

CITY OF BINGEN

ORDINANCE NO. 2011-06-593

AN ORDINANCE REPEALING BINGEN MUNICIPAL CODE 5.08, 5.12, AND 3.14 AND ADOPTING BINGEN MUNICIPAL CODE 5.10, UTILITY TAXES

WHEREAS, the City Council has reviewed its revenues needs for current expenses; and

WHEREAS, the State of Washington allows a City to license for revenue, as authorized by RCW 35.21.865 and 35A.82.020, each as now or hereafter amended;

NOW, THEREFORE, the City Council of the City of Bingen do ordain as follows:

Section 1. Effective February 1, 2012, Bingen Municipal Code 5.08, 5.12, and 3.14 incorporated here by reference and by such incorporation set forth at full length, are hereby repealed.

Section 2. Bingen Municipal Code 5.10, Utility Taxes is adopted and shall read as follows:

Chapter 5.10

UTILITY TAXES

Sections:

- 5.10.010 Purpose.
- 5.10.020 Definitions.
- 5.10.030 Businesses subject to tax.
- 5.10.040 Exceptions and deductions from gross income.
- 5.10.050 Monthly returns and payment.
- 5.10.060 Allocation of income for cellular telephone service.
- 5.10.070 Books and records – Inspection and confidentiality.

- 5.10.080 Investigation of returns.
- 5.10.090 Overpayment or under payment.
- 5.10.100 Failure to make return.
- 5.10.110 Appeal to city council.
- 5.10.120 Unlawful acts.
- 5.10.130 Penalty for violation.
- 5.10.140 Rate change.
- 5.10.010 Purpose.

The provisions of this chapter shall be deemed to be an exercise of the power of the City of Bingen to license for revenue, as authorized by RCW 35.21.865 and 35A.82.020, each as now or hereafter amended, and other applicable state law.

5.10.020 Definitions.

Where used in this chapter, the following words and terms shall have the meanings as defined in this section, unless, from context, a more limited or different meaning is clearly defined or apparent. To the extent any term above is inconsistent and preempted by state statute or federal code, the statute or code, as the case may be, most similar to the definition above shall be the definition for that term.

- A. "Administrator" shall mean the city administrator.
- B. "Cable television service" means the one-way transmission to subscribers of video programming and other programming service and subscriber interactions, if any, that is required for the selection or use of the video programming or other programming service.
- C. "Cellular telephone service" means a one- or two-way telecommunications system used to transmit voice and/or data-based signals or content in whole, or substantially in part, on wireless radio communications, and which is not subject to regulation by the

Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service, pager services, specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology which accomplished a purpose similar to cellular mobile service, including paging. Cellular telephone service shall not include competitive telephone service. (Competitive telephone service” means the providing by any person 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.)

D. “Electricity” means the sale of electrical power.

E. “Gas distribution business” means the business of selling, furnishing, or transmitting gas, whether manufactured or natural (but not including gasoline sales).

F. “Gross income” means the value proceeding or accruing from the sale of tangible property or service, and receipts (including all sums earned or charged, whether received or not) by reason of the investment of capital of the business engaged in, including rentals, royalties, fees or other emoluments, receipts or proceeds from the use or sale of real property or any interest therein, and proceeds from the sale of notes, bonds, mortgages or other evidences of indebtedness or stock and the like and without any deduction on account of the cost of the property sold, the cost of materials used, labor costs, interest or discount paid, taxes, or any expense whatsoever, and without any deduction on account of losses.

G. “Person” or “persons” means natural persons of either gender, firms, co-partnerships, corporations, municipal corporations, and other associations of natural persons whether acting by themselves or by servants, agents or employees.

H. "Pager service" means service provided by means of an electronic device which has the ability to send or receive voice or digital messages transmitted through the local telephone network, via satellite or any other form of voice or data transmission.

I. "Sewerage operation" means operation of sanitary sewer facilities, including collection, treatment and disposal facilities, and combined sanitary and surface water drains and outfalls.

J. "Solid waste service" means the collection and disposal of putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

K. "Water distribution operation" means the business of operating a plant or system for the distribution of water for hire or sale (but does not include any entity distributing water to the City of Bingen for the City to distribute).

L. "Taxpayer" means any person liable for the license fee or taxes imposed by this chapter.

M. "Tax year" or "taxable year" means the 12-month period commencing January 1st and ending December 31st of the same year.

5.10.030 Businesses subject to tax.

To the extent the tax is consistent with federal and state law and with any relevant franchise agreement:

There is hereby levied upon all persons engaged in business activities taxable under this chapter a tax in the amounts to be determined by the application of the respective rates against gross income of such taxpayer derived from the operation of that business. Taxpayers engaged in

or carrying on the business shall be charged with collection of the tax as a condition of doing business, and the tax shall be levied thereafter upon their subscribers at the rate set forth below.

A. Commencing on February 1, 2012, upon every person engaged in or carrying on a telephone business, as defined in RCW 82.04.065, as said statute presently exists or is hereafter amended, a tax equal to six percent of the total gross income, including revenues for intrastate toll, derived from the operation of such business within the city. To the extent permitted by applicable federal and Washington State law, any telecommunications services provided by a cable operator (as defined in 47 U.S.C. Section 522(5) as now or hereafter amended) or other persons over cable television facilities owned or controlled by a cable operator shall be taxable hereunder.

B. Commencing on February 1, 2012, upon every person engaged in or carrying on the sale of cellular telephone service, a tax equal to six percent of the total gross income derived from the operation of such business within the city.

C. Commencing on February 1, 2012, upon every person engaged in the business of operating or providing pager service, a tax equal to six percent of the total gross income derived from the operation of such business within the city.

D. Commencing on February 1, 2012, upon every person engaged in or carrying on the business of cable television service, a tax equal to six percent of the total gross income derived from the operation of such business within the city.

E. Commencing on February 1, 2012, upon every person engaged in or carrying on the business of solid waste collection, a tax equal to six percent of the total gross income derived from the operation of such business within the city.

F. Commencing on February 1, 2012, upon every person engaged in or carrying on the business of electricity service, a tax equal to six percent of the total gross income derived from the operation of such business within the city.

G. Commencing on February 1, 2012, upon every person engaged in or carrying on the business of gas distribution, a tax equal to six percent of the total gross income derived from the operation of such business within the city.

H. Commencing on January 1, 2012, upon every person engaged in or carrying on the business of sewerage operation (which includes surface water drains and outfalls), a tax equal to ten percent of the total gross income derived from the operation of such business within the city.

I. Commencing on January 1, 2012, upon every person engaged in or carrying on the business of water distribution operation, a tax equal to six percent of the total gross income derived from the operation of such business within the city.

5.010.040 Exceptions and deductions from gross income.

There shall be excluded from the total gross income upon which the utility tax is computed the following:

A. Revenues derived from transactions in interstate or foreign commerce, or from business done for the United States and the state of Washington, or their officers or agents or any amounts paid by the taxpayer to the United States and the state, the city or to any political subdivision of the state, as excise taxes levied or imposed upon the sale or distribution of property or services, or as a utility tax.

B. That portion of gross income derived from charges to another telecommunications company, as defined in RCW 82.04.065 as now or hereafter amended, or connecting fees,

switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate service.

C. Charges incurred by a taxpayer engaging in a telephone business and paid to a telecommunications company, as defined in RCW 82.04.065 as now or hereafter amended for telephone service that the taxpayer purchases for the purpose of resale.

D. Adjustments made to a billing or to a customer account or a telecommunications company accrual account in order to reverse a billing or a charge that has been made as a result of third party fraud or other crime and was not properly a debt of a customer.

E. Cash discounts and credit losses actually sustained by a taxpayer on an accrual basis.

5.10.050 Monthly returns and payment.

A. On or before the fifteenth day following the end of each month, each taxpayer shall remit payment for the preceding month's utility tax, accompanied by a monthly statement showing the manner in which the monthly payment is calculated. The monthly statement shall be upon a form provided by the administrator and shall contain such information as may be necessary to enable the administrator to arrive at the lawful amount of the tax. The taxpayer shall, in a legible manner, provide all information required by the administrator on such returns, shall sign the same, and by affidavit shall swear or affirm that the information therein given is full and true and that the taxpayer knows the same to be so.

B. Monthly returns shall be accompanied by a remittance by bank draft, certified check, cashier's check or money order, payable to the City of Bingen, or in cash, in the amount of the fee or tax owed, including delinquencies and installments.

C. Payment made by draft or check shall not be deemed a payment of the fee or tax unless and until the same has been honored in the usual course of business, nor shall acceptance

of any such check or draft operate as an acquittance or discharge of the fee or tax unless and until the check or draft is honored.

D. If the applicant is a partnership, returns must be made by one of the partners, if a corporation, by one of the officers thereof; if a foreign corporation, copartnership or nonresident individual, by the resident agent or local manager of said corporation, copartnership or individual.

5.10.060 Allocation of income for cellular telephone service.

A. Service Address. Payments by a customer for the telephone service from telephones without a fixed location (e.g., cellular telephone service) shall be allocated among taxing jurisdictions to the location of the customer's principal service address during the period for which the tax applies.

B. Presumption. There is a presumption that the service address a customer supplies to the taxpayer is current and accurate, unless the taxpayer has actual knowledge to the contrary.

C. Roaming Phones. When service is provided while a subscriber is roaming outside the subscriber's normal cellular network area, the gross income shall be assigned consistent with the taxpayer's accounting system to the location of the originating cell site of the call, or the local of the main cellular switching office that switched the call.

D. Dispute Resolution. If there is a dispute among one or more other cities, and/or the taxpayer, as to the service address of a customer who is receiving cellular telephone services, and the dispute is not resolved by negotiation among the parties, then the dispute shall be submitted to mediation by a mediator acceptable to the parties involved or a majority of them. In the event mediation is not successful or cannot be effected, the dispute shall be resolved by suit in the Superior Court of Klickitat County or in that jurisdiction required by federal or state law governing. The taxpayer shall have no further liability with respect to additional taxes on the

disputed revenues, but will charge his or her billing records for future revenues to comport with the resolution of the dispute.

E. Authority of Administrator. The administrator is authorized to represent the city in negotiations with other cities for the proper allocation of cellular telephone service taxes imposed pursuant to this chapter.

5.10.070 Books and records – Inspections and confidentiality.

A. It is the duty of each taxpayer to keep and enter in a proper book or set of books or records an account which shall accurately reflect the amount of its gross income, which account shall be open to inspection by the administrator, or his or her designee at a reasonable time, and from which said officer the administrator or his or her designee may verify returns made by the taxpayer.

B. To the extent permitted by Chapter 42.17 RCW and other applicable statutes, the applications, statements or return made to the administrator pursuant to this chapter shall not be made public, nor shall they be subject to the inspection of any person except the mayor, the city attorney, the administrator, or his or her authorized agent and members of the city council.

5.10.080 Investigation of returns.

If any taxpayer fails to apply for a license or make his or her return, or if the administrator is dissatisfied as to the correctness of the statements made in the application or return of any taxpayer, the administrator, or his or her designee, may: (A) enter the premises of such taxpayer at any reasonable time for the purpose of inspecting and auditing the taxpayer's books or records to ascertain the amount of the fee or tax or to determine the correctness of such statements, as the case may be; (B) may examine any person under oath administered by the administrator, or his or her designee, touching the matters inquired into; or (c) fix a time and place for an investigation of the correctness of the return, and issue a subpoena to the taxpayer,

or any other person, to attend such investigation and testify, under oath administered by the administrator, or his or her agent, in regard to the matters inquired into and may, by subpoena, require him or her, or any person, to bring with him or her such books, records and papers as may be necessary. In the event that any such audit reveals an underpayment of 10 percent or more, the taxpayer shall, in addition to the penalties provided by this chapter, be responsible for all of the costs associated with the audit, including, but not limited to, staff time and overhead, accounting fees, professional service fees, and attorneys fees.

5.10.090 Overpayment or underpayment.

A. Overpayment. If the administrator, upon investigation or upon checking returns, finds that the fee or tax paid by a taxpayer is more than the amount required of the taxpayer, he or she shall return the amount overpaid, upon the written request of the taxpayer. Any refund request not submitted within three years of the alleged overpayment shall be forever barred.

B. Underpayment. If the administrator finds that the fee or tax paid by a taxpayer is less than required, he or she shall send a statement to the taxpayer showing the balance due, together with a penalty of 10 percent of the amount due, and the taxpayer shall, within 10 days, pay the amount shown thereon. If payment is not received by the administrator by the due date specified in the notice, the administrator shall add a penalty of an additional 25 percent of the amount of the additional tax found due. In the event that the balance due, including all penalties, is not paid in full within 30 days from the date specified, the penalty shall be increased by 15 percent of the amount due and the total amount due shall accrue interest at the rate of 12 percent per annum. If the administrator finds that all, or any part of, the deficiency resulted from an intent to evade the tax payable hereunder, a penalty of 50 percent of the additional tax found to be due shall be added and the amounts due, including penalties, shall accrue interest at the rate of 12 percent per annum from the date the tax became due and the date payment is actually made.

5.10.100 Failure to make return.

If any taxpayer fails to make a return or pay the fees or taxes therefor, or any part thereof, the administrator shall ascertain the amount of the fee or tax or installment thereof due and shall notify the taxpayer thereof, who shall be liable therefor in any suit or action by the city for the collection thereof. In the event that any taxes imposed by this chapter remain unpaid, the administrator may defer such claims to a collection agency or to the city attorney for collection. If referred to the city attorney for collection, the city attorney shall, with the assistance of the administrator, collect the same by an appropriate means or by suit or action in the name of the city. In the event that the city prevails on any claim that a taxpayer is in noncompliance with the terms of this chapter, the city shall be entitled to an award of its reasonable attorneys' fees and other professional expenses associated with prosecuting the action.

5.10.110 Appeal to city council.

A. Any taxpayer aggrieved by the amount of the fee, tax, or penalty found by the administrator to be required under the provisions of this chapter, may appeal to the city council from such finding by filing a written notice of appeal with the administrator within five days from the time such taxpayer was given notice of such amount and paying an appeal fee in accordance with the city's current fee schedule as may be amended from time to time. The city clerk shall, as soon as practicable, fix a time and place for the hearing of such appeal, which time shall be not more than 30 days after the filing of the notice of appeal, and the city clerk shall cause a notice of the time and place thereof to be delivered or mailed to the appellant. At such hearing the taxpayer shall be entitled to be heard and to introduce evidence on his or her behalf. The city council shall thereupon ascertain the correct amount of the fee, tax, or penalty by resolution and the administrator immediately notify the appellant thereof, which amount,

together with costs of the appeal including outside legal, accounting, and other expenses, if the appellant is unsuccessful therein, must be paid within 10 days after such notice is given.

B. The city council may direct that the appeal hearing provided by subsection (A) of this section be conducted by a hearing officer appointed by the city for that purpose. In such case, the hearing officer shall conduct an evidentiary hearing as provided in subsection (a) of this section and forward findings, conclusions, and a recommendation to the city council for final action. Unless otherwise agreed to by the parties, the hearing office shall convene the hearing within 30 days of the matter being referred by the city council and shall enter his or her written findings, conclusions, and recommendation within 15 days following conclusion of the hearing. Upon receipt of the hearing officer's finding, conclusions and recommendation, the city council shall either adopt the same as their own decision, conduct their own hearing and adopt new findings and conclusions, or remand the matter to the hearing officer for further review.

C. Any judicial appeal of the city council's final determination of such an appeal shall be filed and served within 21 days of the date of the city council's final vote on the matter, and the taxpayer shall be responsible for payment of the costs associated with producing the city's administrative record therein.

5.41.120 Unlawful acts.

It is unlawful: (A) for any person liable for taxes or fees hereunder to fail or refuse to file returns, or to pay any fee or tax or installment thereof when due; (B) for any person to make any false or fraudulent return or any false statement or representation in, or in connection with, any return; (C) to aid or abet another in any attempt to evade payment of the fee or tax, or any part thereof; (D) for any person to fail to appear and/or testify in response to subpoena issued pursuant hereto; (E) to testify falsely upon any investigation of the correctness of a return, or

upon the hearing of any appeal; or (F) in any manner to hinder or delay the city or any of its officers in carrying out the provisions of this chapter.

5.41.130 Penalty for violation.

Any person violating any of the provisions or failing to comply with any of the requirements of this chapter shall, in addition to being liable for the monetary penalties set forth herein, be guilty of a misdemeanor and upon conviction of such violation or failure be punished by a fine of not more than \$5,000 or by imprisonment not to exceed 90 days or by both such fine and imprisonment.

5.10.140 Rate change.

No change in the rate of tax upon persons engaging in providing services taxable under this chapter shall apply to business activities occurring before the effective date of the change, and, except for a change in the tax rate authorized by RCW 35.21.865 as now or hereafter amended and pursuant to RCW 35A.82.020 as now or hereafter amended, no change in the rate of the tax may take effect sooner than 60 days following the enactment of the ordinance establishing the change. The administrator, or his or her designee, shall send to each taxpayer a copy of any ordinance changing the rate of tax upon taxable services promptly upon its enactment.

Section 3. Nothing in this ordinance is intended nor shall be construed as contrary to federal or state law.

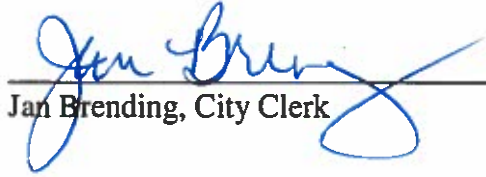
Section 4. This Ordinance shall take effect and be in force five (5) days after its publication according to law.

PASSED BY THE CITY COUNCIL OF THE CITY OF BINGEN, at a regular meeting thereof and approved by the Mayor 15th day of November, 2011,

ATTEST:

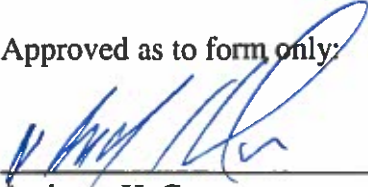


Mayor Betty J. Barnes



Jan Brending, City Clerk

Approved as to form only:



Anthony H. Connors
City Attorney