ORDINANCE NO. 4295

AN ORDINANCE of the City Council of the City of Kent, Washington, amending Section 3.28.050 of the Kent City Code, entitled “Imposition of the tax - Tax or fee levied,” to increase gross receipts rates and square footage tax and establish a gross receipts cap on retailing, and Section 3.28.130 of the Kent City Code, entitled “Limitation of revenue received,” to clarify the allocation of revenues derived by Chapter 3.28 of the Kent City Code.

RECITALS

A. In 2012, the City enacted a business and occupation tax and a square footage tax.

B. In 2017, the City increased its square footage tax effective January 1, 2019, and dedicated the increase in revenue to capital needs.

C. Kent’s current business and occupation tax rates are below those of many other cities that utilize the tax. In addition, the threshold of revenue at which a business owes the business and occupation tax is $250,000 per year, which is a higher threshold than all but two cities in the state of Washington. Approximately 45 percent of Kent businesses are below the threshold and do not owe any business and occupation tax.
D. The City is facing a significant reduction in revenue, commonly referred to as the City’s “fiscal cliff,” when, in October of 2019, it will no longer receive approximately $5 million of streamlined sales tax mitigation, and in June of 2020, it will no longer receive $4.7 million of annexation sales tax credit. Coupled with an ongoing structural imbalance of $2 million, the expected impact is a loss of $11.7 million to the City. In the event the legislature reallocates streamlined sales tax mitigation funds to the City, the amount of those funds will be unknown and will be subject to modification or termination at the will of the legislature. As a result, even if the legislature restores some amount of streamlined mitigation funding, the City will be unable to reliably depend on this funding source.

E. The Mayor and City Council have held numerous public meetings in an effort to engage the public regarding the issues facing the City budget as well as the potential for an increase to the City’s business and occupation tax. Meetings where the budget and/or the business and occupation tax as well as other revenue issues have been discussed occurred as follows: February 2-3, 2018, Council retreat; March 9, 2018, Council retreat; March 27, 2018, Budget Road Show; April 21, 2018, Budget Road Show; May 17, 2018, Budget Road Show; July 13, 2018, special Council workshop; September 18, 2018, budget hearing; September 25, 2018, special Council meeting/Mayor’s budget presentation; September 25, 2018, special Council workshop; October 6, 2018, special Council workshop; October 9, 2018, special Council workshop; October 16, 2018, Council workshop; and the October 16, 2018, budget hearing.

F. In addition to the numerous public meetings and hearings regarding issues facing the City budget as well as the potential for an increase to the City’s business and occupation tax, the City maintained a
FAQ page on its website, asked residents to share feedback, and asked individuals to sign up for email notifications regarding the budget process.

G. The City has a low level of service and staffing for a city of its size. The City’s number of employees per 1,000 residents has remained constant since 2011. Notwithstanding this, in her 2019-2020 budget instructions, the Mayor directed non-public safety departments funded by general revenues to identify expense reductions totaling at least $2.1 million for 2020. Even with these reductions and $2.2 million of other sustainable revenue increases, the City’s general fund revenues are insufficient to cover expected expenses.

H. After extensive consideration, the Council has determined that the business and occupation tax and square footage tax rate should be increased beginning January 1, 2020, in order to help fund the general operations of the City and that funds derived from the increases should be dedicated for that purpose. The revenue generated from the original tax rates established in 2012 will continue to be dedicated to street improvements and projects, and program administration.

I. Even with the implementation of the rates set forth in this ordinance, Kent business and occupation tax rates for manufacturing and retailing will remain at fifty percent of the statutory maximum.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:
SECTION 1. Amendment. Section 3.28.050 of the Kent City Code, entitled “Imposition of the tax – Tax or fee levied,” as amended by Ordinance 4242 and later amended by Section 1 of Ordinance 4260, is hereby amended effective January 1, 2019, as follows:

3.28.050 Imposition of the tax – Tax or fee levied. (Effective January 1, 2019)
Except as provided in subsection (C) of this section, 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 the gross proceeds of sale, gross income of business, or value of products, including byproducts, and by application of rates against the square footage of business office or facility space within the city, as the case may be, as follows:

A. Gross receipts tax.

1. 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 byproducts, extracted within the city for sale or for commercial or industrial use, multiplied by the rate of 0.152 hundredths of one percent (0.00152) through December 31, 2021, and multiplied by the rate of 0.200 hundredths of one percent (0.002) effective January 1, 2022. The measure of the tax is the value of the products, including byproducts, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the city.
2. 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 byproducts, manufactured within the city, multiplied by the rate of 0.046 hundredths of one percent (0.00046) through December 31, 2021, and multiplied by the rate of 0.100 hundredths of one percent (0.001) effective January 1, 2022. The measure of the tax is the value of the products, including byproducts, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the city.

3. 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 0.152 hundredths of one percent (0.00152) through December 31, 2019, and multiplied by the rate of 0.200 hundredths of one percent (0.002) effective January 1, 2020.

4. 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 0.046 hundredths of one percent (0.00046) through December 31, 2021, and multiplied by the rate of 0.100 hundredths of one percent (0.001) effective January 1, 2022.

5. Upon every person engaging within the city in the business of (a) printing, (b) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (c) publishing newspapers, magazines and periodicals, (d) extracting for hire, and (e)
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 0.046 hundredths of one percent (0.00046) through December 31, 2021, and multiplied by the rate of 0.100 hundredths of one percent (0.001) effective January 1, 2022.

6. 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 0.152 hundredths of one percent (0.00152) through December 31, 2021, and multiplied by the rate of 0.200 hundredths of one percent (0.002) effective January 1, 2022.

7. 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 0.152 hundredths of one percent (0.00152) through December 31, 2021, and multiplied by the rate of 0.200 hundredths of one percent (0.002) effective January 1, 2022. 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 developing or producing custom software or of customizing canned software, producing royalties or commissions, and 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.

B. **Square footage tax.** Upon every person who leases, owns, occupies, or otherwise maintains an office, warehouse, or other place of business within the city for purposes of engaging in business activities in the city,
the tax shall be measured by the number of square feet of warehouse business floor space or other business floor space for each office, warehouse, or other place of business leased, owned, occupied, or otherwise maintained within the city during the reporting period, calculated to the nearest square foot.

1. Subject to the reductions established in subsection (B)(6) of this section, the amount of the tax due shall be equal to the sum of the number of square feet of business warehouse floor space for each business warehouse leased, owned, occupied, or otherwise maintained within the city multiplied by the rate of $0.06 quarterly rate for each calendar year listed below, and the number of square feet of other business floor space for each office or other place of business leased, owned, occupied, or otherwise maintained within the city multiplied by the rate of $0.02 quarterly rate for each calendar year listed below.

<table>
<thead>
<tr>
<th>Effective Date</th>
<th>Business Warehouse Floor Space</th>
<th>Other Business Floor Space</th>
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<tbody>
<tr>
<td>1/1/2019</td>
<td>0.06 quarterly rate</td>
<td>0.02 quarterly rate</td>
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<tr>
<td></td>
<td>0.24 annual rate</td>
<td>0.08 annual rate</td>
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<tr>
<td>1/1/2020</td>
<td>0.09 quarterly rate</td>
<td>0.02 quarterly rate</td>
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<tr>
<td></td>
<td>0.36 annual rate</td>
<td>0.08 annual rate</td>
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<tr>
<td>1/1/2025</td>
<td>0.12 quarterly rate</td>
<td>0.02 quarterly rate</td>
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<tr>
<td></td>
<td>0.48 annual rate</td>
<td>0.08 annual rate</td>
</tr>
<tr>
<td>1/1/2028</td>
<td>0.15 quarterly rate</td>
<td>0.03 quarterly rate</td>
</tr>
<tr>
<td></td>
<td>0.60 annual rate</td>
<td>0.12 annual rate</td>
</tr>
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</table>

2. For purposes of this section, business warehouse means a building or structure, or any part thereof, in which goods, wares, merchandise, or commodities are received or stored, whether or not for compensation, in furtherance of engaging in business.

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3. For purposes of this section, *other business floor space* means the floor space of an office or place of business, other than a business warehouse.

4. For purposes of this section, the square footage shall be computed by measuring to the inside finish of permanent outer building walls and shall include space used by columns and projections necessary to the building. Square footage shall not include stairs, elevator shafts, flues, pipe shafts, vertical ducts, heating or ventilation shafts, janitor closets, and electrical or utility closets.

5. Persons with more than one office, warehouse, or other place of business within the city must include all business warehouse floor space and other business floor space for all locations within the city. When a person rents space to another person, the person occupying the rental space is responsible for the square footage business tax on that rental space only if the renter has exclusive right of possession in the space against the landlord. Space rented for the storage of goods in a warehouse where no walls separate the goods, and where the exclusive right of possession in the space is not held by the person to whom the space is rented, shall be included in the warehouse business floor space of the person that operates the warehouse business, and not by the person renting the warehouse space.

6. If the square footage tax imposed in this subsection (B) is less than or equal to the gross receipts tax imposed in subsection (A) of this section, no square footage tax will be due; if the square footage tax imposed in this subsection (B) exceeds the gross receipts tax imposed in subsection (A) of this section, the taxpayer shall also remit the excess over the gross receipts tax payable under subsection (A) of this section.
C. Gross receipts and square footage threshold.

1. **Gross receipts threshold.** The gross receipts tax imposed in subsection (A) of this section shall not apply to any person engaging in any one or more business activities which are otherwise taxable pursuant to this section, whose value of products, including byproducts, gross proceeds of sales, and gross income of the business, as the case may be, from all activities conducted within the city during any calendar year does not exceed the threshold amount of $250,000.

2. **Square footage threshold.** The square footage tax imposed in subsection (B) of this section shall not apply to any person unless that person’s total floor area of business space within the city exceeds the following threshold:

   a. Four thousand taxable square feet of business warehouse space; or

   b. Twelve thousand taxable square feet of other business floor space.

If the square footage tax applies, it applies to all business space leased, owned, occupied, or otherwise maintained by the taxpayer during the applicable reporting period.

D. **Gross Receipts Maximum - Retailing Activities.** Effective January 1, 2022, the gross receipts tax imposed in subsection (A) of this section shall not apply to retailing activities exceeding $20,000,000 in any calendar year which are otherwise taxable pursuant to this section.
§E. Rules. The director may promulgate rules and regulations regarding the manner, means, and method of calculating any tax imposed under this section.

SECTION 2. Amendment. Section 3.28.130 of the Kent City Code, entitled “Limitation of revenue received,” as amended by Ordinance 4147 and later amended by Section 2 of Ordinance 4260 is hereby amended effective January 1, 2019, as follows:

3.28.130 Limitation of revenue received. (Effective January 1, 2019) One half of the revenue received from the square footage tax shall be allocated to the city’s capital resources fund. Remaining revenue received from the taxes imposed by this chapter shall then be dedicated to the general operations of the city subject to the following two exceptions:

A. Revenues equivalent to the original gross receipts and square footage rates in effect from 2013 through 2018 shall first be applied to the actual cost to staff and operate the business and occupation tax division, including one information technology position dedicated to supporting that division, but not to exceed the amount budgeted for that division by the city council. After the above allocations, 100 percent of any residual remaining revenue shall be allocated to the design, construction, maintenance, improvement, operation, and repair of the city’s transportation infrastructure and appurtenant improvements including, without limitation, streets, curbs, gutters, sidewalks, bicycle and pedestrian lanes and paths, street trees, drainage, lighting, and signalization.

B. Square footage revenues equivalent to 0.03 quarterly on business warehouse floor space and 0.01 quarterly on other business floor space shall be allocated to the city’s capital resource fund.
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. - Petition for Referendum. Pursuant to RCW 35.21.706, the city shall provide for a referendum procedure to apply to this ordinance increasing the rate of the city's business and occupation tax. A referendum petition may be filed with the city clerk within seven days of passage of this ordinance. Within 10 days, the city clerk shall confer with the petitioner concerning the form and style of the petition, issue the petition an identification number, and secure an accurate, concise, and positive ballot title from the city attorney. The petitioner shall have 30 days in which to secure the signatures of not less than 15 percent of the registered voters of the city, as of the last municipal general election, upon petition forms which contain the ballot title and the full text of the measure to be referred. The city clerk shall verify the sufficiency of the signatures on the petition and, if sufficient valid signatures are properly submitted, shall certify the referendum measure to the next election ballot within the city or at a special election ballot as provided pursuant to RCW 35.17.260(2). This referendum procedure shall be the exclusive method of referendum for this ordinance, and shall supersede all other statutory initiative or referendum procedures that may apply.
SECTION 6. Effective Date. This ordinance shall take effect and be in force 30 days from and after its passage, as provided by law.

DANA RALPH, MAYOR

November 20, 2018
Date Approved

KIMBERLEY A. KOMOTO, CITY CLERK

November 20, 2018
Date Adopted

November 23, 2018
Date Published

APPROVED AS TO FORM:

ARTHUR “PAP” FITZPATRICK, CITY ATTORNEY