

ORDINANCE 721

CITY OF LACEY

AN ORDINANCE READOPTING CHAPTER 3.02 OF THE LACEY MUNICIPAL CODE RELATING TO AND PROVIDING FOR A BUSINESS AND OCCUPATION TAX, PROVIDING FOR THE ESTABLISHMENT OF A SPECIAL TRUST FUND FOR THE PROCEEDS OF SUCH TAX AND SETTING FORTH PENALTIES FOR FAILURE TO COMPLY WITH SAID CHAPTER

WHEREAS, the City Council duly considered, passed, and published an ordinance or ordinances enacting the chapter of the Lacey Municipal Code identified in the title to this ordinance relating to the subject matter so identified, and

WHEREAS, it has been asserted that ordinances of the City should have been posted in three public places in the City rather than published in the City's official newspaper, and if said assertion is upheld, the validity of that portion of the Lacey Municipal Code identified in the title to this ordinance may be in jeopardy and the Council takes this action in readopting the substantive provisions of said chapter solely for the purpose of protecting the City and its citizens against such a contingency; now, therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, as follows:

Section 1. Chapter 3.02 of the Lacey Municipal Code is hereby readopted to read as follows:

Chapter 3.02  
BUSINESS AND OCCUPATION TAX

Sections:

- 3.02.010 Powers of city.
- 3.02.020 Definitions.
- 3.02.030 Quarterly payment of tax.
- 3.02.040 Records.
- 3.02.050 Failure to pay fee or tax.
- 3.02.060 Overpayment.
- 3.02.070 Return--Failure or refusal to make.
- 3.02.080 Rules and regulations.

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\* For provisions regarding the water revenue fund, see Section 13.44.050 of this code.

Sections: (Continued)

- 3.02.090 Rate.  
 3.02.100 Persons doing business both within and without the city.  
 3.02.110 Exemptions.  
 3.02.120 Deductions.

3.02.010 Powers of city. The provisions of this chapter shall be deemed an exercise of the power of the city of Lacey to license for revenue and regulation. (Ord. 398 §1(part), 1975).

3.02.020 Definitions. In construing the provisions of this chapter, except when otherwise declared or clearly apparent from the context, the following definitions shall be applied.

(1) "Clerk/treasurer" means the clerk/treasurer of the city of Lacey.

(2) "Manager" means the city manager of the city of Lacey.

(3) "City" means the city of Lacey.

(4) "Tax year" or "taxable year" shall mean either the calendar year or the taxpayer's fiscal year when permission is obtained from the clerk/treasurer to use a fiscal year in lieu of a calendar year.

(5) "Person" or "company," herein used interchangeably, means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint-stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, and includes the United States or any instrumentality thereof, provided a valid tax may be levied upon or collected therefrom under the provisions of this chapter.

(6) "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, professional or otherwise, 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.

(7) "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. The auditor may

provide by regulation that the value proceeding or accruing from sales on the installment plan under conditional contracts of sale may be reported as of dates when the payments become due.

(8) "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.

(9) "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.

(10) "Cash discount" means a deduction from the invoice price of goods or charge for services which is allowed if the bill is paid on or before a specified date.

(11) "Successor" means any person who shall, through direct or mesne conveyance, purchase or succeed to the business, or portion thereof, or the whole or any part of the stock of goods, wares or merchandise or fixtures or any interest therein of a taxpayer quitting, selling out, exchanging or otherwise disposing of his business. 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 surety or guarantor.

(12) "Taxpayer" includes any individual, group of individuals, corporation or association required to have a business license hereunder, or liable for any license fee or tax, or for the collection of any license fee or tax hereunder, or who engages in any business, or who performs any act, for which a license fee or tax is imposed by this chapter.

(13) "Quarterly period" means a three-month period beginning the first day of the following months: January, April, July and October. (Ord. 398 §1(part), 1975).

3.02.030 Quarterly payment of tax. The license fee or tax imposed by this chapter is levied and shall be effective commencing January 1, 1976, and shall be due and payable in quarterly installments and remittance therefor shall be made on or before the thirtieth day of the month next succeeding the end of the quarterly period in which the tax accrued, that is, on January 30, April 30, July 30 and October 30 of each year; provided, however, that those businesses which are entitled to report and pay the business and occupation tax imposed by the state on an annual basis may also report and pay the tax imposed by this chapter on such annual basis. The remittance shall be made to the clerk/treasurer and accompanied by a return on a form to be provided and prescribed by the clerk/treasurer. To the return the taxpayer shall be required to swear or affirm that the information therein given is full and true and that the taxpayer knows the same to be so.

First payments and returns under this chapter shall be made on or before April 30, 1976. (Ord. 608 §1, 1980: Ord. 398 §1(part), 1975).

3.02.040 Records. It shall be the duty of every person engaging in business as defined by this chapter to keep and preserve for a period of five years such books and records as will accurately reflect the amount of his gross income or gross subscriber station exchange revenues, as the case may be, and from which can be determined the amount of any fee or tax for which he may be liable under the provisions of this chapter. The term "books and records" as used in this section includes the taxpayer's copies of his federal excise tax returns, state of Washington excise tax returns, and copies of excise tax audits made by the United States or state of Washington and furnished to such person. The taxpayer's books and records shall be open for examination at all reasonable times by the clerk/treasurer or his duly authorized representative. (Ord. 398 §1(part), 1975).

3.02.050 Failure to pay fee or tax. If payment of any fee or tax due under this chapter is not received by the clerk/treasurer on or before the day it becomes due under this chapter, there shall be added a penalty in interest as follows:

- (1) One to forty days delinquency, ten percent with a minimum penalty of five dollars;
- (2) Forty-one to seventy days delinquency, fifteen percent with a minimum penalty of ten dollars;
- (3) Seventy-one or more days delinquency, twenty percent with a minimum penalty of fifteen dollars.

Any tax due and unpaid, and all penalties thereon, shall constitute a debt to the city and may be collected by court proceedings, which remedy shall be in addition to all other remedies. (Ord. 398 §1(part), 1975).

3.02.060 Overpayment. Any money paid to the city through error or otherwise not in payment of the tax imposed by this chapter or in excess of such tax shall, upon request of the taxpayer, be credited against any tax due or to become due from such taxpayer hereunder, or, upon taxpayer's ceasing to do business in the city, be refunded to the taxpayer. (Ord. 398 §1(part), 1975).

3.02.070 Return--Failure or refusal to make. Any person, firm or corporation subject to this chapter who shall fail or refuse to make the tax return or to pay the tax when due, or who shall make any false statement or representation in or in connection with such tax return, or shall otherwise violate or refuse or fail to comply with this chapter, shall be guilty of a misdemeanor. (Ord. 398 §1(part), 1975).

3.02.080 Rules and regulations. The clerk/treasurer is authorized to adopt, publish and enforce, from time to time, such rules and regulations for the proper administration of this chapter as shall be necessary, and it shall be a violation of this chapter to violate or to fail to comply with any such rule or regulation lawfully promulgated hereunder. (Ord. 608 §2, 1980: Ord. 398 §1(part), 1975).

3.02.090 Rate. There is levied upon and there shall be collected from every person as hereinafter provided, for the act or privilege of engaging in business activities, a license fee or occupation tax, sometimes herein referred to as the "tax," in an amount equal to the gross income of the business multiplied by the rate of one-tenth of one percent, provided that the rate for those businesses and service activities defined in RCW 82.04.290 shall be two-tenths of one percent. (Ord. 608 §2, 1980: Ord. 398 §1(part), 1975).

3.02.100 Persons doing business both within and without the city. Persons engaged in the business of rendering services both within and without the city, or partially within and partially without the city, shall be taxable under Section 3.02.090 only on the gross income which is derived from services rendered within the city. (Ord. 424 §1, 1976: Ord. 398 §1(part), 1975).

3.02.110 Exemptions. Except as hereinafter provided, the provisions of Section 3.02.090 shall not apply to:

(1) Any person engaging in any business activity where the gross income of the business is less than one thousand dollars for a quarterly period; provided, however, that when one person engages in more than one business activity and the combined activities equal or exceed one thousand dollars for the quarterly period, no exemption from the tax is allowed by this provision; provided, further, that any person claiming exemption under the provisions of this subsection may be required by the clerk/treasurer to file returns as provided herein, even though no tax may be due.

(2) Any business or occupation which, by the laws of the state of Washington or by the laws of the United States, the city of Lacey is prohibited from taxing.

(3) Any person in respect to his employment in the capacity of an employee or servant as distinguished from that of an independent contractor.

(4) The gross income received by the United States or any instrumentality thereof and by the state of Washington or any municipal subdivision thereof.

(5) Amounts derived from the lease, rental or sale of real estate; provided, however, that nothing herein shall be construed to allow a deduction of amounts derived from engaging in any business herein a mere license to use or enjoy real property is granted, or to allow a deduction of amounts received as commission from the sale or rental of real estate.

(6) Nonprofit or charitable organizations set up under the laws of the state of Washington or any other state or territory of the United States, but not as to any business activities by such entities, which business activities shall be taxable hereunder. (Ord. 398 §1(part), 1975).

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

(1) Amounts derived by persons, other than those engaged 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;

(2) Amounts derived from bona fide initiation fees, dues, contributions, donations, tuition fees and endowment funds on nonprofit or charitable organizations. This paragraph shall not be construed to exempt any person, association, or society from tax liability upon selling the tangible personal property or upon providing facilities or services for which a special charge is made to members or others. Dues which are for, or graduated upon, the amount of service rendered by the recipient thereof are not permitted as a deduction hereunder;

(3) The amount of cash discount actually taken by the purchaser;

(4) The amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis;

(5) So much of the sale price of motor vehicle fuel as constitutes the amount of tax imposed by the state or the United States government upon the sale thereof;

(6) Amounts derived from businesses which the city is prohibited from taxing under the Constitution or laws of this state or the Constitution or laws of the United States;

(7) Amounts derived as compensation for services rendered or to be rendered to patients by a hospital, as defined in RCW Chapter 70.41, devoted to the care of human beings with respect to the prevention or treatment of disease, sickness or suffering, when such hospital is operated by the United States or any of its instrumentalities, or by the state, or any of its political subdivisions;



(8) Amounts derived as compensation for services rendered to patients by a hospital, as defined in RCW Chapter 70.41, which is operated as a nonprofit corporation, nursing homes and homes for unwed mothers operated as religious or charitable organizations, but only if no part of the net earnings received by such an institution inures directly or indirectly to any person other than the institution entitled to deduction hereunder. In no event shall any such deduction be allowed, unless the hospital building is entitled to exemption from taxation under the property tax laws of this state;

(9) By those engaged in banking, loan security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgage or trust deeds on nontransient residential properties;

(10) By those engaged in banking, loan, security or other financial businesses, amounts derived from interest paid on all obligations of the state of Washington, its political subdivisions, and municipal corporations organized pursuant to the laws thereof;

(11) Amounts derived as interest on loans by a lending institution which is owned exclusively by its borrowers or members and which is engaged solely in the business of making loans for agricultural production;

(12) Amounts derived from those activities on which the city has levied a tax pursuant to Chapter 3.06 of this code, known as the "gambling tax";

(13) Amounts derived from manufacturing or selling at wholesale. (Ord. 424 §2, 1976; Ord. 398 §1(part), 1975).

Section 2. It is the intent of the City Council in passing this ordinance to readopt the provisions set forth herein only if said readoption is ruled necessary. It is further the intent of the City Council to reaffirm all of the provisions of Chapter 3.02 of the Lacey Municipal Code as originally adopted and further amended by ordinances of this Council.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY,  
WASHINGTON this 28th day of March, 1985.

CITY COUNCIL

By   
Mayor

Attest:

  
City Clerk

Approved as to form:

  
City Attorney

Posted: March 29, 1985