ORDINANCE NO. 78

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, ESTABLISHING A UTILITY TAX ON UTILITIES WITHIN UNIVERSITY PLACE AND PROCEDURES FOR THE IMPLEMENTATION THEREOF AND PROVIDNG FOR CIVIL AND CRIMINAL PENALTIES

WHEREAS, RCW 35A.82.020 authorizes the City of University Place to license for revenue;

WHEREAS, the City Council of the City of University Place (the "City"), finds in order to provide revenues for the City of University Place a utility tax should be levied pursuant to the City of University Place's authority to license for revenue;

WHEREAS, this utility tax is also imposed for the privilege of providing utilities within University Place pursuant to RCW 35.21.870; and

WHEREAS, the City of University Place desires to provide for a referendum procedure to apply to this ordinance pursuant to RCW 35.21.706; now therefore:

THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Definitions. Unless the context clearly indicates otherwise, the words phrases and terms used in this ordinance shall have the following meanings:

A. "Cable Television" means a system providing service pursuant to a franchise issued by the City of University Place under the Cable Communications Policy Act of 1984 as amended (Public Law No. 98-549, 47 U.S.C. 521 (Supp.) or any system that employs antennae, microwave, wires, wave-guides, cables, coaxial cables, or other conductors, equipment or facilities designed, construed or used for the purpose of: (i) collecting and amplifying local and distant broadcast television signals and distributing and transmitting them; (ii) transmitting original cablecast programming not received through television broadcast signals; or (iii) transmitting television pictures, film and videotape programs not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers; provided, however, that "cable television service" shall not include entities that are subject to charges as "Commercial TV Stations" under 47 U.S.C. Section 148.

B. "Cellular telephone service" means a two-way voice and data telephone/telecommunications system based in whole or substantially in part on wireless radio communications which is not subject to regulation by the

Washington State Utilities and Transportation Commission (WUTC). This includes cellular mobile service. The definition of cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology which accomplishes a purpose similar to cellular mobile service. Cellular telephone service is included within the definition of "telephone business" for the purposes of this Ordinance.

C. "City Manager" means the City Manager of University Place and his or her designees or agents.

D. "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

E. "Gross Income" means the value proceeding or accruing from the sale of tangible property or service, and receipts (including all sums earned or charged, whether received or not) by reason of investment of capital in the business engaged in (including rentals, royalties, interest and other emoluments however designated excluding receipts or proceeds from the sale or use of real property or any interest therein and the proceeds from the sale of notes, bonds, mortgages, or other evidences of indebtedness, or stocks and the like and without any deduction on account of the cost of the property sold, cost of materials used, labor costs, interest or discount paid, or any expenses whatsoever, and without any deduction on account of losses. Further deductions and exceptions from gross income upon which the fee or tax described in this ordinance is computed are set forth in Section 7.

F. "Person or persons" means persons of either sex, firms, copartnerships, corporations, limited liability companies, and other associations, whether acting by themselves or through servants, agents or employees.

G. "Taxpayer" means any person liable for the license fee or tax imposed by this ordinance.

H. "Tax year or taxable year" means (1) the year commencing January 1st and ending on December 31st, of such year, or (2) the taxpayer's fiscal year when permission is obtained from the City Manager to use that period as the tax year, or (3) the year commencing December 15th and ending on December 14th of the following calendar year when permission is obtained from the City Manager to use that period as the tax year.

I. "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, video, data or similar communication or transmission for hire, via a local telephone network, toll line or channel cable, microwave, or similar communication or transmission system. The term includes cooperative or farmer line telephone companies or associations operating an exchange. Telephone business also includes cellular telephone service. Telephone business does not include the providing of competitive telephone service, the providing of cable television service, nor the providing of broadcast services by radio and television stations.

Section 2. Utility Tax Levied - Rate. There is levied on and shall be collected from every person a tax for the act or privilege of engaging in certain business activities, measured by the application of the respective rates against gross income as follows:

A. Telephone Business. Upon every person engaged in or carrying on any telephone business (including cellular telephone service) within the City of University Place a fee or tax equal to two and one-half percent of the total gross income from such business in the City of University Place. Tax liability imposed under this Section shall not apply to that portion of gross income derived from 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.

B. Cable Television. Upon every person engaged in or carrying on the business of transmitting television signals by means of a cable distribution system, commonly known as cable television or "CATV," a tax equal to two and one-half percent of the total gross income derived from such business in the City of University Place during the current calendar year for which license is required.

C. Natural or Manufactured Gas. Upon every person engaged in or carrying on the business of transmitting, distributing, selling and furnishing natural and/or manufactured gas, a tax equal to two and one-half percent of the total gross income from such business in the City of University Place.

D. Solid Waste. Upon every person engaged in or carrying on the business of collecting solid waste, recyclable materials or yard waste, a tax equal to two and one-half percent of the total gross income from such business in the City of University Place, but not including income from the sale of recyclable materials or yard waste.

Section 3. License Requirement. Any person subject to taxation under the provisions of this ordinance is required to obtain an occupation license from the City of

University Place. On and after March 1, 1996, no person subject to payment of the tax herein shall engage in any business, occupation, or activity in the City of University Place without first obtaining and holding a valid license so to do, which license shall be known as an "occupation license" for which the applicant will pay no charge. Such "occupation license shall expire at the end of the calendar year in which it is issued and a new license shall be required for each calendar year, unless the taxpayer is transacting business on a fiscal year with the prior consent of the City Manager, obtains an occupation license for the period of its current fiscal year which shall be deemed the tax year for such taxpayer. In such case, the occupation license shall expire at the end of the taxpayer's tax year.

Application for an "occupation license" shall be made to the City of University Place's Community Services Department which shall provide the forms therefor and shall issue the license.

Any person engaging in or carrying on more than one business, occupation, pursuit or privilege within the City of University Place that is subject to taxation under this Ordinance shall apply for and obtain an "occupation license" and shall pay the tax imposed on each of the same. Each "occupation license" shall be numbered, shall show the name, place and character of business of the taxpayer, and such other information on as the City Manager shall deem necessary, and shall be conspicuously posted in the place of business for which it is issued at all times. Such license shall be personal and nontransferable.

No person to whom an "occupation license" has been issued pursuant to this ordinance shall suffer or allow any other person for whom a separate license is required to operate under or display that person's license, nor shall such other person operate under or display such license.

Any taxpayer who engages in or carries on any business subject to tax hereunder without obtaining and maintaining a valid "occupation license" to do so shall be guilty of a violation of this ordinance for each day during which the business is so engaged in or carried on and the taxpayer who fails or refuses to pay the license fee or tax on any part thereof on or before the due date shall be deemed to be operating without having a license so to do.

Section 4. Allocation of Income - Cellular Telephone Service.

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

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

C. Roaming Phones. When the service is provided while a subscriber is roaming outside the subscriber's normal cellular network area, the gross income shall be assigned consistent with the taxpayer's accounting system to the location of the originating cell site of the call, or to the location of the main cellular switching office that switched the call.

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

Section 5. Remittance.

A. Monthly Remittance. The tax imposed by this ordinance shall be reported and remitted to the City of University Place monthly on or before the last day of the subsequent month. If a taxpayer commences to engage in business at any time other than the first day of the month, then the taxpayer's first return and tax payment shall be based upon and cover the portion of the month during which the taxpayer engaged in business.

B. Returns. The remittance shall be in legal tender and shall be accompanied by a return on a form to be provided and prescribed by the City Manager. The taxpayer shall be required to swear or affirm in writing on the return that the information therein given is full and true and that the taxpayer knows it to be so. If the total tax for which any person is liable under this ordinance is not reasonably expected to exceed $100 in any month, the taxpayer may file a written request with the City Manager to file and pay taxes due under this Ordinance annually. Such requests are subject to approval by the City Manager.

Section 6. Taxpayer engaged in more than one business. Any person engaged in, or carrying on more than one activity or business subject to the tax imposed by this Ordinance, shall pay the tax so ~~imposed~~ on each such business or activity.

Section 7. Deductions. In computing the tax imposed by this Ordinance, the following may be deducted from the measure of the tax:

A. Adjustments made to a billing or to a customer account or to a telecommunications company accrual account in order to reverse a billing or charge that had been made as a result of third-party fraud or other crime and was properly a debt of a customer and for which the taxpayer can provide documentation to the City of University Place.

B. All cash discounts allowed and actually granted to customers of the taxpayer during the tax year and for which the taxpayer can provide documentation to the City of University Place.

C. Amounts derived from transactions in interstate or foreign commerce, or from business done for the government of the United States, its officers or agents in their official capacity, and any amount paid by the taxpayer to the United States or the State of Washington, as excise taxes.

D. The amount of credit losses actually sustained by taxpayers whose regular books are kept on an accrual basis.

E. Amounts derived from business which the City of University Place is prohibited from taxing under the Constitution or the laws of this State or the United States.

Section 8. Record Retention Requirements. It shall be the duty of every person required to obtain an occupation license and liable for payment of any tax imposed by this ordinance to keep and preserve for a period of five years such books and records as will accurately reflect the amount of gross income from the business, and from which can be determined the amount of any tax for which the person may be liable under the provisions of this ordinance. The term "books and records" as used in this section includes but is not limited to copies of the taxpayer's Federal income tax returns, Federal excise tax returns, State of Washington excise tax returns, and copies of income tax and excise tax audits made by the United States or the State of Washington and furnished to such person. The taxpayer's books and records shall be available for examination at all reasonable times by the City Manager and his or her duly authorized.

In the case of any taxpayer who does not keep the necessary books and records within the City of University Place for examination, it shall be sufficient if such person produce the same within the City of University Place as instructed or required by the City Manager

Any taxpayer who fails, neglects, or refuses to produce such books and records in accordance with this ordinance, or fails to file a return, in addition to being subject to other civil and criminal penalties provided by this ordinance, is subject to a tax assessment in an amount determined by the City Manager in accordance with the provisions of this ordinance, which tax assessment shall be deemed prima facie correct and shall be the amount of fee or tax owing to the City of University Place by the taxpayer unless the person can prove otherwise by competent evidence. The taxpayer shall be notified by mail by the City Manager of the amount of tax assessment imposed pursuant to this Section, together with any penalty and/or interest due, and the total of such amounts shall thereupon become immediately due and payable.

Section 9. Tax Delinquency -- Unlawful Acts.

A. Penalties and Interest. For each payment due, if such payment is not made by the due date thereof, there shall be added penalty and interest as follows:

(1) If paid 1 - 10 days late, there shall be a penalty of 10% added to the amount of tax due.

(2) If paid 11 - 20 days late, there shall be a penalty of 15% added to the amount of tax due.

(3) If paid 21 - 30 days late, there shall be a penalty of 20% added to the amount of tax due.

(4) If paid 31 - 60 days late, there shall be a penalty of 25% added to the amount of tax due.

(5) In addition to the above penalty, the City of University Place shall charge the taxpayer interest on all taxes due at the rate of one percent (1%) per month or portion thereof that said amounts are past due.

(6) The tax imposed by this ordinance, and all penalties and interest thereon, shall constitute a debt to the City of University Place, and may be collected by court proceedings in the same manner as any other debt which remedy shall be in addition to all other available remedies. Any judgment entered in favor of the City of University Place may include an award to the City of University Place of all court and collection costs including attorneys' fees to the extent permitted by law. Amounts delinquent more than sixty days may be assigned to a third party for collection, in which case the amount of any collection charges shall be in addition to all other amounts owed. Amounts due shall not be considered paid until the City of University Place has received payment for the full amount due or has discharged the amount due and not paid.

B. Unlawful Acts. It is unlawful for any person liable for the tax imposed by this ordinance to fail to pay the tax when due or for any person, firm, or corporation to make any false or fraudulent return or any false statement in connection with the return.

C. Criminal Penalties. Any person who intentionally violates any provision of this ordinance shall be guilty of a misdemeanor and upon conviction thereof punished pursuant to state law or City ordinance.

Section 10. Quitting, Selling, or Transferring Business. Whenever any taxpayer quits business, or sells out, exchanges, or otherwise disposes of such business, any tax payable under this Ordinance shall become immediately due and payable, and such taxpayer shall, within 10 days thereafter, make a return and pay the tax due; and any person who becomes a successor shall become liable for the full amount of any unpaid tax, interest, and penalties and shall withhold from the purchase price an amount sufficient to pay any tax due from the taxpayer until such time as the taxpayer shall produce a receipt from the City of University Place showing payment in full of any tax due or a certificate that no tax is due. If such tax, interest or penalty has not been paid by the taxpayer within 10 days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax, interest and penalties. The successor's liability shall be limited to the purchase price or fair market value of the business purchased if no cash transaction took place. No successor shall be liable for any tax due from the taxpayer from whom the successor has acquired a business or stock of goods if the successor gives written notice to the City Manager of such acquisition and no assessment is issued by the City Manager within six months of receipt of such notice against the former operator of the business. Taxpayer's account will remain on an active status and be subject to all taxes, penalties, and interest until such time as the City Manager is notified in writing that the taxpayer has discontinued business activity within the City of University Place. Nothing in this ordinance is intended nor shall it be construed to prohibit the successor from engaging in business in the City of University Place pending resolution of the successor's tax liability.

Section 11. <u>Tax Not Exclusive.</u> The tax levied herein shall be additional to any license fee or tax imposed or levied under any other law or under any other ordinance of the City of University Place.

Section 12. <u>Rate Changes.</u> No change in the rate of tax upon persons engaging in the business of furnishing natural gas or in the telephone business, including cellular telephone service, shall apply to business activities occurring before the effective date of the change. Furthermore, except for a change in the tax rate authorized by RCW 35.21.870, no change in the rate of the tax on the business of furnishing natural gas or the telephone business may take effect sooner than sixty (60) days following the enactment of the ordinance establishing the change. The City of University Place shall send to each cellular telephone service company at the address on its occupation license, a copy of any ordinance changing the rate of tax upon cellular telephone service promptly upon its enactment.

Section 13. <u>Appeal Procedure.</u> Any taxpayer aggrieved by the amount of the fee or tax found by the City Manager to be required under the provisions of this ordinance may, upon full payment of the amount assessed, appeal from such finding by filing a written notice of appeal with the City Clerk within 14 days from the date such taxpayer was given notified in writing of such amount. The Clerk shall, as soon as practicable, fix a time and place for the hearing of such appeal before the Hearing Examiner, which time shall be not more than 60 days after the filing of the notice of appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the appellant. At such hearing before the Hearing Examiner, the taxpayer shall be entitled to be heard and to introduce evidence in his or her own behalf. The Hearing Examiner shall render a decision, together with findings of fact and conclusions of law, based upon the evidence presented at the time of the hearing and all material on file in the case. The Hearing Examiner's decisions shall indicate the correct amount of the fee or tax owing. The Hearing Examiner's decision shall be final. The appellant or the City of University Place may appeal the decision of the Hearing Examiner to the Superior Court of Washington in and for Pierce County within 30 days after the date of the Hearing Examiner's decision. The Hearing Examiner may, by subpoena, require the attendance of any person, and may also require him/her to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated and produce the books and records required, if any, and shall testify truthfully under oath administered by the Hearing Examiner as to any matter required of him/her pertinent to the appeal, and it shall be unlawful for him/her to fail or refuse so to do.

Section 14. Over or Underpayment of Tax. In the event that any person makes an overpayment, and within two years of the date of such overpayment makes application for a refund or credit, the person's claims shall be allowed and a refund made by the City of University Place upon determination by the City Manager that no other sums are owed by the person to the City of University Place. If a person determines that the tax has been underpaid and without notice by any party pays the amount due to the City of University Place, such amount shall not be subject to penalty.

Section 15. Referendum Procedure. A referendum petition with respect to this ordinance may be filed with the City Clerk within seven days of the passage of this ordinance. The referendum procedures set forth in RCW 35.17.240 through 35.17.360, as hereafter amended, shall apply, with the following additions and amendments as required by RCW 35.21.706:

A. Within ten days of the filing of the petition, the City Clerk will confer with the petitioner concerning the form and style of the petition, issue and identification number, and secure an accurate, concise and positive ballot title from the City Attorney;

B. The petitioner shall have thirty days in which to secure the signatures of not less than 15% of the registered voters of the City of University Place, as of the last municipal general election, upon petition forms which contain the ballot title and full text of this ordinance; and

C. The City Clerk shall verify the sufficiency of the signatures on the petition, and if sufficient valid signatures are properly submitted, shall certify the referendum measure to the next election ballot within the City of University Place, or at a special election as provided pursuant to RCW 35.17.260(2).

Section 16. 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 17. Effective Date. This Ordinance is effective five days after publication, and the tax takes effect on March 1, 1996.

PASSED BY THE CITY COUNCIL ON DECEMBER 20, 1995

Stanley L.K. Flemming, Mayor

ATTEST:

Susan Matthew/cB
Susan Matthew, City Clerk

APPROVED AS TO FORM:

Robert J. Backstein, City Attorney

Date of Publication: December 22, 1995
Effective Date: December 27, 1995