

## ORDINANCE NO. 1981

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, RELATING TO TAXATION OF UTILITY PROVIDERS; REPEALING IN ITS ENTIRETY CHAPTER 3.3 OF THE DAYTON MUNICIPAL CODE ("DMC"); ENACTING NEW CHAPTER 2-34 OF THE DAYTON MUNICIPAL CODE, RE-ESTABLISHING A SIX PERCENT (6.0%) UTILITY TAX ON THE GROSS RECEIPTS OF THOSE ENGAGED IN THE TELEPHONE BUSINESS, THE TELEGRAPH BUSINESS, THE DISTRIBUTION OF NATURAL GAS, THE LIGHT OR POWER BUSINESS, THE SALE OF CELLULAR TELEPHONE SERVICE, AND CABLE TV SERVICE; ESTABLISHING A TWELVE PERCENT (12%) UTILITY TAX ON THE GROSS INCOME OF THOSE ENGAGED IN THE DISTRIBUTION OF WATER AND WASTEWATER OPERATIONS; ESTABLISHING STANDARDS AND PROCEDURES FOR COLLECTION OF THE SAME; ESTABLISHING PENALTIES FOR FAILURE TO TIMELY PAY THE UTILITY TAX; PROVIDING FOR SEVERABILITY; FIXING AN EFFECTIVE DATE; AND PROVIDING FOR SUMMARY PUBLICATION BY ORDINANCE TITLE ONLY.**

**WHEREAS**, RCW 35.21.865 - .870 authorizes the City to establish a utility tax of up to 6% of the gross revenues of those engaged in the telephone business and those engaged in the distribution of natural gas and electricity without approval of a majority of voters; and

**WHEREAS**, RCW 35A.82.020 authorizes the City to impose excise taxes for the purpose of regulation and revenue, including but not limited to the utility businesses of sewer, solid waste, water and cable tv; and

**WHEREAS**, the cost of providing public safety, parks, streets and other city services have continued to increase, and additional revenue is needed by the City to perform these and other essential services; and

**WHEREAS**, with the recent increase in law enforcement, dispatch, and municipal court service fees, the City Council has determined there is projected to be a deficit balance in the Current Expense Fund by the close of 2021; and

**WHEREAS**, the basic City service levels funded through the Current Expense Fund could suffer a reduction without a new source of revenue; and

**WHEREAS**, implementation of a tax on the City's water and sewer utilities measured by gross earnings is expected to generate additional revenue to help maintain current levels of City services within the Current Expense Fund;

**WHEREAS**, the City Council further desires to deposit all collections of utility taxes from the water and sewer gross receipts into the Current Expense Fund that shall be used for law

enforcement, dispatch and municipal court services; and

**WHEREAS**, the City Council has determined the public interest is best served by the implementation of a tax on the City's water and utilities.

**WHEREAS**, the current utility tax provisions in the DMC are found in another chapter and it is in the interest of convenience, transparency, and best practice that all utility tax provisions be codified in a single chapter.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, DO HEREBY ORDAIN AS FOLLOWS:**

Section 1. Chapter 3.3 - *Utilities Tax* of the Dayton Municipal Code is hereby repealed in its entirety.

Section 2. Chapter 2-34 of the Dayton Municipal Code is hereby enacted to read as follows:

CHAPTER 2-34  
UTILITY TAXES

Sections:

<b>2-34.010</b>	<b>Purpose</b>
<b>2-34.020</b>	<b>Definitions.</b>
<b>2-34.030</b>	<b>Businesses subject to tax.</b>
<b>2-34.040</b>	<b>Exceptions and deductions from gross income.</b>
<b>2-34.050</b>	<b>Returns and payment.</b>
<b>2-34.060</b>	<b>Books and records - Inspection and confidentiality.</b>
<b>2-34.070</b>	<b>Over payment.</b>
<b>2-34.080</b>	<b>Delinquency penalty - Collection.</b>
<b>2-34.090</b>	<b>Penalty for violation.</b>
<b>2-34.100</b>	<b>Rate change.</b>

**2-34.010 Purpose.** The provisions of this chapter shall be deemed to be an exercise of the power of the City of Dayton to license for revenue, as authorized by RCW 35.21.865, RCW 35A.82.020, and other applicable state law.

**2-34.020 Definitions.** Where used in this chapter, the following words and terms shall have the meanings as defined in this section, unless, from the context, a more limited or different meaning is clearly defined or apparent:

- A. "Cellular telephone service" means two-way voice and data telephone/telecommunications system or similar communication systems based in whole or substantially in part on wireless radio communications and which is not currently subject to regulation by the Washington Utilities and Transportation Commission

(WUTC). Cellular telephone service includes cellular mobile service. The definition of cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS) and any other evolving wireless radio communications technology which accomplishes the same purpose as cellular mobile service. Cellular telephone service is included within the definition of "Telephone Business" for the purposes of this ordinance.

- B. "Gross proceeds" or "gross income of business" means the value proceeding or accruing from the sale of tangible personal property and/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.
- C. "Household" means a single service address such as house or apartment number, regardless of the number of persons living at the service address.
- D. "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 ordinance.
- E. "Person" or "persons" means natural persons of either gender, firms, co-partnerships, corporations, municipal corporations/special purpose districts, and other associations of natural persons whether acting by themselves or by servants, agents or employees.
- F. "Sewerage system business" means sanitary sewerage collection, treatment and disposal facilities or any combination of or part of any or all such facilities.
- G. "Taxpayer" means any person liable for the license fee or taxes imposed by this chapter.
- H. "Tax year" or "taxable year" means the twelve-month period commencing January 1st and ending December 31st of the same year.
- I. "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

**2-34.030 Businesses subject to tax.** There is hereby levied upon all persons engaged in business activities taxable under this chapter a tax in the amounts to be determined by the application of the respective rates against gross income of such taxpayer. Taxpayers engaged in or carrying on the business shall be charged with collection of the tax as a condition of doing business, in the amount described below:

- A. Upon every person engaged in or carrying on a telephone business (including cellular telephone service and pager service), as defined in RCW 82.16.010, as said statute presently exists or is hereafter amended, a tax equal to six percent (6.0%) of



the total gross income, including revenues for intrastate toll, derived from the operation of such business within the City.

- B. Upon every person engaged in or carrying on a telegraph business, as defined in RCW 82.16.010, a tax equal to six percent (6%) of the total gross income from such business in the City.
- C. Upon every person engaged in a gas distribution business, as defined in RCW 82.16.010, as said statute presently exists or is hereafter amended, a tax equal to six percent (6.0%) of the total gross income derived from the operation of such business within the City.
- D. Upon every person engaged in a light or power business, as defined in RCW 82.16.010, as said statute presently exists or is hereafter amended, a tax equal to six percent (6.0%) of the total gross income derived from such business within the City.
- E. Upon every person engaged in water distribution business, a tax equal to twelve percent (12%) of the total gross income generated from monthly base rate charges derived from the operation of such business within the City's service area.
- F. Upon every person engaged in sewerage system business, a tax equal to twelve percent (12%) of the total gross income generated from monthly base rate charges derived from the operation of such business within the City's service area.
- G. Upon any cable television business, a tax equal to four percent (4%) of the gross operating revenues derived from the operation of such business within the City of Dayton. To the extent permitted by applicable federal and state law, any telecommunications services provided by a cable operator (as defined in 47 U.S.C. Section 522(5)) or other persons over cable television facilities owned or controlled by a cable operator shall be taxable hereunder.

**2-34.040 Exceptions and deductions from gross income.** There shall be excluded from the total gross income upon which the utility tax is computed the following:

- A. Revenues derived from transactions in interstate or foreign commerce, or from business done for the United States and the state, or their officers or agents or any amounts paid by the taxpayer to the United States and the state, the City or to any political subdivision of the state, as excise taxes levied or imposed upon the sale or distribution of property or services, or as a utility tax.
- B. That portion of gross income derived from charges to another telecommunications company, as defined in RCW 80.40.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate service.
- C. Charges incurred by a taxpayer engaging in a telephone business and paid to a telecommunications company, as defined in RCW 80.40.010, for telephone service

that the taxpayer purchases for the purpose of resale.

- D. Adjustments made to a billing or to a customer account or a telecommunications company accrual account in order to reverse a billing or a charge that has been made as a result of third-party fraud or other crime and was not properly a debt of a customer.
- E. Cash discounts and credit losses actually sustained by a taxpayer on an accrual basis.
- F. Revenues from transactions or activities which the City is prohibited from taxing under the laws and/or Constitutions of the United States or the State of Washington.

**2-34.050 Returns and payment.**

- A. Quarterly Returns. On or before the 20th day following the end of each calendar quarter (i.e., April 20th, July 20th, October 20th, and January 20th), each taxpayer not submitting monthly returns and payment shall remit payment for the preceding quarter's utility tax, accompanied by a quarterly statement showing the manner in which the quarterly payment is calculated. The quarterly statement shall be upon a form approved by the City Administrator and shall contain such information as may be necessary to enable the director to arrive at the lawful amount of the tax. The taxpayer shall, in a legible manner provide all information required by the director on such returns, shall sign the same, and by affidavit shall swear or affirm that the information therein given is full and true and that the taxpayer knows the same to be so.
- B. Monthly Returns. Taxpayers may submit monthly returns and payment in the same form and manner as taxpayer's making quarterly returns.
- C. Returns shall be accompanied by a remittance by bank draft, certified check, cashier's check or money order, payable to the City of Dayton, or in cash, in the amount of the fee or tax owed, including delinquencies and installments.
- D. Payment made by draft or check shall not be deemed a payment of the fee or tax unless and until the same has been honored in the usual course of business, nor shall acceptance of any such check or draft operate as an acquittance or discharge of the fee or tax unless and until the check or draft is honored.
- E. If the taxpayer is a partnership, returns must be made by one of the partners; if a corporation, by one of the officers thereof, if a foreign corporation, co-partnership or nonresident individual, by the resident agent or local manager of said corporation, co-partnership or individual.

**2-34.060 Books and records - Inspection and confidentiality.**

- A. It is the duty of each taxpayer to keep and enter in a proper book or set of books or records an account which shall accurately reflect the amount of its gross income, which account shall be open to inspection by the city administrator, or his or her designee at a reasonable time upon request, and from which said officer the



administrator or his or her designee may verify returns made by the taxpayer.

- B. To the extent permitted by Chapter 42.56 RCW and other applicable statutes, the applications, statements or returns made to the director pursuant to this chapter shall not be made public, nor shall they be subject to the inspection of any person except the Mayor, City Administrator, the City Attorney, and members of the City Council.

**2-34.070 Over payment.**

Any money paid to the city through error or otherwise not in payment of the tax imposed hereby or in excess of such tax shall, upon request of the taxpayer, be credited against any tax due or to become due from such taxpayer hereunder or, upon taxpayer's ceasing to do business in the city, be refunded to the taxpayer. Any refund request not submitted within two (2) years of the alleged overpayment shall be forever barred.

**2-34-080 Delinquency penalty - Collection.**

- A. Interested Charged. If payment of any fee or tax due under this chapter is not received by the City Administrator's Office on or before the day it becomes due, there shall be added a penalty in interest as follows:
1. One (1) to forty (40) days' delinquency, ten percent (10%), with a minimum penalty of five dollars (\$10.00);
  2. Forty-one (41) to seventy (70) days' delinquency, fifteen percent (15%) with a minimum penalty of ten dollars (\$15.00); and
  3. Seventy-one (71) or more days' delinquency, twenty percent (20%) with a minimum penalty of fifteen dollars (\$20.00).
- B. Remedial Action. Any tax due under this chapter and 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.

**2-34.090 Penalty for violation.** Any person violating any of the provisions or failing to comply with any of the requirements of this chapter shall, in addition to being liable for the monetary penalties set forth herein, be guilty of a gross misdemeanor and upon conviction of such violation or failure be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or by imprisonment not to exceed ninety (90) days or by both such fine and imprisonment.

**2-34.100 Rate change.** No change in the rate of tax upon persons engaging in providing services taxable under this chapter shall apply to business activities occurring before the effective date of the change, and, except for a change in the tax rate authorized by RCW 35.21.870. The City Administrator, or Administrator's designee, shall send to each taxpayer a copy of any ordinance changing the rate or tax upon taxable services promptly upon its enactment.

**Section 2. Administrative Procedures.** The Mayor or Mayor's designee is hereby

authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

**Section 3. Water Distribution and Wastewater Services Utility Tax Collection.** all collections of utility taxes from the water distribution services and wastewater services gross receipts shall be deposited into the Current Expense Fund and shall be used to fund law enforcement, dispatch and municipal court services.

**Section 4. Severability.** If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

**Section 4. Effective Date.** This ordinance shall take effect June 1, 2021 or five (5) days after the date of enactment, whichever date is last to occur.


**Section 5. Summary Publication.** A summary thereof of this Ordinance consisting of its title shall be published in the official newspaper of the City and shall take effect and be in full force five (5) days after the date of publication.

**PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF DAYTON, WASHINGTON, AT A REGULAR MEETING THIS 12<sup>TH</sup> DAY OF MAY, 2021.**

City of Dayton

  
By: Zac Weatherford, Mayor

Attested/Authenticated By:

  
By: Trina Cole, City Administrator

Approved as to form:  
Menke Jackson Beyer, LLP

  
By: Quinn Plant, City Attorney

**ORDINANCE SUMMARY BY TITLE ONLY FOR PUBLICATION PURPOSES**

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The full text of the Ordinance No. 1981, adopted the 19<sup>TH</sup> day of May 2021, is available for examination at the Dayton City Hall, 111 South 1<sup>st</sup> Street, Dayton, WA during normal business hours, 7:00 a.m. to 4:00 p.m., Monday – Friday.

By: /s/ Zac Weatherford, Mayor

Attest: /s/ Trina Cole, City Administrator

Approved as to from: /s/ Quinn Plant, City Attorney

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