AN ORDINANCE of the City Council of the City of Kent, Washington, amending Chapter 3.18 of the Kent City Code to establish a tax on cable television services and to increase city water, sewer, and storm drainage internal utility tax allocations by three percent to retire certain capital debt and to increase the general fund balance.

RECITALS

A. The city council has determined that in order to continue providing the same level of essential services to the Kent community, it is necessary to implement new revenue sources.

B. The city council has determined that the public interest is best served by increasing its water, sewer and storm drainage utility taxes plus adding a new cable utility tax, to address projected short term and long term revenue shortfalls caused by changes in state tax laws in order to retain current levels of City services.

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

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

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:

“Cable television business” means:
1. A system providing service pursuant to a franchise issued by the city under the Cable Communications Policy Act of 1984 Public Law No. 98-549, 47 U.S.C. Section 521, as it may be amended or superseded; or
2. Any system that competes directly with such franchised system by employing antennae, microwaves, wires, wave guides, coaxial cables, or other conductors, equipment or facilities designed, construed or used for the purpose of:
   a. Collecting and amplifying local and distant broadcast television signals and distributing and transmitting them;
   b. Transmitting original cable-cast programming not received through television broadcast signals; or
   c. Transmitting television pictures, film and videotape programs not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers; provided, however, that “cable television service” shall not include entities that are subject to charges as “commercial TV stations” under 47 U.S.C. Section 158, as it may be amended or superseded.
Cellular telephone service means any two (2) 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 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, 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 in this section and 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.

**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, 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 six (6) percent of the total gross income, 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) percent to the general fund, three-tenths (0.3) percent to youth/teen programs, and one (1.0) percent to street improvement programs.

2. Upon every person, firm, or corporation engaging in or carrying on a business of selling, wheeling, furnishing, distributing, or producing gas, whether manufactured or natural, for commercial or
domestic use or purposes, 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. This six (6) percent tax will be allocated as follows: four and seven-tenths (4.7) percent to the general fund, three-tenths (0.3) percent to youth/teen programs, and one (1.0) percent 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 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, three-tenths (0.3) percent to youth/teen programs, and one (1.0) percent to street improvement programs.

4. Upon every person, firm, or corporation engaged in or carrying on the business providing cable television services, a tax equal to six (6) percent of the total gross income from that business in the city during the tax year for which the license is required. All revenue received from this tax must be applied only to funding the City’s information technology department operations and capital projects budgets in the proportion determined by the city council in its biennial budget, including all amendments.

45. Upon every person, firm, or corporation engaging in or carrying on a business providing solid waste collection services, a tax equal to 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 (6.5) percent to the general fund, three-tenths (0.3) percent to youth/teen programs, and one (1.0) percent to street improvement programs.

56. 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 tenthirteen percent (1013%) percent of the total gross income from such business in the city during the tax year. This tenthirteen percent (1013%) percent tax will be allocated as follows: four and seven-tenths percent (4.7%) percent to the general fund for the use as allocated in the city’s budget; four percent (4%) percent to the general fund; only for the installation, operation, maintenance and repair of street lighting, fire hydrants, and fire suppression systems subject to the limitations provided in subsection (a) below; two percent (2%) dedicated solely to the repayment and elimination of debt in the city’s “Other Capital Projects” fund subject to the limitations provided in subsection (b) below; one percent (1%) to be applied only to establishing the city’s fund balance consistent with council policy and subject to the limitations provided in subsection (c) below; three-tenths (0.3) percent to youth/teen programs; and one percent (1.0%) percent to street improvement programs; and three-tenths percent (0.3%) to youth/teen programs.

(a) The four percent (4%) percent allocation for street lighting and fire hydrants and suppression is further contingent on the requirement that the city allocate the funds freed up by this revenue to the city’s capital improvement fund(s). All transferred monies that become available in these reallocated capital improvement fund accounts must be applied equally to (a) information technology capital programs directed at funding long- and short-term hardware and software replacement and (b) street...
capital programs, but further restricted to funding street maintenance, repair, and signage only. If the cost to install, operate, maintain, and repair street lighting, fire hydrants, and fire suppression systems is less than the four percent (4%) percent allocation for these purposes, the full four percent (4%) percent amount must still be allocated from the general fund to capital programs for the above-stated purposes.

(b) The two percent (2%) internal tax allocation will be dedicated to the city’s Capital Improvements Fund for the sole purpose of retiring all debt in the city’s Other Capital Projects fund. This two percent (2%) portion of the tax shall be eliminated on January 1, 2023, or on the first day of the year following the date the debt in this fund is fully retired, whichever occurs first.

(c) The one percent (1%) internal tax allocation will be dedicated to the city’s general fund balance solely for the purpose of increasing the fund balance until that balance equals ten percent (10%) of the city’s prior year operating expenses. This one percent (1%) portion of the tax shall be eliminated on the first day of the year following the date the city’s general fund balance equals ten percent (10%) of the prior year’s operating expenses.

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 uncollectible receivables sustained by the taxpayer.

2. Amounts derived from 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 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 it 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. 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 total gross income on its business within the city, and such records shall be retained for at least six (6) years and shall be open at all reasonable times to audit by the finance director or his or her duly authorized 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. Tax – Payment failure – Penalty and collection. If any person, firm, or corporation subject to this chapter fails or neglects 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. Delinquent taxes, including any penalties, are also subject to an interest charge of one (1) percent per month (twelve (12) percent per annum) 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 Chapter 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 Chapter 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 to make tax returns 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 one hundred dollars ($100) per day for each violation, in addition to the nonpayment penalty imposed under KCC 3.18.050. All penalties imposed under this chapter shall constitute a debt to the city. The city may, at its discretion, pursuant to Chapter 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, subsection, or sentence of this ordinance is 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. – Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.
SECTION 4. – Effective Date. This ordinance shall take effect and be in force beginning January 1, 2013, which is more than (5) days after passage and publication, as provided by law.

SÜZETTE COOKE, MAYOR

ATTEST:

BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY

PASSED: 11th day of December, 2012.
APPROVED: 11th day of December, 2012.
PUBLISHED: 14th day of December, 2012.

I hereby certify that this is a true copy of Ordinance No. 4061 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, CITY CLERK

 Utility Taxes – Ch. 3.18 Allocation Adjustment Ordinance