Ordinance No. 3645
(Amending or Repealing Ordinances)

CFN=110 – Water, Sewer, Drainage Rates & Policies
Passed 6/3/2003
Utility Taxes – Ch. 3.18 Rate Adjustment
(amending Secs. 3.18.010-.090)

Amends Ords. 2390;2514;2758;3074;3091;3274;3314;3319;3321;3370;3456;3489;3594

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

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. 3645

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," by (1) adjusting the telephone, gas, electric, water, sewer, and drainage utility taxes set forth therein by one and two-tenths (1 2) percent to a total utility tax of six (6) percent, (2) modifying the existing penalty provisions, and (3) making other revisions to further clarify the intent of the chapter.

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

SECTION 1. - Amendment. Chapter 3.18 of the Kent City Code, entitled "Utility Tax on Telephone, Gas, Electric, Garbage, Water, Sewer and Drainage Utilities," is hereby amended to read as follows:

CHAPTER 3.18

UTILITY TAX ON TELEPHONE, GAS, ELECTRIC, GARBAGE, SOLID WASTE, 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:

Cellular telephone service means any two-way voice and/or data telephone or similar communications system based in whole or in substantial part on wireless radio communications, including cellular mobile service, and which is not subject to utility taxes.
regulation by the Washington State Utilities and Transportation Commission that conflicts with or overrides this chapter. Cellular telephone service includes other wireless radio communications services including, without limitation, specialized mobile radio, paging services, personal communications and data services, and any other evolving wireless radio communications technology that accomplishes a purpose substantially similar to cellular telephone service. Cellular telephone service is included within the definition of “telephone business” for the purposes of this chapter.

Competitive telephone service means the providing by any person, firm, or corporation 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.

Gross income means the value proceeding or accruing from the performance of the particular public service business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or 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. In addition, when determining total gross income from cellular telephone service, “gross income” shall include all income from cellular telephone service (including roaming charges incurred 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 shown on the telephone service company’s records, 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 customers whose place of primary use is outside the city of Kent will not be taxable even though those
cellular services are provided within the city of Kent. There is a rebuttable presumption that the address shown on the cellular telephone service company's records is the place of primary use and is accurate. If the cellular telephone service company knows or should have known that a customer's place of primary use address for a telephone is within the city, then the gross income from cellular telephone service provided to that customer with respect to that telephone is to be included in the company's gross income.

*Network telephone service* means the providing by any person, firm, or corporation of access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, 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. "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" 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. "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, or the provision of internet service as defined in RCW 82.04.297, including the reception of dial-in connection, provided at the site of the internet service provider.

*Telephone business* means the business of providing network telephone service and cellular telephone service, as those terms are defined above in this section and it includes cooperative or farmer line telephone companies or associations operating an exchange. "Competitive telephone service" shall not be considered "telephone business." Telephone business shall include one hundred (100) percent of the business.
and total gross income derived 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 the city levies upon all persons, firms, or corporations (including the city) engaged in certain business activities a utilities tax to be collected as follows

1 Upon every person, firm, or corporation engaging in or carrying on any telephone business within the city, an annual tax equal to three and one-half (3 1/2) six (6) percent of the total gross income operating revenues, including revenues from intrastate toll, derived from the operation of such business within the city. This six (6) percent tax will be allocated as follows: four and seven-tenths (4 7/10) percent to the general fund. In addition, there shall also be assessed a tax of three-tenths (0.3) percent, which revenue from said tax shall be dedicated to youth/teen programs, and plus a tax of one (1.0) percent, which revenue from said 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, firm, or corporation engaging in or carrying on a business of selling, wheeling, furnishing, distributing, or producing gaseous gas, whether manufactured or natural, for commercial or domestic use or purposes, a fee or tax equal to three and one-half (3 1/2) six (6) percent of the total gross income from
such business in the city during the tax year for which the license is required. This six (6) percent tax will be allocated as follows, four and seven-tenths (4.7) percent to the general fund. In addition, there shall also be assessed a tax of three-tenths (0.3) percent, which revenue from said tax shall be dedicated to youth/teen programs, and plus a tax of one (1.0) percent, which revenue from said tax shall be dedicated to street improvement programs.

3. Upon every person, firm, or corporation engaged in or carrying on the business of selling, wheeling, furnishing, or distributing electricity for light and power, a fee or tax equal to three and one-half (3 1/2) six (6) percent of the total gross income from such business in the city during the tax year for which a license is required. This six (6) percent tax will be allocated as follows, four and seven-tenths (4.7) percent to the general fund. In addition, there shall also be assessed a tax of three-tenths (0.3) percent, which revenue from said tax shall be dedicated to youth/teen programs, and plus a tax of one (1.0) percent, which revenue from said tax shall be dedicated to street improvement programs.

4. Upon every person, firm, or corporation engaging in or carrying on a business providing garbage-solid waste collection services, a tax equal to six and one-half (6 1/2) seven and eight-tenths (7.8) percent of the total gross income from such business in the city during the tax year for which the license is required. This seven and eight-tenths (7.8) percent tax will be allocated as follows, six and one-half (6 1/2) percent to the general fund. In addition, there shall also be assessed a tax of three-tenths (0.3) percent, which revenue from said tax shall be dedicated to youth/teen programs, and plus a tax of one (1.0) percent, 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) six (6) percent of the total gross income from such

Utility Taxes – Ch. 3.18
Rate Adjustment
This six (6) percent tax will be allocated as follows: four and seven-tenths (4.7) percent to the general fund. In addition, there shall also be assessed a tax of three-tenths (0.3) percent, which revenue from said tax shall be dedicated to youth/teen programs, and plus a tax of one (1) percent, which revenue from said tax shall be dedicated to street improvement programs.

B. In computing the tax provided in subsection (A) of this section, the taxpayer may deduct from total 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. 3.18.030. Utility tax, when due. The utility tax imposed by KCC 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 that 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 therem reported are full and true, and that the taxpayer knows the same to be true. This statement shall be signed by the taxpayer or its authorized agent. Taxpayers expected to owe less than one thousand dollars ($1,000) 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 (3) month period of the calendar year, commencing on January 1.
Sec. 3.18.040. Taxpayer's records. Each taxpayer shall keep records reflecting the amount of gross operating revenue, total gross income on its business services within the city, and such records shall be retained for at least six (6) years and shall be open at all reasonable times to the inspection or audit by the finance director or his or her duly authorized subordinates or representative for verification of said tax returns and supporting records 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. Tax—Payment failure — Penalty and collection. If any taxpayer, person, firm, or corporation subject to this chapter fails, or neglects or refuses to pay any tax required by this chapter within thirty (30) days from the date the tax is due to the city, a penalty of ten (10) percent of the amount of that tax will be imposed, 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 penalties, are also subject to an interest charge of one (1) percent per month (twelve (12%) percent per annum), or one (1) percent a month) on any unpaid balance from the date the tax payment became due, as provided in KCC 3 18 030, until all past due taxes and penalties are paid in full. Any unpaid tax, penalty, or interest due under this chapter and unpaid, shall constitute a debt to the city. The city may, pursuant to Ch. 19 16 RCW, use a collection agency to collect taxes, interest, and penalties owed or assessed, or it may seek collection by court proceedings, which remedies shall be in addition to all other remedies.

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 Ch 2 32 KCC. 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, firm, or corporation subject to this chapter to fail or refuse to pay the tax when due, or for any person, firm, or corporation 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 fails or neglects 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 one hundred dollars ($75100) per day for each violation, in addition to the non-payment penalty imposed under KCC 3 18 050. All penalties imposed under this chapter thereon shall constitute a debt to the city, and The city may, at its discretion, pursuant to Ch 19 16 RCW, use a collection agency to collect taxes, interest, and penalties owed or assessed pursuant to this chapter, or the city may seek collection by court proceedings, which remedies shall be in addition to all other remedies.
**SECTION 2.**  
*Severability*  
If any one or more section, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**SECTION 3.**  
*Effective Dates*  
This ordinance was enacted by the city council by its passage on June 3, 2003. The effective date of this ordinance will be five (5) days after publication, as provided by law, or 12:01 a.m., June 13, 2003, whichever is later, PROVIDED, that pursuant to RCW 35.21.865, the utility tax rate increases affecting private telephone, gas, and electricity businesses and amending KCC 3.18.020(A)(1), (2) and (3), will not take effect until sixty (60) days after enactment of this ordinance, or 12:01 a.m., Sunday, August 3, 2003.

JIM WHITE, MAYOR

ATTEST

BRENDA JACOBER

BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM

TOM BRUBAKER, CITY ATTORNEY

APPROVED 3rd day of June, 2003.


I hereby certify that this is a true copy of Ordinance No 3645 passed by the city council of the city of Kent, Washington, and approved by the mayor of the city of Kent as hereon indicated.

[Signature]
BRENDA JACOBER, CITY CLERK