

Subject: Ordinance #1501 – Updating Chapter 5.20 – Utility Taxes

Dept. Origin: Mayor’s Office

**Prepared by: Jennifer Robertson
 City Attorney’s Office**

For Agenda of: April 17, 2018

Proposed Council Action:

Exhibits: Ordinance #1501

First Reading of Ordinance #1501. Discuss And give direction to staff. Unless directed Otherwise, this Ordinance will come back for Second Reading and Adoption on May 1, 2018.

	Initial & Date
Concurred by Mayor:	_____
Approved/form by City Atty:	<u>JSR/4-11-18</u>
Approved by _____ Director:	_____
Approved by Department Head:	_____

INFORMATION / BACKGROUND

The City of Ruston has the authority to levy utility taxes under Washington law.¹ Under Washington law the City may levy utility tax upon Cable TV, electricity, gas, sewer, storm water, solid waste, steam, telephone services, and water. The City first adopted its utility tax code (Chapter 5.20 RMC) was first enacted in 2010 and the chapter is in need of an update, including language cleanup.

Given that the City is in the process of negotiating a solid waste collection permit for collection at Point Ruston with the City of Tacoma, the City investigated the Tacoma utility taxes. The City of Tacoma levies 8% utility tax on solid waste and sewer / storm water. While telephones, electricity and gas are limited to a 6% utility tax rate without a vote of the people, solid waste and sewer/storm water are not so limited. In order to bring Ruston in line with Tacoma, the City’s utility tax code revisions are recommended.

The revisions to Chapter 5.20 RMC include:

- Housekeeping amendments (Sections 5.20.010, 5.20.050, 5.20.060);
- Additional definitions in Section 5.20.030, including adding definitions for cable television, gross proceeds of sale, gross revenue, gas distribution business, light and power business, network telephone business, person, sewer system business, solid waste, solid waste collection business, tax payer, telecommunication company, telephone business and water distribution business;

¹ RCW 35A.82.020.

- Adding new categories of utility taxes (solid waste and sewer/storm water) in Section 5.20.030;
- Adding new categories of deductions in Section 5.20.040;
- Updating and improving underpayment procedures in Section 5.20.080;
- Adding the following new sections:
 - Addressing misallocation of cellular service income (Section 5.20.035);
 - Creating a right of the City to audit (Section 5.20.070);
 - Providing for late payment penalties (Section 5.20.090);
 - Providing an appeals process (Section 5.20.100);
 - Establishing the right of the Clerk-Treasurer (Section 5.20.110); and
- Providing a referendum clause for portion of this ordinance as required by law.

RECOMMENDATION / MOTION

This is scheduled for First Reading. No action is requested. Unless directed otherwise, this Ordinance will be brought back for Second Reading and Action on May 1, 2018.

ORDINANCE NO. 1501

AN ORDINANCE OF THE CITY OF RUSTON, WASHINGTON, UPDATING CHAPTER 5.20 OF THE RUSTON MUNICIPAL CODE, RENAMING CHAPTER 5.20 “UTILITY TAX”, AMENDING SECTIONS 5.20.010, 5.20.050, 5.20.060 FOR HOUSEKEEPING PURPOSES, AMENDING SECTIONS 5.20.020 “DEFINITIONS” TO ADD NEW DEFINITIONS, 5.20.030 TO IMPOSE NEW CATEGORIES OF UTILITY TAXES, 5.20.040 TO ADD NEW CATEGORIES OF DEDUCTIONS, 5.20.080 TO ADDRESS UNDERPAYMENT PROCEDURES, RENUMBERING 5.20.070 “VIOLATIONS” TO 5.20.120 AND MAKING HOUSEKEEPING CHANGES, ADDING NEW SECTIONS 5.20.015 (GENERAL OVERVIEW), 5.20.035 (CELLULAR SERVICE INCOME ALLOCATION AND ADMINISTRATION), 5.20.070 (RIGHT TO AUDIT), 5.20.090 (LATE PAYMENT PENALTIES), 5.20.100 (APPEALS) AND 5.20.110 (CLERK-TREASURER TO MAKE RULES), PROVIDING FOR REFERENDUM FOR CERTAIN PORTIONS OF THIS ORDINANCE, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in accordance with RCW 35A.82.020 the City of Ruston has the authority to levy utility taxes; and

WHEREAS, under Washington law the City may levy utility tax upon Cable TV, electricity, gas, sewer, stormwater, solid waste, steam, telephone services, and water; and

WHEREAS, the utility tax code was first enacted in 2010 and is in need of an update; and

WHEREAS, the City of Tacoma levies 8% utility tax on solid waste and sewer/stormwater; and

WHEREAS, the City Council deems it in the best interests of the City of Ruston to also levy an 8 percent utility tax on these businesses; and

WHEREAS, this Ordinance was introduced at a Regular City Council meeting for first reading on April 17, 2018; and

WHEREAS, this Ordinance was adopted at a Regular City Council meeting during second reading on May 1, 2018; **NOW, THEREFORE,**

**THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON DOES
HEREBY ORDAIN AS FOLLOWS:**

Section 1. The Title of Chapter 5.20 of the Ruston Municipal Code is hereby amended to read as follows:

Chapter 5.20 - UTILITY TAX-RATES

Section 2. Section 5.20.010 of the Ruston Municipal Code is hereby amended to read as follows:

5.20.010 - Power to license for revenue.

The provisions of this chapter shall be deemed to be an exercise of the power of the ~~Town~~City to license for revenue.

Section 3. A new section 5.20.015 is hereby added to the Ruston Municipal Code to read as follows:

5.20.015 – Utility Taxes, generally.

There are levied and shall be collected utility taxes against the persons on account of the business activities, and in the amounts to be determined by the application of the rates against gross income, as set forth in this chapter.

Section 4. Section 5.20.020 of the Ruston Municipal Code is hereby amended to read as follows:

5.20.020 - Definitions.

Unless the context clearly indicates otherwise, the words, phrases and terms used in this chapter shall have the following meanings:

“Cable television services” means the one-way transmission of video programming and associated nonvideo signals to subscribers together with subscriber interaction, if any, which is provided in connection with video programming.

"Cellular telephone service" means a two-way voice and data telephone/telecommunications system based in whole or substantially in part on wireless radio communications which is not subject to regulation by the Washington State Utilities and Transportation Commission (WUTC). This includes cellular mobile service. The definition of cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications

technology which accomplishes a purpose similar to cellular mobile service. Cellular telephone service is included within the definition of "telephone business" for the purposes of this chapter.

“Chapter” shall mean Chapter 5.20 RMC, as it may be amended or replaced from time to time.

~~“Telephone business” means the business of providing access to local telephone network, local telephone switching service, toll service, or coin telephone services, or providing telephonic, video, data or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. It includes cooperative or farmer line telephone companies or associations operating an exchange. “Telephone business” does not include the providing of competitive service.~~

"Competitive telephone service" means the providing by any person of telephone equipment, apparatus, or service, other than toll service, which is of a type which can be provided by persons that are not subject to regulation as telephone companies under RCW Title 80 and for which a separate charge is made.

“Gas distribution business” means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

“Gross proceeds of sale” or “gross income of business” means the value proceeding or accruing from the sale of tangible personal property and/or for 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.

“Gross revenue” means revenues received by a utility or business from operations or sales within the city less net uncollectibles. Gross revenue of natural, artificial or mixed gas and electric utilities shall include revenues from the use, rental or lease of operating facilities of the utility other than residential-type space and water heating equipment. Gross revenues shall not include charges which are passed onto the subscribers by a utility pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this section. Gross revenues of telephone utilities shall include 100 percent of the toll service fees from calls originating in and/or billed to subscribers within the City of Ruston including revenue from providing access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, telephonic, video, data or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system, including transmission of communication for cellular telephones or other wireless phone service. Gross revenues of cable television utilities shall include revenues from the one-way transmission of video programming and associated non-video signals to subscribers which is provided in connection with video programming

“Light and power business” means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

"Maximum percentage allowed under RCW 35.21.870" shall mean the maximum rate of taxation the ~~Town~~City is allowed to impose under RCW 35.21.870, in its current form or as

hereafter amended, without the approval of a majority of the voters of the ~~Town~~City voting on a proposition to increase said maximum rate.

"Network telephone business" means the business of providing access to local telephone network, local telephone switching service, toll service, or coin telephone services, or providing telephonic, video, data or similar communication or transmission for hire, via a local telephone network, toll line or changes, or similar communication or transmission system. It includes cooperative or farmer line telephone companies or associations operating an exchange. "Telephone business" does not include the providing of competitive service.

"Person" or "persons" mean persons of either sex, firms, co-partnerships, corporations and other associations of natural persons, whether acting by themselves or by servants, agents or employees.

"Sewerage system business" means and includes:

1. Sanitary sewage disposal sewers and facilities, including without limitation on-site or off-site sanitary sewer facilities consisting of an approved septic tank or septic tank systems, or any other means of sewage treatment and disposal;
2. Combined sanitary sewage disposal and storm or surface water drains and facilities;
3. Storm or surface water drains, channels and facilities;
4. Outfalls for storm drainage or sanitary sewage and works, plants, and facilities for storm drainage or sanitary sewage treatment and disposal;
5. Any combination of or part of any or all of such facilities.

"Solid waste" or "wastes" means all putrescible and non-putrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction waste, abandoned vehicles or parts thereof, and recyclable materials.

"Solid waste collection business" means every person who receives solid waste or recyclable materials for transfer, storage, or disposal including but not limited to all collection services, public or private solid waste disposal sites, transfer stations, and similar operations.

"Taxpayer" means any person liable for taxes imposed by this chapter.

"Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

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

"Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

Section 5. Section 5.20.030 of the Ruston Municipal Code is hereby amended to read as

follows:

5.20.030 - Tax ~~designated~~ imposed.

- (a) ~~From and after February 1, 2010, t~~There is levied upon, and there shall be collected from, every person, firm or corporation engaged in furnishing, for a monetary consideration, of the ~~Town~~City and the inhabitants thereof, with electricity and electrical energy for lighting, heating, power, and other public purposes, within or partly within the corporate limits of the ~~Town~~City, an annual tax for the privilege of so doing, such tax to be equal to the maximum percentage allowed under RCW 35.21.870 of the total gross subscriber revenues from business and residential electrical power service provided to the ~~Town~~City and the inhabitants thereof.
- (b) ~~From and after February 1, 2010, t~~There is levied upon and there shall be collected from, every person, firm or corporation engaged in carrying on a telephone business for hire, within or partly within the corporate limits of the city an annual tax for the privilege of so doing, such tax to be equal to the maximum percentage allowed under RCW 35.21.870 of the total gross operation revenues within the city. Gross operating revenues for this purpose shall not include charges which are passed on to the subscribers by a telephone company pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this chapter.
- (c) ~~From and after February 1, 2010, t~~There is levied upon, and there shall be collected from, every person, firm or corporation engaged in furnishing, for a monetary consideration, natural gas or manufactured gas for lighting, heating, power, and other public purposes, within or partly within the corporate limits of the city, an annual tax for the privilege of so doing, such tax to be equal to the maximum percentage allowed under RCW 35.21.870 of the total gross subscriber revenue from business and residential gas service, both natural and manufactured, in the ~~Town~~City.
- (d) There is levied upon, and there shall be collected from, every person, firm or corporation engaged in furnishing, for a monetary consideration, solid waste collection services, within or partly within the corporate limits of the city, an annual tax for the privilege of so doing, an amount of eight percent of the total gross revenue from all solid waste collection service within the City.
- (e) There is levied upon, and there shall be collected from, every person, firm or corporation engaged in furnishing, for a monetary consideration, sewerage system business, within or partly within the corporate limits of the city, an annual tax for the privilege of so doing, an amount of eight percent of the total gross revenue from all sewerage system service within the City.

Section 6. A new section 5.20.035 is hereby added to the Ruston Municipal Code to read

as follows:

5.20.035 Cellular telephone service – Income allocation and administration.

(a) Allocation of Income.

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

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

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

(b) Dispute Resolution. If there is a dispute between or among the city and another city or cities as to the service address of a customer who is receiving cellular telephone services and the dispute is not resolved by negotiation among the parties, then the dispute shall be resolved by the city and the other city or cities by submitting the issue for settlement to the Association of Washington Cities (AWC). Once taxes on the disputed revenues have been paid to one of the contesting cities, the cellular telephone service company shall have no further liability with respect to additional taxes, penalties, or interest on the disputed revenues, so long as it promptly changes its billing records for future revenues to comport with the settlement facilitated by the AWC.

(c) Authority of Mayor. The Mayor or designee is authorized to represent the city in negotiations with other cities for the proper allocation of cellular telephone service taxes imposed pursuant to this chapter.

(d) Rate Change. No change in the rate of tax upon persons engaging in providing cellular telephone service shall apply to business activities occurring before the effective date of the change and, except for a change in the tax rate authorized by RCW 35.21.870, no change in the rate of the tax may take effect sooner than 60 days following the enactment of the ordinance establishing the change. The Mayor shall send to each cellular telephone service company at the address of record a copy of any ordinance changing the rate of tax upon cellular telephone service promptly upon its enactment.

Section 7. Section 5.20.040 of the Ruston Municipal Code is hereby amended to read as follows:

5.20.040 - Computation deductions.

In computing the annual tax there shall be deducted from the gross operating revenues the following items:

- (a) The amount of credit losses and uncollectibles actually sustained by the taxpayer whose regular books are kept on an accrual basis, provided, that to be eligible for said deduction the taxpayer must provide proof of such credit losses and uncollectibles;
- (b) Amounts derived from transactions in interstate or foreign commerce or from any business which the city is prohibited from taxing under the Constitution of the United States or the constitution of the State.

(c) Charges by a taxpayer engaging in any utility occupation activity subject to this chapter for sales of utility services to any purchaser engaged in the same utility occupation activity that the purchaser buys for the purpose of resale.

(d) That portion of the gross income derived from charges to another telecommunications company for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services.

(e) Adjustments made to a billing or to a customer account or to a telecommunications company accrual account in order to reverse a billing or charge that had been made as a result of third-party fraud or other crime and which was not properly a debt of the customer.

Section 8. Section 5.20.050 of the Ruston Municipal Code is hereby amended to read as

follows:

5.20.050 - Due date.

- (a) The tax imposed by this chapter shall be due and payable in quarterly installments and remittance 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. Such quarterly periods are as follows:

First quarter — January, February, March;

Second quarter — April, May, June;

Third quarter — July, August, September;

Fourth quarter — October, November, December.

- (b) ~~The first payment made under this chapter shall be made by April 30, 2010, for the period beginning with the effective date of this chapter and ending March 31, 2010.~~ On or before the due date the taxpayer shall file with the city a written return, upon such form and setting forth such information as the city shall reasonably require, together with the payment of the amount of the tax.

Section 9. Section 5.20.060 of the Ruston Municipal Code is hereby amended to read as

follows:

5.20.060 - Records of revenue.

Each taxpayer shall keep records reflecting the amount of his gross operating revenues, and such records shall be open at all reasonable times to the inspection of the ~~Town~~City and its duly

authorized employees and agents, for verification of the tax returns or for the fixing of the tax of a taxpayer who fails to make such returns.

Section 10. A new section 5.20.070 is hereby added to the Ruston Municipal Code to read as follows:

5.20.070 Right to audit.

If any taxpayer fails to make his return, or if the city clerk-treasurer is dissatisfied as to the correctness of the statements made in the application or return of any taxpayer, the city shall have the right, at the expense of the business subject to taxation, to conduct such audit procedures as are necessary to establish or account for the taxable revenue should the business subject to taxation fail or refuse to provide an accounting.

Section 11. Section 5.20.080 of the Ruston Municipal Code is hereby amended to read as follows:

5.20.080 Overpayment or underpayment of tax.

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 under this chapter or, upon the taxpayer's ceasing to do business in the city, be refunded to the taxpayer. If the city clerk-treasurer finds that the tax paid is less than required, he or she shall send a statement to the taxpayer showing the balance due. Said taxpayer shall within 10 days after notification pay the amount shown thereon.

Section 12. A new section 5.20.090 is hereby added to the Ruston Municipal Code to read as follows:

5.20.090 Late payment penalties.

All taxes due under this chapter, if said tax is not paid on or before the time specified in RMC 5.20.050, a late payment penalty shall accrue and be added to the tax due as follows: If any tax is not paid within 15 days of its due date, a penalty shall be added equal to ten percent of the tax.

Section 13. A new section 5.20.100 is hereby added to the Ruston Municipal Code to read as follows:

5.20.100 Appeal.

A taxpayer aggrieved by the amount of the tax penalties interest or civil infraction fine determined to be due by the city clerk-treasurer or his or her designee under the provisions of this chapter may appeal such determination to the mayor or designee. Taxpayers shall be required to remit the amounts determined to be due under this chapter prior to filing an appeal.

Section 14. A new section 5.20.110 is hereby added to the Ruston Municipal Code to read as follows:

5.20.110 Clerk-treasurer to make the rules.

The city clerk-treasurer shall have the power and it shall be his duty, from time to time, to adopt, post in the City Hall, and enforce rules and regulations not inconsistent with this chapter or with law for the purpose of carrying out the provisions thereof, and it is unlawful to violate or fail to comply with any such rule or regulation.

Section 15. Section 5.20.070 of the Ruston Municipal Code is hereby renumbered to Section 5.20.120 and is amended to read as follows:

5.20.070120 - Violation — Penalties.

- (a) If any person, firm or corporation subject to this chapter fails to pay any tax required by this chapter ~~within 30 days after the due date thereof~~ by the deadline in RMC 5.20.090 above, ~~there shall be added to such tax a penalty of ten percent of the amount of such tax.~~ then any tax due under this chapter and unpaid, and all penalties thereon, shall constitute a debt to the ~~Town~~City and may be collected by court proceedings, which remedy shall be in addition to all other remedies allowed by law.
- (b) In addition to any other remedies provided herein or available at law, any person, firm or corporation subject to this chapter who fails or refuses to apply for an occupation license or to make tax returns or to pay such tax when due, or who makes any false statement or representation in or in connection with any such application for an occupation license on such tax return, or otherwise violates or refuses or fails to comply with this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not more than \$1,000.00, and by imprisonment for a term of not more than 30 days.

Section 16. Portion of Ordinance Subject to Referendum. The provisions of this Ordinance which establish new taxes, namely Section 5, RMC 5.20.030, subsections (d) and (e) of this Ordinance, are subject to the referendum procedure as follows:

- 1. A referendum petition seeking to repeal this ordinance shall be filed with the City Clerk who shall be designated the person to receive petitions of all types within seven (7) days of the passage by the City Council of this ordinance or publication thereof whichever is later.

2. Within ten days the City Clerk shall confer with the petitioner concerning the form and style of the petition issue an identification number for the petition and cause to be written a ballot title for the measure.

3. The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the measure results in the tax or tax rate increase being imposed and a negative answer to the question and a negative vote on the measure results in the tax or tax rate increase not being imposed. The petitioner shall be notified of the identification number and ballot title within this ten (10) day period.

4. After notification of the identification number and ballot title the petitioner shall have 30 days in which to secure on petition forms the signatures of not less than 15 percent of the registered voters of the City and to file the signed petitions with the City Clerk.

5. Each petition form shall contain the ballot title and the full text of the measure to be referred. The City Clerk shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted the City Clerk shall cause the referendum measure to be submitted to the City voters at the next election within the City or at a special election as provided pursuant to RCW 35.17.260(2).

Section 17. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional 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. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 19. Effective Date. This Ordinance shall be effective five days after publication as provided by law. The utility taxes adopted in Section 5, RMC 5.20.030, subsections (d) and (e) of this Ordinance shall be effective on June 1, 2018.

ADOPTED by the City Council of the City of Ruston and attested by the City Clerk in authentication of such passage on this 1st day of May, 2018.

APPROVED by the Mayor this 1st day of May, 2018.

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams, City Clerk

APPROVED AS TO FORM:

Jennifer S. Robertson
Office of the City Attorney

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO: 1501