

ORDINANCE NO. 2002-12-106

AN ORDINANCE OF THE CITY OF BELLINGHAM ADOPTING NEW BELLINGHAM MUNICIPAL CODE CHAPTER 6.05, ADMINISTRATIVE PROVISIONS FOR CERTAIN TAXES.

WHEREAS, the City is enacting a new business and occupation tax code as Bellingham Municipal Code Chapter 6.04; and,

WHEREAS, the business and occupation taxes implemented by other Washington cities can be inconsistent from jurisdiction to jurisdiction; and,

WHEREAS, the City desires to administer its business and occupation tax code in a fairer and more consistent manner in relation to other Washington jurisdictions; and,

WHEREAS, the Association of Washington Cities, in conjunction with a majority of the Washington cities with a business and occupation tax, developed model administrative provisions to achieve a fairer and more consistent state wide administration of business and occupation taxes;

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Bellingham Municipal Code Chapter 6.05 shall provide as follows:

6.05.010 Purpose

This Chapter is enacted based upon model administrative provisions developed by a coalition of Washington cities that have enacted a business and occupation tax. By enacting these administrative tax provisions, the City hopes to create greater uniformity and consistency among Washington municipal taxing jurisdictions and, to the extent feasible, make it easier for taxpayers working in multiple Washington taxing jurisdictions. However, the provisions of this Chapter are not intended to be exactly the same as other Washington taxing jurisdictions and are not intended to be modified by administrative rulings from other jurisdictions. They are intended to specifically preserve sufficient flexibility for the City of Bellingham.

6.05.015 Application of Chapter

The provisions of this chapter shall apply with respect to those taxes imposed under Bellingham Municipal Code Chapter 6.04 and under other titles, chapters, and sections in such manner and to such extent as indicated in each such title, chapter or section.

6.05.020 Definitions

For purposes of this chapter, the definitions contained in Bellingham Municipal Code Chapter 6.04.030 shall apply equally to the provisions of this chapter unless the term is defined otherwise in this chapter. In addition, the following definitions shall apply:

"Code": "Code" shall mean the Bellingham Municipal Code.

"Records": "Records" shall include, but not be limited to, books, records, papers, invoices, vendor lists, inventories, stocks of merchandise, and other data including federal income tax and state tax returns and reports.

"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").

"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.

"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.

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

6.05.025 Business Registration – Terms – Application

A. No person, whether subject to the payment of a tax or not, shall engage in any business or activity in the City for which a fee or tax is imposed by this chapter without having first obtained and being the holder of a valid and subsisting registration to do so, to be known as a business registration certificate, issued under the provision of this chapter and without having paid the fee or tax imposed by this chapter and, in addition, the registration fee as administratively established and promulgated in writing by the Director, which shall accompany the application therefor.

B. The business registration certificate issued hereunder shall be valid as long as the person to whom the same is issued continues in business and pays the fees and taxes due pursuant to the provisions of this chapter. Application for a business registration certificate shall be made to and issued by the Director on forms provided and pursuant to procedures adopted for that purpose.

6.05.030 Business Registration Certificate – Non-transferability – Separate Certificate Required – Contents – Change of Location

A. Such certificate shall be personal and nontransferable. A new certificate is required any time the person, business entity, ownership or form of doing business changes.

B. In case business is transacted in the City at two or more separate places by one taxpayer, a separate certificate for each place at which business is transacted with the public shall be required and separate tax reports must be submitted for each business location.

C. Each certificate shall be numbered, shall show the name and place of business of the taxpayer, such other information as the Director shall deem necessary, and shall at all times be conspicuously posted in the place of business for which it is issued.

D. Where a place of business of the taxpayer is changed, the taxpayer shall return to the Director the certificate and a new certificate shall be issued for the new place of business free of charge. In the event a certificate is lost or stolen, a new one shall be issued at no cost.

E. No person to whom a certificate has been issued pursuant to this chapter shall suffer or allow any other person for whom a separate certificate is required to operate under or display his or her certificate; nor shall such other person operate under or display such certificate.

6.05.040 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 or chapter 6.04 of the Code shall be due and payable in annual installments. At the Director's discretion, businesses may be assigned to a quarterly or monthly reporting period depending on the tax amount owing or type of 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.

B. Taxes shall be paid as provided in this chapter and accompanied by a return on forms as prescribed by the 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 full and true.

C. Tax returns must be filed and returned by the due date whether or not any tax is owed. Returns not received on or before the due date are subject to penalties and interest in accordance with this chapter.

D. Notwithstanding subsection (A) of this section, a person shall not owe any tax under this chapter and chapter 6.04 of this Code if the following conditions are met:

(1) The person's gross income of the business from all activities taxable under chapter 6.04 of this Code is less than \$20,000 dollars per year if assigned an annual reporting period or \$5,000 dollars per year if assigned a quarterly reporting period; and

(2) The person is not required to collect or pay to the City any other tax or fee which the City is authorized to collect.

Regardless of reporting period assigned, any person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, does not exceed the threshold amount in the current calendar year or calendar quarter, shall file a return, declare no tax due on their return, and submit the return to the Director. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due.

E. A taxpayer who 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 subject to the conditions set forth in subsection D above.

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.

6.05.050 Payment methods - Mailing returns or remittances - Time extension - Deposits - Recording payments - Payment must accompany return - NSF checks.

A. Taxes shall be paid to the Director in United States currency by bank draft, certified check, cashier's check, personal check, money order, cash, or by wire transfer or electronic payment if such wire transfer or electronic payment is authorized by the Director. If payment so received is not paid by the bank on which it is drawn, the taxpayer, by whom such payment is tendered, shall remain liable for payment of the tax and for all legal penalties and administrative fees, the same as if such payment had not been tendered. Acceptance of any sum by the Director shall not discharge the tax or fee due unless the amount paid is the full amount due.

B. A return or remittance which is transmitted to the City by United States mail shall be deemed filed or received on the date shown by the cancellation mark stamped by the Post Office upon the envelope containing it. The Director may allow electronic filing of returns or remittances from any taxpayer. A return or remittance that is transmitted to the City electronically shall be deemed filed or received according to procedures set forth by the Director.

C. If the taxpayer submits a written request detailing the reasons for the requested extension that is received prior to the due date, the Director, for good cause, may grant, in writing, additional time within which to make and file returns.

D. The Director shall keep full and accurate records of all funds received or refunded. The Director shall apply payments first against all penalties and interest owing, and then upon the tax, without regard to any direction of the taxpayer.

E. For any return not accompanied by a remittance of the tax shown to be due thereon, the taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the penalties and interest provided in this chapter.

F. Any payment made that is returned for lack of sufficient funds or for any other reason will not be considered received until payment by certified check, money order, or cash of the original

amount due, plus a "non-sufficient funds" (NSF) charge in an amount as established and promulgated in writing by the Director is received by the Director. Any registration certificate issued upon payment with a NSF check will be considered void, and shall be returned to the Director.

G. The Director is authorized, but not required, to mail tax return forms to taxpayers, but failure of the taxpayer to receive any such forms shall not excuse the taxpayer from filing returns and making payment of the taxes or fees, when and as due under this chapter.

6.05.060 Records to be preserved - Examination - Estoppel to question assessment

A. Every person liable for any fee or tax imposed by this Chapter or Chapter 6.04 shall keep and preserve, for a period of five (5) years after filing a tax return, such records as may be necessary to determine the amount of any fee or tax for which the person may be liable; which records shall include copies of all federal income tax and state tax returns and reports made by the person. All records shall be open for examination at any time during normal business hours by the City or its duly authorized agent.

B. If a person does not keep the necessary books and records within the City, it shall be sufficient if such person (a) produces within the City such books and records as may be required by the Director, or (b) bears the cost of examination by the Director's agent at the place where such books and records are kept; provided that the person electing to bear such cost shall pay in advance to the Director the estimated amount thereof including round-trip fare, lodging, meals and incidental expenses, subject to adjustment upon completion of the examination.

C. Any person who fails, or refuses the Director's request, to provide or make available records shall be forever barred from questioning in any administrative or court proceeding or action, the correctness of any assessment of taxes made by the City for any period for which such records have not been provided, made available or kept and preserved. The Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the estimate of the tax or fees due. Such fee or tax assessment shall be deemed prima facie correct and shall be the amount of tax owing the City by the taxpayer. The Director shall notify the taxpayer by mail 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.

D. Any person who fails to pay all taxes and fees due to the City may be barred from contracting with the City until such time as all taxes and fees are paid in full.

6.05.070 Accounting methods

A. A taxpayer may file tax returns in each reporting period with amounts based upon cash receipts only if the taxpayer's books of account are kept on a cash receipts basis. A taxpayer that does not regularly keep books of account on a cash receipts basis must file returns with amounts based on the accrual method.

B. The taxes imposed and the returns required, hereunder, shall be upon a calendar year basis.

6.05.080 Public work contracts - Payment of fee and tax before final payment for work

The Director may, before issuing any final payment to any person performing any public work contract for the City, as defined by RCW 39.04.010, require such person to pay in full all license fees or taxes due under this title from such person on account of such contract or otherwise, and may require such taxpayer to file with the Director a verified list of all subcontractors supplying labor and/or materials to the person in connection with said public work.

6.05.090 Underpayment of tax, interest, or penalty - Interest – Limitations

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 in full within thirty (30) days from the date of the notice, or within such time as the Director may provide in writing.

B. (1) 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.

(2) 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, for the months of January, April, July, and October of the year immediately preceding the calendar year as published by the United States Secretary of the Treasury. The rate shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

C. The Director shall not assess, or correct an assessment for, additional taxes, penalties, or interest due more than four years after the close of the calendar year in which they were due, except that the Director may issue an assessment:

(1) Against a person who is not currently registered or licensed or has not filed a tax return as required by this chapter for taxes due within the period commencing 10 years prior to the close of the calendar year in which the person was contacted in writing by the Director.

(2) Against a person that has committed fraud or who misrepresented a material fact;

OR

(3) Against a person that has executed a written waiver of such limitations.

6.05.100 Over payment of tax, penalty, or interest – Credit or refund – Interest rate - Statute of limitations.

A. If, upon receipt of an application for a refund, or during an audit or examination of the taxpayer's records and tax returns, the Director determines that the amount of tax, penalty, or interest paid is in excess of that properly due, the excess amount shall be credited to the taxpayer's

account or shall be refunded to the taxpayer. Except as provided in subsection (2) of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four (4) years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

B. The execution of a written waiver shall extend the time for applying for, or making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the Director discovers that a refund or credit is due.

C. Refunds shall be made by means of vouchers approved by the Director and by the issuance of a City check or warrants drawn upon and payable from such funds as the City may provide.

D. Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest, or costs paid by any person shall be paid in the same manner, as provided in subsection (C) of this section, upon the filing with the Director a certified copy of the order or judgment of the court.

E. For refunds or credits of amounts paid or other recovery allowed to a taxpayer after the Effective date of the Ordinance, the rate of interest shall be the federal short term interest rate as outlined for assessments under 6.05.090(B)(2) less two percentage points.

6.05.110 Late Payment – Disregard of Written Instructions – Evasion – Penalties

A. If the Director does not receive a return or payment of any tax due on a return to be filed by a taxpayer by the due date, the Director shall add a penalty equal to the greater of:

1. Five percent (5%) of the amount of the tax or ten dollars (\$10.00) if not received by the due date;
2. Ten percent (10%) of the amount of the tax or fifteen dollars (\$15.00) if not received on or before the last day of the month following the due date;
3. Twenty percent (20%) of the amount of the tax or twenty dollars (\$20.00) if not received on or before the last day of the second month following the due date.

B. If payment of any tax assessed by the Director is not received by the due date specified in the notice, or any extension thereof, the Director shall add a penalty equal to the greater of ten percent (10%) of the amount of the additional tax found due, or ten dollars (\$10.00).

C. 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 twenty-five percent (25%) of the amount of the additional tax due.

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. The Director shall not assess the penalty under this subsection 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.

D. 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 (50%) of the additional tax found to be due.

E. The aggregate of penalties imposed under subsections (A.) and (B.) of this section shall not exceed thirty percent (30%) of the tax due, and shall not be less than twenty dollars (\$20.00). This subsection does not prohibit or restrict the application of other penalties authorized by law.

F. The penalties authorized by subsection (C.) and (D.) shall be assessed in accordance with the provisions of this chapter governing assessment of tax. 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.

6.05.120 Cancellation of penalties.

A. The Director may cancel any penalties imposed under subsections 6.05.110 A. and B. if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the taxpayer shows that it exercised ordinary business care and prudence in making arrangements to file the return and pay the tax but was, nevertheless, due to circumstances beyond the taxpayer's control, unable to file or pay by the due date. The Director has no authority to cancel any other penalties or to cancel penalties for any other reason except as provided in subsection C of this section.

B. A request for cancellation of penalties must be received by the Director within 30 days after the date the Department mails the notice that the penalties are due. The request must be in writing and contain competent proof of all pertinent facts demonstrating that the failure to timely file or pay the tax was due to reasonable cause and not to the taxpayer's willful neglect. In all cases the burden of proving the facts rest upon the taxpayer.

C. The Director may cancel the penalties in subsections 06.05.110(A.) and (B.) one time if a person:

1. is not currently licensed and filing returns; and,
2. had a good faith unawareness of its responsibility to file and pay tax; and,
3. obtained business licenses and filed past due tax returns within 30 days after being notified by the Department.

D. The Director shall not cancel any interest charged upon amounts due.

6.05.130 Taxpayer quitting business - Liability of successor.

A. Whenever any taxpayer quits business, sells out, exchanges, or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable. Such taxpayer shall, within ten (10) days thereafter, make a return and pay the tax due.

B. Any person who becomes a successor shall become liable for the full amount of any tax owing. The successor shall withhold from the purchase price a sum sufficient to pay any tax due to the city from the taxpayer until such time as: a) the taxpayer shall produce a receipt from the City showing payment in full of any tax due or a certificate that no tax is due, or b) more than six (6) months has passed since the successor notified the Director of the acquisition and the Director has not issued and notified the successor of an assessment.

C. Payment of the tax by the successor shall, to the extent thereof, be deemed a payment upon the purchase price. If such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due such successor from the taxpayer.

D. Notwithstanding the above, if a successor gives written notice to the Director of the acquisition, and the Department does not within six (6) months of the date it received the notice issue an assessment against the taxpayer and mail a copy of that assessment to the successor, the successor shall not be liable for the tax.

6.05.140 Administrative Appeal.

Any taxpayer, except one who has failed to comply with section 6.05.060 of this Code, who feels aggrieved by the amount of the fee or tax determined by the Director to be required under the provisions of this chapter may appeal from such finding by filing a written notice of appeal with the City's Hearing Examiner within 30 days from the time such taxpayer was given notice of such amount. A filing fee as determined under BMC 2.56 shall be submitted with the appeal, which filing fee is required to process the appeal. Payment of the amount assessed shall be paid before the appeal to the Hearing Examiner can be heard. The Hearing Examiner shall, under the procedures of BMC 2.56, fix a time and place for the hearing of such appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the parties. The hearing shall be conducted in accord with the provisions of BMC 2.56. The decision of the Hearing Examiner shall indicate the correct amount of the fee or tax owing. The appellant may seek judicial review of the decision to the Whatcom County Superior Court. The City shall have the same right of review from a decision as does a taxpayer.

6.05.150 Judicial Review of Hearing Examiner Decision.

Any taxpayer, except one who has failed to comply with section 6.05.060 of this Code, who has paid any tax as required and who feels aggrieved by the amount of the tax, and after first exhausting the right of administrative appeal set forth in this chapter, may seek judicial review in the Whatcom County Superior Court within 21 days of the entry of the City's final administrative decision. The taxpayer shall set forth the amount of the tax imposed upon the taxpayer that the taxpayer concedes to be the correct amount of tax and the reason why the tax imposed should be reduced or abated. The appealing party shall serve a copy of the application for writ upon the opposing party within the time herein specified and shall file the original thereof, with proof of service with the Clerk of the Superior Court of Washington for Whatcom County. The trial in the Superior Court on appeal shall be based upon the administrative record. The burden shall rest upon the

taxpayer to prove that the tax as paid by the taxpayer is incorrect, either in the whole or in part, and to establish the correct amount of the tax.

6.05.160 Director to make rules.

The Director shall have the power, from time to time, to adopt, publish and enforce rules and regulations not inconsistent with this chapter or with law for the purpose of carrying out the provisions of this chapter and it shall be unlawful to violate or fail to comply with, any such rule or regulation.

6.05.170 Ancillary allocation authority of Director.

The Director is authorized to enter into agreements with other Washington cities which impose an "eligible gross receipts tax", as defined in BMC 6.04.030, to do any of the following:

(1) Conduct a joint audit of a taxpayer by using an auditor employed by the City of Bellingham, another city, or a contract auditor;

(2) Allocate or apportion the gross proceeds of sales, gross receipts, or gross income of the business, or taxes due from any person that is required to pay an eligible gross receipts tax to more than one Washington city;

(3) Apply the City's tax prospectively where a taxpayer has no office or place of business within the City and has paid tax on all gross income to another Washington city where the taxpayer is located; provided that the other city maintains an eligible gross receipts tax, and the income was not derived from contracts with the City.

6.05.180 Mailing of Notices.

Any notice required by this chapter to be mailed to any taxpayer or licensee shall be sent by ordinary mail, addressed to the address of the taxpayer or licensee as shown by the records of the Director. Failure of the taxpayer or licensee to receive any such mailed notice shall not release the taxpayer or licensee from any tax, fee, interest, or any penalties thereon, nor shall such failure operate to extend any time limit set by the provisions of this chapter. It is the responsibility of the taxpayer to inform the Director in writing about a change in the taxpayer's address.

6.05.190 Tax declared additional.

The fee and tax levied under BMC 6.04 shall be additional to any other fee or tax imposed or levied under any law or any other ordinance of the City of Bellingham except as otherwise expressly provided.

6.05.200 Public disclosure – Confidentiality - Information sharing.

A. The City shall not disclose any tax information that would violate the Washington state Public Disclosure Act (Chapter 42.17 of the Revised Code of Washington) or any other law prohibiting disclosure of tax information, as that term may be defined by law.

B. RCW 82.32.330(3)(i), as currently enacted, allows disclosure of taxpayer information to other certain designated governmental entities for official purposes but only if those governmental entities grant substantially similar disclosure privileges to the City of Bellingham. Accordingly,

Council grants reciprocity to those governmental entities identified in RCW 82.32.330(3)(l), as that section is currently enacted or as it may hereafter be modified, that grant reciprocity to the City of Bellingham, provided that those governmental entities shall not further disclose the tax information except as authorized by law.

C. Nothing in this section shall prevent the use of tax information by the City or any other agency in any civil or criminal action involving any license, tax, interest, or penalty or as otherwise may be authorized by law.

6.05.210 Tax constitutes debt.

Any fee or tax due and unpaid under this chapter, and all interest and penalties thereon, shall constitute a debt to the City of Bellingham and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

6.05.220 Unlawful actions - Violation - Penalties.

A. It shall be unlawful for any person under this Code:

1. To violate or fail to comply with any of the provisions of this chapter or any other lawful rule or regulation adopted by the Director; or,
2. To make any false statement on any license application or tax return; or,
3. To aid or abet any person in any attempt to evade payment of a fee or tax; or,
4. To fail to appear or testify in response to a subpoena issued pursuant to BMC 2.56; or,
5. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this Chapter.
6. To continue to engage in business after the revocation of a business registration certificate.

B. Violation of any of the provisions of this chapter is a gross misdemeanor. Any person convicted of a violation of this chapter may be punished by a fine not to exceed \$1,000, imprisonment not to exceed one year, or both fine and imprisonment. Penalties or punishments provided in this chapter shall be in addition to all other penalties provided by law.

6.05.230 Suspension or Revocation of business registration.

A. The Director, or designee, shall have the power and authority to suspend or revoke any registration issued under the provisions of Title 6 of this Code. The Director, or designee, shall notify such taxpayer in writing by certified mail of the suspension or revocation of his or her registration and the grounds therefor. Any registration issued under Title 6 of this Code may be suspended or revoked based on one or more of the following grounds:

1. The registration was procured by fraud or false representation of fact.
2. The taxpayer failed to comply with any provisions of this Title 6 of the BMC.

3. The taxpayer failed to comply with any provisions of this Code.
4. The taxpayer is in default in any payment of any fee or tax under this Code.

B. Any taxpayer may, within 10 days from the date that the suspension or revocation notice was mailed to the taxpayer, appeal from such suspension or revocation by filing a written notice of appeal ("petition") setting forth the grounds therefor with the Hearing Examiner. A copy of the petition must be provided by the taxpayer to the Director and the City Attorney on or before the date the petition is filed with the Hearing Examiner. The hearing shall be conducted in accordance with the procedures for hearing contested cases set out in BMC 2.56 as currently enacted or hereafter modified. After the hearing thereon the Hearing Examiner shall, after appropriate findings of fact, and conclusions of law, affirm, modify, or overrule the suspension or revocation and reinstate the registration, and may impose any terms upon the continuance of the registration.

C. No suspension or revocation of a registration issued pursuant to the provisions of this subchapter shall take effect until 10 days after the mailing of the notice thereof by the Department, and if appeal is taken as herein prescribed the suspension or revocation shall be stayed pending final action by the Hearing Examiner. All registrations that are suspended or revoked shall be surrendered to the City on the effective date of such suspension or revocation.

D. The decision of the Hearing Examiner shall be final. The taxpayer and/or the Department may seek review of the decision by the Superior Court of Washington in and for Whatcom County within 21 days from the date of the decision. If review is sought as herein prescribed the suspension or revocation shall be stayed pending final action by the Superior Court.

E. Upon revocation of any registration as provided in this subchapter no portion of the registration fee shall be returned to the taxpayer.

6.05.240 Closing agreement provisions.

The Director may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the chapters within this title and administered by this chapter for any taxable period(s). Upon approval of such agreement, evidenced by execution thereof by the Director and the person so agreeing, the agreement shall be final and conclusive as to the tax liability or tax immunity covered thereby, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon, or the agreement modified, by the Director or the taxpayer, and

(2) In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

6.05.250 Charge-off of uncollectible taxes.

The Director may charge off any tax, penalty, or interest that is owed by a taxpayer, if the Director ascertains that the cost of collecting such amounts would be greater than the total amount that is owed or likely to be collected from the taxpayer. Any charge off greater than \$15,000 must receive prior City Council approval.

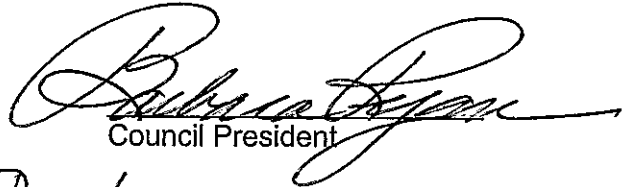
6.05.250 Serverability

If any provision of this chapter or its application to any person or circumstance is held invalid for any reason, the remainder of the chapter or the application of the provision or chapter to other persons or circumstances shall not be affected.

Section 2. Effective date.

This ordinance shall take effect on April 1, 2003.

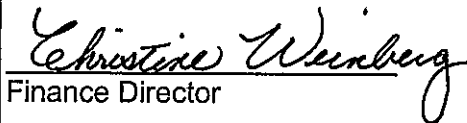
PASSED by Council this 16TH day of DECEMBER, 2002.


Council President

APPROVED by me this 30th day of December, 2002.


Mayor

ATTEST:


Finance Director

APPROVED AS TO FORM:


Office of the City Attorney

Published: DECEMBER 20, 2002