

## SULTAN CITY COUNCIL

AGENDA ITEM COVER SHEET

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ITEM NO: Public Hearings

DATE: July 13, 2006

SUBJECT: Ordinance 927-06, Cable Utility Tax  
Ordinance 932-06, B & O Tax  
Ordinance 933-06, B & O Tax

CONTACT PERSON: Lee Walton, Interim City Administrator

SUMMARY: The City of Sultan is presently facing a financial crisis that seriously limits its ability to maintain even minimum levels of basic public services including police protection, street and park maintenance. Unless additional resources become available this deterioration of service levels will inevitably result in economic destabilization (retaining and attracting new business) and a gradual reduction in property values.

Options include:

1. A voter approved increase in the property tax
2. A ½ percent increase in the Real Estate Excise Tax
3. Adoption of the standard B&) tax on manufacturing, wholesale and financial institutions
4. Imposition of the standard utility tax on cable services

The B & O alternative is clearly the most appropriate since it is a very standard tax commonly used in many Washington cities. Also, as proposed, this tax would impact only the largest businesses in the City, some of which are not subject to the sales tax. If these resources proved to be insufficient then further consideration should be given to the REET alternative.

FISCAL IMPACT: Since the City is not currently privy to all sales reported to the State Department of Revenue, the amount of revenue that will be produced by this tax is difficult to estimate. Our best "guesstimate" is that at a rate of 0.002%, it will bring in between \$85,000-\$100,000 annually (sufficient for one additional police officer).

The utility tax on cable service is estimated to produce approximately \$35,000 annually.

RECOMMENDED  
ACTION:

Continue the public hearings if necessary and introduce Ordinances 927-06, 932-06 and 933-06 for a first reading.

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COUNCIL ACTION:

DATE:

CITY OF SULTAN

ORDINANCE NO. 927-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON, AMENDING SECTION 3.52.020 A TO ADD SUBSECTION 7 "CABLE TELEVISION" AND IMPOSING A 6% UTILITY TAX ON THE SAME.

It is hereby ordained by the City Council of the City of Sultan, Washington as follows:

Section 1. Sultan Municipal Code Section 3.52.020 A is hereby amended to add subsection 7 to read as follows:

- 7. Cable Television Service.. There shall be levied upon every person, firm or corporation engaged in or carrying on cable television service, a tax equal to six percent of the total gross revenue derived from such business in the City of Sultan, excepting amounts derived from transactions in interstate or foreign commerce, if any..

Section 2. If any section of this ordinance, or if any subsection or part shall be declared unlawful, the balance of this ordinance, and of each section shall remain in full force and effect.

Section 3. This Ordinance shall become effective on: \_\_\_\_\_, 2006.

PASSED by the City Council and APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2006.

CITY OF SULTAN

By \_\_\_\_\_ BEN TOLSON, Mayor

ATTEST:

By \_\_\_\_\_ LAURA KOENIG, City Clerk

Approved as to form:

By \_\_\_\_\_ THOM H. GRAAFSTRA, City Attorney

Date of Publication: \_\_\_\_\_

**CITY OF SULTAN**

**ORDINANCE NO. 932-06**

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON  
ENACTING A NEW CHAPTER 3.49 SULTAN MUNICIPAL CODE  
AND IMPOSING A BUSINESS AND OCCUPATION TAX FOR THE  
PRIVILEGE OF OPERATING A FINANCIAL INSTITUTION,  
MANUFACTURING, AND DOING SALES AT WHOLESALE  
WITHIN THE CITY

Whereas City has solicited input from statewide business organizations and local business organizations such as the Chamber of Commerce;

Whereas City conducted a public hearing concerning the imposition of a Business and Occupation Tax on July 13, 2006;

NOW, THEREFORE, it is hereby ordained by the City Council of the City of Sultan, Washington as follows:

Section 1. A new Chapter 3.49 Sultan Municipal Code is hereby enacted reading as follows:

**CHAPTER 3.49**

**Sections**

- 3.49.010 Purpose**
- 3.49.020 Exercise of Revenue License Power**
- 3.49.025 Administrative Provisions**
- 3.49.030 Definitions**
- 3.49.040 Imposition of the tax**
- 3.49.050 Doing Business with the City**
- 3.49.060 Multiple activities credit when activities take place in one or more towns of cities with eligible gross receipts taxes**
- 3.49.070 Deductions to prevent multiple taxation of transactions involving more than one city or town with an eligible gross receipts tax**
- 3.49.080 Exemptions**
- 3.49.090 Deductions**
- 3.49.100 Tax part of overhead**
- 3.49.110 Severability**

**3.49. 010 Purpose.** The provisions of this chapter shall be deemed an exercise of the power of the City to license and/or tax for revenue the privilege of engaging in business

in the City. It is the intent of this chapter to comply with the provisions of Engrossed House bill 2030, chapter 79, Laws of 2003.

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

**3.49.025 Administrative Provisions.** The administrative provisions contained in chapter 3.73 Sultan Municipal Code shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

**3.49.030 Definitions.** In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

**"Business."** "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

**"Business and occupation tax."** "Business and occupation tax" or "gross receipts tax" means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business.

**"Commercial or industrial use."** "Commercial or industrial use" means the following uses of products, including by-products, by the extractor or manufacturer thereof:

- (1) Any use as a consumer; and
- (2) The manufacturing of articles, substances or commodities;

**"Eligible gross receipts tax."** The term "eligible gross receipts tax" means a tax which:

- (1) Is imposed on the act or privilege of engaging in business activities within section .040; and
- (2) Is measured by the gross volume of business, in terms of gross receipts and is not an income tax or value added tax; and
- (3) Is not, pursuant to law or custom, separately stated from the sales price; and
- (4) Is not a sales or use tax, business license fee, franchise fee, royalty or severance tax measured by volume or weight, or concession charge, or payment for the use and enjoyment of property, property right or a privilege; and
- (5) Is a tax imposed by a local jurisdiction, whether within or without the State of Washington, and not by a Country, State, Province, or any other non-local jurisdiction above the County level.

**"Engaging in business"** (1) The term "engaging in business" means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

(2) This section sets forth examples of activities that constitute engaging in business in the City, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimus business activities in the City without having to pay City business and occupation taxes. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection (1). If an activity is not listed, whether it constitutes engaging in business in the City shall be determined by considering all the facts and circumstances and applicable law.

(3) Without being all inclusive, any one of the following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf constitutes engaging in business and may require a person to pay business and occupation taxes:

(a) Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City.

(b) Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City.

(c) Soliciting sales.

(d) Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.

(e) Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.

(f) Installing, constructing, or supervising installation or construction of, real or tangible personal property.

(g) Soliciting, negotiating, or approving franchise, license, or other similar agreements.

(h) Collecting current or delinquent accounts.

(i) Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

(j) Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.

(k) Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.

(l) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

(m) Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.

- (n) Investigating, resolving, or otherwise assisting in resolving customer complaints.
  - (o) In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.
  - (p) Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.
  - (q) Accepting or executing a contract with the City, irrespective of whether goods or services are delivered within or without the City, or whether the person's office or place of business is within or without the City.
- (4) If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not pay tax.
- (a) Meeting with suppliers of goods and services as a customer.
  - (b) Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.
  - (c) Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf.
  - (d) Renting tangible or intangible property as a customer when the property is not used in the City.
  - (e) Attending, but not participating in a "trade show" or "multiple vendor events". Persons participating at a trade show shall review the City's trade show or multiple vendor event ordinances.
  - (f) Conducting advertising through the mail.
  - (g) Soliciting sales by phone from a location outside the City.
- (5) A seller located outside the City merely delivering goods into the City by means of common carrier is not required to pay tax, provided that it engages in no other business activities in the City.

The City expressly intends that engaging in business includes 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.

**"Gross income of the business."** "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

**"Gross proceeds of sales."** "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.

**"Financial institution."** "Financial institution means a federal or state chartered bank, mutual bank, savings and loan association or credit union.

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

**"Manufacturer," "to manufacture."** (1) "Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from the person's own materials or ingredients any products. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to less than twenty percent (20%) of the total value of all materials or ingredients that become a part of the finished product, the owner of the equipment or facilities will be deemed to be a processor for hire, and not a manufacturer. 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. (2) "To manufacture" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials or ingredients so that as a result thereof a new, different or useful product is produced for sale or commercial or industrial use, and shall include:

- (a) The production of special made or custom made articles;
- (b) The production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;
- (c) Crushing and/or blending of rock, sand, stone, gravel, or ore; and
- (d) The producing of articles for sale, or for commercial or industrial use from raw materials or prepared materials by giving such materials, articles, and substances of trade or commerce new forms, qualities, properties or combinations including, but not limited to, such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, aging, curing, mild curing, preserving, canning, and the preparing and freezing of fresh fruits and vegetables.

"To manufacture" shall not include the production of 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.

**"Person."** "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the State of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise and the United States or any instrumentality thereof.

**"Sale," "casual or isolated sale."** (1) "Sale" means any transfer of the ownership of, title to, or possession of, property for a valuable consideration and includes any activity classified as a "sale at retail," "retail sale," or "retail service." It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract

under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

(2) "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis.

**"Sale at wholesale," "wholesale sale."** "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.

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

**"Value proceeding or accruing."** "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. 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.

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

(2) Where such products, including by-products, are extracted or manufactured for commercial or industrial use; and where such products, including by-products, are shipped, transported or transferred out of the City, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products. In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs. The Director may prescribe rules for the purpose of ascertaining such values. (3) Notwithstanding subsection (2) above, the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or

improved product shall correspond to (a) the retail selling price of such new or improved product when first offered for sale; or (2) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

[Comment: This definition is slightly different than that contained in RCW 82.04.450.

The meaning is intended to be the same, and the only difference is in grammatical construction. The model also adds a sentence, taken from WAC 458-20-112, at the end of subsection (2) explaining the use of costs to ascertain the value of the products.]

**“Wholesaling.”** “Wholesaling” means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification.

**3.49.040 Imposition of the tax - tax or fee levied.** (1) Except as provided in subsection (2) of this section, there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the City, whether the person’s office or place of business be within or without the City. The tax shall be in amounts to be determined by application of rates against gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as follows:

(a) Upon every person engaging within the City in business as a manufacturer, as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured within the city, multiplied by the rate of two-tenths of one percent (.002). 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.

(b) Upon every person engaging within the City in the business of making sales at wholesale, except persons taxable under subsection (a) 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 (.002).

(c) Upon every person engaging within the City in business as a financial institution, as to such persons, the amount of tax with respect to such business shall be equal to the gross income of the business multiplied by the rate of two tenths of one percent (.002).

(2) The gross receipts tax imposed in this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including by-products, as the case may be, from all activities conducted within the City during any calendar year is equal to or less than \$20,000, or is equal to or less than \$5,000 during any quarter if on a quarterly reporting basis.

**3.49.050 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 .040 that would otherwise apply if the sale or service were taxable pursuant to that section, except that if no rate is specified, then the rate shall be two tenths of one percent (.002).

**3.49.060 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 .040 shall be taxable under each applicable subsection.

(2) Notwithstanding anything to the contrary herein, if imposition of the City's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the City's tax, and still apply the City tax to as much of the taxpayer's activities as may be subject to the City's taxing authority.

(3) To take the credit authorized by this section, a taxpayer must be able to document that the amount of tax sought to be credited was paid upon the same gross receipts used in computing the tax against which the credit is applied.

(4) Credit for persons that sell in the City products that they extract or manufacture.

Persons taxable under the 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 manufacturing of the products sold in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

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

(1) Amounts subject to an eligible gross receipts tax in another city that also maintains nexus over the same activity. A taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:

(a) A taxpayer that has paid an eligible gross receipts tax, with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the City.

(b) 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.

(2) Person manufacturing products within and without. A person manufacturing products within the City using products manufactured by the same person outside the City may deduct from the measure of the manufacturing tax the value of products manufactured outside the City and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products.

### **3.49.080 Exemptions.**

- (1) Public utilities. This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of Chapter 3.52 Sultan Municipal Code.
- (2) Investments - dividends from subsidiary corporations. (a) This chapter shall not apply to amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations.
- (3) Employees.
  - (a) This chapter shall not apply to any person in respect to the person's employment in the capacity as an employee or servant as distinguished from that of an independent contractor. For the purposes of this subsection, the definition of employee shall include those persons that are defined in the Internal Revenue Code, as hereafter amended.
  - (b) A booth renter, as defined by RCW 18.16.020, is an independent contractor for purposes of this chapter.
- (4) Amounts derived from sale of real estate. This chapter shall not apply to gross proceeds derived from the sale of real estate.
- (5) Amounts derived from manufacturing, selling or distributing motor vehicle fuel. This chapter shall not apply to the manufacturing, selling, or distributing motor vehicle fuel, as the term "motor vehicle fuel" is defined in RCW 82.36.010 and exempt under RCW 82.36.440, provided that any fuel not subjected to the state fuel excise tax, or any other applicable deduction or exemption, will be taxable under this chapter.
- (6) Amounts derived from liquor, and the sale or distribution of liquor. This chapter shall not apply to liquor as defined in RCW 66.04.010 and exempt in RCW 66.08.120.
- (7) Casual and isolated sales. This chapter shall not apply to the gross proceeds derived from casual or isolated sales.

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

- (1) Receipts from tangible personal property delivered outside the State. In computing tax, there may be deducted from the measure of tax under 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 manufacturing classification with respect to articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the "value of product" provisions.
- (3) Credit losses of accrual basis taxpayers. In computing tax, there may be deducted from the measure of tax the amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis.

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

**3.49.100 Tax part of overhead.**

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

**3.49.110 Severability Clause.**

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

Section 2. This Ordinance and the tax imposed shall become effective on: \_\_\_\_\_.

CITY OF SULTAN

By: \_\_\_\_\_  
Ben Tolson, Mayor

ATTEST:

By: \_\_\_\_\_  
Laura Koenig, City Clerk

Approved as to form:

By: \_\_\_\_\_  
Thom Graafstra, City Attorney

Date of Publication: \_\_\_\_\_

Effective Date: \_\_\_\_\_

D-13

**CITY OF SULTAN**

**ORDINANCE NO. 933-06**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON  
CREATING A NEW CHAPTER 3.73 SULTAN MUNICIPAL CODE AND  
ESTABLISHING ADMINISTRATIVE PROVISIONS FOR THE COLLECTION OF B & O  
TAX IN THE CITY

Whereas simultaneous with the enactment of this Ordinance Sultan is establishing and imposing B & O tax and the City wishes to establish administrative provisions for the collection of that tax;

Now, therefore, it is hereby ordained by the City Council of the City of Sultan, Washington as follows.

Section 1. A new Chapter 3.73 Sultan Municipal Code is hereby enacted reading as follows:

**Chapter 3.73**

**Administrative Provisions For Business and Occupation Tax**

**Sections:**

- 3.73.010 Purpose**
- 3.73.015 Application of Chapter**
- 3.73.020 Definitions**
- 3.73.025 Taxes due; reporting; returns; failure to pay**
- 3.73.030 Payment**
- 3.73.035 Record keeping**
- 3.73.040 Accounting methods**
- 3.73.045 Public Works Contracts**
- 3.73.050 Underpayment**
- 3.73.055 Time in which to assess**
- 3.73.060 Over payment**
- 3.73.065 Late Payment**
- 3.73.070 Cancellation of penalties**
- 3.73.075 Liability of successor**
- 3.73.080 Administrative appeal**
- 3.73.085 Judicial Review**
- 3.73.090 Rule making**
- 3.73.095 Agreements**
- 3.73.100 Mailing of notices**

- 3.73.105 Public disclosure**
- 3.73.110 Tax as debt**
- 3.73.115 Unlawful Actions**
- 3.73.120 Suspension or revocation of business license**
- 3.73.125 Closing agreement**
- 3.73.130 Charge offs**
- 3.73.135 Severability**

**3.73.010 Purpose.** The purpose of this chapter is to establish regular procedures for the collection and payment of business and occupation taxes due the City.

**3.73.015 Application of chapter stated.** The provisions of this chapter shall apply with respect to the taxes imposed under Chapter 3.49 Sultan Municipal Code.

**3.73.020 Definitions.** For purposes of this chapter:

The definitions contained in chapter 3.49 Sultan Municipal Code shall apply equally to the provisions of this chapter unless the term is defined otherwise in this chapter. In addition, the following definitions will apply.

**"Reporting period."** "Reporting period" means:

- (1) A one-month period beginning the first day of each calendar month (monthly); or
- (2) A three-month period beginning the first day of January, April, July or October of each year (quarterly); or
- (3) A twelve-month period beginning the first day of January of each year (annual).

**"Return."** "Return" means any document a person is required by the City to file to satisfy or establish a tax that is administered or collected by the City under Chapter 3.49 Sultan Municipal code and that has a statutorily defined due date.

**"Successor."** "Successor" means any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, any part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

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

**3.73.025 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) The tax imposed by Chapter 3.49 Sultan Municipal Code shall be due and payable in quarterly installments. At the Director of Finance's (herein after in this Chapter the "Director") discretion, businesses may be assigned to a monthly or annual reporting period depending on the tax amount owing. 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 chapter and accompanied by a return on forms as prescribed by the Director. The return shall be signed by the taxpayer personally or by a responsible officer or agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is complete and true.

(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 chapter 3.49 Sultan Municipal Code, 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) (or higher threshold as determined by city) in the current calendar year) or Five Thousand Dollars (\$5,000) (or higher threshold as determined by the city) 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 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 chapter, in computing any period of days prescribed by this chapter the day of the act or event from which the designated period of time runs shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or City or Federal legal holiday, in which case the last day of such period shall be the next succeeding day which is neither a Saturday, Sunday, or City or Federal legal holiday.

(7) If any taxpayer fails, neglects or refuses to make a return as and when required in this chapter, the Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the Director's estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the City by the taxpayer. The Director shall notify the taxpayer by mail of the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

**3.73.030 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 chapter.

(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 chapter.

### **3.73.035 Records to be preserved - Examination - Estoppel to question assessment.**

Every person liable for any tax imposed by Chapter 3.49 Sultan Municipal Code 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 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 a Director 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 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.

**3.73.040 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.

**3.73.045 Public work contracts - Payment of 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 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.

**3.73.050 Underpayment of tax, interest, or penalty – Interest.**

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. 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.

For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. 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.

**3.73.055 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 chapter for taxes due within the period commencing 10 years prior to the close of the calendar year in which the person was contacted in writing by the Director;
- (2) Against a person that has committed fraud or who misrepresented a material fact; or
- (3) Against a person that has executed a written waiver of such limitations.

**3.73.060 Over payment 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. 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 shall be the average federal short term interest rate as outlined for assessments under .050 plus two (2) percentage points.

**3.73.065 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 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 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 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 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 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 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 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 of the amount due, but not less than Ten Dollars (\$10).

(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 as required by Chapter 5.04 Sultan Municipal Code, the Director shall impose a penalty of five (5) percent 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 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 chapter. 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 of the additional tax found to be due.

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

(8) The penalties authorized by subsections (5) and (6) of this section shall be assessed in accordance with the provisions of this chapter 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 Sultan 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.

### **3.73.070 Cancellation of penalties.**

(1) The Director may cancel any penalties imposed under subsections .065 (1) 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 30 days after the date the Department mails the notice that the penalties are due. The request must be in writing and contain competent proof of all pertinent facts 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 in subsections .065 (1) 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 30 days after being notified by the Department.

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

### **3.73.075 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.

### **3.73.080 Administrative Appeal.**

Any person, except one who has failed to comply, aggrieved by the amount of the tax determined by the Director to be required under the provisions of this chapter may appeal from such determination by filing a written notice of appeal and paying such appeal fee as set by resolution with the City Clerk within 30 days from the date written notice of such amount was mailed to the taxpayer. The City Clerk shall, as soon as practical, fix a time and place for the hearing of such appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the parties. The decision of the City Clerk shall indicate the correct amount of the fee or tax owing.

**3.73.085 Judicial Review of Administrative Appeal Decision.** The taxpayer or the City may obtain judicial review of the City Clerk's administrative decision by applying for a Writ of Review in the Snohomish County Superior Court within 20 days from the date of the City Clerk's decision in accordance with the procedure set forth in Chapter 7.16 RCW, other applicable law, and court rules. The City shall have the same right of review from the administrative decision as does a taxpayer.

### **3.73.090 Director to make rules.**

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

### **3.73.095 Authority of Director to enter into agreements.**

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 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.

### **3.73.100 Mailing of Notices.**

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

### **3.73.105 Public disclosure - Confidentiality - Information sharing.**

(1) For purposes of this section, unless a different meaning is clearly established by context, the following definitions apply:

(a) "Disclose" means to make known to any person in any manner.

(b) "Tax information" means:

(i) A taxpayer's identity;

(ii) The nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemption, credits, assets, liability, net worth, tax liability deficiencies, over assessments, or tax payments, whether taken from the taxpayer's books and records or any other source;

(iii) Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or

(iv) Other data received by, recorded by, prepared by, or provided to the Director with respect to a taxpayer.

PROVIDED, That tax information shall not include data, material, or documents that do not disclose information related to a specific or identifiable taxpayer.

(2) Tax returns and information may be "public records" as that term is defined in RCW 42.17.020, or as amended or recodified. The Director shall not disclose tax information if disclosure would violate RCW Chapter 42.17, or as recodified and amended, or any other law prohibiting disclosure.

(3) Tax information may be disclosed to the following:

(a) The Mayor, City Administrator, members of the City Council, City Attorney, City Clerk, or their authorized designees, for official purposes;

(b) Any agency or officer of the United States of America, the State of Washington, or a tax department of any state, county, city or town, provided that the agency or officer grants substantially similar privileges to the City, and further provided that the agency or officer shall not further disclose the tax information except as authorized in this section.

(c) The taxpayer to whom it pertains or to such person or persons as the taxpayer may designate in writing as the taxpayer's designee; except that tax information not received from the taxpayer shall not be so disclosed if the Director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer

or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the Director that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court.

(4) Nothing in this section shall prevent the use of tax information by the Director or any other agency in any civil or criminal action involving any license, tax, interest, or penalty.

(5) A person disclosing tax information to a person not entitled to receive that information under this section is guilty of a misdemeanor, and if the person violating this privacy requirement is an officer or employee of the City, such person may be required to forfeit their office or employment.

### **3.73.110 Tax constitutes debt.**

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

### **3.73.115 Unlawful actions - Violation - Penalties.**

(1) It shall be unlawful for any person liable for fees under this chapter or taxes under Chapter 3.49 SMC:

(a) To violate or fail to comply with any of the provisions of this chapter 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 by the City Clerk;

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

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

(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, or imprisonment not to exceed one year, or both fine and imprisonment.

### **3.73.120 Suspension or Revocation of business registration.**

(1) The Director, or designee, shall have the power and authority to suspend or revoke any license issued under the provisions of Chapter 5.04 SMC for violation of this chapter and Chapter 3.49 SMC. The Director shall notify such licensee in writing by certified mail of the suspension or revocation of his or her license and the grounds therefor. Any licensee may, within 10 days from the date that the suspension or

revocation notice was mailed to the licensee, appeal from such suspension or revocation by filing a written notice of appeal ("petition") setting forth the grounds therefor with the City Clerk. A copy of the petition must be provided by the licensee to the Director and the City Attorney on or before the date the petition is filed with the City Clerk. The City Clerk shall set a date for hearing said appeal and notify the licensee by mail of the time and place of the hearing. After the hearing thereon the City Clerk shall, after appropriate findings of fact, and conclusions of law, affirm, modify, or overrule the suspension or revocation and reinstate the license, and may impose any terms upon the continuance of the license.

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

The decision of the City Clerk shall be final. The licensee and/or the Department may seek review of the decision by the Superior Court of Washington in and for Snohomish County within 20 days from the date of the decision. If review is sought as herein prescribed the suspension or revocation shall be stayed pending final action by the Superior Court.

(3) Upon revocation of any license as provided in this subchapter no portion of the license fee shall be returned to the licensee.

### **3.73.125 Closing agreement provisions.**

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

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

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

### **3.73.130 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. [Charge-offs in excess of \$\_\_\_\_\_ require [City Council] approval.]

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

Section 2. This Ordinance shall become effective on: \_\_\_\_\_

Passed by the City Council and Approved by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_ 2006

CITY OF SULTAN

BY: \_\_\_\_\_  
Ben Tolson, Mayor

ATTEST:

By: \_\_\_\_\_  
Laura Koenig, City Clerk

Approved as to form:

By: \_\_\_\_\_  
Thom Graafstra, City Attorney

Date of publication: \_\_\_\_\_  
Effective date: \_\_\_\_\_

**SULTAN CITY COUNCIL**  
**AGENDA ITEM COVER SHEET**

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ITEM NO: Consent C 1

DATE: June 29, 2006

SUBJECT: B & O Tax Ordinances

CONTACT PERSON: Lee Walton, City Administrator

SUMMARY: The City has discussed the need to generate additional revenue and one of the sources considered is a B & O Tax on certain types of businesses within the City. Attached are copies of the draft ordinances which will be considered at the public hearing. To move this process along, we are requesting that a public hearing be set for July 13, 2006 to be held during the Council meeting.

FISCAL IMPACT:

RECOMMENDED ACTION: Set Public Hearing for July 13, 2006 during the regular Council meeting.

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COUNCIL ACTION:

DATE: