

CITY COUNCIL AGENDA ITEM CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adopting Ordinance No. 808 – Business and Occupation Tax		
DEPARTMENT:	Administrative Services		
PRESENTED BY:	Sara Lane, Administrative Services Director Rick Kirkwood, Budget Supervisor		
ACTION:	<input checked="" type="checkbox"/> Ordinance	<input type="checkbox"/> Resolution	<input type="checkbox"/> Motion
	<input type="checkbox"/> Discussion	<input type="checkbox"/> Public Hearing	

PROBLEM/ISSUE STATEMENT:

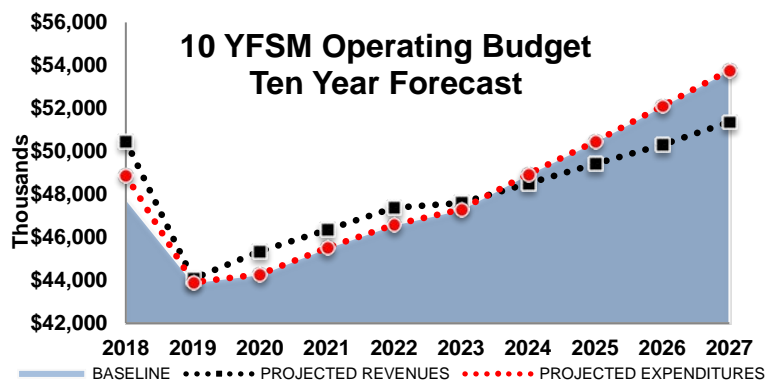
The 10 Year Financial Sustainability Plan (10 YFSP), accepted by the City Council on June 16, 2014, prioritized seven target strategies to reduce projected future revenue and expenditure gaps. The 10 YFSP recognized that the City must be sensitive to the balance between the need for services and the City’s ability to raise fees, charges, and taxes to support those services. To that end, staff was directed to study a diversified mix of revenues in order to balance the sources of revenue amongst taxpayers and to provide ongoing stability and predictability. The City strives to keep a total revenue mix that encourages growth and keeps Shoreline economically competitive and a city of choice for people to live and do business.

With that in mind, the 10 YFSP seeks to implement a balanced revenue structure designed to support economic growth and provide long term financial stability for City operations. Council Goal No. 1, Action Step No. 3 directs staff to continue to implement the 10 YFSP including Strategy 6 – engaging the business community in a discussion regarding the potential implementation of a Business and Occupation (B&O) Tax.

Proposed Ordinance No. 808, as amended, would provide for a B&O Tax in the City of Shoreline, by creating two new Chapters in the Shoreline Municipal Code: Chapter 3.22, Business & Occupation Tax and Chapter 3.23, Tax Administrative Code. Tonight, Council is scheduled to further discuss and adopt proposed Ordinance No. 808.

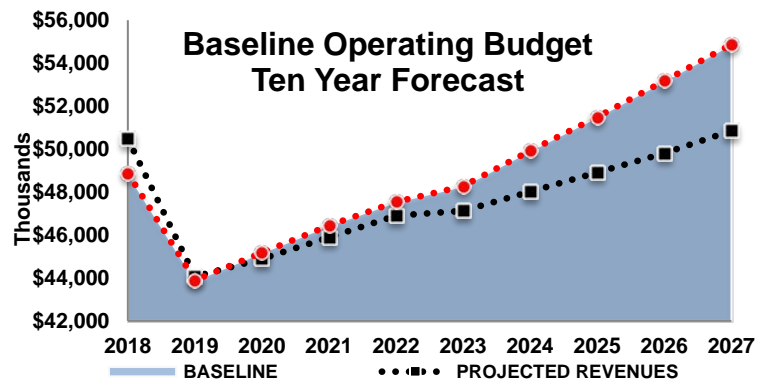
RESOURCE/FINANCIAL IMPACT:

Assuming no new revenues or changes in service levels, the 10 Year Financial Sustainability Model Operating Budget forecast projects potential gaps between revenues and expenses to occur beginning in 2022 with a cumulative gap totaling \$5.696 million over the 10-year forecast. This forecast projects revenues and expenditures in 2018 and 2019 at



100%, or the budgetary amount, and for 2020 and beyond with revenues at 101% and expenditures at 98%, which is representative of how the City historically ends each year. Additionally, while there is “surplus” revenue projected in several years of the 10 YFSM Operating Budget forecast, the amount of “surplus” as a percent of operating revenues is very small, totaling about \$1.070 million, or 2% of projected expenditures in 2020 and significantly less in the other years prior to 2023.

The Baseline Operating Budget forecast projects potential gaps between revenues and expenses to occur beginning in 2020 with a cumulative gap totaling \$14.465 million over the 10-year forecast. This forecast projects revenues and expenditures at 100%, or the budgetary amount, for all years of the 10-year forecast.



These potential budget gaps will be addressed as the City of Shoreline is required to pass a balanced budget and does so each year within the following policies:

- Current revenues will be sufficient to support current expenditures.
- Resources (fund balance) greater than budget estimates in any fund shall be considered “One-time” and shall not be used to fund ongoing service delivery.

As noted above, the 10-year forecast assumes no changes in service levels, and does not address currently un- or underfunded operating needs such as Public Safety, facility staffing, landscape maintenance in the right of way, janitorial services in parks, code enforcement, tree maintenance, business relationship development, human and senior services. Additionally, the 10-year forecast does not include any capital costs, a category that is also significantly underfunded. The ongoing unreliability of state-shared revenues further supports the need for a stable City revenue source.

There is no immediate financial impact associated with tonight’s action. However, the implementation of a B&O Tax has been identified as a potential revenue source to narrow the gap throughout the 10-year forecast, bringing in an estimated \$1.033 million annually. One-time and ongoing costs associated with the implementation of the tax are estimated at \$315,000 and \$245,000 per year respectively.

As discussed with the City Council previously, no single strategy in the 10 YSFP will solve the forecasts potential budget gaps. It will take a combination of all seven strategies to provide financial sustainability of the City’s existing services and create capacity to begin to address currently un- or underfunded needs.

RECOMMENDATION

Staff recommends that the City Council adopt Ordinance No. 808, providing for a Business & Occupation Tax in the City of Shoreline by creating two new Chapters in the

Shoreline Municipal Code: Chapter 3.22, Business & Occupation Tax and Chapter 3.23, Tax Administrative Code.

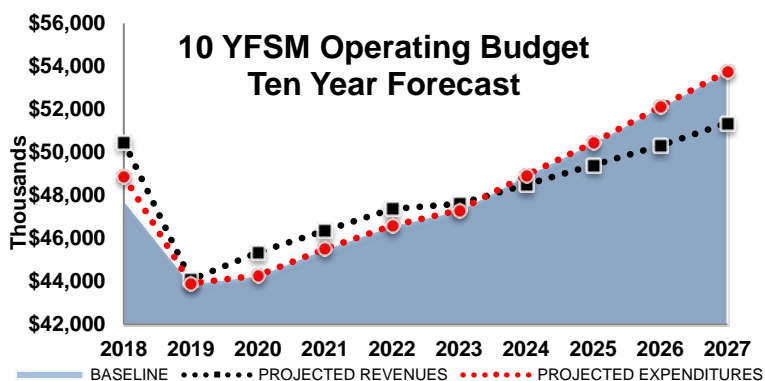
Approved By: City Manager **DT** City Attorney **MK**

INTRODUCTION

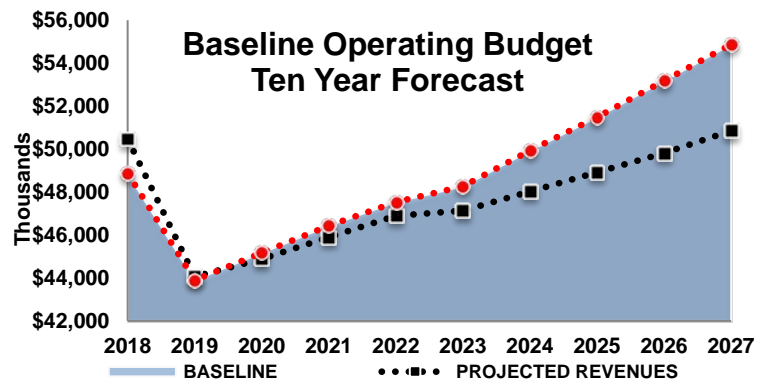
In 2014, the City Council formed a subcommittee to develop a 10 Year Financial Sustainability Plan (10 YFSP). The purpose of the 10 YFSP is to strengthen Shoreline's economic base by identifying seven strategies for the City to maintain financial resiliency and financially sustain existing services, recognizing that the City must be sensitive to the balance between the need for services and the City's ability to raise fees, charges, and taxes to support those services. To that end, staff was directed to study a diversified mix of revenues in order to balance the sources of revenue amongst taxpayers and to provide ongoing stability and predictability. The City strives to keep a total revenue mix that encourages growth and keeps Shoreline economically competitive and a city of choice for people to live and do business. The 10 YFSP was accepted by the City Council on June 16, 2014; the staff report available here: <http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2014/staffreport061614-8a.pdf>.

The 10 YFSP seeks to implement a balanced revenue structure designed to encourage economic growth and provide long term financial stability for City operations. The City has successfully implemented, and continues to utilize, five of the seven strategies since acceptance of the 10 YFSP, with two strategies remaining to be implemented: Strategy 5 – replacing the General Fund contribution to the Roads Capital Fund with another dedicated funding source and Strategy 6 – engaging the business community in a discussion regarding the possible future implementation of a Business and Occupation (B&O) Tax.

Since inception, it was understood that long term financial sustainability required implementation of all seven of the identified strategies. Thus, even with the implementation of these strategies, the 10-year forecast for the City's operating budget projects that, assuming no new revenues or changes in service levels, expenditures will exceed revenues beginning in 2022 with a cumulative gap totaling \$5.696 million over the 10-year forecast. This forecast projects revenues and expenditures in 2018 and 2019 at 100%, or the budgetary amount, and for 2020 and beyond with revenues at 101% and expenditures at 98%, which is representative of how the City historically ends each year. Additionally, while there is "surplus" revenue projected in several years of the 10 YFSM Operating Budget forecast, the amount of "surplus" as a percentage of operating revenues is very small, totaling about \$1.070 million, or 2% of projected expenditures in 2020 and significantly less in the other years prior to 2023.



The Baseline Operating Budget forecast projects potential gaps between revenues and expenses to occur beginning in 2020 with a cumulative gap totaling \$14.465 million over the 10-year forecast. This forecast projects revenues and expenditures at 100%, or the budgetary amount, for all years of the 10-year forecast.



The 10-year forecast assumption does not consider currently un- or underfunded operating needs, such as:

- **Public Safety** –The City’s target has been to have f police staffing at one police officer per 1,000 residents. Even with the addition of one police officer (K9 Unit) in 2018, Shoreline’s staffing will be slightly under the goal. It will take an additional two uniformed officers to meet meet this target.
- **Fleet & Facility Staffing** – with the expansion of the City’s Police Department and the addition of vehicles and facilities with the transition of Wastewater operations, Fleet and Facilities staff have identified the need for an additional 0.5 full time equivalent (FTE) staff person. This request was not included in the 2018 proposed budget.
- **Tree Maintenance and Implementation of the Urban Forest Strategic Plan** – The City’s publicly owned trees in parks and in the rights-of-way are assets that need ongoing maintenance to stay healthy and safe. The City fell behind in addressing hazardous trees and was not able to do any regular maintenance on right-of-way trees. In 2016 one-time funding was allocated to catch up with hazardous tree backlog and in 2017 funding was transferred from irrigation in parks to keep up with hazardous tree removal and begin a small maintenance program for right-of-way trees. This funding is not adequate to keep up with the maintenance needs of trees and has resulted in a reduction in the level of service for maintaining the City’s grass areas in parks.
- **Landscape Maintenance in the Right of Way** – Significant cost increases in Landscape Maintenance bids in 2016 resulted in adjustments to maintenance tasks, and schedules in order to minimize the budgetary impact. The completion of the final segment of Aurora Avenue and maturation of the installed landscaping will continue to put upward price pressure on this service, as will the rehabilitation and replacement of streetscape infrastructure installed in the earlier Aurora Avenue phases.
- **Janitorial Services in Parks** – Janitorial services are currently performed daily in Shorelines parks. During the summer busy season, this level of service is inadequate to ensure that supplies are available for patrons and the facilities are safe and sanitary. While some one-time savings have been allocated to increase the service to two times per day in Richmond Beach Saltwater Park during the 2018 summer season, the rest of Shoreline’s parks will continue to be serviced just once daily and an ongoing funding source for increased service at Saltwater Park hasn’t been identified.

- **Council Priority Areas for Increased Focus -**
 - Code enforcement – increasing staffing to improve enforcement efforts.
 - Business relationship development – additional staffing to build stronger relationships with Shoreline’s business community.
 - Human and Senior Services - Council and residents consistently support increased funding for both Human and Senior services in Shoreline. Current funding is being incrementally increased to achieve a target of 1% of ongoing general revenues.
 - Maintenance of the City’s street and signage assets is underfunded given the stagnant fuel tax collections and need to allocate general revenues to fill the gap.

Additionally the 10-year forecast does not include any capital costs, a category that is also significantly underfunded and includes the following unfunded projects:

- Parks, Recreation and Open Space (PROS) Plan Identified Projects:
 - Property acquisition and development
 - Maintenance of newly added park property
 - Development and operation of a community and aquatics center
- Sidewalks (Maintenance, repair and construction of new facilities)
- Americans with Disability Act (ADA) Transition Plan
- City Maintenance Facility
- Transportation Projects:
 - Westminster Way and N 155th Street
 - N. 185th Street Corridor
 - N. 160th Street and Greenwood Avenue N.
 - Trail along the Rail
 - N. 148th Street Non-motorized bridge
 - Ballinger Way – NEW project
 - Linden and 185th Intersection
 - Traffic Signal Rehabilitation

BACKGROUND

RCW 35A.82.020 (<http://app.leg.wa.gov/rcw/default.aspx?cite=35A.82.020>) provides cities the authority to impose a B&O Tax on businesses that operate in their cities. Cities may impose a B&O Tax primarily measured on gross proceeds of sales or gross income. For purposes of calculating the B&O Tax, businesses may be divided into several classifications (e.g., retailing, manufacturing, services, or wholesale) and those conducting multiple activities will report in more than one classification. The implementation of a B&O Tax, up to a rate of 0.002 does not require a public vote; however, the ordinance imposing the tax must include a provision for a referendum procedure.

During the City Council’s 2017 Strategic Planning Workshop held earlier this year, the Council reviewed the plan to support implementation of the remaining 10 YFSP strategies and directed staff to provide an update of Strategy 6 in the summer. Since that time staff procured the support of BERK, a local consulting firm, to engage the business community in a discussion about the potential implementation of a B&O Tax in

Shoreline. The results of this outreach were shared with the City Council at Council's August 14, 2017 meeting. At this discussion, Council directed staff to bring back a draft B&O Tax ordinance for Council consideration.

Proposed Ordinance No. 808 (Attachment A) was brought to Council for discussion on November 13, 2017. This ordinance creates two new chapters in the Shoreline Municipal Code (SMC): Chapter 3.22, Business and Occupation Tax (Exhibit A) and Chapter 3.23, Tax Administrative Code (Exhibit B). Both chapters are based on the Association of Washington Cities' 2012 B&O Tax Model Ordinance (Attachment B) with some modifications. These include the City Council's guidance provided during the Council's August 14, 2017 discussion. The staff report for the November 13th Council discussion is available at the following link:

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2017/staffreport111317-9a.pdf>.

ALTERNATIVE ANALYSIS

Tonight, Council is scheduled to further discuss and adopt proposed Ordinance No. 808. The following options are available to Council:

1. Adopt proposed Ordinance No. 808 as drafted and described below. This option fulfills Strategy 6 of the 10 YFSP.
2. Adopt proposed Ordinance No. 808 with some or all of the potential amendments, or other Council identified amendments, described below. This option fulfills Strategy 6 of the 10 YFSP.
3. Not adopt or take no action and provide staff with alternate guidance on accomplishing Strategy 6 of the 10 YFSP.

Basis and Rate of the Tax

Gross Receipts: Single Rate vs. Varying Rates per Classification

The City can set a single rate for all tax classifications or a varying rate at its discretion. A flat rate provides consistency and simplicity while a varying rate provides some recognition that certain business classifications tend to have higher or lower overhead. It also can provide the opportunity to accomplish certain economic development goals by setting rates lower for tax classifications that the City may be interested in attracting. Currently, 44 cities in Washington State impose a B&O Tax and 16 of those have set at least one varying rate. The State has varying rates for each classification. Cities with varying rates charge services at a higher rate than retail at a factor ranging from 125% to 364%, with a mean of 200%. For the three King County cities (Issaquah, Kent, and Seattle) that have varying rates between services and retail, the factor range is 125-33%.

Staff recommends that the City set the service rate two times the retail rate. This maintains simplicity but does recognize that the profit margin for service revenue is generally higher than for other categories, a concern that was mentioned frequently in the survey and interviews. The primary source of data available for staff's evaluation was received from the State and relates to sales tax. Based upon that information, all businesses reporting service revenue would appear to fall under a \$200,000, exemption

threshold, making it difficult to reliably estimate the revenue related to a higher service rate at this time.

Gross Receipt Rate Setting

As part of the 10 YFSP, a rate of .001 was used for modeling the impact of this revenue source to support current service levels. The City Council could set the rate at a higher level of up to .002 to generate additional revenue to meet other unfunded needs discussed earlier in this report. Assuming an exemption threshold of \$200,000, each additional .0005 increase in rate (i.e. going from a rate of .001 to .0015) will generate approximately \$500,000 in additional revenue.

Proposed Ordinance No. 808 is drafted to implement the B&O Tax at a minimum rate of .001 for all classifications other than services and .002 for services to support current service levels in the 10 YFSP and consider what additional City Council priorities could be addressed by a higher services rate.

Potential Amendment:

The City Council has received a request from the Washington Healthcare Association (WHCA) on behalf of residential care facilities in Shoreline. The WHCA is recommending two changes. First that Residential Care Facilities be provided a unique reporting classification that would be taxed at the lower .001 rate, and a deduction for State Medicaid Revenue. At this time, staff is not recommending the creation of a unique classification for Residential Care Facilities. The deduction for State Medicaid Revenue will be discussed under exemptions and deductions later in this report.

Use of Other Factors such as Number of Employees and Square Footage

Some cities will use multiple factors to determine the total tax due. While these other factors are considered a license for revenue they can be collected in combination with the gross receipts tax. Generally, additional factors are utilized to help ensure that the tax is more equitable for businesses that may have a business location in the City but for varying reasons a significant portion of gross receipts would not be taxable by the City. This is especially prevalent in warehousing where the gross receipts would be reported to the location where goods are delivered to, not from where they are delivered from. This type of option adds a significant amount of complexity both for the businesses filing the tax and for the City collecting the tax.

Proposed Ordinance No. 808 is drafted to rely solely on gross receipts as the basis for its B&O Tax due to the complexity that is created for businesses to accurately calculate tax based on multiple factors.

Exemption Threshold

The State's Model Ordinance for a B&O Tax requires cities to adopt an exemption threshold of at least \$20,000, where a business grossing less than the threshold would not be subject to the tax. The City is able to set the exemption thresholds at any level. The exemption thresholds vary from the minimum of \$20,000 up to a high of \$1.5 million. The value of the exemption threshold is to exempt small business from the tax and ease the administrative burden associated with collecting smaller tax due amounts.

Proposed Ordinance No. 808 sets the exemption threshold at \$200,000 to minimize impact to small business and the administrative burden of collecting a small tax from a larger number of businesses.

Potential Amendment:

The City Council has received a suggestion from a business owner suggesting that the \$200,000 exemption threshold was arbitrary and not large enough to protect small businesses, particularly restaurants, that already operate on a small profit margin. Another business suggested that the exemption threshold should be set at \$400,000. The City Council could choose to set the exemption threshold at a higher or lower level, as long as it is at least \$20,000 per year as required by the model ordinance.

Tax Exemptions and Deductions

Exemptions

Section .090 of proposed Ordinance No. 808 identifies the following mandatory and standard exemptions from B&O Tax:

1. Public utilities where a Utility Tax is imposed.
2. Investments - dividends from subsidiary corporations.
3. Insurance business.
4. Employees.
5. Amounts derived from sale of real estate.
6. Mortgage brokers' third-party provider services trust accounts.
7. Amounts derived from manufacturing, selling or distributing motor vehicle fuel (Mandatory).
8. Amounts derived from liquor, and the sale or distribution of liquor (Mandatory).
9. Casual and isolated sales.
10. Accommodation sales.
11. Taxes collected as trust funds.

The City is required to include the mandatory exemptions and encouraged to include the standard exemptions to provide consistency for businesses that need to comply with multiple local tax codes.

While the City has the authority to identify additional exemptions to help address unique situations and accomplish operational objectives, staff recommend, and proposed Ordinance No. 808 includes, only the mandatory and standard exemptions identified in the Model Ordinance and two common exemptions:

- Revenue subject to another gross receipts tax imposed by the City. For example, the City currently levies gross receipt taxes on utility revenue at 6%, card room revenue at 10%, and pull tab revenue at 5%. The intent would be to exempt these revenues from the B&O Tax; however other types of revenue generated by those businesses (like service or retail) would still be subject to the City's B&O Tax.
- Non-Profit (501(C)(3)) business revenue. As drafted, proposed Ordinance No. 808 exempts all revenue generated by a Non-Profit (501(C)(3), (4), (7)), except for retail sales.

Deductions, Credits, and Allocation

Section .070-.078 of proposed Ordinance No. 808 conforms with the Model Ordinance to provide a system of deductions, credits and allocation methodology that ensures that businesses are not taxed on the same revenue by multiple jurisdictions.

Section .100 of proposed Ordinance No. 808 defines some additional mandatory and standard deductions from the model ordinance:

1. Receipts from tangible personal property delivered outside the State (Mandatory).
2. Cash discount taken by purchaser.
3. Credit losses of accrual basis taxpayers.
4. Constitutional prohibitions (Mandatory).
5. Receipts from the sale of tangible personal property and retail services delivered outside the City but within Washington.
6. Professional employer services.
7. Interest on investments or loans secured by mortgages or deeds of trust.

While some cities have retained unique deductions, outside the standard and mandatory deductions, most would be better addressed as an exemption. Therefore, as drafted, proposed Ordinance No. 808 limits the deductions to mandatory and standard deductions from the Model Ordinance.

Potential Amendments:

As mentioned earlier, the City Council has received a request from the WHCA on behalf of residential care facilities in Shoreline. The WHCA requested that the City provide a deduction for State Medicaid Revenue. WHCA has noted that facilities that accept State Medicaid residents are of the lowest income level and that the Medicaid rate paid by the State is already lower than the cost of providing services to these clients. While, staff were not able to find any other cities that currently allow this deduction, the State does provide for this deduction and has also moved to taxing these facilities at a lower rate.

Following discussions between staff and the WHCA, staff recommends that an exemption be included in the ordinance for State Medicaid payments, given that these are pass-through payments from the State, for the lowest income residents. Many Residential Care Facilities won't even accept Medicaid patients because of the financial burden in covering costs. It is staff's understanding that if such an exemption is not provided the facility would have to spread this cost to other payers of facility services to close the facility's "revenue" gap. Additionally, in discussions with the WHCA, this exemption seemed to be the highest priority concern to allow their members to continue to service Medicaid residents. This exemption would apply to all facilities that receive such payments which primarily includes residential care facilities and adult family homes.

Staff recommends the inclusion of a deduction for State Medicaid payments received by Residential Care Facilities.

Licensing and Tax Administration

The Model Ordinance provides specific guidance on many aspects of tax administration. These provisions are included in proposed Ordinance No. 808 through the creation of SMC Chapter 3.23. The only deviation in this proposed code from the Model Administrative Provisions is the creation of an Active Nonreporting filing status. This approach will allow the City to limit tax filing for small businesses that are likely under the tax threshold. It does not alleviate the requirement for them to file should they exceed the threshold. All other provisions are included in the Model Provisions.

As part of the implementation of a B&O Tax, there are several practical considerations and options for tax administration, particularly relating to business licensing and collection of the tax. If proposed Ordinance No. 808 is adopted, staff will analyze costs and benefits of each option as part of the implementation process. At a high level staff anticipate the implementation and ongoing administration needs with associated costs as follows:

System of Record

The City would need to maintain all filing history, accounts receivables, delinquencies, and audit information for each taxpayer account. Generally, the City's financial system is not able to fulfill the requirements for tax administration so a separate tax administration system would need to be procured, implemented and integrated to the licensing and collection systems.

Tax Collection

The City will need provision for collecting taxes. While most cities offer an online filing option, either independently or through FileLocal, no City currently mandates online filing. Therefore the City would likely need to plan for costs associated with online filing via FileLocal as well as a printing, mailing, and lockbox service, similar to wastewater utility payments.

Staffing for Implementation/Administration/Audit

In order to implement and administer the collection, maintenance, and auditing of the tax, ongoing staffing in the City's Administrative Services Department (1.00 FTE Financial/Tax Analyst would need to be added). During implementation, some additional consulting and/or limited term staffing will also be necessary to assist with outreach, education and system implementation. Additionally, in order to ensure the tax is being correctly collected, the City will need to develop an audit program. This would likely be performed by hiring independent auditors.

One-time and ongoing costs for each component are estimated as follows:

	One-Time	Ongoing	2018 Total
System of Record	\$ 200,000	\$ 50,000	\$ 250,000
Tax Collection:			
FileLocal	\$ 35,000	\$ 15,000	\$ 50,000
Retail Lockbox/ Printing	\$ 30,000	\$ 25,000	\$ 55,000
Staffing:	\$ 50,000	\$ 155,000	\$ 205,000
Total	\$ 315,000	\$ 245,000	\$ 560,000

If proposed Ordinance No.808 is adopted by the City Council tonight, staff will bring a budget amendment to the 2018 Budget in early 2018 for the expenses associated with the administrative costs and the addition of the 1.00 FTE Financial/Tax Analyst.

Implementation Steps

The following are the major steps that would need to be completed in order to implement a B&O Tax in Shoreline:

1. Adopt proposed Ordinance No. 808, subject to referendum (*tonight*)
2. Develop an administration plan, evaluating options including:
 - a. Contract with the State for administration
 - b. Implement a system and partner with *FileLocal* to provide joint filing
 - c. Communication Plan
3. Budget amendment for implementation costs – early 2018
4. Implement administration plan, including staff training – 2nd - 3rd Quarter 2018
5. Business communication and education – 2018 and ongoing

As drafted, proposed Ordinance No. 808 has an effective date of January 1, 2019. This date provides staff with adequate time to implement systems and processes necessary to collect the tax and provide adequate business education and outreach. Alternatively, Council could choose to make the tax effective January 1, 2018. In this scenario, staff would assign all taxpayers an annual filing status, with first returns being due 1/31/2019 to provide time for communication and system and process implementation.

Councilmember Scully also suggested considering an effective date based on timing of a projected budget gap. Staff would not recommend this option given the unpredictability to both businesses and the City, and the associated costs and time necessary to implement processes and systems and educate taxpayers to collect the tax.

While staff will be continually tracking implementation of the B&O Tax, a review of the program is planned for 2020, which will include a full year of tax collection and administration based on qualifying businesses’ 2019 filings. The review will include a look at collecting on a quarterly versus an annual basis depending on business size. Any changes from the review in 2020 will be incorporated in the following budget cycle.

Potential Amendment:

Councilmember McGlashan and Councilmember Salomon indicated concern with the effective date of January 1, 2019. There was interest in a later effective date

that was either linked to the timing of the first potential forecast gap or was set at January 1, 2020 to align with the first projected potential forecast “gap” between revenues and expenditures in the Baseline Operating Budget forecast model. Should Council choose to move and adopt an amendment to the ordinance, staff would recommend choosing a date certain, such as January 1, 2020 to allow for adequate time for implementation and reduce the risk associated with an unanticipated economic downturn. Staff would additionally recommend some funding for system selection and implementation in 2018 to provide opportunity to partner with other cities for a system solution.

SUMMARY

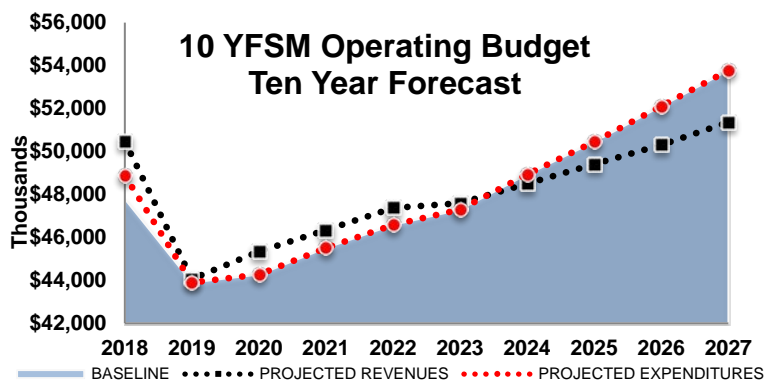
The 10 YFSP, which was accepted by the City Council on June 16, 2014, prioritized seven target strategies to reduce projected future revenue and expenditure gaps. Council Goal No. 1 directs staff to continue to implement the 10 YFSP including Strategy 6 – engaging the business community in a discussion regarding the potential implementation of a B&O Tax. The City continues to face a structural imbalance in operating revenues where, even with diligent care and effort, costs are growing faster than revenues, and State shared revenues and Federal subsidies continue to be vulnerable. The City has limited revenue options for stable revenue sources to address this structural challenge. A B&O Tax is one of those few options.

COUNCIL GOALS ADDRESSED

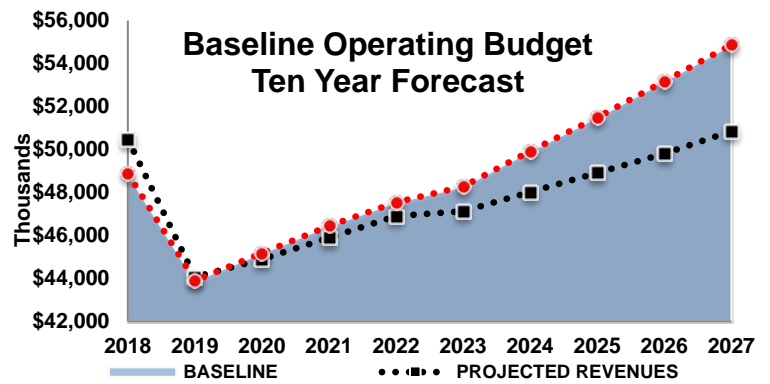
This item addresses Council Goal 1, “Strengthen Shoreline's economic base to maintain the public services that the community expects”, and specifically, Action Step #3 of that Goal: “Continue to implement the 10-year Financial Sustainability Plan to achieve sufficient fiscal capacity to fund and maintain priority public services, facilities, and infrastructure”, with a specific focus on Strategy 1 – encouraging a greater level of economic development, Strategy 5 seeking to replace the General Fund support of the Roads Capital Fund with another dedicated funding source, and Strategy 6 – engaging the business community in a discussion regarding the potential implementation of a B&O tax.

RESOURCE/FINANCIAL IMPACT

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As discussed with the City Council previously, no single strategy in the 10 YSFP will solve the forecasts potential budget gaps. It will take a combination of all seven strategies to provide financial sustainability of the City’s existing services and create capacity to begin to address currently un- or underfunded needs.

RECOMMENDATION

Staff recommends that the City Council adopt Ordinance No. 808, providing for a Business & Occupation Tax in the City of Shoreline by creating two new Chapters in the Shoreline Municipal Code: Chapter 3.22, Business & Occupation Tax and Chapter 3.23, Tax Administrative Code.

ATTACHMENTS

- Attachment A: Proposed Ordinance No. 808
- Attachment A, Exhibit A: SMC Chapter 3.22 – Business and Occupation Tax
- Attachment A, Exhibit B: SMC Chapter 3.23 – Tax Administrative Code

Attachment B: Model B&O Tax Ordinance

ORDINANCE NO. 808

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON AMENDING SHORELINE MUNICIPAL CODE TITLE 3, REVENUE AND FINANCE, BY ADDING A NEW CHAPTER 3.22, BUSINESS AND OCCUPATION TAX, AND A NEW CHAPTER 3.23, TAX ADMINISTRATIVE CODE; PROVIDING FOR A REFERENDUM PROCESS; AND PROVIDING A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE

WHEREAS, the City of Shoreline is a non-charter optional municipal code city as provided in Title 35A RCW, incorporated under the laws of the state of Washington; and

WHEREAS, Washington Constitution Article XI, Section 12 and RCW 35A.82.020 and 35A.11.020 grants the City the authority to license for revenue and to define taxation categories in order to respond to the unique concerns and responsibilities of the City; and

WHEREAS, these provisions of the law grant the City authority to impose a business and occupation tax on businesses operating within the City; and

WHEREAS, in order to preserve the City's financial sustainability, the need for additional revenue sources has been considered and the City Council has included the potential imposition of a business and occupation tax for revenue purposes in its Strategic Plans and in the City's 10 Year Financial Sustainability Plan; and

WHEREAS, to involve the community in the decision process, the City convened a Long-Range Financial Planning Citizens Advisory Committee and also engaged the business community through a variety of methods to receive input about various options available to the City for implementing a business and occupation tax; and

WHEREAS, the City Council has considered the entire public record, public comments, written and oral, and considered the proposed amendments at its regularly scheduled meetings on August 14, 2017 and November 13, 2017; and

WHEREAS, RCW 35.102.040 requires the City utilize the mandatory provisions of the model ordinances developed by Washington cities when imposing a business and occupation tax and adopting administrative provisions related to the imposition and collection of such a tax, but also allows for flexibility to customize the ordinances based on local goals and policies; and

WHEREAS, the model ordinance gives the City the ability to set a single, flat tax rate for all businesses or a varying rate based on a business's classification; and

WHEREAS, the City Council has determined that establishing two classifications – service and retail – will maintain significant simplicity while recognizing varying profit margins; and

WHEREAS, RCW 35.21.710 authorizes the City to set the business and occupation tax rate at no more than .002 based on solely on annual gross receipts or in combination with other factors; and

WHEREAS, the City Council has determined that the business and occupation tax rate should be based only on annual gross receipts and be set at .001 for all classifications except services, which should have a rate of .002; and

WHEREAS, the model ordinance provides mandatory and standard exemptions for potential inclusion but also gives the City the ability to create a certain exemptions from business and occupation tax including an annual gross receipts exemption threshold for small businesses to meet the City's own objections, exemptions to set economic policy, and exemptions to maintain local control; and

WHEREAS, the City Council has determined that adoption all of the mandatory and standard exemptions is within the City's interest and that setting an annual gross receipt exemption threshold of \$200,000 would minimize impact on small business as well as reducing the administrative burden of collecting a small tax from a large number of businesses; exempting all revenue subject to another gross receipts tax imposed by the City on business so as not to overburden these businesses; and exempting 501(C)(3) non-profit business revenue given their non-profit status; and

WHEREAS, the model ordinance provides mandatory and standard deductions for potential inclusion that ensures businesses are not taxed on the same revenue by multiple jurisdictions; and

WHEREAS, the City Council has determined that all mandatory and standard deductions identified in the model ordinance should be adopted; and

WHEREAS, the City Council has determined that imposition of a business and occupation tax (B&O Tax) and providing for uniform administration of the City's tax codes will be in the best interest of the public health, safety, and welfare;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Amendment to Title 3 Revenue and Finance. A new chapter, Chapter 3.22 *Business and Occupation Tax*, is added to Title 3 as set forth in Exhibit A to this Ordinance.

Section 2. Amendment to Title 3 Revenue and Finance. A new chapter, Chapter 3.23 *Tax Administrative Code*, is added to Title 3 as set forth in Exhibit B to this Ordinance.

Section 3. Referendum. This ordinance is subject to referendum as set for in RCW 35.21.706. A referendum petition to repeal this ordinance may be filed with the City Clerk within seven (7) days of adoption of this ordinance. Within ten (10) days of such filing, the City Clerk shall confer with the petition concerning form and style of the petition, issue the petition and identifications number, and secure and accurate, concise, and positive ballot title from the

City Attorney. The petitioner shall then have thirty (30) days in which to secure the signatures of not less than fifteen (15) percent of the City’s registered voters as of the last municipal general election upon petition forms which contain the ballot title and the full text of the measures to be referred. The City Clerk shall verify the sufficiency of the signatures on the petition and, if sufficient valid signatures are properly submitted, shall certify the referendum measure to the next election ballot within the City or at a special election ballot as providing pursuant to RCW 35.17.260(2).

Section 4. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any person or situation.

Section 5. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and/or the Code Reviser are authorized to make necessary corrections to this ordinance, including the corrections of scrivener or clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references.

Section 6. Publication and Effective Date. A summary of this Ordinance consisting of the title shall be published in the official newspaper. In the event that no referendum petition is filed, this Ordinance shall take effect at 12:01 am on January 1, 2019.

PASSED BY THE CITY COUNCIL ON DECEMBER 4, 2017

Mayor Christopher Roberts

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik-Smith
City Clerk

Margaret King
City Attorney

Date of Publication: , 2017
Effective Date: , 2017

**ORDINANCE NO. 808
EXHIBIT A**

**Shoreline Municipal Code
CHAPTER 3.22 Business and Occupation Tax**

SMC 3.22.010 Purpose. The purpose of this chapter is to provide for the City’s authority to license for revenue as authorized by the Washington State Constitution, Article XI, Section 12, and RCW 35A.11.020 and RCW 35A.82.020.

SMC 3.22.020 Exercise of revenue license power. The provisions of this chapter shall be deemed an exercise of the power of the City to license for revenue. The provisions of this chapter are subject to periodic statutory or administrative rule changes or judicial interpretations of the ordinances or rules. The responsibility rests with the licensee or taxpayer to reconfirm tax computation procedures and remain in compliance with the Shoreline Municipal Code.

SMC 3.22.025 Adoption by reference. Where provisions of the Revised Code of Washington (RCW) are adopted or incorporated by reference in this chapter, the adoption or incorporation shall be deemed to refer to the provision as it now exists or as it may be hereafter amended.

SMC 3.22.028 Administrative Provisions. The administrative provisions contained in chapter 3.23 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

SMC 3.22.030 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. “A” Definitions

1. Advance – Reimbursement.

- a. “Advance” means money or credits received by a taxpayer from a customer or client with which the taxpayer is to pay costs or fees on behalf of the customer or client.
- b. “Reimbursement” means money or credits received from a customer or client to repay the taxpayer for money or credits expended by the taxpayer in payment of costs or fees of the customer or client.

2. Agricultural Product – Farmer.

- a. “Agricultural product” means any product of plant cultivation or animal husbandry including, but not limited to, a product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; turf; or any animal including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal. For the limited purposes of this chapter, “agricultural

product” does not include animals intended to be pets or marijuana, useable marijuana, marijuana concentrates, marijuana-infused products, or any other marijuana product included in RCW 69.50.101 as now enacted or hereafter amended.

b. “Farmer” means any person engaged in the business of growing or producing, upon the person’s own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. “Farmer” shall not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person’s own consumption. “Farmer” shall not include a person selling any animal or substance obtained therefrom in connection with the person’s business of operating a stockyard or a slaughter or packing house. “Farmer” shall not include any person in respect to the business of taking, cultivating, or raising timber. For the limited purposes of this chapter, “farmer” shall not include any person engaged in the business of growing or producing marijuana as defined by RCW 69.50.101(t) as now enacted or hereafter amended.

B. “B” Definitions

1. "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.
2. “Business and occupation 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. “C” Definitions

1. “Chapter” means Chapter 3.22 SMC, as it may be amended or replaced from time to time.
2. “City” means the City of Shoreline.
3. “Competitive telephone service” means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under RCW Title 80 and for which a separate charge is made.
4. "Commercial or industrial use" means the following uses of products, including by-products, by the extractor or manufacturer thereof:
 - a. Any use as a consumer; and
 - b. The manufacturing of articles, substances or commodities.
5. “Consumer” means the following:
 - a. Any person who purchases, acquires, owns, holds, or uses any tangible or intangible personal property irrespective of the nature of the person’s 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 a consumer other than for the purpose of:

- i. Resale as tangible or intangible personal property in the regular course of business;
 - ii. Incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers;
 - iii. Incorporating such property as an ingredient or component of a new product or as a chemical used in processing a new product when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new product; or
 - iv. Consuming the property 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;
- b. Any person engaged in any business activity taxable under SMC 3.22.050(A)(7);
 - c. Any person who purchases, acquires, or uses any competitive telephone service as herein defined, other than for resale in the regular course of business;
 - d. Any person who purchases, acquires, or uses any personal, business, or professional service defined as a retail sale or retail service in this subsection other than for resale in the regular course of business;
 - e. Any person who is an end user of software;
 - f. Any person engaged in the business of “public road construction” in respect to tangible personal property when that person incorporates the tangible personal property as an ingredient or component of a publicly owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of a publicly owned street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of a publicly owned mass public transportation terminal or parking facility;
 - g. Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business;
 - h. Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

- i. Any person engaged in “government contracting.” Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person.

Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of “consumer.”

D. “D” Definitions

1. “Day” means, unless otherwise provided, a calendar day.
2. “Director” means the finance director of the City or any officer, agent or employee of the City designated to act on the director’s behalf. The finance director is also known as the Administrative Services Director.
3. “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 (Title 62A RCW) do not determine when or where delivery of tangible personal property occurs for purposes of taxation.
4. "Digital automated service," "digital code," and "digital goods" have the same meaning as in RCW 82.04.192.
5. "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.040.050(2)(g) and 82.04.050(6)(b).

E. “E” Definitions

1. "Eligible gross receipts tax" means a tax which:
 - a. Is imposed on the act or privilege of engaging in business activities within SMC 3.22.050; and

- b. Is measured by the gross volume of business, in terms of gross receipts and is not an income tax or value added tax; and
 - c. Is not, pursuant to law or custom, separately stated from the sales price; and
 - d. 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
 - e. 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.
2. "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.
- a. 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.
 - b. This subsection 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 minimus business activities in the City without having to register and obtain a business license pursuant to SMC Title 5 or pay City business and occupation taxes. The activities listed in this subsection are illustrative only and are not intended to narrow the definition of "engaging in business" in this subsection. 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.
 - c. 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 pursuant to SMC Title 5:
 - i. Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City;
 - ii. Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City;
 - iii. Soliciting sales;
 - iv. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance;
 - v. 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;

- vi. Installing, constructing, or supervising installation or construction of, real or tangible personal property;
 - vii. Soliciting, negotiating, or approving franchise, license, or other similar agreements;
 - viii. Collecting current or delinquent accounts;
 - ix. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials;
 - x. 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;
 - xi. 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;
 - xii. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings;
 - xiii. 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;
 - xiv. Investigating, resolving, or otherwise assisting in resolving customer complaints;
 - xv. 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;
 - xvi. Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf; or
 - xvii. 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.
- d. 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 pursuant to SMC Title and pay tax. Activities which shall not constitute "engaging in business" include:
- i. Meeting with suppliers of goods and services as a customer;
 - ii. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions;
 - iii. 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;

- iv. Renting tangible or intangible property as a customer when the property is not used in the City;
 - v. 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;
 - vi. Conducting advertising through the mail; or
 - vii. Soliciting sales by phone from a location outside the City.
- e. 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 pursuant to SMC Title 5, provided that it engages in no other business activities in the City. Such activities do not include those in SMC 3.22.030(E)(d).
3. "Extracting" is the activity engaged in by an extractor and is reportable under the extracting classification.
4. "Extractor" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product; or fells, cuts or takes timber, Christmas trees, other than plantation Christmas trees, or other natural products; or takes fish, shellfish, or other sea or inland water foods or products. "Extractor" shall not include persons performing under contract the necessary labor or mechanical services for others; or persons meeting the definition of farmer.
5. "Extractor for Hire" means a person who performs under contract necessary labor or mechanical services for an extractor.

F. "F" Definitions (Reserved)

G. "G" Definitions

1. "Government contracting" means a contract for the provision of 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.
2. "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.

3. "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.
4. "Gross receipts tax" - see Business & Occupation Tax

H. "H" Definitions (Reserved)

I. "I" Definitions

1. "In the [this] city" or "within the [this] city" includes areas within the corporate city limits of the city of Shoreline.

J. "J" Definitions (Reserved)

K. "K" Definitions (Reserved)

L. "L" Definitions (Reserved)

M. "M" Definitions

1. "Manufacturing" means the activity conducted by a manufacturer and is reported under the manufacturing classification.
2. "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. A business not located in the city that is the owner of materials or ingredients processed for it in the city by a processor for hire shall be deemed to be engaged in business as a manufacturer in the city
3. "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:

- a. The production of special made or custom made articles;
- b. The production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;
- c. Crushing and/or blending of rock, sand, stone, gravel, or ore; or
- 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.

“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.

N. “N” Definitions

1. Newspaper – Magazine – Periodical.
 - a. “Newspaper” means a publication offered for sale regularly at stated intervals at least once a week and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind.
 - b. “Magazine” or “periodical” means any printed publication, other than a newspaper, issued and offered for sale regularly at stated intervals at least once every three months, including any supplement or special edition of the publication. Any publication meeting this definition qualifies regardless of its content.
2. “Nonprofit organization” means an organization exempt from federal income tax under Section 501(c)(3), (4), or (7) of the Internal Revenue Code, or as hereafter amended.

O. “O” Definitions

1. “Office” or “place of business” means a fixed location or permanent facility where the regular business of the person is conducted and which is either owned by the person or over which the person exercises legal dominion and control. The regular business of the person is presumed conducted at a location:
 - a. Whose address the person uses as its business mailing address; and
 - b. Where the place of primary use is shown on a telephone billing or a location containing a telephone line listed in a public telephone directory or other similar publication under the business name; and
 - c. Where the person holds itself out to the general public as conducting its regular business through signage or other means; and

- d. Where the person is required to obtain any appropriate state and local business license or registration unless they are exempted by law from such requirement.

A vehicle such as a pick-up, van, truck, boat or other motor vehicle is not an office or place of business. A post office box is not an office or place of business. If a person has an office or place of business, the person's home is not an office or place of business unless it meets the criteria for office or place of business above. If a person has no office or place of business, the person's home or apartment within the city will be deemed the place of business.

P. "P" Definitions

1. "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, non-profit, or otherwise and the United States or any instrumentality thereof.
2. "Processing for hire" means the performance of labor and mechanical services upon materials or ingredients belonging to others so that as a result a new, different or useful product is produced for sale, or commercial or industrial use. A processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon that person's own materials or ingredients. If a person furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to 20 percent or more of the total value of all materials or ingredients that become a part of the finished product the person will be deemed to be a manufacturer and not a processor for hire.
3. "Product – Byproduct."
 - a. "Product" means tangible personal property, including articles, substances, or commodities created, brought forth, extracted, or manufactured by human or mechanical effort.
 - b. "Byproduct" means any additional product, other than the principal or intended product, which results from extracting or manufacturing activities and which has a market value, without regard to whether or not such additional product was an expected or intended result of the extracting or manufacturing activities.

Q. "Q" Definitions (Reserved)

R. "R" Definitions

1. "Retailing" means the activity of engaging in making sales at retail and is reported under the retailing classification.

2. "Retail Service" means 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:

- a. 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" shall not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons;
- b. Abstract, title insurance, and escrow services;
- c. Credit bureau services;
- d. Automobile parking and storage garage services;
- e. 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;
- f. Service charges associated with tickets to professional sporting events;
- g. The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services; or
- h. The renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

3. "Royalties" means compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, tradenames, and similar items.

S. "S" Definitions

1. "Sale," "casual or isolated sale."

- a. "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.
- b. "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.

2. "Sale at retail," "Retail sale."

- a. “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:
 - i. Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or
 - ii. 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
 - iii. 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
 - iv. 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
 - v. 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 (i) through (v) this subsection, SMC 3.22.030(S)(2)(a), following such use.
 - vi. Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in SMC 3.22.030(S)(2)(b)(vi) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

- b. “Sale at retail” or “retail sale” also means:
 - i. Every sale of tangible personal property to persons engaged in any business activity which is taxable under SMC 3.22.050(A)(7).
 - ii. The sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:
 - 1) 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;

- 2) 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;
- 3) 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;
- 4) 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" shall not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;
- 5) 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;
- 6) 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;

- 7) The installing, repairing, altering, or improving of digital goods for consumers; or
- 8) The sale of or charge made for tangible personal property, labor and services to persons taxable under SMC 3.22.030(S)(2)(b)(ii)(1) through (b)(ii)(7) of this subsection 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 SMC 3.22.030(S)(2)(a) of this section and nothing contained subsection SMC 3.22.030(S)(2)(a) of this section shall be construed to modify this subsection.

- iii. The provision of competitive telephone service to consumers.
- iv. 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 subsection SMC 3.22.030(S)(2)(c), the sale of the 'sale of prewritten computer software' includes the sale of or charge made for a key or an enabling or 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 characterized by the vendor or by the purchaser.

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 a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

The service described in this subsection includes the right to access and use prewritten software to perform data processing. For purposes of this subsection, "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.

The term "sale at retail" or "retail sale" shall not include the sale of or charge made for:

- 1) Custom software; or
- 2) The customization of prewritten software.

- v. 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”)
- vi. 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" shall 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.
- vii. 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”).
- viii. The following sales to consumers of digital goods, digital codes, and digital automated services:
 - 1) Sales in which the seller has granted the purchaser the right of permanent use;
 - 2) Sales in which the seller has granted the purchaser a right of use that is less than permanent;
 - 3) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and
 - 4) 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 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.

- ix. The installing, repairing, altering, or improving of digital goods for consumers.
- x. “Sale at retail” or “Retail Sale” shall not include:
 - 1) 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.
 - 2) The sale of or charge made for labor and services rendered for environmental remedial action.

- c. "Sale at wholesale," "wholesale sale" means any sale of tangible personal property, digital goods, digital codes, digital automated services, prewritten computer software, or services described in subsection SMC 3.22.030(S)(2)(b)(iv) 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.

- d. “Services” means professional or personal services and refers generally to the activity of rendering services as distinct from making sales of tangible personal property or of services which have been defined in RCW 82.04.040 and 82.04.050 and WAC 458-20-138.
 - i. Services include, but are not limited to: accountants, aerial surveyors, agents, ambulances, appraisers, architects, assayers, attorneys, automobile brokers, barbers, baseball clubs, beauty shop operators, brokers, chemists, chiropractors, collection agents, community television antenna owners, court reporters, dentists, detectives, doctors, employment agents, engineers, financiers, funeral directors, refuse collectors, hospital owners, janitors, kennel operators, laboratory operators, landscape architects, lawyers, loan agents, map makers, music teachers, oculists, orchestra or band leaders contracting to provide musical services, osteopathic physicians, physicians, public accountants, public stenographers, real estate agents, school bus operators, school operators, sewer services other than collection, warehouse operators who are not subject to other specific statutory tax classifications, teachers, theater operators, undertakers and veterinarians, and other persons engaging in the business of serving persons.

- ii. Persons performing “services” do not include persons engaged in the business of cleaning, repairing, improving, etc., the personal property of others, such as automobile, house, jewelry, radio, refrigerator and machinery repairmen, laundry or dry cleaners. Also not included are certain personal and professional services specifically included within the definition of the term “sale at retail” in this section.
 - iii. Not included are persons who render services to others in the capacity of employees as distinguished from independent contractors. Persons engaged in the business of rendering services to others are taxable under the sales of retail services classification upon the gross income of such business under Section 3.22.050(A)(7). There must be included within gross amounts reported for tax all fees for services rendered and all charges recovered for expenses incurred in connection therewith, such as transportation costs, hotel, restaurant, telephone, copy, printing, computer time and other expenses charged in providing the services.
- e. Software – Prewritten Software – Custom Software – Customization of Canned Software – Master Copies – Retained Rights.
- i. “Prewritten software” or “canned software” means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or enhances computer software of which such person is not the author or creator, the person shall be deemed to be the author or creator only of the person’s modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; however where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.
 - ii. “Custom software” means software created for a single person.
 - iii. “Customization of canned software” means any alteration, modification, or development of applications using or incorporating canned software to specific individualized requirements of a single person. Customization of canned software includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of canned software does not change the underlying character or taxability of the original canned software.
 - iv. “Master copies” of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor

makes copies for sale or license. The software encoded on a master copy and the media upon which the software resides are both ingredients of the master copy.

- v. “Retained rights” means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensor, or distributor.

“Software” means any information, program, or routine, or any set of one or more programs, routines, or collections of information used, or intended for use, to convey information that causes one or more computers or pieces of computer-related peripheral equipment, or any combination thereof, to perform a task or set of tasks. “Software” includes the associated documentation, materials, or ingredients regardless of the media upon which that documentation is provided, that describes the code and its use, operation, and maintenance and that typically is delivered with the code to the consumer. All software is classified as either canned or custom.

- 3. “SMC” means Shoreline Municipal Code.

T. “T” Definitions

- 1. “Tax” - see Business & Occupation Tax.
- 2. “Taxpayer” means any "person", as herein defined, required to have a business license pursuant to SMC Title 5 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.
- 3. “Tuition fee” includes library, laboratory, health service and other special fees, and amounts charged for room and board by an educational institution when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution. “Educational institution,” as used in this section, means only those institutions created or generally accredited as such by the state and includes educational programs that such educational institution cosponsors with a nonprofit organization, as defined by the Internal Revenue Code Section 501(c)(3), as hereafter amended, if such educational institution grants college credit for coursework successfully completed through the educational program, or an approved branch campus of a foreign degree-granting institution in compliance with Chapter 28B.90 RCW, and in accordance with RCW 82.04.4332 or defined as a degree-granting institution under RCW 28B.85.010(3) and accredited by an accrediting association recognized by the United States Secretary of Education, and offering to students an educational program of a general academic nature or those institutions which are not operated for profit and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture, but not including specialty schools, business colleges, other trade schools, or similar institutions.

U. “U” Definitions (Reserved)

V. "V" Definitions

1. "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or which is 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.
2. "Value of products."
 - a. The value of products, including by-products, extracted or manufactured, shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or by-products by the seller.
 - b. Where such products, including by-products, are extracted or manufactured for commercial or industrial use; and where such products, including by-products, are shipped, transported or transferred out of the City, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products. In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs. The Director may prescribe rules for the purpose of ascertaining such values.
 - c. Notwithstanding subsection (b) above, the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond to;
 - i. the retail selling price of such new or improved product when first offered for sale; or
 - ii. the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

W. "W" Definitions

1. "Wholesaling" means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification.

X. "X, Y, and Z" Definitions (Reserved)

SMC 3.22.040 Agency – Sales and services by agent, consignee, bailee, factor or auctioneer.

A. Sales in Own Name – Sales or Purchases as Agent. Every person, including agents, consignees, bailees, factors or auctioneers having either actual or constructive possession of tangible personal property or having possession of the documents of title thereto, with power to sell such tangible personal property in the person's own name and actually so selling shall be deemed the seller of such tangible personal property within the meaning of this chapter.

The burden shall be upon the taxpayer in every case to establish the fact that such taxpayer is not engaged in the business of selling tangible personal property but is acting merely as broker or agent in promoting sales or making purchases for a principal. Such claim will be recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:

1. The books and records of the broker or agent show the transactions were made in the name and for the account of the principal, and show the name of the actual owner of the property for whom the sale was made, or the actual buyer for whom the purchase was made.
2. The books and records show the amount of the principal's gross sales, the amount of commissions and any other incidental income derived by the broker or agent from such sales. The principal's gross sales must not be reflected as the agent's income on any of the agent's books and records. Commissions must be computed according to a set percentage or amount, which is agreed upon in the agency agreement.
3. No ownership rights may be conferred to the agent unless the principal refuses to pay, or refuses to abide by the agency agreement. Sales or purchases of any goods by a person who has any ownership rights in such goods shall be taxed as retail or wholesale sales.
4. Bulk goods sold or purchased on behalf of a principal must not be co-mingled with goods belonging to another principal or lose their identity as belonging to the particular principal. Sales or purchases of any goods which have been co-mingled or lost their identity as belonging to the principal shall be taxed as retail or wholesale sales.

B. If the above requirements are not met the consignor, bailor, principal or other shall be deemed a seller of such property to the agent, consignee, bailee, factor or auctioneer.

C. Services in Own Name – Procuring Services as Agent. For purposes of this subsection, an agent is a person who acts under the direction and control of the principal in procuring services on behalf of the principal that the person could not itself render or supply. Amounts received by an agent for the account of its principal as advances or reimbursements are exempted from the measure of the tax only when the agent is not primarily or secondarily liable to pay for the services procured.

Any person who claims to be acting merely as agent in obtaining services for a principal will have such claim recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:

1. The books and records of the agent show that the services were obtained in the name and for the account of the principal, and show the actual principal for whom the purchase was made.
2. The books and records show the amount of the service that was obtained for the principal, the amount of commissions and any other income derived by the agent for acting as such. Amounts received from the principal as advances and reimbursements must not be reflected as the agent's income on any of the agent's books and records. Commissions must be computed according to a set percentage or amount, which is agreed upon in the agency agreement.

SMC 3.22.050 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 be 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 business as an extractor; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, extracted within the City for sale or for commercial or industrial use, multiplied by the rate of .1 of one percent (.001). The measure of the tax is the value of the products, including by-products, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the City.
 2. Upon every person engaging within the City in business as a manufacturer, as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured within the City, multiplied by the rate of .1 of one percent (.001). The measure of the tax is the value of the products, including by-products, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the City.
 3. Upon every person engaging within the City in the business of making sales at wholesale, 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 .1 of one percent (.001).
 4. 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 .1 of one percent (.001)

5. 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 .1 of one percent (.001).
6. 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 .1 of one percent (.001).
7. Upon every other person engaging within the City in any business activity other than or in addition to those enumerated in the above subsections; as to such persons, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of .2 of one percent (.002).

This subsection includes, among others, and without limiting the scope hereof (whether or not title to material used in the performance of such business passes to another by accession, merger or other than by outright sale), persons engaged in the business of developing, or producing custom software or of customizing canned software, producing royalties or commissions, and persons engaged in the business of rendering any type of service which shall not constitute a sale at retail, a sale at wholesale, or a retail service.

- 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 US\$200,000, or is equal to or less than US\$50,000 during any quarter if on a quarterly reporting basis.

SMC 3.22.070 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 (2) or more subsections of SMC 3.22.050(A) shall be taxable under each applicable subsection.
- B. Notwithstanding anything to the contrary herein, if imposition of the City's Business and Occupation 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's 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 the City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid:
1. With respect to the manufacturing of the products sold in the City, and
 2. 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.
- 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 the 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 the 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.

SMC 3.22.075 Deductions to prevent multiple taxation of manufacturing activities. 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

SMC 3.22.076 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. Domiciled shall mean the location of a person's headquarters.

SMC 3.22.077 Allocation and apportionment of income when activities take place in more than one jurisdiction.

Gross income, other than persons subject to the provisions of chapter 82.14A RCW, shall be allocated and apportioned as follows:

- A. Gross income derived from all activities other than those taxed as service or royalties under SMC 3.22.050(A)(7) shall be allocated to the location where the activity takes place.
- B. In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

- C. 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:
1. The seller's place of business if the purchaser receives the digital product at the seller's place of business;
 2. 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;
 3. 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;
 4. 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
 5. 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 82.04.050(6)(b) was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.
- D. If none of the methods in subsection C of this section 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 SMC 3.22.077(C)(1) through .077(C)(5) of this section, 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, SMC 3.22.077(D). The City may employ an alternative method for allocating the income from the sale of digital products if the methods provided in subsections SMC 3.22.077(C)(1) through .077(C)(5) 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.
- E. For purposes of subsections SMC 3.22.077(C)(1) through .077(C)(5), "Receive" has the same meaning as in RCW 82.32.730.
- F. Gross income derived from activities taxed as services and other activities taxed under SMC 3.22.050(A)(7) 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.
1. 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:

- a. The individual is primarily assigned within the City;
 - b. 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
 - c. 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.
2. 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:
- a. The customer location is in the City; or
 - b. The income-producing activity is performed in more than one location and a greater proportion of the service-income-producing activity is performed in the City than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or
 - c. The service-income-producing activity is performed within the City, and the taxpayer is not taxable in the customer location.
3. If the allocation and apportionment provisions of this subsection do not fairly represent the extent of the taxpayer's business activity in the City or cities in which the taxpayer does business, the taxpayer may petition for or the tax administrators may jointly require, in respect to all or any part of the taxpayer's business activity, that one of the following methods be used jointly by the cities to allocate or apportion gross income, if reasonable:
- a. Separate accounting;
 - b. The use of a single factor;
 - c. The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the City; or
 - d. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

G. The definitions in this subsection apply throughout this section:

1. "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.

2. "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.
3. "Customer location" means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.
4. "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.
5. "Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.
6. "Service-taxable income" or "service income" means gross income of the business subject to tax under either the service or royalty classification.
7. "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. "Taxable in the customer location" means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so.

H. 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.

SMC 3.22.078 Allocation and apportionment of printing and publishing income when activities take place in more than one jurisdiction.

Notwithstanding RCW 35.102.130, 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.

SMC 3.22.080 Reserved

SMC 3.22.090 Exemptions.

A. Tax Exemption Thresholds. This chapter shall not apply to any person engaged in any one or more business activities which are otherwise taxable pursuant to SMC 3.22.050, when the value of products, gross proceeds of sale, or gross income of business, less applicable deductions and exemptions, is less than or equal to US\$200,000 for an annual reporting period, regardless of assigned reporting frequency. The annual exemption amount may be divided by the assigned filing frequency and applied to each return due and payable during the year. It is the taxpayer's responsibility to reconcile the exemption taken during the year to the allowable annual deduction. The administrative provisions in

SMC 3.23.090 and 3.23.100 apply to any underpayment or overpayment of tax resulting from such reconciliation.

- B. City Taxes. 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:
 - 1. SMC Chapter 3.32 Utility Tax
 - 2. SMC Chapter 3.30 Gambling Tax
- C. 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.
- D. 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.
- E. 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 in the Internal Revenue Code, as hereafter amended.
 - 2. A booth renter is an independent contractor for purposes of this chapter.
- F. 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) calendar days or longer.
- G. 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.
- H. Amounts derived from manufacturing, selling or distributing motor vehicle fuel. This chapter shall not apply to the manufacturing, selling, or distributing motor vehicle fuel, as the term "motor vehicle fuel" is defined in RCW 82.36.010 and exempt under RCW

82.36.440, 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.

- I. 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.
- J. Casual and isolated sales. This chapter shall not apply to the gross proceeds derived from casual or isolated sales.
- K. 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 shall 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 (14) calendar days to reimburse in kind a previous accommodation sale by the buyer to the seller.
- L. 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.
- M. Nonprofit Corporations or Nonprofit Organizations. This chapter shall not apply to nonprofit organizations exempt from federal income tax under Section 501(c)(3), (4), or (7) of the Internal Revenue Code, as hereafter amended, except with respect to retail sales of such persons.
- N. City of Shoreline. The city of Shoreline is exempt from the tax levied by this chapter

SMC 3.22.100 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 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. 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.

SMC 3.22.120 Tax part of overhead.

It is not the intention of this chapter that the taxes or fees herein levied upon persons engaging in business be construed as taxes or fees upon the purchasers or customer, but that such taxes or fees shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes or fees shall constitute a part of the cost of doing business of such persons.

3.22.130 Severability Clause.

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

Ordinance No. 808
Exhibit B

Chapter 3.23 Tax Administrative Code

SMC 3.23.010 Purpose. The purpose of this chapter is to provide administrative guidelines and provisions to implement, administer, and enforce taxes imposed by the City of Shoreline.

SMC 3.23.015 Application of chapter stated. The provisions of this chapter shall apply with respect to the taxes imposed under chapter 3.22 SMC Business and Occupation Tax, chapter 3.30 SMC Gambling Tax; chapter 3.32 Utility Tax; and to such other chapters and sections of the Shoreline Municipal Code in such manner and to such extent as expressly indicated in each such chapter or section.

SMC 3.23.020 Definitions.

- A. For purposes of this chapter, the definitions contained in chapter 3.22 SMC 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.
1. "Active nonreporter" means a person who has been assigned a status by the Director that permits the person not to file a Return unless the person's gross receipts exceed the exemption threshold establish in chapter 3.22 SMC.
 2. "Day" means, unless otherwise provided, a calendar day.
 3. "Department" means, unless otherwise provided, the Administrative Services Department of the City of Shoreline. Where provisions of Chapter 82.32 RCW are incorporated in SMC 3.23.090 of this chapter, "Department" as used in the RCW shall refer to the "Director."
 4. "Director" means the finance director of the City of Shoreline or any officer, agent or employee of the City designated to act on the director's behalf. The finance director is also known as the Administrative Services Director.
 5. "Reporting period" means:
 - a. A one-month period beginning the first day of each calendar month (monthly); or
 - b. A three-month period beginning the first day of January, April, July or October of each year (quarterly); or
 - c. A twelve-month period beginning the first day of January of each year (annual).
 6. "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.
 7. "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.
 8. "Tax year," "taxable year" " means the calendar year.

- B. Where provisions of Chapter 82.32 RCW are incorporated in SMC 3.23.090 of this chapter, "warrant" as used in the RCW shall mean "citation or criminal complaint."

SMC 3.23.030 Registration certificate requirements.

- A. Any person who engages in any business or performs any act that is subject to the provisions of SMC Title 5 and any other applicable chapters or sections of the SMC, even if that person is not subject to any tax imposed pursuant to the SMC, shall apply obtain a license from the City pursuant to SMC Title 5.
- B. No person shall engage in any business without first having obtained a license pursuant to SMC Title 5.
- C. The City business license shall serve as the certificate for this chapter.

SMC 3.23.040 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 pursuant to SMC Title 5, the tax imposed by chapters 3.22 SMC, 3.30 SMC, and 3.32 SMC, and any other applicable chapters or sections, shall be due and payable in quarterly installments. At the Director's discretion, businesses may be assigned to a monthly, annual, or active nonreporter 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 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 chapters 3.22 SMC, any person, not placed on an active nonreporter status by the Director, 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 Two Hundred Thousand Dollars (US\$200,000) in the current calendar year 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 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.

SMC 3.23.050 Payment methods - Mailing returns or remittances - Time extension - Deposits - Recording payments - Payment must accompany return - NSF checks.

- A. Taxes shall be paid to the City of Shoreline 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, 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 that 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 U.S. Post Office upon the envelope containing it. The Director may allow electronic filing of returns or remittances from any taxpayer. A return or remittance which is transmitted to the City electronically shall be deemed filed or received according to procedures set forth by the Director.
- C. If a written request 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 of twenty dollars (US\$20.00) is received by the Director. Any license issued upon payment with a NSF check will be considered void, and shall be returned to the Director. No license shall be reissued until payment (including the twenty dollars (US\$20.00) NSF fee) is received.
- 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.

SMC 3.23.060 Records to be preserved - Examination - Estoppel to question assessment.

- A. Every person liable for any fee or tax imposed by the applicable chapters of the SMC 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 books, records, papers, invoices, vendor lists, inventories, stocks of merchandise, and other data including federal income tax and state tax returns and reports shall be open for examination at any time by the Director or its duly authorized agent. Every person's business premises shall be open for inspection or examination by the Director or a 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:
 - 1. Produces within the City such books and records as may be required by the Director, or
 - 2. 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.
 - 3. Any person who fails, or refuses a request by the Department or the Director, to provide or make available records, or to allow inspection or examination of the business premises, shall be forever barred from questioning in any court 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, or in respect of which inspection or examination of the business premises has been denied. 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.

SMC 3.23.070 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.

SMC 3.23.080 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, require such person to pay in full all license fees or taxes due under the applicable chapters of the SMC 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.

SMC 3.23.090 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 (30) days from the date of the notice, or within such time as the Director may provide in writing.
- B. The Director shall compute interest in accordance with RCW 82.32.050 as it now exists or as it may be amended. If this provision is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of this ordinance shall apply.

SMC 3.23.095 Time in which assessment may be made.

The Director shall not assess, or correct an assessment for, additional taxes, penalties, or interest due more than four (4) years after the close of the calendar year in which they were incurred, except that the Director may issue an assessment:

- A. 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;
- B. Against a person that has committed fraud or who misrepresented a material fact; or
- C. Against a person that has executed a written waiver of such limitations.

SMC 3.23.100 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 (B) 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. The Director shall compute interest on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060 as it now exists or as it may be amended. If this provision is held to be invalid, then the provisions of RCW 82.32.060 existing at the effective date of this ordinance shall apply

SMC 3.23.110 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 by the due date, the Director shall add a penalty in accordance with RCW 82.32.090(1), as it now exists or as it may be amended.
- B. 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 by the Director for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty 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 Title SMC 5, the Director shall impose a penalty 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 provision 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 in accordance with RCW 82.32.090(5), as it now exists or as it may be amended
- 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 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 (E) above of this section can each be imposed on the same tax found to be due. This provision does not prohibit or restrict the application of other penalties authorized by law.
- H. 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 of Shoreline 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 City of Shoreline 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.

SMC 3.23.120 Cancellation of penalties.

- A. The Director may cancel any penalties imposed under SMC 3.23.110(A) 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 thirty (30) calendar 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 supporting a reasonable cause determination. In all cases the burden of proving the facts rests upon the taxpayer.
- C. The Director may cancel the penalties in imposed under SMC 3.23.110(A) one time if a person:
 - 1. Is not currently licensed and filing returns,
 - 2. Was unaware of its responsibility to file and pay tax, and
 - 3. Obtained business licenses and filed past due tax returns within thirty (30) calendar days after being notified by the Department.
- D. The Director shall not cancel any interest charged upon amounts due.

SMC 3.23.130 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) calendar 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:
 - 1. 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
 - 2. 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.
- A. 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.
- B. 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.

SMC 3.23.140 Administrative Appeal.

- A. Any person, except one who has failed to comply with SMC 3.23.060, having been issued a notice of additional taxes, delinquent taxes, interest, or penalties assessed by the Director may, within thirty (30) calendar days after the issuance of such notice or within the period covered by any extension of the due date granted by the Director, request a correction of the amount of the assessment and a conference with the Director for review of the assessment. Interest and penalties assessed shall continue to accrue during the Director's review of a request for a correction, except and to the extent that the Director later determines that a tax assessment was too high or the delay in issuing a determination is due to unreasonable delays caused by the Director. The Director shall make a final determination regarding the assessment and shall notify the taxpayer of the Director's determination within sixty (60) calendar days after the conference, unless otherwise notified in writing by the Director. Such determination shall be subject to appeal pursuant to subsection (B) of this section. If no request for correction is filed within the time period provided herein, the assessment covered by such notice shall become final and immediately due and payable, and no appeal to the hearing examiner shall be allowed.
- B. Any person aggrieved by the amount of any fee, tax, interest or penalty determined by the Department to be due under the provisions of this chapter, Chapter 3.22 SMC, Business and Occupation Tax; Chapter 3.32 SMC, Utility Tax; or Chapter 3.30 SMC, Gambling Tax, may appeal such determination pursuant to the following procedures:

1. *Form of appeal.* It must be in writing and must contain the following:
 - a. The name and address of the taxpayer;
 - b. A statement identifying the determination of the Director from which the appeal is taken;
 - c. A statement setting forth the grounds upon which the appeal is taken and identifying specific errors the Director is alleged to have made in making the determination; and
 - d. A statement identifying the requested relief from the determination being appealed.
2. *Time and place to appeal.* Any appeal shall be filed with the office of the city clerk with a copy to the Director no later than thirty (30) calendar days following the date on which the determination of the Director was mailed to the taxpayer. A US\$500 filing fee shall be submitted with the appeal, which filing fee is required to process the appeal. If no appeal is filed within the time period provided herein, the assessment covered by such notice shall become final and immediately due and payable. No refund request may be made for the audit period covered in that assessment. Failure to follow the appeal procedures in this section shall preclude the taxpayer's right to appeal.
3. *Appeal hearing.* The city's hearing examiner shall, as soon as practical, 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 examiner shall conduct the appeal hearing in accordance with this chapter and procedures developed by the hearing examiner, at which time the appellant taxpayer and the Director shall have the opportunity to be heard and to introduce evidence relevant to the subject of the appeal
4. *Burden of proof.* The appellant taxpayer shall have the burden of proving by a preponderance of the evidence that the determination of the Director is erroneous.
5. *Hearing record.* The hearing examiner shall make an electronic sound recording of each appeal unless the hearing is conducted solely in writing. The hearing examiner may, by subpoena, require the attendance of any person at the hearing, and may also require him or her to produce pertinent books and records. Any person served with such a subpoena shall appear at the time and place therein stated and produce the books and records required, if any, and shall testify truthfully under oath administered by the hearing examiner as to any matter required of him or her pertinent to the appeal; and it shall be unlawful for him or her to fail or refuse to do so. The city attorney shall seek enforcement of a hearing examiner subpoena in an appropriate court.
6. *Decision of the hearing examiner.* Following the hearing, the hearing examiner shall enter a written decision on the appeal, supported by findings and conclusions in support thereof, within fourteen (14) working days of the hearing. A copy of the findings, conclusions, and decision shall be mailed to the appellant taxpayer and to the Director. The written decision shall state the correct amount of the fee, tax, interest or penalty owing.
7. *Interest accrual or payment.* Interest and/or penalties shall continue to accrue on all unpaid amounts, in accordance with SMC 3.23.090 and SMC 3.23.110, notwithstanding the fact that an appeal has been filed. If the hearing examiner determines that the taxpayer is owed a refund, such refund amount shall be paid to the taxpayer in accordance with SMC 3.23.100.

SMC 3.23.150 Judicial Review of Director's Determination.

Any person, except one who has failed to comply with SMC 3.23.060, having paid any tax as required and feeling aggrieved by the amount of the tax assessed, and after first exhausting the right of administrative appeal set forth in this chapter, may seek judicial review in the King County Superior Court within twenty-one (21)

calendar days of the date of the decision of the Hearing Examiner. 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 trial in the Superior Court shall be de novo in accordance with the laws of the State of Washington. The burden shall rest upon the taxpayer to prove that the tax paid by the taxpayer is incorrect, either in whole or in part, and to establish the correct amount of the tax.

SMC 3.23.160 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.

SMC 3.23.170 Ancillary allocation authority of Director.

The Director is authorized to enter into agreements with other Washington cities which impose an "eligible gross receipts tax":

- A. To conduct an audit or joint audit of a taxpayer by using an auditor employed by the City of Shoreline, another city, or a contract auditor, provided, that such contract auditor's pay is not in any way based upon the amount of tax assessed;
- B. To allocate or apportion in a manner that fairly reflects the gross receipts earned from activities conducted within the respective cities 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; and
- C. To 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.

SMC 3.23.180 Mailing of Notices.

Any notice required by this chapter to be mailed to any taxpayer or licensee shall be sent by ordinary U.S. mail, addressed to the address of the taxpayer or licensee as shown by the records of the City. 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.

SMC 3.23.190 Tax declared additional.

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

SMC 3.23.200 Public disclosure - Confidentiality - Information sharing.

- A. For purposes of this section, in addition to the following, defined terms shall be as set forth in SMC 1.05.050, SMC 3.22.030, and SMC 3.23.020:

- 1. "Disclose" means to make known to any person in any manner whatever a return or tax information.
- 2. "Tax information" means:
 - a. A taxpayer's identity;
 - b. The nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemption, credits, assets, liability, net worth, tax liability deficiencies, over assessments, or tax payments, whether taken from the taxpayer's books and records or any other source;

- c. Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or
 - d. Other data received by, recorded by, prepared by, or provided to the City with respect to the determination or the existence, or possible existence, of liability, or the amount thereof, of a person under Chapter 3.22 SMC for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Nothing in this chapter requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material or documents so as to permit its disclosure.
 3. "City agency" means every city office, Department, division, bureau, board, commission, or other city agency.
 4. "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer.
- B. Returns and tax information are confidential and privileged, and except as authorized by this section, neither the Director nor any other person may disclose any return or tax information.
- C. This section does not prohibit the Director from:
 1. Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:
 - a. In respect of any tax imposed under any applicable chapter of the SMC if the taxpayer or its officer or other person liable under this title is a party in the proceeding; or
 - b. In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding.
 2. Disclosing, subject to such requirements and conditions as the Director prescribes by rules adopted pursuant to SMC 3.23.160, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the Director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the Department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;
 3. Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;
 4. Disclosing such return or tax information, for official purposes only, to the mayor or city attorney, or to any City agency, or to any member of the city council or their authorized

designees dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

5. Permitting the City's records to be audited and examined by the proper state officer, his or her agents and employees;
6. Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought or where otherwise allowed to be disclosed under this section;
7. Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax Department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of the City;
8. Disclosing any such return or tax information to the United States Department of justice, including the bureau of alcohol, tobacco, firearms and explosives, the Department of defense, the immigration and customs enforcement and the customs and border protection agencies of the United States Department of homeland security, the United States coast guard, the alcohol and tobacco tax and trade bureau of the United States Department of treasury, and the United States Department of transportation, or any authorized representative of these federal agencies or their successors, for official purposes;
9. Publishing or otherwise disclosing the text of a written determination designated by the Director as a precedent pursuant to RCW 82.32.410;
10. Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers and the active/closed status of such registrations, state or local business license registration identification and the active/closed status and effective dates of such licenses, reseller permit numbers and the expiration date and status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. Except that this subsection may not be construed as giving authority to the City or any recipient to give, sell, or provide access to any list of taxpayers for any commercial purpose;
11. Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW, the Public Records Act, or is a document maintained by a court of record and is not otherwise prohibited from disclosure;
12. Disclosing such return or tax information to the United States Department of agriculture, or successor Department or agency, for the limited purpose of investigating food stamp fraud by retailers;

13. Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the City for a filed tax warrant, judgment, or lien against the real property;
 14. Disclosing to a person against whom the Department has asserted liability as a successor under SMC 3.23.130 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;
 15. Disclosing real estate excise tax affidavit forms filed under Chapter 3.20 SMC in the possession of the City, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;
 16. Disclosing such return or tax information to the court or hearing examiner in respect to the City's application for a subpoena if there is probable cause to believe that the records in possession of a third party will aid the Director in connection with its official duties under this title or a civil or criminal investigation.
- D. The Director may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection.
1. The disclosure must be in connection with the Department's official duties under SMC Title 3, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The Department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the Department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.
 2. Before disclosure of any tax return or tax information under this subsection, the Director must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The Director may not disclose any tax return or tax information under this subsection until the time period allowed in subsection (D)(3) of this section has expired or until the court has ruled on any challenge brought under subsection (D)(3) of this section.
 3. The person in possession of the data, materials, or documents to be disclosed by the Department has twenty (20) calendar days from the receipt of the written request required under subsection (D)(2) of this section to petition the superior court of the county in which the petitioner resides for injunctive relief. The court must limit or deny the request of the Director if the court determines that:
 - a. The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;
 - b. The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the Department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

- c. The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.
 - 4. The Director must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.
 - 5. Requesting information under subsection (D)(3) of this section that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.
- E. Service of a subpoena issued by the court or by the hearing examiner pursuant to SMC 3.23.140 or other related authority does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena issued by the court or the hearing examiner may disclose the existence or content of the subpoena to that person's legal counsel.
- F. Any person acquiring knowledge of any return or tax information in the course of his or her employment with the City and any person acquiring knowledge of any return or tax information as provided under subsections (C)(4) through (C)(8) and subsection (C)(11) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the city, such person must forfeit such office or employment and is incapable of holding any public office or employment in this city for a period of two (2) years thereafter.

SMC 3.23.210 Tax constitutes debt.

Any applicable fee or tax due and unpaid under this chapter, and all interest and penalties thereon, shall constitute a debt to the City of Shoreline 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.

SMC 3.23.220 Unlawful actions - Violation - Penalties.

- A. It shall be unlawful for any person liable for fees under this chapter; Chapter 3.22 SMC, Business and Occupation Tax; Chapter 3.32 SMC, Utility Tax; Chapter 3.30 SMC, Gambling Tax; or SMC Title 5 Business Licenses:
 - 1. To violate or fail to comply with any of the provisions of this chapter or SMC Chapters 3.22, 3.32, 3.30, or SMC Title 5, or any lawful rule or regulation adopted by the Director;
 - 2. To make any false statement on any license application or tax return;
 - 3. To aid or abet any person in any attempt to evade payment of a license fee or tax;
 - 4. To fail to appear or testify in response to a subpoena;
 - 5. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this Chapter.
- 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 US\$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.
- C. Any person, or officer of a corporation, convicted of continuing to engage in business after the revocation of a license shall be guilty of a gross misdemeanor and may be punished by a fine not to exceed US\$5,000, or imprisonment not to exceed one year, or both fine and imprisonment.

SMC 3.23.230 Suspension or Revocation of Business License.

- A. The Director, or designee, shall have the power and authority to suspend or revoke any license issued under the provisions of SMC Title 5 Business and to such other chapters and sections of the Shoreline Municipal Code in such manner and to such extent as expressly indicated in each such chapter or section for failure to pay an applicable tax. The Director, or designee, shall notify such licensee/registrant in writing by certified mail of the intended suspension or revocation of his or her license and the grounds therefor. Any license issued under this chapter may be suspended or revoked based on one or more of the following grounds:
1. The license was procured by fraud or false representation of fact.
 2. The licensee has failed to comply with any provisions of SMC Title 3.
 3. The licensee has failed to comply with any provisions of the Shoreline Municipal Code.
 4. The licensee is in default in any payment of any license fee or tax under SMC Title 3.
 5. The licensee or employee has been convicted of a crime involving the business.
- B. Any licensee may, within thirty (30) calendar days from the date that the suspension or revocation notice was mailed to the licensee, 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 licensee to the Director and the city attorney on or before the date the petition is filed with the hearing examiner. The hearing examiner shall set a date for hearing said appeal and notify the licensee by mail of the time and place of the hearing. 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 license, and may impose any terms upon the continuance of the license.
- C. No suspension or revocation of a license issued pursuant to the provisions of this subchapter shall take effect until thirty (30) calendar days after the mailing of the notice thereof by the Director, and if appeal is taken as herein prescribed the suspension or revocation shall be stayed pending final action by the hearing examiner. All licenses which 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 licensee and/or the Director may seek review of the decision by the superior court of Washington in and for King County within thirty (30) calendar 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 license as provided in this section no portion of the license fee shall be returned to the licensee.

SMC 3.23.240 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:

- A. The case shall not be reopened as to the matters agreed upon, or the agreement modified, by the Director or the taxpayer, and
- B. 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.

SMC 3.23.250 Charge-off of uncollectible taxes.

The Director may charge off any tax, penalty, or interest that is owed by a taxpayer, if the Director reasonably 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 and otherwise within the Director's authority. Charge-offs in excess of \$5,000 require City Council approval.

SMC 3.23.260 Collection of tax.

Nothing in this chapter precludes the City from pursuing the collection of any fee, tax, interest or penalty due and unpaid to the fullest extent and in any manner authorized by law, including but not limited to the filing of a civil action against the taxpayer for the payment of such debt or the use by the city of a collection agency for such purposes.

SMC 3.23.270 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances shall not be affected.

Model Ordinance

Final revised version of the City model ordinance for business license tax. Dated October 2012.

The legislative intent information contained in the boxes indicates the intent of the ordinance and provide guidance for courts and administrators in the uniform interpretation of the ordinance. They should not be adopted as part of the ordinance, but as a supporting document to the ordinance.

While the tax provisions of this chapter are intended to provide a uniform methodology for levying a gross receipts tax on business entities, nothing in this chapter should be construed as limiting a city's ability to levy and collect a business privilege tax on any other basis; such as a tax on square footage, a tax on annualized full-time equivalents [head tax], graduated annual license tax, or any other tax calculated on a basis other than a gross receipts tax [gross income of the business, gross proceeds of sales, or value of products multiplied by rates.]

MODEL ORDINANCE CHAPTER ____.

.010 Purpose. [CITY MAY ENACT A "PURPOSE PROVISION" IN THIS SECTION.]

.020 Exercise of revenue license power. The provisions of this chapter shall be deemed an exercise of the power of the City to license for revenue. The provisions of this chapter are subject to periodic statutory or administrative rule changes or judicial interpretations of the ordinances or rules. The responsibility rests with the licensee or taxpayer to reconfirm tax computation procedures and remain in compliance with the City code.

Legislative intent information

This section implements Washington Constitution Article XI, Sec. 12 and RCW 35A.82.020 and 35A.11.020 (code cities); 35.22.280(32) (first class cities); RCW 35.23.440(8) (second class cities); 35.27.370(9) (fourth class cities and towns), which give municipalities the authority to license for revenue. In the absence of a legal or constitutional prohibition, municipalities have the power to define taxation categories as they see fit in order to respond to the unique concerns and responsibilities of local government. See Enterprise Leasing v. City of Tacoma, 139 Wn.2d 546 (1999). It is intended that this model ordinance be uniform among the various municipalities adopting it.

.028 Administrative Provisions. The administrative provisions contained in chapter _____ shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

.030 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.

"Business." "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. **(Mandatory)**

"Business and occupation tax." "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. **(Mandatory)**

"Commercial or industrial use." "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;

"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 (Title 62A RCW) do not determine when or where delivery of tangible personal property occurs for purposes of taxation. **(Mandatory)**

"Digital automated service," "digital code," and "digital goods" have the same meaning as in RCW 82.04.192. (Mandatory)

"Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050(2)(g) and (6)(b). (Mandatory)

"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 section .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. **(Mandatory)**

[Comment: This definition is worded slightly different from the state's definition (RCW 82.04.440) in that it goes into more detail in describing what constitutes an eligible gross receipts tax. In addition, it makes it very clear that an eligible gross receipts tax for which a credit can be calculated must be imposed at the local level.]

"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 minimus 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 (1). 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, 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 (4).

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. **(Mandatory)** [Comment: Section (2) has been added to the State's definition of engaging in business to give guidelines and parameters to businesses in order for them to better ascertain whether or not they need to license and pay tax to the cities.]

"Extracting." "Extracting" is the activity engaged in by an extractor and is reportable under the extracting classification. [Comment: This definition is not contained in state law; however, RCW 35.102.120 requires that the model ordinance include this definition.]

"Extractor." "Extractor" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product; or fells, cuts or takes timber, Christmas trees, other than plantation Christmas trees, or other natural products; or takes fish, shellfish, or other sea or inland water foods or products. "Extractor" does not include persons performing under contract the necessary labor or mechanical services for others; or persons meeting the definition of farmer.

"Extractor for Hire" "Extractor for hire" means a person who performs under contract necessary labor or mechanical services for an extractor.

"Gross income of the business." "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. **(Mandatory)**

"Gross proceeds of sales." "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. **(Mandatory)**

"Manufacturing." "Manufacturing" means the activity conducted by a manufacturer and is reported under the manufacturing classification. **(Mandatory unless you don't tax manufacturing activities)** [Comment: This definition is not contained in state law, however RCW 35.102.120 requires that the model ordinance include this definition.]

"Manufacturer," "to manufacture." (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. **(Mandatory)** (A business not located in this City that is the owner of materials or ingredients processed for it in this City by a processor for hire shall be deemed to be engaged in business as a manufacturer in this City.) **(Optional)** [Comment: This definition differs from that found in RCW 82.04.110. The manufacturing vs. processing for hire language has been included within this definition rather than covered by rule as provided in RCW 82.04.110. The optional portion of this definition is different from the RCW in that the RCW allows for the owner of materials that are processed in Washington to be excluded as a manufacturer. It is presumed that the RCW was written in this way to encourage material owners to bring their materials into Washington to be processed by Washington processors for hire. The State chooses to forego the tax that the owner would pay on the value of the materials under the manufacturing classification. The aluminum and nuclear fuel assembly provisions were excluded since no B & O city contains these types of activities.]

(2) "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:

- (a) The production of special made or custom made articles;
- (b) The production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;
- (c) Crushing and/or blending of rock, sand, stone, gravel, or ore; and
- (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.

"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. **(Mandatory)** [Comment: This definition is different from RCW 82.04.120. The cutting, delimiting, and measuring of felled, cut, or taken trees does not usually take place within cities so that was deleted. The RCW also states that some activities which are covered in other special taxing classifications at the State level are not manufacturing. Although some of these activities normally do not take place in cities we included them into manufacturing since they fall within the definition. Manufacturing activities covered in other tax classifications at the State level such as slaughtering, curing, preserving, or canning were included in this definition since the Cities do not have the other classifications.]

"Person." "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, non-profit, or otherwise and the United States or any instrumentality thereof. **(Mandatory)**

"Retailing." "Retailing" means the activity of engaging in making sales at retail and is reported under the retailing classification. **(Mandatory)** [Comment: This definition is not contained in state law, however RCW 35.102.120 requires that the model ordinance include this definition.]

"Retail Service." "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. **(Mandatory)**

[Comment: This definition has been removed and separated from the definition of "sale at retail" since many cities have kept these activities taxable at a rate different from their "retailing" rate. The State changed these activities to retail from service a few decades ago. This separation of definitions enables those cities that have historically taxed retail sales and retail services at a different rate to continue to do so. The definition includes more examples under the amusement and recreation subsection than States definition and these examples originated from the State's rule on amusement and recreation.]

"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. [Comment: the term "routine or continuous" comes from WAC 458-20-106.]

"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 (a), (b), (c), (d), or (e) of this subsection following such use.

(f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(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 .050(1)(g).

(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;

~~((g))~~ (h) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), ~~((and))~~ (f), and (g) of this subsection 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 (1) of this section and nothing contained in subsection (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. [Comment: Cities can only include "competitive telephone service" since telephone business is taxed under the utility tax.]

(5) (a) "Sale at retail" or "retail sale" shall also include the sale of ~~((canned))~~ 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~~((, but shall))~~ . For purposes of this subsection (5)(a) the sale of the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or 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 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:

(i) Custom ~~((custom))~~ software; or

(ii) The ~~((the))~~ customization of prewritten ~~((canned))~~ software.

(b)(i) 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 a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(ii)(A) The service described in (b)(i) of this subsection 5 includes the right to access and use prewritten software to perform data processing.

(B) For purposes of this subsection (b)(ii) "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.

(8) "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).

(9) "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.]

(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.]

(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 [insert reference to section 5(11)] 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.

(12) "Sale at retail" or "retail sale" shall also include the installing, repairing, altering, or improving of digital goods for consumers.

(Mandatory) [Comment: This definition is different than RCW 82.04.050. Retail services have been given their own definition. Public road construction and government contracting has been included into this definition since the Cities do not have special tax classifications for those two activities. Environmental or nuclear waste clean up are assigned to the service and other classification. And the sales to farmers will remain under the retailing classification. The reference to "telephone business and cable service" in subsection (3)(f) has been included to clarify to hotels and motels that such telephone services and cable services are taxable under the utility tax.]

"Sale at wholesale," "wholesale sale." "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 [insert reference to "sale at retail" section 5(b)(i)], 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. **(Mandatory)** [The last sentence must be included since telephone_business would normally be taxed under the utility tax. The wholesale treatment of telephone business to another telecommunications company is dictated by State law.]

"Services." [Comment: RCW 35.102.120 requires that the model ordinance include this definition. However, no explicit definition will be included in this Model Ordinance until the RCW contains a definition of "service". In the absence of a definition of "service" in state law, the Cities generally use this term and classification to include those activities that do not fall within one of the other tax classifications used by a city.]

"Taxpayer." "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.

"Value proceeding or accruing." "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or which is 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.

(Mandatory if you have a manufacturing tax)

"Value of products." (1) The value of products, including by-products, extracted or manufactured, shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or by-products by the seller.

(2) Where such products, including by-products, are extracted or manufactured for commercial or industrial use; and where such products, including by-products, are shipped, transported or transferred out of the City, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products. In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs. The Director may prescribe rules for the purpose of ascertaining such values. (3) Notwithstanding subsection (2) above, the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond to (a) the retail selling price of such new or improved product when first offered for sale; or (2) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale. [Comment: This definition is slightly different than that contained in RCW 82.04.450. The meaning is intended to be the same, and the only difference is in grammatical construction. The model also adds a sentence, taken from WAC 458-20-112, at the end of subsection (2) explaining the use of costs to ascertain the value of the products.]

(Mandatory if you have manufacturing or extracting tax)

“Wholesaling.” “Wholesaling” means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification. **(Mandatory)** [Comment: This definition is not contained in state law, however RCW 35.102.120 requires that the model ordinance include this definition.]

.050 Imposition of the tax - tax or fee levied. (1) Except as provided in subsection (2) 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 be 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:

(a) Upon every person engaging within the City in business as an extractor; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, extracted within the city for sale or for commercial or industrial use, multiplied by the rate of _____ of one percent (____). The measure of the tax is the value of the products, including by-products, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

(b) Upon every person engaging within the City in business as a manufacturer, as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured within the city, multiplied by the rate of _____ of one percent (____). The measure of the tax is the value of the products, including by-products, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

(c) Upon every person engaging within the City in the business of making sales at wholesale, except persons taxable under subsection ___ of this section; 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 _____ of one percent (____).

(d) 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 _____ of one percent (____).

(e) 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 _____ of one percent (____).

(f) 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 _____ of one percent (____).

(g) Upon every other person engaging within the City in any business activity other than or in addition to those enumerated in the above subsections; as to such persons, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of _____ of one percent (____). This subsection includes, among others, and without limiting the scope hereof (whether or not title to material used in the performance of such business passes to another by accession, merger or other than by outright sale), persons engaged in the business of developing, or producing custom software or of customizing canned software, producing royalties or commissions, and persons engaged in the business of rendering any type of service which does not constitute a sale at retail, a sale at wholesale, or a retail service. [Comment: Most cities do not use all of the classifications listed above, so they need only adopt those that are imposed within their jurisdictions.] (Mandatory wording for those classifications that are adopted).

(2) 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. **(Subsection (2) is mandatory)**

~~(.060 Doing business with the City. Except where such a tax is otherwise levied and collected by the City from such person, there is hereby levied a tax on the privilege of accepting or executing a contract with the City. Such tax shall be levied and collected whether goods or services are delivered within or without the City and whether or not such person has an office or place of business within or without the City.~~

~~Except as provided in _____ [insert city code reference to section .077], as to such persons the amount of tax shall be equal to the gross contract price multiplied by the rate under section .050 that would otherwise apply if the sale or service were taxable pursuant to that section.)~~

Legislative intent information

This "super-nexus" section is repealed to reflect changes effective January 1, 2008, when allocation and apportionment provisions in section .077 took effect for city B&O taxes. The intent is that this change would not affect any rights under contracts executed for periods under the old language prior to the change.

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

(1) Persons who engage in business activities that are within the purview of two (2) or more subsections of .050 shall be taxable under each applicable subsection.

(2) 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.

(3) 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.

(4) 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.

(5) 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. (6) 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. **(Mandatory)**

[Comment: The wording in this section .070 is not quite the same as RCW 35.102.060 (1). Subsection (1) is the same as (a) in RCW 35.102.060. Subsection (2) has the same meaning although the cities add the last phrase that the tax will be subjected to the greatest extent possible. Subsection (3) is not included in RCW 35.102.060—it merely states that the taxpayer must have records or proof that it paid another eligible gross receipts tax to another local jurisdiction.

In the case of manufacturing products that have been partially manufactured in another location with an eligible gross receipt tax, the cities have chosen to give a deduction and only tax the incremental increase in the value of the product. This should provide an equal or better treatment to the manufacturer than the credit provision contained in RCW 35.102.060 (1)(d). (Refer to subsection .075(2) below.)]

Legislative intent information

This section provides a tax credit for taxpayers engaged in multiple taxable activities. The section provides a credit against eligible selling or manufacturing taxes imposed by the City for extracting or manufacturing taxes paid to the City or to any other local jurisdiction with respect to the same products. The tax credit does not depend upon whether a person that sells in the City extracts or manufactures in the City or in another jurisdiction to which it has paid an eligible gross receipts tax. The tax credit does not depend on whether a person that manufactures in the City extracts in the City or in another jurisdiction to which it has paid an eligible gross receipts tax. The credit is available to any person that pays an eligible gross receipts tax on the applicable activities, regardless of where it conducts business. The result of this section is that a city in which selling takes place gives up the tax to the manufacturing jurisdiction and the manufacturing jurisdiction gives up the tax to the extracting jurisdiction, whether those jurisdictions are inside or outside the State of Washington.

.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.

(1) 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:

(a) 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.

(b) 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).

(c) 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. **(Mandatory)**

Legislative intent information

This section establishes deductions to be applied when a single taxable activity is taxable by more than one jurisdiction that imposes an eligible gross receipts tax for taxes due prior to January 1, 2008. Prior to January 1, 2008, under Washington State Law, more than one city that has established nexus can include 100% of the gross receipts from that transaction in its tax base. However, to eliminate the possibility of the same sale or service being taxed more than once by cities that maintain nexus and an eligible gross receipts tax, the cities have provided this deduction to taxpayers. For taxes due after January 1, 2008, the apportionment provisions in section .077 will provide the mechanism for all activities except manufacturing.

Sales. A taxpayer that has paid an eligible gross receipts tax on the sale to the jurisdiction where the product is delivered may deduct the gross receipts used to measure that tax from the measure of the tax owed to another jurisdiction on the sale. If a taxpayer has not paid tax to the jurisdiction where the product is delivered, then no deduction is allowed. The sale shall be taxed by the city where the office or place of business that generated the sale is located.

Service. A taxpayer that has paid an eligible gross receipts tax on services to the jurisdiction where the service is performed may deduct the gross receipts used to measure that tax from the measure of the tax owed to another jurisdiction on that service. If a taxpayer has not paid tax to the jurisdiction where the service is

performed, then the service income shall be taxed by the city where the office or place of business that generated the sale is located. For both sales and services, the order of taxing rights is delivery city, first; and business office location, second.

General Business Activities Other Than Services. The eligible gross receipts tax on income derived from intangibles such as royalties, licenses, trademarks, patents and goodwill, and reportable under the general business classification .050 (7), shall be assigned to the domicile/headquarters office.

Conducting Business With Another City. A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with a city may deduct the contract price used to measure the tax from the measure of the tax owed to another city on the same activity.

(2) 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.

(Mandatory)

.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).

.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 _____ [insert city code reference to .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)], "Receive" has the same meaning as in RCW 82.32.730.

~~((3))~~ (6) Gross income derived from activities taxed as services and other activities taxed under _____ [insert city code reference to .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:

- (i) The customer location is in the city; or
- (ii) The income-producing activity is performed in more than one location and a greater proportion of the service-income-producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or
- (iii) The service-income-producing activity is performed within the city, and the taxpayer is not taxable in the customer location.

(c) If the allocation and apportionment provisions of this subsection do not fairly represent the extent of the taxpayer's business activity in the city or cities in which the taxpayer does business, the taxpayer may petition for or the tax administrators may jointly require, in respect to all or any part of the taxpayer's business activity, that one of the following methods be used jointly by the cities to allocate or apportion gross income, if reasonable:

- (i) Separate accounting;
- (ii) The use of a single factor;
- (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.

~~((4))~~ (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) "**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.

(c) "**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.

(d) "**Customer location**" means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.

(e) "**Primarily assigned**" means the business location of the taxpayer where the individual performs his or her duties.

(f) "**Service-taxable income**" or "**service income**" means gross income of the business subject to tax under either the service or royalty classification.

(g) "**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.

(h) "**Taxable in the customer location**" means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so.

~~((5))~~ (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.

[Mandatory – Effective January 1, 2008]

Legislative intent information

This section is required by RCW 35.102.130 and provides allocation and apportionment formulas to be applied when a single taxable activity takes place in more than one jurisdiction, whether or not that jurisdiction imposes a gross receipts tax. A definition of delivery has been added in section .030. Retail services will be allocated to where the activity takes place. Digital goods will be allocated according to the new factors set out in RCW 35.102.130, as amended.

.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.

Legislative intent information

This section is required by RCW 35.102.150 and provides that printing and publishing income shall be allocated to the city in which taxpayer's business is directed or managed. This section is not mandatory for the model ordinance, but the tax treatment is required by RCW 35.102.150.

.090 Exemptions.

(1) **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 **[local utility tax cite]**.

(2) **Investments - dividends from subsidiary corporations.** (a) 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.

(3) **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.

~~4~~(3) **Employees.**

(a) 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 in the Internal Revenue Code, as hereafter amended.

(b) A booth renter is an independent contractor for purposes of this chapter.

~~5~~(4) **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.

~~6~~(5) **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.

~~(7)(6))~~ **Amounts derived from manufacturing, selling or distributing motor vehicle fuel.** This chapter shall not apply to the manufacturing, selling, or distributing motor vehicle fuel, as the term "motor vehicle fuel" is defined in RCW 82.36.010 and exempt under RCW 82.36.440, 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.

(Mandatory)

(7) **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. **(Mandatory)**

(8) **Casual and isolated sales.** This chapter shall not apply to the gross proceeds derived from casual or isolated sales.

(9) **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.

(10) **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.

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

(1) **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. **(Mandatory)**

(2) **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.

(3) **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.

(4) **Constitutional prohibitions.** In computing tax, there may be deducted from the measure of the tax amounts derived from business which the City is prohibited from taxing under the Constitution of the State of Washington or the Constitution of the United States. **(Mandatory)**

(5) **Receipts From the Sale of Tangible Personal Property and Retail Services Delivered Outside the City but Within Washington.** Effective January 1, 2008, 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.

(6) **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.

(7) 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.

Legislative intent information

Subsection (6) is required by RCW 35.102.160 and provides that professional employer organizations may deduct the portion of fees for actual costs of employee wages and other benefits and taxes from gross income. This deduction is not mandatory for the model ordinance, but the tax treatment is required by RCW 35.102.160 and is taken from RCW 82.04.540(2).

.120 Tax part of overhead.

It is not the intention of this chapter that the taxes or fees herein levied upon persons engaging in business be construed as taxes or fees upon the purchasers or customer, but that such taxes or fees shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes or fees shall constitute a part of the cost of doing business of such persons.

.130 Severability Clause.

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

Note: The following Items contained in the model ordinance guidelines are omitted from this Core model ordinance.

Definitions omitted:

- (1) Advancement, Reimbursement
- (2) Agricultural Product
- (3) Artistic or cultural organization
- (4) Consumer
- (5) In this City, within the City
- (6) Newspaper
- (7) Non-profit organization or non-profit corporation
- (8) Office, or Place of business
- (9) Precious metal bullion or monetized bullion
- (10) Product, byproduct
- (11) Royalties
- (12) Software, canned software, custom software, customization of canned software, master copies, retained rights
- (13) Tuition fee

Sections omitted:

- (.040) Agency—sales and services by agent, consignee, bailee, factor or auctioneer
- (.110) Application to City's business activities.

Exemptions and Deductions omitted:

Numerous exemptions and deductions—compare with model guidelines to see if you need additional exemptions or deductions.

NOTE: Because of the wording contained in Section .050(2), cities should insure that their licensing or registration section contains the authority to impose the license or registration. Section .050(2) is intended to relieve persons engaging in business activities that total equal to or less than \$20,000 from tax obligations – but not from license or registration fee requirements.