ORDINANCE NO. 1177

AN ORDINANCE OF THE CITY OF LYNDEN
AMENDING ORDINANCE 1020 AND CHAPTER 3.28
OF THE LYNDEN MUNICIPAL CODE

The City Council of the City of Lynden does ordain as follows:

Section A. Chapter 3.28 of the Lynden Municipal Code Title 3.28 is revised to read as follows:

3.28.010 Exercise of License Revenue Power: The provisions of this chapter shall be deemed an exercise of the power of the City of Lynden to license for revenue.

3.28.010 Definitions: In construing the provisions of this chapter, save when otherwise plainly declared or clearly apparent from the context, the following definitions shall be applied:

(a) “Gross Income” means the value proceeding or accruing from the sale of tangible property or service, and receipts (including all sums earned or charged, whether received or not) by reason of the investment of capital in the business engaged in, including rentals, royalties, fees or other emoluments, however designated (excluding receipts or proceeds from the use or sale of real property or any interest therein, and proceeds from the sale of notes, bonds mortgages, or other evidences of indebtedness, or stocks and the like) and without any deduction on account of losses.

(b) “Person” or “Persons” means persons of either sex, firms, corporations, co-partnerships, and other associations of natural persons whether acting by themselves or by servants, agents or employees.

(c) “Tax Year” or “Taxable Year” means the year commencing January 1 and ending on December 31 of the same year, or, in lieu thereof, the taxpayer’s fiscal year when permission is obtained from the City Finance Director to use the same as the tax year.

(d) “Telephone business” means the business of providing access to a local telephone network; local telephone network switching service; toll service; cellular telephone service; coin telephone services; telephonic video, data, or similar communication or transmission for hire via a local telephone network, toll line or channel, cable, microwave or similar communication or transmission system. It further indicates cooperative or farmer line telephone companies or associations operating an exchange. “Telephone business” does not include the providing of competitive telephone service, the providing of cable television service, or the providing of broadcast services by radio or television stations.

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

(f) “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 may be provided by persons not subject to regulation as telephone companies under Title 80 RCW, and for which a separate charge is made. Transmission of communication through cellular telephones is classified as “telephone business” rather than “competitive telephone service.”

(g) “Customer” means the person, firm, corporation, business or other such entity which partakes of, utilizes or subscribes for the services of a licensed utility.

(h) “Taxpayer” means a utility required to have a license under the provisions of this chapter – 3.26.030 Occupation License Required.

3.28.030 Occupation License Required: No person, firm or corporation shall engage in or carry on any business, occupation, pursuit or privilege for which a license fee or tax is imposed by this chapter without first having obtained and being the holder of a valid and subsisting license to do so, to be known as a “utility occupation license.” Each person, firm or corporation shall promptly apply to the City Finance Director for a license upon the appropriate form provided by the Finance Director giving such information as reasonably necessary for the administration and enforcement of this chapter; and upon acceptance, the City Finance Director shall thereupon issue such a license to the applicant. A utility occupation license shall be personal and non-transferable.

3.28.035 Occupation License Posted: All licenses issued pursuant to the provisions of this chapter shall be kept posted by the licensee in a conspicuous place in his principal place of business located in the City, or if no principal place of business is located within the City limits, all licenses issued pursuant to this chapter shall be available for inspection at the City’s reasonable request. No person to whom a license has been issued shall suffer or allow any other person chargeable with a separate license to operate under or display his license, nor shall such other person operate under or display such license.

3.28.040 Occupations Subject to Tax – Amount: There is levied upon, and shall be collected from persons, including the City, on account of certain business activities engaged in or carried on, license fees or occupation taxes in the amount to be determined by the application of rates given against gross income as follows:

(a) Upon every person engaged in or carrying on the business of selling or furnishing electric energy, a fee or tax equal to six percent (6%) of the total gross income derived from such business in the City during the period for which the license fee or tax is due;

(b) Upon every person engaged in or carrying on a telephone business, excepting cellular telephone service, a fee or tax equal to six percent (6%) of the total gross income excluding revenues from interstate toll, derived from such business in the City during the period for which the license fee or tax is due. For the purposes of this subsection, “gross income” shall not include charges which are passed on to the subscriber by a telephone company pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this section, nor competitive telephone service which is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made;

(c) There is levied upon and shall be collected from persons engaged in the business or occupation of a cellular phone service provider an amount equal to six percent (6%) applied to the balance of gross income after allowance for adjustments and deductions as provided for in this chapter under 3.28.075;

(d) Upon every person engaged in or carrying on the business of selling or furnishing natural gas for domestic business or industrial consumption, a fee or tax equal to six percent (6%) of the total gross income derived from such business in the City during the period for which the license fee or tax is due;

Ordinance No. 1177
Amending Ordinance 1026 and Chapter 3.28 of the Lyden Municipal Code
2 of 7
(e) Upon every person engaged in or carrying on the business of transmitting television by cable, a fee or tax equal to six percent (6%) of the total gross income derived from such business in the City during the period for which the license fee or tax is due;

(f) Upon every person, including the City, engaged in or carrying on the business of operating or conducting a water system for domestic, business or industrial consumption, a fee or tax equal to six percent (6%) of the total gross income derived from such business in the City during the period for which the license fee or tax is due;

(g) Upon every person, including the City, engaged in or carrying on the business of operating or conducting a sewerage system for domestic, business or industrial use, a fee or tax equal to six percent (6%) of the total gross income derived from such business in the City during the period for which the license fee or tax is due;

(h) Upon every person, including the City, engaged in or carrying on the business of operating or conducting a garbage or solid waste refuse collection system for domestic, business or industrial use, a fee or tax equal to six percent (6%) of the total gross income derived from such business in the City during the period for which the license fee or tax is due;

(i) Upon every person, including the City, engaged in or carrying on the business of operating or conducting a stormwater system for domestic, business or industrial use, a fee or tax equal to six percent (6%) of the total gross income derived from such business in the City during the period for which the license fee or tax is due.

3.28.050 License Tax Year: All utility occupation licenses shall be for the tax year for which issued and shall expire at the end of the tax year.

3.28.060 Customer Tax Base Limit: The rates of tax set forth in the Lynden Municipal Code Chapter 3.28.040 shall be measured against a maximum of the first Five Thousand Dollars ($5,000.00) of total gross income derived from any one customer account, metered service or other separately identified billing account in any one month or fraction thereof. On amounts over said Five Thousand Dollars ($5,000.00) figure, the tax shall be one percent (1.0%) of the total gross income derived from such business. Provided, however, that for natural gas sales the rate shall further be reduced by one-half of one percent (1/2%) on sales in any one calendar month of over Fifty Thousand Dollars ($50,000.00) to any one customer account, metered service or other separately identified billing account.

3.28.070 Exceptions and Deductions-General: In computing the tax imposed by this chapter, amounts derived from transactions in interstate commerce, or from business performed for the government of the United States, its officers or agents in their official capacity, and any amount paid by the taxpayer to the United States or the State of Washington as excise taxes, may be deducted from the measure of the tax.

3.28.075 Exemptions and Deductions—Cellular Telephone Service: In addition to the general exemptions and deductions provided for in 3.26.070 for cellular telephone service, there shall also be excluded from the total gross income upon which the license fee or tax is computed, the following:

(a) That portion of the gross income derived from charges to another telecommunications company, as defined in RCW 80.04.010, and as subsequently amended, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services;
(b) Charges by a taxpayer engaging in a telephone business to a telecommunications company, as defined in RCW 80.04.010, and as subsequently amended, for telephone service that the purchaser buys for the purpose of resale;

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

(d) A deduction from gross income shall be allowed, only to cellular phone service providers which keep their regular books of account on an accrual basis, for credit losses actually sustained by a taxpayer as a result of cellular telephone service business.

3.28.078 Allocation of Income—Cellular Telephone Service: The allocation of income by a cellular telephone service provider shall be as follows:

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

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

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

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

3.28.080 Remittance Required Monthly: Each month constitutes a period; and on or before the last day of the month following the end of such period, the license fee or tax for said period is due. A monthly or quarterly installment as determined at the discretion of the City Finance Director, shall be required.

3.28.084 Remittance Authorization for Public Funds: The remittance due by City-operated utility occupations subject to this tax shall be paid by means of an accounts payable from the Water, Stormwater and/or Sewer Operating Fund to the City of Lynden, and the Finance Department is hereby authorized and directed to submit invoices as set forth above.

3.28.088 Remittance Upon Sale or Transfer of Business: Upon the sale or transfer during any tax year of a business on account of which a fee or tax is hereby required, the purchaser or transferee shall, if the fee or tax has not been paid in full for said year by the seller, be responsible for the entire outstanding payment owing, and remit sale liability to the City prior to receiving a new utility occupation license.

3.28.090 Taxpayer Records: Each taxpayer shall keep accurate records reflecting the amount of gross income on services and disclosing all information necessary to determine
the taxpayer’s tax liability hereunder during each tax base period. Such records shall be kept and maintained for a period of not less than three (3) years. All books, records, and other items required to be kept under this section shall be subject to and immediately made available for inspection and audit at any time, with or without notice, at the place where such records are kept, by the Finance Director or his designee, for the purpose of enforcing the provisions of this taxing chapter.

3.28.100 Applications and Returns Confidential: The applications, statements or returns made to the City pursuant to this chapter shall not be made public, nor shall they be subject to inspection of any person except the Mayor, City Attorney, City Finance Director or his designate, and members of the City Council; provided the foregoing shall not be construed to prohibit the City Finance Director from making known or revealing facts contained in any return, or disclosed in any examination for official purposes.

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

3.28.120 Failure to Make Return or Pay Full Tax: If any taxpayer fails, neglects or refuses to apply for a license, or make his return, or pay the tax in full as required herein, the City Finance Director is authorized to determine the amount of the tax payable and by mail to notify such taxpayer of the amount so determined. The amount so affixed shall thereupon be the tax and be immediately due and payable. Failure to comply with the provisions of this chapter will subject the taxpayer to provisions contained in the delinquent penalty sections of the chapter.

3.28.130 Overpayment or Underpayment of Tax: If, upon applications by a taxpayer for a refund or for an audit of his records, or upon any examination of the returns of any taxpayer, it is determined by the Finance Director that within three (3) years immediately proceeding the above that an error has occurred, then:

(a) If a tax or other fee has been paid in excess of that properly due, the total excess paid over all amounts due to the City within a period of three (3) years shall be paid directly to the taxpayer at the City’s option.

(b) If a tax or other fee has been paid which is less than that properly due, or no tax or fee has been paid, the City Finance Director shall mail a statement to the taxpayer showing the balance due, including the tax amount and penalty assessments and fees, and it shall be a separate, additional violation of this chapter, both civil and criminal, if the taxpayer fails to make such payment in full within ten (10) business days of mailing, or fails to appeal said payment per provision of this chapter.

3.28.140 Delinquent Payment – Penalty: For each monthly period payment due under the provisions of this chapter, if such payment is not made by the persons subject to the tax by the due date thereof, there shall be added a penalty as follows:

(a) If payment in full is received within thirty (30) days from the due date, ten percent (10.0%) of the accrued tax; and

(b) If payment in full is received between thirty-one (31) and sixty (60) days from the due date, twenty percent (20%) of the accrued tax; and

(c) If payment in full is received beyond sixty (60) days from the due date, thirty percent (30.0%) of the accrued tax.

3.28.150 Taxes, Penalties and Fees Constitute Debt to Municipality: Any tax due and unpaid under this chapter, and all penalties or fees unpaid shall constitute debt to the City, and may be collected by court proceedings the same as any other debt in like amount which shall be in addition to all other existing remedies. On any civil action the
City shall recover reasonable attorneys’ fees and audit costs, if the City is the prevailing party.

3.28.160 Limitation on Right to Recovery: The right of recovery by the City from the taxpayer for any tax provided hereunder shall be barred after the expiration of three (3) calendar years from the date the said tax became due. The right of recovery against the City because of overpayment of tax by any taxpayer shall be barred after the expiration of three (3) calendar years from the date such payment was made.

3.28.170 False Returns: It shall be unlawful for any person subject to this chapter to fail or refuse to make application or return for a license or to pay the fee or tax or installment thereof when due, or for any person to make any false or fraudulent application or return or any false statement or representation in, or in connection with any such application or return, or to aid or abet another in any attempt to evade a payment of the fee or tax, or any part thereof, or to fail to appear at or testify falsely upon any investigation of the correctness of a return or upon the hearing of any appeal or in any manner to hinder or delay the City or any of its officers in carrying out the provisions of this chapter.

3.28.180 Noncompliance – Penalty: Any person subject to this chapter, who fails or refuses to apply for a utility occupation license or to make tax returns or to pay the tax or penalties when due, or who makes any false statement or representation in or in connection with any such application, or who otherwise violates or refuses to comply with the provisions of this chapter, shall be deemed guilty of a misdemeanor, and each such person is guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued or permitted, and upon any conviction of any such violation, such person shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00) for each day or portion thereof which such person is found guilty of noncompliance with the provision of this chapter.

3.28.190 Appeals to Council: Any taxpayer aggrieved by the amount of the fee or tax found by the City Finance Director to be required under the provisions of this chapter may appeal to the City Council from such finding by filing a written notice of appeal with the City Finance Director within seven (7) business days from the time such taxpayer was given notice of such amount. The Finance Director shall, as soon as practicable, fix a time and place for the hearing of such appeal, and he shall cause a notice of the time and place thereof to be delivered or mailed to the appellant. At such hearing the taxpayer shall be entitled to be heard and to introduce evidence on his own behalf. The City Council shall thereupon ascertain the correct amount of the fee or tax by resolution, and the Finance Director shall immediately notify the appellant thereof, which amount, together with the costs of appeal, if such applicant is unsuccessful therein, must be paid within five (5) business days after such notice is given. The Mayor may, by subpoena, require the attendance thereof of any person, and may also require him to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated, produce the records required, if any, and shall testify truthfully under oath administered by the mayor as to any matter required of him pertinent to the appeal, and it shall be unlawful for him to fail or refuse so to do.

Section 3.28.200 Tax Not Exclusive. The tax levied herein shall be additional to any license fee or tax imposed or levied under any other state statute or City ordinance.

Section B. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, and if, for any reason, this ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

Section C. Any ordinance or parts of ordinances in conflict herewith are hereby repealed.
Section 6: This ordinance shall become effective and remain in full force and effect on and after the 1st day of October, 2003.


ATTEST:

[Signature]
CITY CLERK

APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY

[Signature]
MAYOR