

ORDINANCE NO 1075

AN ORDINANCE OF THE CITY OF ROSLYN, WASHINGTON, RELATING TO UTILITY TAXES; AMENDING SECTION 5.05.120 OF THE ROSLYN MUNICIPAL CODE ADOPTING NEW UTILITY TAX RATES; AMENDING CHAPTER 5.05 OF THE ROSLYN MUNICIPAL CODE TO UPDATE THE MISDEMEANOR PENALTY AND TO LIMIT THE REFUND PERIOD; ESTABLISHING THE EFFECTIVE DATE OF RATE CHANGES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN ORDINANCE EFFECTIVE DATE

WHEREAS, the City of Roslyn is classified as a non-charter code city under title 35A RCW; and

WHEREAS, RCW 35A.21.160 provides that a code city shall have all of the powers which any city of any class may have; and

WHEREAS, RCW 35.22.280(32) authorizes any city of the first class “[t]o grant licenses for any lawful purpose, to fix by ordinance the amount to be paid therefor, and to provide for revoking the same”; and

WHEREAS, the Washington Supreme Court in *Fleetwood v. Read*, 21 Wash. 547, 552-553 (1899) and subsequent decisions has interpreted this language as authorizing licenses for revenue purposes as well as regulation; and

WHEREAS, pursuant to the above authority, code cities are authorized to impose taxes upon gross revenues earned by utility and service providers within their jurisdictional boundaries, and

WHEREAS, the City of Roslyn has previously approved imposition of a utility tax upon gross revenues derived from telephone, electric utilities, and cable service operators, which utility tax is codified at Chapter 5.05 of the Roslyn Municipal Code. . . ; and

WHEREAS, RCW 35.21.865 authorizes the City to establish a utility tax of up to 6% of the gross revenues of those engaged in electrical energy, natural gas, or telephone business; and

WHEREAS, state law provides at RCW 35.21.865 that no change in the rate of tax it imposes on the privilege of conducting an electrical energy, natural gas, or telephone business may take effect before the expiration of sixty days following the enactment of the ordinance establishing the change; and

WHEREAS, the adoption of an ordinance pertaining to enforcement relates solely to governmental procedures and contains no substantive standards respecting use or modification of the environment and is therefore exempt from the requirements of the State Environmental Policy Act pursuant to WAC 197-11-800(19); and

WHEREAS, the City Council desires to update additional provisions of the utility tax code to address limits on refund periods and update current misdemeanor penalties;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ROSLYN, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Amendment of Section 5.05.120. RMC 5.05.120, Utilities subject to fee or tax and amount, is hereby amended to read as follows:

5.05.120 Utilities subject to fee or tax and amount.

From and after ~~January 1, 1976~~ 12:01 a.m. on June 1, 2011, there ~~are is~~ is hereby levied ~~the~~ following quarterly license fees or taxes, in the amounts to be determined by the application of the rates against gross income, as follows:

A. Upon every person engaged in or carrying on a telephone business, a quarterly fee or tax equal to ~~five~~ six percent of the total gross income from such business in the city during each quarter.

B. Upon every person engaged in or carrying on a business of selling or furnishing electric light and/or power, a quarterly fee or tax equal to ~~five~~ six percent of the total gross income from such business in the city during each quarter.

C. Upon every person engaged in or carrying on a television or radio cable business, a quarterly fee or tax equal to ~~five~~ six percent of the total gross income from such business in the city during each quarter.

Section 2. Amendment of Section 5.05.180. RMC 5.05.180, Overpayment, is hereby amended to read as follows:

5.05.180 Overpayment.

Any money paid to the city through error or otherwise not in payment of the fee or tax imposed hereby or in excess of such fee or tax shall, upon request of the taxpayer, be credited against any tax due on or to become due from such taxpayer hereunder or, upon the taxpayer's ceasing to do business in the city, be refunded to the taxpayer, provided, however, that overpayments extending beyond one year prior to notification of the City shall not be refunded.

Section 3. Amendment of Section 5.05.410. Section 5.05.410, Violation - Penalty, is hereby amended to read as follows:

5.05.410 Violation – Penalty.

Any person violating any provision of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than ~~\$300~~ 1,000.00, or a jail sentence of not more than ~~60~~ 90 days, or by both such fine and jail sentence. Where a violation is for nonpayment of a required fee or tax imposed by this chapter, the above penalty shall be in addition to the unpaid fee or tax, together with interest thereon at the rate of 10 percent per annum from the date it was due until paid, which tax or fee and interest shall be paid by the violator in addition to any fine and/or jail sentence imposed.

Section 4. Referendum authorized. A referendum petition to repeal this ordinance may be filed with the City Clerk within seven days of passage of this ordinance. Within ten days of such filing, the City Clerk shall confer with the petitioner concerning form and style of the petition, issue the petition an identification number, and secure an accurate, concise, and positive ballot title from

the designated local official. The petitioner shall have thirty (30) days in which to secure the signatures of not less than fifteen (15) percent of the registered voters of the city, as of the last municipal general election, upon petition forms that 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). Except as otherwise provided herein, all provisions set forth at RCW 35.17.250 through RCW 35.17.360 that are applicable to the character and form for an initiative petition, to the examination and certification thereof, and to the submission to the vote of the people of the ordinance proposed thereby, shall apply to the referendum petition authorized herein and to this ordinance.

Section 5. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 6. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE __
DAY OF 22ND DAY OF MARCH, 2011.**

CITY OF ROSLYN



Cordy Cooke, Mayor Pro-Tem

ATTEST/AUTHENTICATED:


Amber Shallow, Clerk-Treasurer

Approved as to form:


Margaret King, City Attorney

Filed with the City Clerk: March 22, 2011
Passed by the City Council: March 23, 2011
Date of Publication: March 25, 2011
Effective Date: March 30, 2011