.

5. The City shall determine the methodology for selecting which units within a rental property are subject to inspection under subsections D(2) and (3), below, and for each rental property subject to a periodic inspection, shall select units for inspection using such methodology and inform the rental property owner and the inspector of the rental units selected for inspection.

6. By December 1 of the year before a rental property's inspection must be completed, the City shall mail a notice to the rental property owner informing the owner that the inspection under this section must be completed in the coming calendar year and identifying those rental units at the

rental property that are subject to inspection. The City shall mail such notice to the rental property owner at the address provided on the rental property owner's registration under OMC 5.82.070.

D. Rental units subject to inspection.

1. Except as provided in subsections 4 and 5 below, for a rental property consisting of one to four rental units, one rental unit may be selected by the City for inspection.
2. Except as provided in subsections 4 and 5 below, for a rental property consisting of between five and 20 rental units, no more than 20 percent, rounded up to the next whole number, of the rental units, up to a maximum of four units, may be selected by the City for inspection.
3. Except as provided in subsections 4 and 5 below, for a rental property consisting of 21 or more rental units, no more than 20 percent, rounded up to the next whole number, of the rental units, up to a maximum of 50 units, may be selected by the City for inspection.
4. If one or more units on a rental property selected for inspection by the City fail inspection, the City may require up to 100 percent of the units on the rental property be inspected.
5. If the City has, since the last required inspection, received one or more reports of a municipal code violation at the rental property or conditions at the rental property that endanger or impair the health or safety of a tenant, the City may require 100 percent of the units on the rental property be inspected.

E. Conduct of Inspection of Rental Property.

1. After receiving notice from the City that a rental property is due for inspection under this section, a rental property owner shall arrange with a qualified rental housing inspector to perform, at a particular date and time, the inspection of the unit or units identified by the City as subject to inspection. The inspection must be conducted at the rental property owner's expense, except as provided in subsection 8, below.
2. Not more than 60 nor fewer than 30 days prior to the date set for the inspection, the rental property owner shall provide notice to each tenant of the rental property of the impending inspection, using the form created by the City, completed by the rental property owner with all required information. The rental property owner shall provide a copy of the notice to the inspector upon request on the day of inspection.
3. The qualified rental housing inspector shall conduct an in-person inspection of the rental unit or units selected by the City for inspection. The rental property owner shall allow the inspector to access the rental property and shall, under the authority of RCW 59.18.150, facilitate the inspector's access to each rental unit subject to inspection, including providing the notice required in subsection 2, above.
4. In conducting an inspection under this section, the inspector may only investigate a rental property as needed to provide a certificate of inspection under this section.
5. In conducting an inspection under this section, the inspector shall utilize the checklist developed by the City, inspecting the unit or units subject to inspection to determine if the unit meets or fails to meet each element listed on the checklist. If any rental unit fails to meet any element of the checklist, the rental property fails the inspection and a certificate of inspection for the rental property may not be issued.

6. Unless the rental property fails the inspection, the inspector shall, within 10 days of conducting an inspection of a rental property, issue a certificate of inspection on the form developed by the City and shall provide a copy of the certificate of inspection to the City and to the rental property owner.

7. If the rental property fails the inspection, the inspector shall, within 10 days of the inspection, provide the rental property owner and the City a notice of inspection failure. A rental property owner may appeal a failed inspection under subsection F, below.

8. The City may, at the City's discretion, provide City funding for an inspection of a rental property operated by an affordable housing provider.

F. Appeal of failed inspection. If a rental property fails an inspection under this section, the rental property's owner may appeal such failure by submitting a written appeal notice to the City Manager. The appeal notice must be received by the City Manager within 14 days of issuance of the notice of failed inspection. The appeal notice must identify the rental property subject to the notice of failed inspection, the name of the rental property's owner, and must state with particularity the basis for the appeal. A copy of the notice of failed inspection must be provided to the City Manager along with the appeal notice. The City Manager, or designee, shall, within 30 days of receipt of the appeal, review the appeal and shall issue a written decision to uphold, modify, or reverse the failed inspection. The City Manager's or designee's decision is the final decision of the City.

G. Failure to complete inspection when required. If a rental property owner fails to complete an inspection of the rental property owner's rental property by the end of the calendar year in which the inspection is due, or if the rental property fails the inspection:

1. The City shall mail a notice of non-compliance to the rental property owner.

2. Upon receipt of a notice of non-compliance, a rental property owner shall, within 30 days, complete the required inspection and provide a certificate of inspection to the City or enter into a compliance agreement with the City.

3. If, 30 days after receipt of a notice of non-compliance, a rental property owner has not completed the required inspection and provided a certificate of inspection to the City or has not entered into a compliance agreement with the City, or if at any time a property owner violates the terms of a compliance agreement with the City:

a. The rental property owner is in violation of this Chapter and is subject to the penalty provisions of OMC 5.82.130, below;

b. The City may declare the rental property or one or more units thereof, unlawful to occupy pursuant to RCW 59.18.085; after so declaring, the City shall mail written notice to the property owner and any and all affected tenants that the rental property or a unit or units have been declared unlawful to occupy;

c. The City may suspend or revoke the property owner's business license pursuant to OMC 5.02.050; and

d. The rental property owner shall pay for relocation assistance to each displaced tenant as provided in RCW 59.18.085, and, if the City pays for relocation assistance on behalf of the property owner, the property owner shall reimburse the City for all such amounts paid.

#### **5.82.100 Prohibition on Passing Charges to a Tenant to Comply with a Program**

A landlord may not pass on to the tenant any costs incurred by the landlord in complying with this Chapter including: inspection fees, registration fees, business license fees, and repairs not related to damages caused by the tenant.



**5.82.110 Rent Increases Prohibited if Rental Unit has Defective Conditions**

A. A landlord may not increase the rent charged to a tenant by any amount if the rental unit has one or more defective conditions making the rental unit uninhabitable, if a tenant's request for repair to make the rental unit habitable has not been completed, or if the rental unit is otherwise in violation of RCW 59.18.060. If the tenant believes the rental unit has one or more defective conditions making the unit uninhabitable or violates RCW 59.18.060, the tenant may notify the landlord in writing as required by RCW 59.18.070, specifying the premises involved; the owner's name, if known; and the defective condition before the effective date listed in the notice of rent increase.

B. A landlord may not increase rent on any unit in a rental property if the rental property owner has not completed inspection of the rental property as required in OMC 5.82.090, or if the rental property has failed inspection under that section.

**5.82.120 Retaliation Prohibited**

A landlord may not retaliate against a tenant for asserting tenant rights under the tenant protection provisions of this Chapter or any other applicable tenant protection law.

A. It is a violation of this Chapter and a defense against eviction for a landlord to threaten, commence, or carry out retaliation, including a retaliatory eviction, based on the tenant having asserted rights and protections afforded by this Chapter or any other applicable tenant protection law.

B. There is a rebuttable presumption that a landlord's action was retaliatory if the action occurred within 90 days of the tenant asserting a right or protection afforded by this Chapter or any other applicable tenant protection law.

C. In addition to the definitions of retaliation provided in RCW 59.18.240, prohibited retaliatory actions under this section include:

1. Rescinding an offer of lease renewal;
2. Refusing to provide, accept, or approve a rental application or a rental agreement;
3. Misrepresenting any material fact when providing a rental reference about a tenant; and
4. Threatening to allege to a government agency that a tenant or prospective tenant, or a family member of a tenant or prospective tenant, is not lawfully in the United States.

D. A landlord who retaliates against a tenant for asserting rights or protections afforded by this Chapter or any other applicable tenant protection law is in violation of this Chapter and is liable to the tenant and is subject to the remedies and penalties under OMC 5.82.130.

**5.82.130 Violations**

A. Any tenant claiming injury from any violation of this chapter may bring an action in Thurston County Superior Court or in any other court of competent jurisdiction to enforce the provisions of this chapter and is entitled to all remedies available at law or in equity appropriate to remedy any violation of this chapter, including declaratory or injunctive relief.

B. A landlord who violates this Chapter is liable to the tenant in an action brought by the tenant under subsection A, above, for: (1) any actual damages incurred by the tenant as a result of the landlord's or owner's violation or violations of this chapter; (2) double the amount of any security deposit unlawfully charged or withheld by the landlord; (3) reasonable attorney fees and costs incurred by the tenant in bring such action.

C. A landlord's failure to comply with any of the provisions of this chapter is a defense in any legal action brought by the landlord to recover possession of the rental unit.

D. A landlord's failure to comply with any of the provisions of this chapter may result in denial, suspension, or revocation of a business license, as provided in OMC 5.82.080.

E. A landlord or rental property owner who violates any provision of this Chapter commits a civil infraction or infractions and is subject to a fine or fines as set forth below. Each day a landlord or rental property owner is in violation of any provision of this Chapter constitutes a separate violation.

1. First offense: Class 3 (\$50), not including statutory assessments.
2. Second offense arising out of the same facts as the first offense: Class 2 (\$125), not including statutory assessments.
3. Three or more offenses arising out of the same facts as the first offense: Class 1 (\$250), not including statutory assessments.

F. The penalties imposed in this Chapter are not exclusive when the acts or omissions constitute a violation of another chapter of the Olympia Municipal Code. In addition to all other penalties, remedies, or other enforcement measures established within this Chapter, or as otherwise provided by law, any act or omission that constitutes a violation of this Chapter may be subject to penalties and enforcement provisions as provided by other provisions of the Olympia Municipal Code, and such penalties and enforcement provisions may be imposed as set forth in such provisions. The exercise of one remedy does not foreclose use of another. Remedies may be used singly or in combination; in addition, the City may exercise any rights it has at law or equity.

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<sup>1</sup> Code reviser's note: OMC 5.82.090, as created by Ord. 7376, takes effect January 1, 2025.

**Section 22. Amendment of OMC Chapter 5.84.** Olympia Municipal Code Chapter 5.84, Utility Services Tax, is hereby amended to read as follows:

## **Chapter 5.84**

### **UTILITY SERVICES TAX**

5.84.000 Chapter Contents

Sections:

5.84.001 Administrative provisions.

5.84.002 Business and occupations tax applies

5.84.010 Definitions.

5.84.020 Exercise of power to license for revenue.

5.84.030 Occupation license required.

5.84.050 Occupations subject to tax – Amount.

5.84.060 Interstate, foreign and governmental commerce exempt.

5.84.070 Allocation of income – Cellular telephone service

5.84.080 Tax due quarterly.

5.84.090 Effective date of rate change.

5.84.110 Tax due upon transfer.

5.84.115 Use tax on the privilege of using natural gas or manufactured gas as a consumer.

5.84.160 Appeal from tax determination.

5.84.170 Power to promulgate regulations.

5.84.210 Violations – Civil infraction.

#### **5.84.001 Administrative Provisions**

The administrative provisions contained in OMC Chapter 5.05 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

#### **5.84.002 Business and Occupations Tax Applies**

The provisions contained in OMC Chapter 5.04 shall be fully applicable to businesses regulated under this chapter.

#### **5.84.010 Definitions**

In construing the provisions of this chapter, save when otherwise plainly declared or clearly apparent from the context, the following definitions shall be applied:

A. "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 in the business engaged in, including rentals, royalties, fees or other emoluments, however designated (excluding 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 stocks and the like), and without any deduction on account of the cost of the property sold, the cost of materials used, labor costs, interest or discount paid, or any expense whatsoever, and without any deduction on account of losses.

A deduction from gross income shall be allowed to cellular telephone service companies who keep their books on an accrual basis for credit losses, including losses to fraud, other than fraud by employees or agents of the telephone service company.

B. "Person" or "persons" means persons of either sex, firms, copartnerships, corporations, and other associations of natural persons, whether acting by themselves or by servants, agents or employees.

C. "Taxpayer" means any person liable to the license fee or tax imposed by this chapter.

D. "Tax year" or "taxable year" means the year commencing January 1st, and ending on the thirty-first day of December of the same year, or in lieu thereof, the taxpayer's fiscal year when permission is obtained from the Director to use the same as the tax period.

E. "Telecommunications service" or "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.

Telecommunication services or telephone business also includes those activities previously used to define telephone business such as the providing by any person of 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. "Telecommunication service or 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.

F. "Cellular telephone service" is a voice or data telephone/telecommunications system based in whole or substantial part on wireless radio communications, whether or not the communications are subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service. 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 the same purpose as cellular mobile service.

G. "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 RCW Title 80 and for which a separate charge is made. Competitive telephone service also includes leasing of telephone street directories. Transmission of communication through cellular telephones is classified as "telephone business" rather than "competitive telephone service."

H. "Place of primary use" means the residential street address or the primary business street address of the customer and in both cases must be located within the licensed service area of the home service provider.

#### **5.84.020 Exercise of power to license for revenue**

The provisions of this chapter shall be deemed an exercise of the power of the city to license for revenue.

#### **5.84.030 License required**

It is unlawful for any person, firm or corporation to engage in business in the City without first obtaining a license pursuant to the provisions of OMC 5.02. Any additional licensing or permitting requirements of this Chapter 5.84 (Utility Services Tax) shall also apply.

#### **5.84.050 Occupations subject to tax – Amount**

From and after the effective date of the ordinance codified in this section, there is levied upon, and shall be collected from, the persons on account of the business activities, license fees in the amounts to be determined by the application of the rates against gross income, as follows:

- A. Upon every person engaged in or carrying on a telecommunications service or telephone business, or a combined telephone and telegraph business, including revenues from intrastate toll, derived from such business provided to customers within the city, a fee or tax equal to nine (9) percent of the total gross income from such business in the city during the person's tax year for which the license is required; provided, however, that the minimum fee or tax shall not be less than one hundred dollars (\$100.00) per tax year.
- B. Upon every person engaged in or carrying on a telegraph business, a fee or tax equal to nine (9) percent of the total gross income from such business in the city during the tax year for which the license is required; provided, however, that the minimum fee or tax shall not be less than one hundred dollars (\$100.00) per tax year.
- C. Upon every person engaged in or carrying on the business of selling or furnishing gas for hire, a fee or tax equal to nine (9) percent of the gross income from such business in the city during the person's tax year for which the license is required; provided, however, that the minimum fee or tax shall not be less than one hundred (\$100.00) dollars per tax year.
- D. Upon every person engaged in or carrying on the business of selling or furnishing electric light and power, a fee or tax equal to nine (9) percent of the total gross income from such business in the city during the person's tax year for which the license is required; provided, however, that the minimum fee or tax shall not be less than one hundred (\$100.00) dollars per tax year.
- E. Upon every person engaged in or carrying on the business of selling or furnishing cable television, a fee or tax equal to six (6) percent of the total gross income from such business in the city during the person's tax year for which the license is required; provided, however, that the minimum fee or tax shall not be less than one hundred (\$100.00) dollars per tax year.
- F. Upon every person conducting or engaged in the business of supplying steam heat or power to the public for hire, a fee or tax equal to one (1) percent of the total gross income from such business in the city during the person's tax year for which the license is required; provided, however, that the minimum fee or tax shall not be less than one hundred (\$100.00) dollars per tax year.
- G. Upon every person conducting or engaged in the business of transporting passengers for hire on a regular route, a fee or tax equal to one (1) percent of the total gross income from such business in the city during the tax year for which the license is required; provided, however, that the minimum fee or tax shall not be less than one hundred (\$100.00) dollars per tax year.
- H. Upon every person conducting or engaged in the business of selling or furnishing water, collecting or processing sewage, collecting or disposing of solid waste, handling or disposing of storm water runoff, a fee or tax equal to six (6) percent of the total gross income from such business in the city during the tax year for which the license is required; provided, that the tax on City of Olympia owned utilities engaged in the business of collecting or processing sewage, collecting or disposing of solid waste,

handling or disposing of stormwater runoff, or furnishing water shall be as set forth below, based on the total gross income from such enterprise in the city during the tax year; provided further, however, that the minimum fee or tax shall not be less than one hundred (\$100.00) dollars per tax year.

| Enterprise     | Rate  |
|----------------|-------|
| 1. Sewer       | 12.5% |
| 2. Solid Waste | 12.5% |
| 3. Stormwater  | 12.5% |
| 4. Water       | 12.5% |

This section shall not apply to:

1. Gross revenue of wholesale utility providers, that is, those which obtain utility services from the city for customers located in the service area of the provider and which own the distribution system and provide maintenance, collection, meter reading, and/or other services associated with the wholesale provision of utility services;
2. Businesses operated primarily for the purpose of recycling of solid waste.

**5.84.060 Interstate, foreign and governmental commerce exempt**

A. There shall be excepted and deducted from the total gross income upon which a license fee or tax is computed so much thereof as is derived from the transactions in interstate or foreign commerce, or from business done for the government of the United States, its officers or agents, and any amount paid by the taxpayer to the United States, the state, or the city as excise taxes levied or imposed upon the sale or distribution of property or services.

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

C. Any person subject to the payment of a license fee or tax under the provisions of any ordinance of the city, other than this, on account of engaging in any activity for which the person is liable to tax under this chapter, or any person required to pay fees, or render services, to the city, by virtue of any ordinance granting a franchise to such person, may deduct the amount of such fee, tax, or the value of such services, from the amount of fee or tax imposed by this chapter on account of such activity, but such person shall nevertheless, in the manner provided for under this chapter, apply for and procure a business license.

**5.84.070 Allocation of income – Cellular telephone service**

A. In determining the total gross income from telephone business in the City for purposes of subsection 5.84.050.A, there shall be included all gross income from cellular telephone service (including roaming charges incurred by Olympia customers outside this state) provided to customers whose "place of primary use" is in the City, regardless of the location of the facilities used to provide the service. The customer's "place of primary use" is, with respect to each telephone: (a) the customer's address; or (b) the customer's place of residence if the telephone is for personal use, and in both cases must be located within the licensed service area of the home service provider. Roaming charges and cellular telephone

charges to customer whose principal service address is outside Olympia will not be taxable even though those mobile services are provided within Olympia.

B. 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. When the service is provided while a subscriber is roaming outside the subscriber's normal cellular network area, the gross revenues 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. 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 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 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 it promptly changes its billing records for future revenues to comport with the settlement facilitated by AWC.

#### **5.84.080 Tax due quarterly**

A. Tax imposed by this chapter shall be due and payable in quarterly installments, and remittance shall be made on or before the end of the month next succeeding the end of the quarterly period in which the tax accrued. Such quarterly periods are as follows:

1. First quarter – January, February, March;
2. Second quarter – April, May, June;
3. Third quarter – July, August, September;
4. Fourth quarter – October, November, December.

B. On or before the due date, the taxpayer shall file with the Director a written return upon such form and setting forth such information as the Director shall reasonably require to compute the tax, together with the payment of the amount of the tax.

#### **5.84.090 Effective date of rate change**

No rate change under this chapter shall take effect before the expiration of sixty days following the enactment of the ordinance establishing the change.

#### **5.84.110 Tax due upon transfer**

Upon the sale or transfer during any tax year of a business on account of which a fee or tax is required by this chapter, the purchaser or transferee shall, if the fee or tax has not been paid in full for said year, be responsible for its payment for that portion of the year during which the purchaser or transferee carries on such business.

#### **5.84.115 Use tax on the privilege of using natural gas or manufactured gas as a consumer**

A. As authorized by RCW 82.14.230, there is fixed and imposed on every person a use tax for the privilege of using natural gas or manufactured gas in the city as a consumer. The tax shall be in an amount equal to the value of the article used by the taxpayer multiplied by the rate of tax on the business of selling or furnishing gas for domestic, business or industrial consumption set forth in Section 5.84.050(C) of this chapter. The "value of the article used" shall have the meaning set forth in RCW 81.12.010(1), and does not include any amounts that are paid for the hire or use of a natural gas

business in transporting the gas subject to tax under this section if those amounts are subject to tax under Section 5.84.050(C) of this chapter.

B. The tax imposed under this section shall not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under Section 5.84.050(C) of this chapter with respect to the gas for which exemption is sought under this subsection.

C. There shall be a credit against the tax levied under this section in an amount equal to any tax paid by:

1. The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to Section 5.84.050(C) of this chapter by another state with respect to the gas for which a credit is sought under this subsection; or
2. The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

D. The use tax hereby imposed shall be paid by the consumer. The administration and collection of the tax hereby imposed shall be by the Washington State Department of Revenue pursuant to RCW 82.14.050.

#### **5.84.170 Power to promulgate regulations**

The Director shall have the power, and it shall be the Director's duty, 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 to violate or fail to comply with, any such rule or regulation.

#### **5.84.210 Violations – Civil infraction**

A. It shall be a civil infraction for a person, firm, limited liability company or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, limited liability company or corporation found to have committed a civil infraction shall be assessed a monetary penalty as provided in OMC Chapter 4.44, Uniform Civil Enforcement.

**Section 23. Amendment of OMC Chapter 5.86.** Olympia Municipal Code Chapter 5.86, Multi-family Dwelling Tax Exemptions, is hereby amended to read as follows:

**Section 24. Corrections.** The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**Section 25. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

**Section 26. Ratification.** Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

**Section 27. Effective Date.** This Ordinance shall take effect after passage and publication, as provided by law, on \_\_\_\_\_, 2024.



MAYOR

**ATTEST:**

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CITY CLERK

**APPROVED AS TO FORM:**

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CITY ATTORNEY

**PASSED:**

**APPROVED:**

**PUBLISHED**