ORDINANCE NO. 14-1015

AN ORDINANCE of the City Council of the City of SeaTac, Washington, creating a new Chapter 3.90 of the SeaTac Municipal Code related to the Establishment of a Tax on the Gross Revenues of Certain Utilities Operating Within the City to Provide Revenue for City Services and Capital Requirements.

WHEREAS, the City Council has determined that there is a need for additional revenue in order to provide stabilization for long term funding of necessary City services; and

WHEREAS, it will not be possible to maintain the basic City service levels and fund capital improvements without a new source of revenue; and

WHEREAS, the City is constitutionally restricted in the types of taxes it may impose to generate income for City operations; and

WHEREAS, one such tax authorized by the Revised Code of Washington is a tax upon the gross income of utility businesses within the City; and

WHEREAS, the City Council has determined that it is in the best interests of the public health, safety and welfare to adopt an Ordinance creating a new chapter of the SeaTac Municipal Code to establish a utility tax;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON, DO ORDAIN as follows:

Section 1. A new Chapter 3.90 of the SeaTac Municipal Code is hereby added to read as follows:

Part I—Utility Tax

3.90.010 Utility tax.

The tax provided for in this Chapter shall be known as the "utility tax," and is levied upon the privilege of conducting an electric energy business, natural or manufactured gas business, solid waste business, surface water management business, telephone business, or cable television business within the City of SeaTac.

3.90.020 Use and accountability of tax proceeds.

All revenues collected pursuant to this Chapter shall be deposited into the General Fund, and shall be used for funding of general governmental services as the City Council shall direct through its budget process.

3.90.030 Definitions.

As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this Section shall have the indicated meanings.

(A) "Cable television services" means the transmission of video programming and associated non-video signals to subscribers together with subscriber interaction, if any, which is provided in connection with video programming.

(B) "Cellular telephone service" means any two-way voice and data telephone or similar communications system based in whole or in substantial part on wireless radio communications, including cellular mobile service, and which is not subject to regulation by the Washington State Utilities and Transportation Commission. Cellular mobile service includes other wireless radio communications services including specialized mobile radio, personal communications services, and any other evolving wireless radio communications technology that accomplishes a purpose substantially similar to cellular mobile service. Cellular telephone service is included within the definition of "telephone business" for the purposes of this Chapter.

(C) "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, directory advertising and lease of telephone street directories, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which may be provided by persons not subject to regulation as telephone companies under RCW Title 80, and for which a separate charge is made. Transmission of communication through cellular telephones is classified as "telephone business" rather than "competitive telephone service."

(D) "City Manager" means the City Manager of the City of SeaTac, Washington, or his or her designee.

(E) "Gas distribution business" means the business of operating a plant or system of the production or distribution for hire or sale and/or for the wheeling of gas, whether manufactured or natural.

(F) "Gross income" means the value proceeding or accruing from the performance of the particular business involved, including gross proceeds of sales, compensation for the rendition of services, and receipts (including all sums earned or charged, whether received or not) by reason of investment in the business engaged in (excluding rentals, receipts or proceeds from the use or sale of real property or any interest therein, and proceeds from the sale of notes, bonds, mortgages or other evidences of indebtedness, or stocks and the like), all without any deduction on account of the cost of property sold, the cost of materials used, labor costs, taxes (except income collected from customers to recover the tax imposed by this Chapter), interest or discount paid, delivery costs or any expenses whatsoever, and without any deduction on account of losses.

(G) "Light and power business" means the business of operating a plant or system for the generation, transmission, production, or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(H) "Pager service" means service provided by means of an electronic device which has the ability to send or receive voice or digital messages transmitted through the local telephone network, via satellite or any other form of voice or data transmission. "Pager service" is included within the definition of "telephone business" for the purposes of this Chapter.

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

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

(K) "Surface water management service" means those services provided by the City of SeaTac or any business that includes, but is not limited to, basin planning, facilities maintenance, surface water run-off regulation, drainage investigation and enforcement, aquatic resource restoration, surface and storm water quality and environmental monitoring, natural surface water drainage system planning, and surface water facility design and construction.

(L) "Taxpayer" means any person, firm, corporation, association, or entity of any type engaged in a business subject to taxation under this Chapter.

(M) "Tax Relief Year" means July 1st of the prior year and June 30th of the current year.

(N) "Telephone business" means the business of providing access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, or providing telephonic, cellular, video, data, pager or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. The term includes cooperative or farmer line telephone companies or associations operating an exchange. "Telephone business" does not include the providing of competitive telephone service or cable television service, or other providing of broadcast services by radio or television stations.

3.90.040 Light and Power Business subject to tax – Amount.

A. There is levied upon and shall be collected from a taxpayer engaged in or carrying on a light and power business in the City of SeaTac a tax equal to six percent (6.0%) of the total gross income from such business in the City during the period for which the tax is due.

B. During any Tax Year, any Municipal Light and Power business upon which there is levied a Utility Tax pursuant to this Chapter shall receive a credit against the Utility Tax that would otherwise be due for the amount of any payment paid by such business to the City pursuant to the terms of a franchise agreement. However, in no case shall the credit exceed the dollar amount of the Utility Tax due, and in no case shall the amount of Utility Tax owed under this Chapter

exceed the dollar amount of the franchise agreement payment unless explicitly authorized in said franchise agreement.

3.90.050 Telephone Business subject to tax – Amount.

There is levied upon and shall be collected from a taxpayer engaged in or carrying on a telephone business in the City of SeaTac a tax equal to six percent (6.0%) of the total gross income from such business in the City during the period for which the tax is due.

3.90.060 Solid Waste Collection Business subject to tax – Amount.

A. There is levied upon and shall be collected from a person engaged in or carrying on a solid waste collection business in the City of SeaTac a tax equal to five percent (5.0%) of the total gross income from such business in the City during the period for which the tax is due.

B. During any Tax Year, any Solid Waste Collection business upon which there is levied a Utility Tax pursuant to this Chapter shall receive a credit against the Utility Tax that would otherwise be due for the amount of any payment paid by such businesses to the City pursuant to the terms of a collection contract or franchise. However, in no case shall the credit exceed the dollar amount of the Utility Tax due.

3.90.070 Gas Distribution Business subject to tax – Amount.

There is levied upon and shall be collected from a taxpayer engaged in or carrying on a gas distribution business in the City of SeaTac a tax equal to six percent (6.0%) of the total gross income from such business in the City during the period for which the tax is due.

3.90.080 Cable Television Services Business subject to tax – Amount.

There is levied upon and shall be collected from a taxpayer engaged in or carrying on a cable television services business in the City of SeaTac a tax equal to six percent (6.0%) of the total gross income from such business in the City during the period for which the tax is due.

3.90.090 Surface Water Management Business subject to tax – Amount.

A. There is levied upon and shall be collected from a taxpayer engaged in or carrying on a surface water management business in the City of SeaTac a tax equal to six percent (6.0%) of the total gross income from such business in the City during the period for which the tax is due.

B. For a surface water management business operated by the City of SeaTac, gross income does not include interfund transfers.

3.90.100 Tax year.

The tax year for purposes of this Utility Tax shall commence January 1, 2015, and end December 31, 2015, and thereafter shall commence on January 1st and end on December 31st each year.

3.90.110 Exceptions and deductions.

A. There is excepted and deducted from the total gross income upon which the tax is computed:

(1) That part of the total gross income derived from business which the City is prohibited from taxing under the constitution or laws of the United States and the constitution or laws of the State of Washington.

(2) Income derived from that portion of network telephone service, as defined in RCW 82.04.065, which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services; or for access to, or charges for, interstate services; or charges for network telephone service that is purchased for the purpose of resale.

(3) Adjustments made to a billing or customer account in order to reverse a billing or charge that was not properly a debt of the customer.

(4) Cash discounts allowed and actually granted to customers of the taxpayer during the tax year.

(5) Uncollectible debts written off the taxpayer's books during the tax year. If subsequently collected, the income shall be reported for the period in which collected.

3.90.120 Payment of the tax – Utility Tax return.

The tax imposed by this Chapter shall be due and payable in monthly installments, and remittance therefore shall be made on or before the last day of the month following the end of the monthly period in which the tax is accrued. Quarterly returns may be allowed upon agreement of a quarterly payment schedule and written approval from the City Manager. Annual returns for smaller entities may be allowed upon agreement and written approval from the City Manager. On or before said due date, the taxpayer shall file with the City Manager a written utility tax return setting forth such information as the City Manager shall reasonably require relating to the accurate computation and collection of this tax, together with the payment of the amount.

3.90.130 Taxpayer's records.

Each taxpayer shall keep records reflecting the amount of the taxpayer's gross income on sales and services within the City, and such records shall be open at all reasonable times for the inspection of the City Manager to verify information provided on any utility tax return, or to determine whether such return is required to be filed.

3.90.140 Failure to make returns or to pay the tax in full.

If a taxpayer fails, neglects, or refuses to make his return as and when required by this Chapter, the City Manager is authorized to determine the amount of the tax payable, and to notify such taxpayer of the amount so determined. The amount so fixed shall thereupon be the tax and be immediately due and payable, together with penalties, any administrative costs incurred to determine the amount of tax payable, and interest. Delinquent taxes, including any penalties and costs, are subject to an interest charge of twelve percent (12%) per year on the unpaid balance from the date any such taxes became due.

3.90.150 Penalty for delinquent payment.

If a taxpayer subject to this tax fails to pay any tax required by this Chapter within ten (10) calendar days after the due date thereof, there shall be added to such tax a late charge of ten (10) percent of the amount of such tax, or fifty dollars ($50.00), whichever is greater. Any tax due under this Chapter that is unpaid and all penalties thereon shall constitute a debt to the City and may be collected by court proceedings, which remedy shall be in addition to all other remedies.

3.90.160 Overpayment of tax.

Money paid to the City through error, or otherwise not in payment of the tax imposed by this Chapter, or in excess of such tax, shall, upon discovery, be credited against any tax due or to become due from such taxpayer hereunder. If such taxpayer has ceased doing business in the City, any such overpayment shall be refunded to the taxpayer.

3.90.170 Noncompliance – Penalty.

A. No taxpayer subject to this chapter shall fail or refuse to file tax returns or to pay tax when due, nor shall any taxpayer make a false statement or representation in, or in connection with, any such tax return, or otherwise violate or refuse to comply with this Chapter or with any rule promulgated pursuant to SMC 3.90.190.

B. In addition to the interest and penalties set forth in this Chapter, a willful violation of or failure to comply with this Chapter is a civil infraction, to be prosecuted by the City Attorney through the SeaTac Municipal Court, subject to a penalty of $250.00 for each day that the violation continues.

3.90.180 Appeal.

A taxpayer aggrieved by the amount of the tax, penalties, interest, or costs determined to be due by the City Manager under the provisions of this Chapter, may appeal such determination to the Hearing Examiner in accordance with SMC 1.20. Such an appeal must be submitted in writing to the City Clerk within 20 calendar days of the decision made by the City Manager. The decision of the Hearing Examiner shall be final.

3.90.190 City Manager to make rules.

The City Manager shall have the power to adopt and enforce rules and regulations not inconsistent with this Chapter or with the law for the purposes of carrying out the provisions thereof.

3.90.200 Notice.

Any notice required by this Chapter to be mailed to any taxpayer shall be sent ordinary mail, postage prepaid, addressed to the address of the taxpayer as shown by the records of the City. If no such address is shown, then notice shall be sent to such address as the City Manager is able to ascertain by reasonable effort. Failure of the taxpayer to receive any such mailed notice shall not release the taxpayer from any tax, or any penalties, and any tax nonetheless shall become final in accordance with the provisions of this Chapter. The failure to receive notice shall not operate to

extend any time limit set by the provisions of this Chapter. Notice shall be deemed given to the taxpayer on the fourth calendar day after the day of placement of the notice in the mail, so for example, if a notice is placed in the mail on Monday, it shall be deemed given as of the Friday of the same week.

Part II—Utility Tax Relief

3.90.300 Utility tax relief.

A. There is granted to persons who meet the qualifications and requirements of SMC 3.90.310 and 3.90.320 relief from the city utility tax as follows:

(1) For utility bills billed to and paid by the person directly during a tax relief year for utility service charges from any utility company, who is subject to the utility tax of the City, the City shall pay to such person a reimbursement for the Utility Tax which applied to such bills subject to the limits set forth in this Section and in SMC 3.90.330.

(2) Utility Tax attributable to a Surface Water Management business is not subject to utility tax relief under this Section.

3.90.310 Utility tax relief – Qualifications.

A. To qualify for the relief set forth in SMC 3.90.300, a person must be requesting reimbursement for the amount of City utility taxes imposed during the previous tax relief year and must:

(1) Have an income during the tax relief year, or part thereof, for which a reimbursement is requested from all sources whatsoever, not exceeding very low income (50%) category limit published by the United States Department of Housing and Urban Development for its programs for the Seattle, Bellevue, Everett-PMSA/MSA. As used in this subsection, "income" means:

(a) "Disposable income," as that term is defined in RCW 84.36.383, as it may be amended or replaced from time to time; and

(b) The aggregate value of gifts and receipts received from all sources during the calendar year for which a reimbursement is requested.

(2) Have been a resident of the dwelling unit within the City at all times during any period for which a reimbursement is requested, and have made the payment of City utility taxes from his or her income or resources.

(3) Be either:

(a) 65 years of age or older at all times during any period for which reimbursement is requested; or

(b) Disabled and unable to work, as defined under RCW 84.36.383 and WAC 458-16A-130 as they currently exist or are hereafter amended.

3.90.320 Claim filing procedures.

A. Only one claim for utility tax relief may be made per household per tax relief year, and must be filed by October 1st for the preceding tax relief year, or portion thereof, for which a reimbursement is requested; and

B. Copies of all bills for which a claim is made shall be submitted to the City as part of the claim for relief, and proof of qualification as set forth in 3.90.310; and

C. All claims for relief shall be submitted in writing on forms provided by the City Manager and certified by the claimant that, under the penalty of perjury, all information provided in the claim is true and correct.

3.90.330 Amount of Utility Tax Relief

A. "Utility tax relief reimbursement" will be based upon the amount of Utility Tax paid during the tax relief year as follows:

1. Utility Tax paid was equal to or greater than $50.00 and less than $75.00 per tax relief year: $50.00 utility tax relief reimbursement;

2. Utility Tax paid was equal to or greater than $75.00 and less than $100.00 per tax relief year: $75.00 utility tax relief reimbursement;

3. Utility Tax paid was equal to or greater than $100.00 per tax relief year: $100.00 utility tax relief reimbursement.

Section 2. This Ordinance shall be in full force and effect five (5) days after passage and publication as required by law.

Section 3. If any provision of this Ordinance is determined to be invalid or unenforceable for any reason, the remaining provision of this Ordinance shall remain in force and effect.

ADOPTED this 28th day of October, 2014, and signed in authentication thereof on this 28th day of October, 2014.

CITY OF SEATAC

Mia Gregerson, Mayor

ATTEST:

Kristina Gregg, City Clerk

Approved as to Form:

Mary Mirante Bartolo

Mary E. Mirante Bartolo, City Attorney

[Effective Date: 11/8/14]

[Utility Tax]