Ordinance No. 3274

(Amending or Repealing Ordinances)

CFN=104 – Finance
CFN=186 – Budget
CFN=110 – Water/Sewer/Garbage Rates & Policies
Passed 1/2/1996
Amending Utility Tax on Telephone, Gas, Electric, Garbage, Water, Sewer & Drainage Utilities, changing the utility tax rates and dedicating a portion of the tax revenue for street improvements (Ord. 3314 inadvertently amended Ord. 3274)

(Amending Secs. 3.18.010;3.18.020;3.18.030;3.18.040;3.18.050;3.18.060;
3.18.070;3.18.080;3.18.090)

Amending Ords. 2390,2514

Amended by Ords 3456;3489;3594;3645

{Ord. 3489 Readopted, re-enacted, ratified and confirmed by Ord. 3533}

Amended by Ord. 4020;4061 (Sec. 3.18.020)

The date ["Beginning July 1, 1998"] has led to confusion This date will be deleted from cover sheets of ordinance/resolution revision pages This cover sheet will be deleted on electronic pages only, no other deletions or changes have been made to the document – 6/21/2012
ORDINANCE NO. 3274

AN ORDINANCE of the City Council of the City of Kent, Washington amending Chapter 3.18 of the Kent City Code entitled "Utility Tax on Telephone, Gas, Electric, Garbage, Water, Sewer and Drainage Utilities, changing the utility tax rates and dedicating a portion of the tax revenue for street improvements.

WHEREAS, on or about April 7, 1992, the City Council, pursuant to Chapter 82.80 RCW, established a street utility for the City of Kent; and

WHEREAS, as a result of a court challenge to the City of Seattle's street utility in the case of Covell vs. City of Seattle, No. 61178-5, the City Council repealed the City of Kent's street utility; and

WHEREAS, in order to maintain the same funding levels for street improvements in the City of Kent, the City Council believes it is in the City's best interest to increase the City's utility tax rate as a substitute funding source to be dedicated to street improvements; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 3.18 of the Kent City Code is hereby amended as follows:

Utility Tax
CHAPTER 3.18. UTILITY TAX ON TELEPHONE, GAS, ELECTRIC, GARBAGE, WATER, SEWER AND DRAINAGE UTILITIES

Sec. 3.18.010. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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.

Network telephone service means the providing by any person of access to a local telephone network, local telephone switching service, toll service, coin telephone services, telephonic, video, data, or similar communication, or transmission for hire via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. 'Network telephone service' includes interstate service, including toll service, originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state. 'Network telephone service' does not include the providing of competitive telephone service, the providing of cable television service, or the providing of broadcast services by radio or television stations.

Telephone business means the business of providing network telephone service, as defined above in this section. It includes cooperative or farmer line telephone companies or associations operating an exchange. Telephone business shall include one hundred (100) percent of the total service fees from calls originating and/or billed to subscribers within the city.

Telephone service means competitive telephone service or network telephone service, as defined in the definitions of
''network telephone service'' and ''competitive telephone service'' set out in this section.

Sec. 3.18.020. Certain utilities subject to tax.

A. In addition to the other business and license fees required by the ordinances of the city, there is hereby levied upon all persons (including the city) engaged in certain business activities a utilities tax to be collected as follows:

1. Upon every person engaging in or carrying on any telephone business within the city, an annual tax equal to three and one-half (3 1/2) percent of the total gross operating revenues, including revenues from intrastate toll, derived from the operation of such business within the city. In addition, there shall also be assessed an interim tax of 0.3 percent effective until 11:59 p.m. on December 31, 1996 which revenue from said interim tax shall be dedicated to youth teen programs, plus an interim tax of 1.0 percent effective until 11:59 p.m. on April 7, 2002, or until the effective date of any new legislation adopted by the Washington State Legislature during the 1996 Legislative Session authorizing cities to implement street utilities, whichever is sooner, which revenue from said interim tax shall be dedicated to street improvement programs. Gross operating revenues for this purpose shall not include charges which are passed on to the subscribers by a telephone company pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this chapter.
2. Upon every person engaging in or carrying on a business of selling, furnishing, distributing, or producing gaseous gas for commercial or domestic use or purposes, a fee or tax equal to three and one-half (3 1/2) percent of the total gross income from such business in the city during the tax year for which the license is required. In addition, there shall also be assessed an interim tax of 0.3 percent effective until 11:59 p.m. on December 31, 1996 which revenue from said interim tax shall be dedicated to youth teen programs, plus an interim tax of 1.0 percent effective until 11:59 p.m. on April 7, 2002 or until the effective date of any new legislation adopted by the Washington State Legislature during the 1996 Legislative Session authorizing cities to implement street utilities, whichever is sooner, which revenue from said interim tax shall be dedicated to street improvement programs.

3. Upon every person engaged in or carrying on the business of selling, furnishing, or distributing electricity for light and power, a fee or tax equal to three and one-half (3 1/2) percent of the total gross income from such business in the city during the tax year for which a license is required. In addition, there shall also be assessed an interim tax of 0.3 percent effective until 11:59 p.m. on December 31, 1996 which revenue from said interim tax shall be dedicated to youth teen programs, plus an interim tax of 1.0 percent effective until 11:59 p.m. on April 7, 2002 or until the effective date of any new legislation adopted by the Washington State Legislature during the 1996 Legislative Session authorizing cities to implement street utilities, whichever is sooner, which revenue from said interim tax shall be dedicated to street improvement programs.
4. Upon every person engaging in or carrying on a business providing garbage service, a tax equal to six and one-half (6 1/2) percent of the total gross income from such business in the city during the tax year for which the license is required. In addition, there shall also be assessed an interim tax of 0.3 percent effective until 11:59 p.m. on December 31, 1996 which revenue from said interim tax shall be dedicated to youth teen programs, plus an interim tax of 1.0 percent effective until 11:59 p.m. on April 7, 2002 or until the effective date of any new legislation adopted by the Washington State Legislature during the 1996 Legislative Session authorizing cities to implement street utilities, whichever is sooner, which revenue from said interim tax shall be dedicated to street improvement programs.

5. Upon every person (including the city) engaging in or carrying on the business of selling, furnishing or distributing water, sewer or drainage services, a tax equal to three and one-half (3 1/2) percent of the total gross income from such business in the city during the tax year. In addition, there shall also be assessed an interim tax of 0.3 percent effective until 11:59 p.m. on December 31, 1996 which revenue from said interim tax shall be dedicated to youth teen programs, plus an interim tax of 1.0 percent effective until 11:59 p.m. on April 7, 2002 or until the effective date of any new legislation adopted by the Washington State Legislature during the 1996 Legislative Session authorizing cities to implement street utilities, whichever is sooner, which revenue from said interim tax shall be dedicated to street improvement programs.
B. In computing the tax provided in subsection A., the taxpayer may deduct from gross income, the following items:

1. The actual amount of credit losses and uncollectibles sustained by the taxpayer.

2. Amounts derived from the transactions in interstate and foreign commerce which the city is prohibited from taxing under the laws and constitution of the United States.

Sec. 3.18.025. Certain utilities subject to interim tax.

Until December 31, 1996, the provisions of this section, and not section 3.18.020, shall be in full force and effect as follows:

1. In addition to the other business and license fees required by the ordinances of the city, there is hereby levied upon all persons (including the city) engaged in certain business activities a utilities tax to be assessed and collected as follows:

a. Upon every person engaging in or carrying on any telephone business within the city, an annual tax equal to three and eight tenths (3.8) percent of the total gross operating revenues, including revenues from intrastate toll, derived from the operation of such business within the city. Gross operating revenues for this purpose shall not include charges which are passed on to the subscribers by a telephone company pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this chapter.
b. Upon every person engaging in or carrying on a business of selling, furnishing, distributing, or producing gaseous gas for commercial or domestic use or purposes, a fee or tax equal to three and eight tenths (3.8) percent of the total gross income from such business in the city during the tax year for which the license is required.

e. Upon every person engaged in or carrying on the business of selling, furnishing, or distributing electricity for light and power, a fee or tax equal to three and eight tenths (3.8) percent of the total gross income from such business in the city during the tax year for which a license is required.

d. Upon every person engaging in or carrying on a business of providing garbage service, a tax equal to six and eight tenths (6.8) percent of the total gross income from such business in the city during the tax year for which a license is required.

e. Upon every person (including the city) engaging in or carrying on a business of selling, furnishing or distributing water, sewer or drainage services, a tax equal to three and eight tenths (3.8) percent of the total gross income from such business in the city during the tax year.

2. In computing the tax provided in subsection 1., the taxpayer may deduct from gross income, the following items:

a. The actual amount of credit losses and uncollectibles sustained by the taxpayer.

b. Amounts derived from the transactions in interstate and foreign commerce which the city is prohibited from taxing under the laws and constitution of the United States.
3. The provisions of this subsection, consisting of an interim tax rate, shall be and remain in effect, in lieu of the provisions of subsection 3.18.020 above, until 11:59 p.m., December 31, 1996, after which time this subsection shall have no force or effect and the provisions of section 3.18.020 shall be in full force and effect.

4. All references in this chapter and the city Code or any city ordinance to section 3.18.020 shall mean section 3.18.025 until the provisions of section 3.18.025 sunset on December 31, 1995 as provided herein.

Sec. 3.18.030. Utility tax, when due.

The utility tax imposed by section 3.18.020 of this chapter shall be due and payable in monthly installments and remittance thereof shall be made on or before the last day of the following month in which the tax accrued. On or before said due date, the taxpayer shall file with the finance department a return upon a form to be prescribed and provided by the finance department, which return shall contain a statement by the taxpayer, stating the amount of tax for which he is liable for the preceding monthly period, that the information therein given and the amount of tax liability therein reported are full and true and that the taxpayer knows the same to be true; which statement shall be signed by the taxpayer or authorized agent. Taxpayers expected to owe less than one thousand dollars ($1,000.00) per month may submit taxes on a quarterly basis, taxes shall be due on the last day of the month following the end of the quarter in which the tax accrued. Quarterly period for the purpose of this chapter shall mean each three-month period of the calendar year.

Sec. 3.18.040. Taxpayer's records.

Each taxpayer shall keep records reflecting the amount of his gross operating revenues on services within the city, and such records shall be open at all reasonable times to the inspection of the finance director or his duly authorized subordinates for verification of said tax returns or for the filing of a tax of a taxpayer who fails to make such a return.
Sec. 3.18.050. Failure to make returns or to pay taxes in full.

If any taxpayer fails, neglects or refuses to make his return as when required herein, the finance director is authorized to determine the amount of tax payable, and by mail to notify such taxpayer of the amount so determined. The amount so fixed shall thereupon be the tax and be immediately due and payable, together with penalty and interest. Delinquent taxes, including any penalty, are subject to an interest charge of twelve (12) percent per year (or one (1) percent a month) on any unpaid balance from the date the tax payment became due, as provided in section 3.18.030, until paid.

Sec. 3.18.060. Overpayment of tax.

Any money paid to the city through error, or otherwise not in payment of the tax imposed by this chapter, or in excess of such tax, shall, upon request of the taxpayer, be credited against any tax due or to become due from such taxpayer hereunder, or, upon the taxpayer ceasing to do business in the city, be refunded to the taxpayer.

Sec. 3.18.070. Appeal to hearing examiner.

Any taxpayer aggrieved by the amount of tax, interest, or penalties determined by the finance director to be due under the provisions of this chapter may appeal such determinations to the city hearing examiner in accordance with, and subject to, the provisions set forth in Kent City Code Chapter 2.32. Taxpayers shall be required to remit the amounts determined to be due under this chapter prior to filing an appeal.

Sec. 3.18.080. False returns.

It is unlawful for any person subject to this chapter to fail or refuse to pay the tax when due, or for any person to make any false or fraudulent application or return or any false statement or representation in, or in connection with such return, or to aid or abet another in any attempt to evade payment of the tax, or any part thereof, or to testify falsely upon any investigation of the correctness of a return upon the hearing of an appeal or in any manner hinder or delay the city or any of its officers in carrying out the provisions of this chapter.
Sec. 3.18.090. Noncompliance; civil penalty.

Any person, firm or corporation subject to this chapter, who refuses to make tax returns or to pay tax when due, or who makes a false statement or representation in or in connection with a utility tax return, or who otherwise violates or refuses to comply with this chapter, is subject to a cumulative penalty in the amount of seventy-five dollars ($75.00) per day for each violation. All penalties thereon shall constitute a debt to the city and may be collected by court proceedings, which remedy shall be in addition to all other remedies.

Section 2. Limitations on Tax Rate Changes. The provisions of this ordinance shall be subject to the tax rate change requirements of RCW 35.21.865 for electricity, telephone and natural gas utilities.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4. Effective Date. This ordinance shall take effect and be in force five (5) days from and after its publication as provided by law.

JIM WHITE, MAYOR

ATTEST:

BRENDAL JACOBER, CITY CLERK
APPROVED AS TO FORM:

ROGER A. LUBOVICH, CITY ATTORNEY

PASSED 2 day of January, 1996.
APPROVED 3 day of January, 1996.
PUBLISHED 5 day of January, 1996.

I hereby certify that this is a true copy of Ordinance No. 3274, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER (SEAL)
BRENDA JACOBER, CITY CLERK