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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 4747

AN ORDINANCE relating to cellular telephone service and the utility occupation tax of the City of Bellevue; amending Section 1 (parts) of Ordinance No. 1989 and Sections 4.10.020 and .040 of the Bellevue City Code; adding new sections 4.10.042 and 4.10.080 to Chapter 4.10 of the Bellevue City Code; repealing Section 1 (part) of Ordinance No. 1989 and Section 4.10.080 of the Bellevue City Code; and establishing an effective date.

WHEREAS, the Cellular Tax Study Advisory Committee was created by the State Department of Revenue at the direction of the State Legislature to study taxation of cellular telephone services; and

WHEREAS, said Advisory Committee addressed concerns raised by the cellular telephone industry such as uniformity of municipal taxation of cellular telephone service and allocation of tax revenues to appropriate jurisdictions; and

WHEREAS, the Advisory Committee recommended that certain model ordinance provisions be adopted by local municipalities; and

WHEREAS, the Association of Washington Cities (AWC) recommends that cities adopt the primary provisions of the Advisory Committee's recommendations; and

WHEREAS, the City of Bellevue currently taxes the provision of cellular telephone service pursuant to the Utility Occupation Tax Code (Chapter 4.10 of the Bellevue City Code) and desires to amend such Code to provide consistency with other cities in the administration and collection of such taxes; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 1 (part) of Ordinance No. 1989 and Section 4.10.020 of the Bellevue City Code are hereby amended to read as follows:

4.10.020 Definitions.

A. "Clerk" means such city employee or agent as the city manager shall designate.

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B. "Gross proceeds of sale," "gross income of business" means the value proceeding or accruing from the performance of the particular utility occupation involved, including operations incidental thereto, but without any deduction on account of the cost of the service provided, 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.

C. "Cellular telephone service" means two-way voice and data telephone/telecommunications system based 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. The definition of cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS) and any other evolving wireless radio communications technology which accomplishes the same purpose as cellular mobile service.

D. "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 Title 80 RCW and for which a separate charge is made.

E. "Network telephone service" means the providing by any person 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" does not include the providing of competitive telephone service, the providing of cable television service, nor the providing of broadcast services by radio or television stations.

F. "Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide

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telecommunications for hire, sale, or resale to the general public within this state.

G. "Telephone business" means the business of providing network telephone service, as defined in this section. It includes cooperative or farmer line telephone companies or associations operating an exchange.

H. "Telephone service" means competitive telephone service or network telephone service, or both, as defined in this section.

Section 2. Section 1 (part) of Ordinance No. 1989, as most recently amended by Section 1 of Ordinance No. 4194, and Section 4.10.040 of the Bellevue City Code are hereby amended to read as follows:

4.10.040 Occupations subject to tax - Amount.

There is levied upon, and shall be collected from everyone, including the city, on account of certain business activities engaged in or carried on in the city, license fees or occupation taxes in the amount to be determined by the application of rates given against gross income as follows:

A. Upon everyone engaged in and carrying on a telegraph business, a fee or tax equal to 4.5 percent of the total gross income from such business in the city during the period for which a license or tax is due;

B. Upon everyone engaged in or carrying on a telephone business, a fee or tax equal to 6 percent of the total gross income from such business in the city during the period for which a license or tax is due. In determining gross income from such telephone business, including intrastate toll telephone service, the taxpayer shall include 100 percent of the gross income received from such business in the city;

C. Upon everyone engaged in or carrying on the business of cellular telephone service, a fee or tax equal to 6 percent of the total gross income from such business in the city during the period for which the fee or tax is due;

D. Upon everyone engaged in or carrying on the business of selling or furnishing gas for domestic, business or industrial consumption, a fee or tax equal to 4.5 percent of the total gross income from such business in the city during the period for which the license fee or tax is due;

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E. Upon everyone, including the city, engaged in or carrying on the business of furnishing water for domestic, business or industrial consumption, a fee or tax equal to 4.5 percent of the total gross income from such business in the city during the period for which the license fee or tax is due;

F. Upon everyone engaged in or carrying on the business of selling or furnishing electric energy, a fee or tax equal to 4.5 percent of the total gross income from such business in the city during the period for which the license fee or tax is due;

G. Upon everyone engaged in the business of operating or conducting a fire alarm system, a direct telegraph or burglary and police alarm system for hire, a fee or tax equal to 4.5 percent of the total gross income from the city during the period for which the license fee or tax is due;

H. Upon everyone, including the city, engaged in the conduct, maintenance and operation of a sewerage system, a fee or tax equal to 4.5 percent of the total gross income from such business in the city during the period for which the license fee or tax is due; and

I. Upon everyone engaged in or carrying on the business of transmitting television by cable, a fee or tax equal to 4.8 percent of the total gross income from such business in the city during the period for which the fee or tax is due.

Section 3. A new section 4.10.042 is hereby added to Chapter 4.10 of the Bellevue City Code to read as follows:

4.10.042 Cellular Telephone Service - Income Allocation and Administration

A. Allocation of Income.

1. Service Address:

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

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2. 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.

3. Roaming:

When the cellular telephone 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 to the location of the main cellular switching office that switched the call.

B. Dispute Resolution.

If there is a dispute between or among the city and another city or cities 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 resolved by the city and the other city or cities by submitting the issue for settlement to the Association of Washington Cities (AWC). Once taxes on the disputed revenues have been paid to one of the contesting cities, the cellular telephone service company shall have no further liability with respect to additional taxes, penalties, or interest on the disputed revenues, so long as it promptly changes its billing records for future revenues to comport with the settlement facilitated by the AWC.

C. Authority of Administrator.

The City Manager or his or her designee 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.

D. Tax Rate Change.

No change in the rate of tax upon persons engaging in providing cellular telephone service shall apply to business

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activities occurring before the effective date of the change and, except for a change in the tax rate authorized by RCW 35.21.870, no change in the rate of the tax may take effect sooner than sixty days following the enactment of the ordinance establishing the change. The City Manager or his or her designee shall send to each cellular telephone service company at the address of record a copy of any ordinance changing the rate of tax upon cellular telephone service promptly upon its enactment.

Section 4. Section 1 (part) of Ordinance No. 1989 and Section 4.10.080 of the Bellevue City Code are hereby repealed.

Section 5. A new section 4.10.080 is hereby added to Chapter 4.10 of the Bellevue City Code to read as follows:

4.10.080 Deductions.

In computing the tax imposed by this chapter, the following items may be deducted from the measure of the tax.

- A. The amount of credit losses actually sustained by taxpayers whose regular books are kept upon an accrual basis.
- B. Charges by a taxpayer engaging in a telephone business to a telecommunications company for telephone service that the purchaser buys for the purpose of resale.
- C. That portion of the gross income derived from charges to another telecommunications company for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services.
- D. Adjustments made to a billing or to a customer account or to a telecommunications company accrual account in order to reverse a billing or charge that had been made as a result of third-party fraud or other crime and was not properly a debt of the customer.
- E. Amounts derived from business which the city is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.

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Section 6. This ordinance shall take effect and be in force thirty days after its final passage.

PASSED by the City Council this 20th day of March, 1995, and signed in authentication of its passage this 20th day of March, 1995.

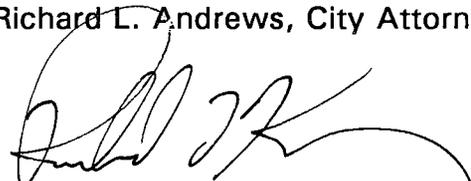
(SEAL)



Donald S. Davidson, DDS, Mayor

Approved as to form:

Richard L. Andrews, City Attorney



Richard L. Kirkby, Assistant City Attorney

Attest:



Myrna L. Basich, City Clerk

Published March 24, 1995