ORDINANCE NO. 4281

AN ORDINANCE of the City Council of the City of Kent, Washington, amending Chapter 3.18 of the Kent City Code to clarify provisions relating to solid waste collection services.

RECITALS

A. The City had levied a utility tax on "garbage service" until 2003, when it amended the code to include a broader set of collection services under the term “solid waste collection services.”

B. Although the City has changed its terminology from "garbage service" to "solid waste collection services," it has not provided a definition of "solid waste" or "solid waste collection services" in Chapter 3.18. The City has instead relied on its definition of “solid waste” from a separate chapter of the Kent City Code, Chapter 7.03.

C. The lack of such definitions in Chapter 3.18 has led to confusion and the inconsistent payment of utility taxes on solid waste collection services, including commercial recycling services.

D. This amendment to Chapter 3.18 is meant to clarify the services that are subject to the tax to ensure that those businesses subject to the provisions of Chapter 3.18 are properly remitting the utility tax on all collection services, including commercial recycling services.

Amend KCC 3.18.020 - Re: Utility Tax - Definitions
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Amendment - KCC 3.18.010. Section 3.18.010 of the Kent City Code, entitled “Definitions,” 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under the Cable Communications Policy Act of 1984 Public Law No. 98-549, 47 U.S.C. Section 521, as it may be amended or superseded; or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 antennas, 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.

Solid waste means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

Solid waste collection service means receiving solid waste for transfer, storage, or disposal including, but not limited to, all residential and commercial collection services, public or private solid waste disposal sites, transfer stations, and similar operations.

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.

SECTION 2. - Administrative Rules. The finance director may develop administrative rules or tax advisories to administer Chapter 3.18 and the changes made by this ordinance.

SECTION 3. - 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 4. - 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; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

**SECTION 5. - Effective Date.** This ordinance shall take effect and be in force thirty days from and after its passage, as provided by law.

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**DANA RALPH, MAYOR**

Date Approved: 6/19/18

**KIMBERLEY A. KOMOTO, CITY CLERK**

Date Adopted: 6/19/18

Date Published: 6/22/18

**ARTHUR "PAT" FITZPATRICK, CITY ATTORNEY**

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Amend KCC 3.18.020 -
Re: Utility Tax - Definitions