

ORDINANCE NO. 1355

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON** relating to revenue and finance, adding a new chapter to Title 3 of the Des Moines Municipal Code entitled Business and Occupation Tax, imposing a new business and occupation tax, setting the amount of tax and an effective date, adding business and occupation tax administrative provisions, prescribing penalties, providing a required referendum procedure, and codifying a new chapter in Title 3 DMMC.

**WHEREAS**, RCW 35A.82.020 authorizes code cities to impose business licensing requirements and excises upon business transacted within such a city to the extent permitted by the general law, and

**WHEREAS**, the City has acted upon this authority by enacting business licensing and other requirements which are set forth in Titles 3 and 5 of the Des Moines Municipal Code, and

**WHEREAS**, the City Council desires to maintain an essential level of community services such as public safety, transportation, culture and recreation and therefore intends to raise revenues through this means, and

**WHEREAS**, RCW 35.21.710 authorizes cities to levy and collect a tax not to exceed two-tenths of one percent (.2%) on the gross income of persons doing business within the City, and

**WHEREAS**, the Washington State Legislature has approved EHB 2030 which requires that, effective January 1, 2005, all cities levying or planning to levy a general business and occupation tax must revise their ordinances or adopt ordinances to be consistent with the "model ordinance" for municipal gross receipts business and occupation tax created through the Washington Association of Cities, now, therefore

**THE CITY COUNCIL OF THE CITY OF DES MOINES DO ORDAIN AS FOLLOWS:**

**Sec. 1. Purpose.** The purpose of this ordinance is to implement Washington Constitution Article XI, Sec. 12, and RCW 35A.82.020 and 35A.11.020 and interpreting caselaw, which give the City the authority to license for revenue and to define taxation categories in order to respond to the unique concerns and responsibilities of local government, to implement a business and occupation tax, and to provide a structure for the efficient administration of the City's business and occupation tax.

**Sec. 2. Exercise of revenue license power.** The provisions of this ordinance shall be deemed an exercise of the power of the City to license for revenue. The provisions of this ordinance 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.

**Sec. 3. Definitions.**

(1) **Use of words and phrases.** As used in this ordinance, unless the context or subject matter clearly requires otherwise,

the words or phrases defined in this section shall have the indicated meanings. Words in the singular number shall include the plural, and the plural shall include the singular.

(2) **"Adoption by reference."**

(a) This section incorporates by reference all definitions set forth in Chapter 82.04 of the Revised Code of Washington (RCW), as hereafter amended, except where a conflicting definition is stated in this section.

(b) Chapter 82.04 RCW, adopted by reference by this ordinance, is adopted pursuant to RCW 35A.12.140 as though fully set forth in this ordinance, together with any amendments and additions provided in this ordinance, and is applicable within the City as presently constituted or as may be subsequently amended.

(c) Not less than one (1) copy of chapter 82.04 RCW, as codified, and suitably marked to indicate amendments and additions, is filed in the office of the Des Moines City Clerk and is available for use and examination by the public.

(3) **"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.

(4) **"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. "Agricultural product" does not include animals intended to be pets.

(5) **"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.

(6) **"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.

(7) **"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;

(8) "**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 Title 80 RCW and for which a separate charge is made.

(9) "**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 section 6 of this ordinance;

(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 section, 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;

(j) Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer."

(10) "**Day care homes in residences**" means child and adult day care facilities in residences otherwise occupied as private homes.

(11) "**Director**" means the Finance Director of the City or any officer, agent or employee of the City designated by the City Manager to act on the Director's behalf.

(12) "**Eligible gross receipts tax**" means a tax which:

(a) Is imposed on the act or privilege of engaging in business activities within section 6 of this ordinance; 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.

(13) **"Engaging in business."**

(a) "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.

(b) 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 (a). 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.

(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.

(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 and pay business and occupation tax.

(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.

(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.

(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 shall not be considered to be "engaging in business" in the City and shall not be required to register and obtain a business license, provided that it engages in no other business activities in the City.

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.

(14) **"Extracting"** is the activity engaged in by an extractor and is reportable under the extracting classification.

(15) **"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, or takes, cultivates, or raises 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; persons cultivating or raising fish entirely within confined rearing areas on the person's own land or on land in which the person has a present right of possession; or persons who fell, cut, or take plantation Christmas trees from the person's own land or from land in which the person has a present right of possession; or persons meeting the definition of "farmer".

(16) **"Extractor for hire"** means a person who performs under contract necessary labor or mechanical services for an extractor.

(17) **"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" does 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" does not include a person selling any animal or substance obtained there from in connection with the person's business of operating a stockyard or a slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber.

(18) **"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.

(19) **"Gross proceeds of sales"** means the value proceeding or accruing from the sale of tangible personal property or for services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(20) **"In this City"** or **"within this City"** includes all federal areas lying within the corporate city limits of the City of Des Moines.

(21) **"Manufacturing"** means the activity conducted by a manufacturer and is reported under the manufacturing classification.

(22) **"Manufacturer," "to manufacture."**

(a) **"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 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

(b) **"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:

(i) The production of special made or custom made articles;

(ii) The production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;

(iii) Crushing and/or blending of rock, sand, stone, gravel, or ore; and

(iv) 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 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.

(23) **"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 (3) months, including any supplement or special edition of the publication. Any publication meeting this definition qualifies regardless of its content.

(24) **"Non-profit 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.

(25) **"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,

(b) 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.

(26) **"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.

(27) **"Precious metal bullion"** means any precious metal which has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, rhodium, and palladium, and which is in such state or condition that its value depends upon its contents and not upon its form. For purposes of this section, "monetized bullion" means coins or other forms of money manufactured from gold, silver, or other metals and heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United States, or any foreign nation, but does not include coins or money sold to be manufactured into jewelry or works of art.

(28) **"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 twenty percent (20%) 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.

(29) **"Product", "Byproduct."**

(a) **"Product"** means a 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.

(30) **"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).

(30) **"Retailing"** means the activity of engaging in making sales at retail and is reported under the retailing classification.

(31) **"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:

(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" does 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; and

(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.

(h) **"Retail service"** shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

(32) **"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.

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

(34) **"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.

(35) **"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), (ii), (iii), (iv), or (v) of this subsection following such use.

(b) **"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 section 6(1)(g) of this ordinance.

(c) **"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:

(i) 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;

(ii) 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;

(iii) 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;

(iv) 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;

(v) 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;

(vi) The sale of and charge made for the furnishing of lodging and all other services, except network telephone service 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;

(vii) The sale of or charge made for tangible personal property, labor and services to persons

taxable under (i), (ii), (iii), (iv), (v), and (vi) 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 (34)(a) of this section and nothing contained in subsection (34)(a) of this section shall be construed to modify this subsection.

(d) "**Sale at retail**" or "**retail sale**" shall also include the providing of competitive telephone service to consumers.

(e) "**Sale at retail**" or "**retail sale**" shall also include the sale of canned 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 not include custom software or the customization of canned software.

(f) "**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**").

(g) "**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**").

(h) "**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.)

(i) "**Sale at retail**" or "**retail sale**" shall not include the sale of or charge made for labor and services rendered for environmental remedial action as defined in

RCW 82.04.2635(2). (This should be reported under the service and other classification).

(36) **"Sale at wholesale"** or **"wholesale sale"** means any sale of tangible personal property 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 network telephone service to a telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715.

(37) **"Services."** At such time as Chapter 82.04 RCW defines "services", that definition shall apply. Until such time as Chapter 82.04 RCW shall define "services", "services" means all business activities not defined elsewhere in this section.

(38) **"Software", "canned software," "custom software," "customization of canned software," "master copies," "retained rights."**

(a) **"Canned software"** means software that is created for sale to more than one (1) person. For purposes of this ordinance, canned software is deemed to be tangible personal property regardless of the method of delivery-tangible media (e.g., disk or installed on hardware) or intangible (e.g., electronically over telecommunications paths).

(b) **"Customer software"** means software created for a single person.

(c) **"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.

(d) **"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.

(e) **"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.



(f) **"Software"** means any information, program, or routine, or any set of one (1) 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.

(39) **"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.

(40) **"Tax year"** or **"taxable year"** means the calendar year.

(41) **"Taxpayer"** means any "person", as herein defined, required to have a business license under chapter 5.04 DMMC or liable for the collection of any tax or fee under this ordinance, or who engages in any business or who performs any act for which a tax or fee is imposed by this ordinance.

(42) **"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 non-profit 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 in 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.

(43) **"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. The value proceeding or accruing from sales on the installment plan under conditional contracts of sale shall be reported as of the dates when the payments become due.

(44) **"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 (a) the retail selling price of such new or improved product when first offered for sale; or (b) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

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

**Sec. 4. Agency--Sales and services by agent, consignee, bailee, factor or auctioneer.**

(1) **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 ordinance.

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:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(2) 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.

(3) **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:

(a) 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.

(b) 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.

**Sec. 5. Registration/license requirements.** Every person who engages in business activities within the City shall register for and obtain a business license from the City as required in chapter 5.04 DMMC.

**Sec. 6. Imposition of the tax--Tax or fee levied.**

(1) In addition to the business license fee required by Chapter 5.04 DMMC, and except as provided in subsection 2 of this section or elsewhere in the chapter, there are 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 the 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 for sale or for commercial or industrial use, multiplied by the rate of two tenths of one percent (.2%). 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, multiplied by the rate of two tenths of one percent (.2%). 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 2 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 two tenths of one percent (.2%).

(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 two tenths of one percent (.2%).

(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 two tenths of one percent (.2%).

(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 two tenths of one percent (.2%).

(g) Upon every other person engaging within the City in any business activity other than or in addition to those enumerated in this section, 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 two tenths of one percent (.2%). This subsection includes but is not limited to (regardless of whether 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.

(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 fifty thousand dollars (\$50,000).

**Sec. 7. 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. As to such persons, the amount of tax shall be equal to the gross contract price multiplied by the rate under section 6 of this ordinance that would otherwise apply if the sale or service were taxable pursuant to that section.

**Sec. 8. 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 section 6 of this ordinance shall be taxable under each applicable subsection.

(2) Notwithstanding anything to the contrary herein, if the 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; provided, that the City tax shall still apply to as much of the taxpayer's activities as may be constitutionally subject to the City's taxing authority.

(3) As a condition to taking 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) 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 ordinance with respect to the sale of those products.

(5) 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 ordinance with respect to the manufacturing of those products.

(6) 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 ordinance with respect to the sale of those products.

**Sec. 9. Deductions to prevent multiple taxation of transactions involving more than one city with an eligible gross receipts tax.**

(1) 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

(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 subsection, 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 or where 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.

(d) A person manufacturing products within the City and using products manufactured by the same person outside the City may deduct from the measure of the manufacturing tax the value of the 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.

#### **Sec. 10. Exemptions.**

(1) **Public utilities.** This ordinance shall not apply to any person conducting a business activity upon which tax liability is specifically imposed under the provisions of chapter 3.68 DMCC.

(2) **Investments--dividends from subsidiary corporations.** This ordinance 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) **Employees.**

(a) This ordinance shall not apply to any person with 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) For purposes of this ordinance, a booth renter, as defined by RCW 18.16.020, is an independent contractor.

(4) **Amounts derived from sale of real estate.** This ordinance shall not apply to gross proceeds derived from the sale of real estate; provided, that this exemption shall not be construed to exempt 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 ordinance 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.

(5) **Mortgage brokers' third-party provider services trust accounts.** This ordinance 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.

(6) **Amounts derived from manufacturing, selling or distributing motor vehicle fuel.** This ordinance 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 as 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 ordinance.

(7) **Amounts derived from liquor, and the sale or distribution of liquor.** This ordinance shall not apply to liquor as defined in RCW 66.04.010 and exempt in RCW 66.08.120.

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

(9) **Accommodation sales.** This ordinance 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 (a) 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 (b) 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 ordinance 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.

(11) **Non-profit activities.** This ordinance shall not apply to the non-profit activities of religious, charitable, educational, benevolent, fraternal, or social organizations which have been determined by the Internal Revenue Service of the United States to be exempt from the payment of income tax.

(12) **Governmental activities.** This ordinance shall not apply to the exercise of governmental functions performed by any instrumentality of the United States, the state of Washington, or any political subdivision thereof.



**Sec. 11. Deductions.** In computing the license fee or tax imposed by this ordinance, 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 received by the purchaser or its agent outside the State of Washington.

(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) **Sales at wholesale or retail of precious metal bullion and monetized bullion.** In computing tax, there may be deducted from the measure of the tax amounts derived from the sale at wholesale or retail of precious metal bullion and monetized bullion. However, no deduction is allowed on amounts received as commissions upon transactions for the accounts of customers over and above the amount paid to other dealers associated in such transactions, and no deduction or offset is allowed against such commissions on account of salaries or commissions paid to salesmen or other employees.

(5) **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.

(6) **Other deductions.** All other items allowed by the State of Washington as deductions from the business and occupation tax imposed by the state; provided, that the items being deducted have been included in the remaining income after having subtracted the exemptions in section 10 of this ordinance.

**Sec. 12. Tax part of overhead.** It is not the intention of this ordinance that the taxes or fees herein levied upon persons engaging in business be construed as taxes or fees upon the purchasers or customers, 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.

**Sec. 13. Administration--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.**

(1) Other than any annual license fee or registration fee assessed under Chapter 5.04 DMMC, the tax imposed by this ordinance shall be due and payable in quarterly installments. At the Director's discretion, businesses may be assigned to a monthly or annual 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.

(2) Taxes shall be paid as provided in this ordinance 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.

(3) Tax returns must be filed and returned by the due date whether or not any tax is owed.

(4) For purposes of the tax imposed by this ordinance, any person 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 twenty thousand dollars (\$20,000) in the current calendar year or five thousand dollars (\$5,000) in the current quarter, shall file a return, declare no tax due on their return, and submit the return to the Director. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due.

(5) 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.

(6) Except as otherwise specifically provided by any other provision of this ordinance, in computing any period of days prescribed by this ordinance, 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.

(7) If any taxpayer fails, neglects or refuses to make a return as and when required in this ordinance, 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.

**Sec. 14. Administration, Payment methods - Mailing returns or remittances - Time extension - Deposits - Recording payments - Payment must accompany return - NSF checks.**

(1) Taxes shall be paid to the Director in United States currency by bank draft, certified check, cashier's check, personal check, money order, cash, or by wire transfer or electronic payment if such wire transfer or electronic payment is authorized by the Director. If payment so received is not paid by the bank on which it is drawn, the taxpayer, by whom such payment is tendered, shall remain liable for payment of the tax and for all legal penalties, 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.

(2) 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 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.

(3) 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.

(4) 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.

(5) 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 ordinance.

(6) 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 (\$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 (\$20.00) NSF fee] is received.

(7) 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 ordinance.

**Sec. 15. Administration, records to be preserved - Examination - Estoppel to question assessment.** Every person liable for any fee or tax imposed by this ordinance 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.

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

(2) Any person who fails, or refuses the Director's request, 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.

**Sec. 16. Administration--Accounting methods.**

(1) 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.

(2) The taxes imposed and the returns required hereunder shall be upon a calendar year basis.

**Sec. 17. 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 this title from such person on account of such contract or otherwise, and may require such taxpayer to file with the Director a verified list of all subcontractors supplying labor and/or materials to the person in connection with said public work.

**Sec. 18. Underpayment of tax, interest, or penalty--  
Interest.**

(1) 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.

(2) Interest imposed after the effective date of this ordinance, shall be computed from the last day of the month following the end of the reporting period and will continue to accrue until payment is made. In case of an audit the interest shall be computed from the first day of the month following each calendar year or portion thereof included in the audit period.

(3) For the purposes of this section, the rate of interest to be charged to the taxpayer for taxes on the taxable gross receipts of the calendar year as of January 2005 and thereafter shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two (2) percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year. The rate shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

**Sec. 19. 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 years after the close of the calendar year in which they were incurred, except that the Director may issue an assessment:

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

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

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

**Sec. 20. Overpayment of tax, penalty, or interest--  
Credit or refund--Interest rate--Statute of limitations.**

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

(2) 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.

(3) 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.

(4) 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 (3) of this section, upon the filing with the Director a certified copy of the order or judgment of the court.

(5) Interest on overpayments of taxes for periods beginning on or after January 1, 2005, shall be the average federal short term interest rate as outlined for assessments under section 18(3) of this ordinance, plus two (2) percentage points.

**Sec. 21. Late payment--Disregard of written  
instructions--Evasion--Penalties.**

(1) 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 equal to five (5) percent (5%) of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, the Director shall add a total penalty equal to fifteen (15) percent (15%) of the amount of the tax; and if the tax is not received on or before the last day of the second month following the due date, the Director shall add a total penalty equal to twenty-five (25) percent (25%) of the amount of the tax. No penalty assessed herein shall be less than Five Dollars (\$5.00).

(2) If a tax deficiency is assessed by the Director, there shall be added a penalty equal to five (5) percent (5%) of the amount of the deficiency. If payment of any tax deficiency assessed by the Director is not received by the due date

specified in the notice, or any extension thereof, the Director shall assess a penalty equal to fifteen (15) percent (15%) of the amount of the additional tax found due. If payment of any tax deficiency assessed by the Director is not received on or before the thirtieth (30th) day following the due date specified in the notice, or any extension thereof, the Director shall assess a penalty equal to twenty-five (25) percent (25%) of the amount of additional tax found due. No penalty added shall be less than Five Dollars (\$5.00).

(3) 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 of ten (10) percent (10%) of the amount due, but not less than Ten Dollars (\$10.00).

(4) 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 or registration as required by Chapter 5.04 DMMC, the Director shall impose a penalty of five (5) percent (5%) of the amount of tax due from that person for the period that the person was not licensed. No penalty shall be imposed under this subsection (4) 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.

(5) If the Director determines that all or any part of a deficiency resulted from the taxpayer's failure to follow specific written tax reporting instructions, there shall be assessed a penalty of ten (10) percent (10%) of the amount of the additional tax due.

(a) A taxpayer fails to follow specific written tax reporting instructions when the Director has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the Director has not issued final instructions because the matter is under appeal pursuant to this ordinance. The Director shall not assess the penalty under this subsection (5), upon any taxpayer that has made a good faith effort to comply with the specific written instructions provided by the Director to that taxpayer.

(b) Specific written instructions may be given as a part of a tax assessment, audit, determination or closing agreement, provided that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents.

(c) Any specific written instructions by the Director shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

(6) If the Director finds that all or any part of the deficiency resulted from an intent to evade the tax payable, the Director shall assess a penalty of fifty (50) percent (50%) of the additional tax found to be due.

(7) The Director may impose the penalties authorized under subsections (1) through (5) above of this section. Each penalty can be imposed on the same tax found to be due or anytime thereafter. This subsection does not prohibit or restrict the application of other penalties authorized by law.

(8) The Director shall assess the penalties authorized by subsections (5) and (6) of this section. The penalties shall be assessed in accordance with the provisions of this ordinance governing assessment of tax deficiencies. 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.

(9) For the purposes of this section, "return" means any document a person is required by the City of Des Moines 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.

**Sec. 22. Cancellation of penalties.**

(1) The Director may cancel any penalties imposed under section 21(1) of this ordinance 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 (3).

(2) A request for cancellation of penalties must be received by the Director within thirty (30) days after the date the Finance Services 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.

(3) The Director may cancel the penalties under section 13 (1) of this ordinance one time if a person:

(a) Is not currently licensed and filing returns,

(b) Was unaware of its responsibility to file and pay tax, and

(c) Obtained business licenses and filed past due tax returns within thirty (30) days after being notified by the Financial Services Department of the violation.

(4) The Director shall not cancel any interest charged upon amounts due.



**Sec. 23. Taxpayer quitting business--Liability of successor.**

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

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

(3) 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.

(4) 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.

**Sec. 24. Administrative appeal.** Except to the extent that such appeal may be barred pursuant to section 15 of this ordinance, a person aggrieved by the amount of the fee or tax determined by the Director to be required under the provisions of this ordinance, or any other determination by the Director pursuant to this ordinance may, upon paying the fee or tax determined by the Director to be due, and the appeal fee as set under DMMC 18.94.330, file an appeal regarding the amount of the fee or tax to the Hearing Examiner within ten (10) days of the Director's final decision, under the provisions of the hearing examiner code, Chapter 18.94 DMMC. The appeal must be in the form as required under DMMC 18.94.113.

**Sec. 25. 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 ordinance or with law for the purpose of carrying out the provisions of this ordinance and it shall be unlawful to violate or fail to comply with, any such rule or regulation.

**Sec. 26. Ancillary allocation authority of Director.** The Director is authorized to enter into agreements with other Washington cities which impose an "eligible gross receipts tax":

(1) To conduct an audit or joint audit of a taxpayer by using an auditor employed by the City of Des Moines, 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;

(2) 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.

(3) 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.

**Sec. 27. Mailing of notices.** Any notice required by this ordinance to be mailed to any taxpayer or licensee shall be sent by ordinary mail, addressed to the address of the taxpayer or licensee as shown by the records of the Director. Failure of the taxpayer or licensee to receive any such mailed notice shall not release the taxpayer or licensee from any tax, fee, interest, or any penalties thereon, nor shall such failure operate to extend any time limit set by the provisions of this ordinance. It is the responsibility of the taxpayer to inform the Director in writing about a change in the taxpayer's address.

**Sec. 28. 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 Des Moines except as herein otherwise expressly provided.

**Sec. 29. Tax constitutes debt.** Any license fee or tax due and unpaid under this ordinance, and all interest and penalties thereon, shall constitute a debt to the City of Des Moines 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.

**Sec. 30. Unlawful actions--Violation--Penalties.**

(1) It shall be unlawful for any person liable for fees under this ordinance (or other ordinance as listed):

(a) To violate or fail to comply with any of the provisions of this ordinance or any lawful rule or regulation adopted by the Director;

(b) To make any false statement on any license application or tax return;

(c) To aid or abet any person in any attempt to evade payment of a license fee or tax;

(d) To fail to appear or testify in response to a subpoena issued pursuant to applicable federal, state or local law;

(e) To testify falsely in any investigation, audit, or proceeding conducted pursuant to this ordinance.

(2) Violation of any of the provisions of this ordinance is a gross misdemeanor. Any person convicted of a violation of this ordinance may be punished by a fine not to exceed \$1,000.00, imprisonment not to exceed one year, or both fine and imprisonment. Penalties or punishments provided in this ordinance shall be in addition to all other penalties provided by law.

(3) 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 \$5,000.00, or imprisonment not to exceed one year, or both fine and imprisonment.

**Sec. 31. Revocation or denial of business license or registration--Appeals.** Violation of any provision of this ordinance is a basis for revocation or denial of a business license or registration under the provisions of chapter 5.04 DMMC. Upon notice of revocation or denial of a business license based upon the provisions of this ordinance, an aggrieved person may, upon payment of the appeal fee as set under DMMC 18.94.330, appeal to the Hearing Examiner within ten (10) days of the City Manager's final decision, under chapter 5.04 DMMC and the provisions of the Hearing Examiner Code, chapter 18.94 DMMC. The appeal must be in the form as required under DMMC 18.94.113.

**Sec. 32. Closing agreement provision.** 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 ordinance for any taxable period(s). Upon approval of such agreement, evidenced by execution thereof by the Director and the person so agreeing, the agreement shall be final and conclusive as to the tax liability or tax immunity covered thereby, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

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

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

**Sec. 33. 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.

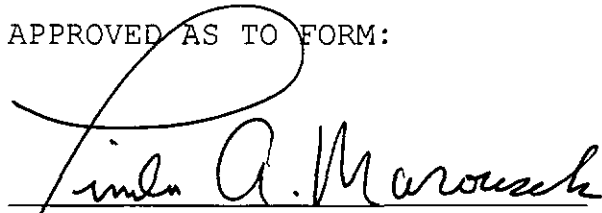


**Sec. 37. Effective date.** This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

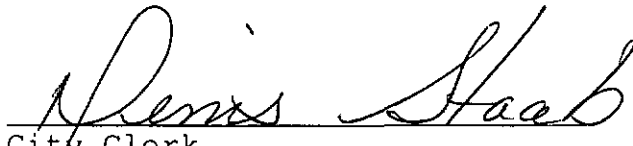
**PASSED BY** the City Council of the City of Des Moines this 2nd day of December, 2004 and signed in authentication thereof this 2nd day of December, 2004.

  
MAYOR

APPROVED AS TO FORM:

  
City Attorney

ATTEST:

  
City Clerk

Published: December 17, 2004

LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

CITY OF DES MOINES

ORDINANCE NO. 1355, Adopted December 2, 2004.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance relates to revenue and finance, adds a new chapter to Title 3 of the Des Moines Municipal Code entitled Business and Occupation Tax, imposes a new business and occupation tax, sets the amount of tax and an effective date, adds business and occupation tax administrative provisions, prescribes penalties, provides a required referendum procedure, and codifies a new chapter in Title 3 DMMC.

The full text of the ordinance will be mailed without cost upon request.

Denis Staab  
City Clerk

Published: December 17, 2004