

ORDINANCE NO. 1560

CITY OF LACEY

AN ORDINANCE RELATED TO BUSINESS AND OCCUPATION TAXES, ADDING SECTIONS 3.02.075, 3.02.076, 3.02.077, AND 3.02.078, REPEALING SECTION 3.02.090 AND AMENDING SECTIONS 3.02.040, 3.02.050, 3.02.070, 3.02.100, 3.02.110, 3.02A.030, 3.02A.031, 3.02A.050, 3.02A.100, AND 3.02A.130, ALL OF THE LACEY MUNICIPAL CODE, PROVIDING AN EFFECTIVE DATE AND APPROVING A SUMMARY FOR PUBLICATION.

WHEREAS, Since 2004, RCW Chapter 35.102 has required cities that levy business and occupation (B&O) taxes to implement a B&O tax model ordinance; and

WHEREAS, the most recent model ordinance was adopted in 2013; and

WHEREAS, in 2019, the state legislature passed HB 1403 and HB 1059, both of which effect changes that necessitate updates to the model ordinance; and

WHEREAS, the Association of Washington Cities organized a B&O city workgroup to develop an update to the model ordinance; and

WHEREAS, the workgroup included several cities and worked with the business community to revise the model ordinance; and

WHEREAS, RCW 35.102.040 requires that all B&O tax cities adopt any amendments to the model ordinance with the same effective date; and

WHEREAS, the B&O tax cities have agreed to make the amendments effective as of January 1, 2020; and

WHEREAS, the City Council, finds it in the interest of the city to adopt the amendments to the model ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, AS FOLLOWS:

Section 1. Section 3.02.040 of the Lacey Municipal Code is hereby amended as follows:

3.02.040 Definitions.

In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

- A. “Business” includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.
- B. “Business and occupation tax” or “gross receipts tax” means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business.
- C. “Commercial or industrial use” means the following uses of products, including by-products, by the extractor or manufacturer thereof:
1. Any use as a consumer; and
 2. The manufacturing of articles, substances or commodities.
- D. “Delivery” means the transfer of possession of tangible personal property between the seller and the buyer or the buyer’s representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer’s representative first takes physical control of the property or exercises dominion and control over the property. Dominion and control means the buyer has the ability to put the property to the buyer’s own purposes. It means the buyer or the buyer’s representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer’s representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer’s representative. It is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property. Delivery terms and other provisions of the Uniform Commercial Code (RCW Title 62A) do not determine when or where delivery of tangible personal property occurs for purposes of taxation.
- E. “Digital automated service,” “digital code,” and “digital goods” have the same meaning as in RCW 82.04.192.
- F. “Digital products” means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050(2)(g) and (6)(b).

- G. Eligible Gross Receipts Tax. The term “eligible gross receipts tax” means a tax which:
1. Is imposed on the act or privilege of engaging in business activities within LMC 3.02.050; and
 2. Is measured by the gross volume of business, in terms of gross receipts and is not an income tax or value added tax; and
 3. Is not, pursuant to law or custom, separately stated from the sales price; and
 4. Is not a sales or use tax, business license fee, franchise fee, royalty or severance tax measured by volume or weight, or concession charge, or payment for the use and enjoyment of property, property right or a privilege; and
 5. Is a tax imposed by a local jurisdiction, whether within or without the state of Washington, and not by a country, state, province, or any other non-local jurisdiction above the county level.

H. Engaging in Business.

1. The term “engaging in business” means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.
2. This section sets forth examples of activities that constitute engaging in business in the city, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de ~~minus~~ minus ~~minimis~~ business activities in the city without having to register and obtain a business license or pay city business and occupation taxes. The activities listed in this section are illustrative only and are not intended to narrow the definition of “engaging in business” in subsection (H)(1) of this section. If an activity is not listed, whether it constitutes engaging in business in the city shall be determined by considering all the facts and circumstances and applicable law.
3. Without being all inclusive, any one of the following activities conducted within the city by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license.

- a. Owning, renting, leasing, maintaining, or having the right to use, or using for business purposes, tangible personal property, intangible personal property, or real property permanently or temporarily located in the city.
- b. Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the city.
- c. Soliciting sales.
- d. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.
- e. Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.
- f. Installing, constructing, or supervising installation or construction of, real or tangible personal property.
- g. Soliciting, negotiating, or approving franchise, license, or other similar agreements.
- h. Collecting current or delinquent accounts.
- i. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.
- j. Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.
- k. Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.
- l. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

m. Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the city, acting on its behalf, or for customers or potential customers.

n. Investigating, resolving, or otherwise assisting in resolving customer complaints.

o. In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.

p. Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

~~q. Accepting or executing a contract with the city, irrespective of whether goods or services are delivered within or without the city, or whether the person's office or place of business is within or without the city.~~

4. If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the city but the following, it need not register and obtain a business license and pay tax.

a. Meeting with suppliers of goods and services as a customer.

b. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.

c. Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.

d. Renting tangible or intangible property as a customer when the property is not used in the city.

e. Attending, but not participating in a "trade show" or "multiple vendor events". Persons participating at a trade show shall review the city's trade show or multiple vendor event ordinances.

f. Conducting advertising through the mail.

g. Soliciting sales by phone from a location outside the city.

5. A seller located outside the city merely delivering goods into the city by means of common carrier is not required to register and obtain a business license; provided, that it engages in no other business activities in the city. Such activities do not include those in subsection (H)(4) of this section.

The city expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the tax under the law and the constitutions of the United States and the state of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

I. “Gross income of the business” means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property 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.

J. “Gross proceeds of sales” means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services or for other services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

K. “Manufacturing” means the activity conducted by a manufacturer and is reported under the manufacturing classification. ~~or~~

1. “Manufacturer” means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from the person’s own materials or ingredients any products. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to less than twenty percent (20%) of the total value of all materials or ingredients that become a part of the finished

product, the owner of the equipment or facilities will be deemed to be a processor for hire, and not a manufacturer.

2. ~~to~~ To manufacture” means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials or ingredients so that as a result thereof a new, different or useful product is produced for sale or commercial or industrial use, and shall include:

- ~~1~~a. The production of special made or custom made articles;
- ~~2~~b. The production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;
- ~~3~~c. Crushing and/or blending of rock, sand, stone, gravel, or ore; and
- ~~4~~d. The producing of articles for sale, or for commercial or industrial use from raw materials or prepared materials by giving such materials, articles, and substances of trade or commerce new forms, qualities, properties or combinations including, but not limited to, such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, aging, curing, mild curing, preserving, canning, and the preparing and freezing of fresh fruits and vegetables.

~~Such term~~ To manufacture” shall not include the production of digital goods or the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

L. “Person” means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

M. “Retailing” means the activity of engaging in making sales at retail and is reported under the retailing classification.

N. "Retail Service" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

1. Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, batting cages, day trips for sightseeing purposes, and others, when provided to consumers. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.
2. Abstract, title insurance, and escrow services;
3. Credit bureau services;
4. Automobile parking and storage garage services;
5. Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;
6. Service charges associated with tickets to professional sporting events; and
7. The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, Turkish bath services, escort services, and dating services.
8. The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

NO. Sale, Casual or Isolated Sale.

1. "Sale" means any transfer of the ownership of, title to, or possession of, property for a valuable consideration and includes any activity classified as a "sale at retail," "retail sale," or "retail service." It includes renting or leasing, conditional sale

contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

2. "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis.

OP. Sale at Retail, Retail Sale.

1. "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers, other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

- a. Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or
- b. Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or
- c. Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or
- d. Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or
- e. Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include

every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a “sale at retail” or “retail sale” even though such property is resold or utilized as provided in subsection (OP)(1)(a), (b), (c), (d), or (e) of this section following such use.

2. “Sale at retail” or “retail sale” also means every sale of tangible personal property to persons engaged in any business activity which is taxable under LMC 3.02.050(A).

3. “Sale at retail” or “retail sale” shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

a. The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

b. The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

c. The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

- d. The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term “janitorial services” shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term “janitorial services” does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;
- e. The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under Chapter 82.16 RCW;
- f. The sale of and charge made for the furnishing of lodging and all other services, except telephone business and cable service, by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;
- g. The installing, repairing, altering or improving of digital goods for consumers;
- h. The sale of or charge made for tangible personal property, labor and services to persons taxable under subsections (OP)(3)(a), (b), (c), (d), (e), (f) and (g) of this section when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a “sale at retail” or “retail sale” even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (OP)(1) of this section and nothing

contained in subsection (OP)(1) of this section shall be construed to modify this subsection.

4. “Sale at retail” or “retail sale” shall also include the providing of competitive telephone service to consumers.

5. “Sale at retail” or “retail sale”

a. “Sale at retail” or “retail sale” shall also include the sale of prewritten software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user. For purposes of this subsection (OP)(5)(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser. The term “sale at retail” or “retail sale” does not include the sale of or charge made for:

(1) Custom software; or

(2) The customization of prewritten software.

b. (1) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or the third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(2) (a) The service described in subsection (OP)(5)(b)(1) of this section includes the right to access and use prewritten software to perform data processing.

(b) For purposes of this subsection (OP)(5)(b)(2), “data processing” means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

6. “Sale at retail” or “retail sale” shall also include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation

terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state, the state of Washington, or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind. (Public road construction)

7. “Sale at retail” or “retail sale” shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, “extended warranty” means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term “extended warranty” does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement.

78. “Sale at retail” or “retail sale” shall also include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to Chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation (government contracting).

89. “Sale at retail” or “retail sale” shall not include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development. (This should be reported under the service and other classification.)

~~9~~10. “Sale at retail” or “retail sale” shall not include the sale of or charge made for labor and services rendered for environmental remedial action. (This should be reported under the service and other classification.)

~~10~~11. “Sale at retail” or “retail sale” shall also include the following sales to consumers of digital goods, digital codes, and digital automated services:

- a. Sales in which the seller has granted the purchaser the right of permanent use;
- b. Sales in which the seller has granted the purchaser a right of use that is less than permanent;
- c. Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and
- d. Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

A retail sale of digital goods, digital codes, or digital automated services under this subsection (~~OP~~)(10) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

For purposes of this subsection, “permanent” means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

~~11~~12. “Sale at retail” or “retail sale” shall also include the installing, repairing, altering, or improving of digital goods for consumers.

~~PQ~~. “Sale at wholesale” or “wholesale sale” means any sale of tangible personal property, digital goods, digital codes, digital automated services, prewritten computer software, or services described in subsection (~~OP~~)(5)(a) of this section in which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of

telephone business to another telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715.

QR. “Taxpayer” means any “person”, as herein defined, required to have a business license under this chapter or liable for the collection of any tax or fee under this chapter, or who engages in any business or who performs any act for which a tax or fee is imposed by this chapter.

RS. “Wholesaling” means engaging in the activity of making sales at wholesale.

Section 2. Section 3.02.050 of the Lacey Municipal Code is hereby amended as follows:

3.02.050 Imposition of the tax--tax or fee levied.

A. Except as provided in subsection B 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 by determined by application of rates against gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as follows:

1. 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 one-tenth of one percent (.001).
2. Upon every person engaging within the City in the business of (i) printing, (ii) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (iii) publishing newspapers, magazines and periodicals, (iv) extracting for hire, and (v) 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 one-tenth of one percent (.001).
3. 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 two-tenths of one percent (.002).

~~equal to gross proceeds of sale, gross income of business, or value of products, including by-products, multiplied by one-tenth of one percent (.001) except for those business and service activities encompassed within RCW 82.04.290 wherein the rate for such multiplication shall be two-tenths of one percent (.002).~~

B. The gross receipts tax imposed in this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including by-products, as the case may be, from all activities conducted within the city during any calendar year is equal to or less than \$20,000, or is equal to or less than \$5,000 during any quarter if on a quarterly reporting basis ~~or \$20,000.00 annually if on an annual reporting basis.~~

Section 3. Section 3.02.070 of the Lacey Municipal Code is hereby amended as follows:

3.02.070 Multiple activities credit when activities take place in one or more cities with eligible gross receipt taxes.

A. Persons who engage in business activities that are within the purview of two or more subsections of LMC 3.02.050 shall be taxable under each applicable subsection.

B. Notwithstanding anything to the contrary herein, if imposition of the city's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the city's tax, and still apply the city tax to as much of the taxpayer's activities as may be subject to the city's taxing authority.

C. To take the credit authorized by this section, a taxpayer must be able to document that the amount of tax sought to be credited was paid upon the same gross receipts used in computing the tax against which the credit is applied.

D. Credit for persons that sell in the City products that they extract or manufacture. Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid (a)

with respect to the manufacturing of the products sold in the City, and (b) with respect to the extracting of the products, or the ingredients used in the products, sold in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products~~Persons taxable under the retailing classification with respect to selling products in this city shall be allowed a credit against those taxes for any eligible gross receipts taxes paid with respect to the printing, or the printing and publishing, of the products sold within the city. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.~~

E. Credit for persons that manufacture products in the City using ingredients they extract. Persons taxable under the manufacturing classification with respect to manufacturing products in this City shall be allowed a credit against those taxes for any eligible gross receipts tax paid with respect to extracting the ingredients of the products manufactured in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

F. Credit for persons that sell within the City products that they print, or publish and print. Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid with respect to the printing, or the printing and publishing, of the products sold within the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

Section 4. There is hereby added to the Lacey Municipal Code a new section, 3.02.075, to read as follows:

3.02.075 Deductions to prevent multiple taxation of manufacturing activities and prior to January 1, 2008, transactions involving more than one city with an eligible gross receipts tax.

A. Amounts subject to an eligible gross receipts tax in another city that also maintains nexus over the same activity. For taxes due prior to January 1, 2008, a taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:

1. A taxpayer that has paid an eligible gross receipts tax, with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the City.

2. Notwithstanding the above, a person that is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties, trademarks, patents, or goodwill shall assign those gross receipts to the jurisdiction where the person is domiciled (its headquarters is located).

3. A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with another city may deduct an amount equal to the contract price used to measure the tax due to the other city from the measure of the tax owed to the City.

B. Person manufacturing products within and without. A person manufacturing products within the City using products manufactured by the same person outside the City may deduct from the measure of the manufacturing tax the value of products manufactured outside the City and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products.

Section 5. There is hereby added to the Lacey Municipal Code a new section, 3.02.076, to read as follows:

3.02.076 Assignment of gross income derived from intangibles.

Gross income derived from the sale of intangibles such as royalties, trademarks, patents, or goodwill shall be assigned to the jurisdiction where the person is domiciled (its headquarters is located).

Section 6. There is hereby added to the Lacey Municipal Code a new section, 3.02.077, to read as follows:

3.02.077 Allocation and apportionment of income when activities take place in more than one jurisdiction.

Effective January 1, 2008, gross income, other than persons subject to the provisions of chapter 82.14A RCW, shall be allocated and apportioned as follows:

(1) Gross income derived from all activities other than those taxed as service or royalties under LMC 3.02.050(1)(g) shall be allocated to the location where the activity takes place.

(2) In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

(3) In the case of sales of digital products, the activity takes place where delivery to the buyer occurs. The delivery of digital products will be deemed to occur at:

(a) The seller's place of business if the purchaser receives the digital product at the seller's place of business;

(b) If not received at the seller's place of business, the location where the purchaser or the purchaser's donee, designated as such by the purchaser, receives the digital product, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(c) If the location where the purchaser or the purchaser's donee receives the digital product is not known, the purchaser's address maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(d) If no address for the purchaser is maintained in the ordinary course of the seller's business, the purchaser's address obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and

(e) If no address for the purchaser is obtained during the consummation of the sale, the address where the digital good or digital code is first made available for transmission by the seller or the address from which the digital automated service or service described in RCW 82.04.050 (2)(g) or (6)(b) was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(4) If none of the methods in subsection [insert city code reference to .077(3)] for determining where the delivery of digital products occurs are available after a good faith effort by the taxpayer to apply the methods provided in subsections [insert city code reference to .077(3)(a) through .077(3)(e)], then the city and the taxpayer may mutually agree to employ any other method to effectuate an equitable allocation of income from the sale of digital

products. The taxpayer will be responsible for petitioning the city to use an alternative method under this subsection [insert city code reference to .077(D)]. The city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in subsections [insert city code reference to .077(3)(a) through .077(3)(e)] are not available and the taxpayer and the city are unable to mutually agree on an alternative method to effectuate an equitable allocation of income from the sale of digital products.

(5) For purposes of subsections [insert city code reference to .077(3)(a) through .077(3)(e)], the following definitions apply:

(a) “Digital automated services,” “digital codes,” and “digital goods” have the same meaning as in RCW 82.04.192;

(b) “Digital products” means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050 (2)(g) and (6)(c); and

(c) “Receive” has the same meaning as in RCW 82.32.730.

(6) [Effective January 1, 2020] Gross income derived from activities taxed as services and other activities taxed under LMC 3.02.050(1)(g) shall be apportioned to the city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service income factor and the denominator of which is two.

(a) The payroll factor is a fraction, the numerator of which is the total amount paid in the city during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

Compensation is paid in the city if:

(i) The individual is primarily assigned within the city;

(ii) The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent or more of his or her service for the tax period in the city; or

(iii) The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent or more of his or her service in any city and the employee resides in the city.

(b) The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the city during the tax period, and the denominator

of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the city if: the customer location is in the city.

(c) Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the service income factor if, in respect to such activity, at least some of the activity is performed in the city, and the gross income is attributable under (b) of this subsection (6) to a city or unincorporated area of a county within the United States or to a foreign country in which the taxpayer is not taxable. For purposes of this subsection (6)(c), "not taxable" means that the taxpayer is not subject to a business activities tax by that city or county within the United States or by that foreign country, except that a taxpayer is taxable in a city or county within the United States or in a foreign country in which it would be deemed to have a substantial nexus with the city or county within the United States or with the foreign country under the standards in RCW 35.102.050 regardless of whether that city or county within the United States or that foreign country imposes such a tax.

(d) If the allocation and apportionment provisions of this subsection (6) do not fairly represent the extent of the taxpayer's business activity in the city, the taxpayer may petition for or the tax administrators may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(i) Separate accounting;

(ii) The exclusion of any one or more of the factors;

(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or

(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(e) The party petitioning for, or the tax administrator requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to subsection (d) of this subsection (6) must prove by a preponderance of the evidence:

(i) That the allocation and apportionment provisions of this subsection (6) do not fairly represent the extent of the taxpayer's business activity in the city; and

(ii) That the alternative to such provisions is reasonable.

The same burden of proof shall apply whether the taxpayer is petitioning for, or the tax administrator is requiring, the use of an alternative, reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(f) If the tax administrator requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the tax administrator cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this subsection (6).

(g) A taxpayer that has received written permission from the tax administrator to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the tax administrator reasonably relied in approving a reasonable alternative method.

(7) The definitions in this subsection apply throughout this section.

(a) "Apportionable income" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.

(b) "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a city or county within the United States or within a foreign country. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(c) “Compensation” means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal internal revenue code.

(d) “Customer” means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business.

(e) “Customer location” means the following:

(i) For a customer not engaged in business, if the service requires the customer to be physically present, where the service is performed.

(ii) For a customer not engaged in business, if the service does not require the customer to be physically present:

(A) The customer’s residence; or

(B) If the customer’s residence is not known, the customer’s billing/ mailing address.

(iii) For a customer engaged in business:

(A) Where the services are ordered from;

(B) At the customer’s billing/ mailing address if the location from which the services are ordered is not known; or

(C) At the customer’s commercial domicile if none of the above are known.

(f) “Individual” means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(g) “Primarily assigned” means the business location of the taxpayer where the individual performs his or her duties.

(h) “Service-taxable income” or “service income” means gross income of the business subject to tax under either the service or royalty classification.

(i) “Tax period” means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are

calculated for that year, but not later than the end of the first quarter of the following year.

(8) Assignment or apportionment of revenue under this Section shall be made in accordance with and in full compliance with the provisions of the interstate commerce clause of the United States Constitution where applicable.

Section 7. There is hereby added to the Lacey Municipal Code a new section, 3.02.078, to read as follows:

3.02.078 Allocation and apportionment of printing and publishing income when activities take place in more than one jurisdiction.

Notwithstanding RCW 35.102.130, effective January 1, 2008, gross income from the activities of printing, and of publishing newspapers, periodicals, or magazines, shall be allocated to the principal place in this state from which the taxpayer's business is directed or managed. As used in this section, the activities of printing, and of publishing newspapers, periodicals, or magazines, have the same meanings as attributed to those terms in RCW 82.04.280(1) by the department of revenue.

Section 8. Section 3.02.090 of the Lacey Municipal Code is hereby repealed.

Section 9. Section 3.02.100 of the Lacey Municipal Code is hereby amended as follows:

3.02.100 Exemptions.

A. Public Utilities. This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of Chapter 3.01 LMC.

B. Investments--Dividends from Subsidiary Corporations. This chapter shall not apply to amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations.

C. Insurance Business. This chapter shall not apply to amounts received by any person who is an insurer or their appointed insurance producer upon which a tax based on gross premiums is paid to the state pursuant to RCW 48.14.020~~,_~~ and provided further, that the provisions of this subsection shall not exempt any bonding company from tax with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor.

D. Employees.

1. This chapter shall not apply to any person in respect to the person's employment in the capacity as an employee or servant as distinguished from that of an independent contractor. For the purposes of this subsection, the definition of employee shall include those persons that are defined as such in the Internal Revenue Code, as hereafter amended.

2. A booth renter, ~~as defined by RCW 18.16.020,~~ is an independent contractor for purposes of this chapter.

E. Amounts Derived from Sale of Real Estate. This chapter shall not apply to gross proceeds derived from the sale of real estate. This, however, shall not be construed to allow an exemption of amounts received as commissions from the sale of real estate, nor as fees, handling charges, discounts, interest or similar financial charges resulting from, or relating to, real estate transactions. This chapter shall also not apply to amounts received for the rental of real estate if the rental income is derived from a contract to rent for a continuous period of thirty (30) days or longer.

F. Mortgage Brokers' Third-Party Provider Services Trust Accounts. This chapter shall not apply to amounts received from trust accounts to mortgage brokers for the payment of third-party costs if the accounts are operated in a manner consistent with RCW 19.146.050 and any rules adopted by the director of financial institutions.

G. Amounts Derived from Manufacturing, Selling or Distributing Motor Vehicle Fuel. This chapter shall not apply to the manufacturing, selling, or distributing of motor vehicle fuel, as the term "motor vehicle fuel" is defined in RCW ~~82.36.01~~82.38.020 and exempt under RCW ~~82.36.44~~82.38.280; provided, that any fuel not subjected to the state fuel excise tax, or any other applicable deduction or exemption, will be taxable under this chapter.

H. Amounts Derived from Liquor, and the Sale or Distribution of Liquor. This chapter shall not apply to liquor as defined in RCW 66.04.010 and exempt in RCW 66.08.120.

I. Casual and Isolated Sales. This chapter shall not apply to the gross proceeds derived from casual or isolated sales, unless said sale would rise to the minimum amount of gross income pursuant to LMC 3.02.050.

J. Accommodation Sales. This chapter shall not apply to sales for resale by persons regularly engaged in the business of making retail sales of the type of property so sold to other persons similarly engaged in the business of selling such property, where:

1. The amount paid by the buyer does not exceed the amount paid by the seller to the vendor in the acquisition of the article; and
2. The sale is made as an accommodation to the buyer to enable the buyer to fill a bona fide existing order of a customer or is made within fourteen days to reimburse in kind a previous accommodation sale by the buyer to the seller.

K. Taxes Collected as Trust Funds. This chapter shall not apply to amounts collected by the taxpayer from third parties to satisfy third party obligations to pay taxes such as the retail sales tax, use tax, and admission tax.

L. Nonprofit Corporations or Nonprofit Organizations. This chapter shall not apply to nonprofit organizations exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as hereafter amended, except with respect to retail sales of such persons.

M. Small Business Startup. This chapter shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including by-products, as the case may be, from all activities conducted within the city is equal to or less than \$500,000.00 annually and the person has conducted business within the city for a period of less than three years and has not previously conducted business within the city.

N. Amounts Derived from Manufacturing or Selling at Wholesale. This chapter shall not apply to amounts derived from manufacturing or selling at wholesale.

Section 10. Section 3.02.110 of the Lacey Municipal Code is hereby amended as follows:

3.02.110 Deductions.

In computing the license fee or tax, there may be deducted from the measure of tax the following items:

A. **Receipts from Tangible Personal Property Delivered Outside the State.** In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property that is delivered by the seller to the buyer or the buyer's representative at a location outside the state of Washington.

B. **Cash Discount Taken by Purchaser.** In computing tax, there may be deducted from the measure of tax the cash discount amounts actually taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extracting or manufacturing classifications with respect to articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the "value of product" provisions.

C. **Credit Losses of Accrual Basis Taxpayers.** In computing tax, there may be deducted from the measure of tax the amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis.

D. **Constitutional Prohibitions.** In computing tax, there may be deducted from the measure of the tax amounts derived from business which the city of Lacey is prohibited from taxing under the Constitution of the state of Washington or the Constitution of the United States.

E. Receipts from the Sale of Tangible Personal Property and Retail Services Delivered Outside the City but Within Washington. Effective January 1, 2008, A amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property delivered to the buyer or the buyer's representative outside the City but within the state of Washington may be deducted from the measure of tax under the retailing, retail services, or wholesaling classification.

F. Professional Employer Services. In computing the tax, a professional employer organization may deduct from the calculation of gross income the gross income of the business derived from performing professional employer services that is equal to the portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf

of a covered employee by the professional employer organization under a professional employer agreement.

G. Interest on Investments or Loans Secured by Mortgages or Deeds of Trust. In computing tax, to the extent permitted by Chapter 82.14A RCW, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on non-transient residential properties.

Section 11. Section 3.02A.030 of the Lacey Municipal Code is hereby amended as follows:

3.02A.030 Definitions.

For purposes of this chapter:

The definitions contained in Chapter 3.02 LMC shall apply equally to the provisions of this chapter unless the term is defined otherwise in this chapter. In addition, the following definitions will apply.

- A. "Director" "Director" means the finance director of the city of Lacey or the finance director's designee.
- B. "Reporting period." "Reporting period" means:
 - 1. A one-month period beginning the first day of each calendar month (monthly); or
 - ~~2.~~ A three-month period beginning the first day of January, April, July or October of each year (quarterly); or
 - ~~3.~~ A twelve-month period beginning the first day of January of each year (annual).
- C. "Return." "Return" means any document a person is required by the city to file to satisfy or establish a tax or fee obligation that is administered or collected by the city and that has a statutorily defined due date.
- D. "Successor." "Successor" means any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, any part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. Any person

obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

E. "Tax year," "taxable year." "Tax year" or "taxable year" means the calendar year.

Section 12. There is hereby added to the Lacey Municipal Code a new section, 3.02A.031, to read as follows:

3.02A.031 Definitions -- References to Chapter 82.32 RCW

Where provisions of Chapter 82.32 RCW are incorporated in LMC 3.02.090 of this Title, "Department" as used in the RCW shall refer to the "Director" as defined in LMC 3.02A.030 and "warrant" as used in the RCW shall mean "citation or criminal complaint."

Section 13. Section 3.02A.050 of the Lacey Municipal Code is hereby amended as follows:

3.02A.050 When due and payable - Reporting periods ~~— monthly, quarterly, and annual~~ returns - Threshold provisions or Relief from filing requirements - Computing time periods - Failure to file returns.

A. Other than any annual license fee or registration fee assessed under this chapter, the tax imposed by this chapter shall be due and payable in quarterly installments. ~~However, those businesses that are entitled to report and pay the business and occupation tax imposed by the state of Washington on an annual basis may also report and pay the tax imposed pursuant to Chapter 3.02 LMC on an annual basis.~~ At the Director's discretion, businesses may be assigned to a monthly or annual reporting period depending on the tax amount owing or type of tax. Until December 31, 2020, Tax tax payments are due on or before the last day of the next month following the end of the assigned reporting period covered by the return. Effective January 1, 2021, tax payments are due on or before the time as provided in RCW 82.32.045(1), (2), and (3).

B. Taxes shall be paid as provided in this chapter and accompanied by a return on forms as prescribed by the ~~director~~ Director. The return shall be signed by the taxpayer personally or by a responsible officer or agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is complete and true.

- C. Tax returns must be filed and returned by the due date whether or not any tax is owed.
- D. For purposes of the tax imposed by Chapter 3.02 LMC, any person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, is equal to or less than five thousand dollars (\$5,000) in the current quarter, shall file a return, declare no tax due on their return, and submit the return to the ~~director~~Director. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due.
- E. A taxpayer that commences to engage in business activity shall file a return and pay the tax or fee for the portion of the reporting period during which the taxpayer is engaged in business activity.
- F. Except as otherwise specifically provided by any other provision of this chapter, in computing any period of days prescribed by this chapter the day of the act or event from which the designated period of time runs shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or city or federal legal holiday, in which case the last day of such period shall be the next succeeding day which is neither a Saturday, Sunday, or City or Federal legal holiday.
- G. If any taxpayer fails, neglects or refuses to make a return as and when required in this chapter, the director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the director's estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the city by the taxpayer. The director shall notify the taxpayer by mail of the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

Section 14. Section 3.02A.100 of the Lacey Municipal Code is hereby amended as follows:

3.02A.100 Underpayment of tax, interest, or penalty - Interest.

- A. If, upon examination of any returns, or from other information obtained by the director, it appears that a tax or penalty less than that properly due has been paid, the director shall assess the additional amount found to be due and shall add thereto interest on the tax only. The

director shall notify the person by mail of the additional amount, which shall become due and shall be paid within thirty days from the date of the notice, or within such time as the director may provide in writing.

B. Interest and penalties:

1. Interest and penalties imposed prior to the effective date of this ordinance shall be calculated as follows:

- a. One to forty days delinquency, ten percent interest on the tax owed with a minimum penalty of five dollars (\$5.00);
- b. Forty-one to seventy days delinquency, fifteen percent interest on the tax owed with a minimum penalty of ten dollars (\$10.00);
- c. Seventy-one or more days delinquency, twenty percent interest on the tax owed with a minimum penalty of fifteen dollars (\$15.00).

2. ~~Interest imposed after the effective date of this ordinance, shall be computed from the last day of the month following the end of the reporting period and will continue to accrue until payment is made. In case of an audit the interest shall be computed from the first day of the month following each calendar year or portion thereof included in the audit period.~~ For tax periods after December 31, 2004, the Director shall compute interest in accordance with RCW 82.32.050 as it now exists or as it may be amended.

3. ~~For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal short term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year. The rate shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.~~ If LMC 3.02A.100(B)(2) is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of this ordinance shall apply.

Section 15. Section 3.02A.130 of the Lacey Municipal Code is hereby amended as follows:

3.02A.130 Late payment - Disregard of written instructions - Evasion - Penalties.

A. If payment of any tax due on a return to be filed by a taxpayer is not received by the ~~director~~Director by the due date, the ~~director~~Director shall add a penalty ~~equal to five percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, the director shall add a total penalty equal to fifteen percent of the amount of the tax; and if the tax is not received on or before the last day of the second month following the due date, the director shall add a total penalty equal to twenty-five percent of the amount of the tax. No penalty assessed herein shall be less than five dollars.~~in accordance with RCW 82.32.090(1), as it now exists or as it may be amended.

B. ~~If a tax deficiency is assessed by the director due to the tax being substantially underpaid, there shall be added a penalty equal to five percent of the amount of the deficiency. If payment of any tax deficiency assessed by the director is not received by the due date specified in the notice, or any extension thereof, the director shall assess a penalty equal to fifteen percent of the amount of the additional tax found due. If payment of any tax deficiency assessed by the director is not received on or before the thirtieth day following the due date specified in the notice, or any extension thereof, the director shall assess a penalty equal to twenty-five percent of the amount of additional tax found due. No penalty added shall be less than five dollars. As used in this subsection, "substantially underpaid" means that the taxpayer has paid less than 80% of the amount of tax determined by the director to be due for the entire period of time covered by the director's deficiency notice and the amount of underpayment is at least \$1,000.00.~~If the Director determines that any tax has been substantially underpaid as defined in RCW 82.32.090(2), there shall be added a penalty in accordance with RCW 82.32.090(2), as it now exists or as it may be amended.

C. If a citation or criminal complaint is issued for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty ~~of ten percent of the amount due, but not less than ten dollars~~in accordance with RCW 82.32.090(3), as it now exists or as it may be amended.

D. If the director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the director a license as required by Chapter 5.12 LMC, the director shall impose a penalty ~~of five percent of the amount of tax due from that person for the period that the person was not licensed~~in accordance with RCW 82.32.090(4), as it now exists or as it may be amended. No penalty shall be imposed under this subsection if the person who has engaged in business without a license obtains a license prior to being notified by the director of the need to be licensed.

E. If the director determines that all or any part of a deficiency resulted from the taxpayer's failure to follow specific written tax reporting instructions, there shall be assessed a penalty ~~of ten percent of the amount of the additional tax due~~in accordance with RCW 82.32.090(5), as it now exists or as it may be amended.

1. ~~A taxpayer fails to follow specific written tax reporting instructions when the director has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the director has not issued final instructions because the matter is under appeal pursuant to this chapter. The director shall not assess the penalty under this subsection E, upon any taxpayer that has made a good faith effort to comply with the specific written instructions provided by the director to that taxpayer.~~

2. ~~Specific written instructions may be given as a part of a tax assessment, audit, determination or closing agreement, provided that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents.~~

3. ~~Any specific written instructions by the director shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.~~

F. If the director finds that all or any part of the deficiency resulted from an intent to evade the tax payable, the director shall assess a penalty ~~of fifty percent of the additional tax found to be due~~in accordance with RCW 82.32.090(6), as it now exists or as it may be amended.

G. The penalties imposed under subsections A through ~~F~~E of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

H. ~~The penalties authorized by subsections E and G of this section shall be assessed in accordance with the provisions of this chapter governing assessment of tax deficiencies.~~ The director shall not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

I. For the purposes of this section, “return” means any document a person is required by the ~~city~~ City of Lacey to file to satisfy or establish a tax or fee obligation that is administered or collected by the city, and that has a statutorily defined due date.

J. If incorporation into the Lacey Municipal Code of future changes to RCW 82.32.090 is deemed invalid, then the provisions of RCW 82.32.090 existing at the time this ordinance is effective shall apply.

Section 16. EFFECTIVE DATE. This Ordinance shall take effect on January 1, 2020.

Section 17. SEVERABILITY. If any section, sentence, clause or phrase of this ordinance should be held to be invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 18. CORRECTIONS. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 19. The Summary attached hereto is hereby approved for publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY,
WASHINGTON, at a regularly-called meeting thereof, held this 5th day of December,
2019.

CITY COUNCIL



Mayor

Attest:



City Clerk

Approved as to form:



City Attorney

**SUMMARY FOR PUBLICATION
ORDINANCE NO 1560
CITY OF LACEY**

The City Council of the City of Lacey, Washington, passed on December 5, 2019, AN ORDINANCE RELATED TO BUSINESS AND OCCUPATION TAXES, ADDING SECTIONS 3.02.075, 3.02.076, 3.02.077, AND 3.02.078, REPEALING SECTION 3.02.090 AND AMENDING SECTIONS 3.02.040, 3.02.050, 3.02.070, 3.02.100, 3.02.110, 3.02A.030, 3.02A.031, 3.02A.050, 3.02A.100, AND 3.02A.130, ALL OF THE LACEY MUNICIPAL CODE, PROVIDING AN EFFECTIVE DATE AND APPROVING A SUMMARY FOR PUBLICATION.”

The main points of the Ordinance are described as follows:

1. The Ordinance adopts mandatory elements of the model B&O tax ordinance as required by state legislature HB 1403 and HB1059.
2. The Ordinance provides an effective date of January 1, 2020.
3. The Ordinance approves this Summary for Publication.

A copy of the full text of this Ordinance will be mailed without charge to any person requesting the same from the City of Lacey.

Published: December 9, 2019