

ORDINANCE No. 122764

COUNCIL BILL No. 116277

AN ORDINANCE relating to business licensing; clarifying requirements for filing tax returns and paying tax liability; providing that a first violation for failure to obtain a business license, failure to obtain an amusement device license, failure to obtain an admission tax endorsement, or failure to file a declaration of intent to conduct or operate a gambling activity or fundraising event, shall constitute a civil infraction and that subsequent violations shall constitute a crime and providing punishment and penalties for such violations; adding provisions to specifically identify accountability for unlawful acts committed by individuals acting on behalf of a business entity; repealing SMC Sections 5.55.215 and 5.55.216; and amending sections 5.55.040, 5.55.220, and 5.55.225 of the Seattle Municipal Code, including technical corrections thereto.

Introduced: <u>7-21-08</u>	By: <u>Godden</u>
Referred:	To: <u>Finance and Budget (FAB)</u>
Referred:	To:
Referred:	To:
Reported: <u>8-11-08</u>	Second Reading:
Third Reading: <u>8-11-08</u>	Signed:
Presented to Mayor: <u>8-12-08</u>	Approved: <u>8-18-08</u>
Returned to City Clerk: <u>8-18-08</u>	Published: <u>Full 9</u>
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

# The City of Seattle--Legislative Department

## REPORT OF COMMITTEE

Date Reported and Adopted \_\_\_\_\_

Honorable President:

Your Committee on \_\_\_\_\_

to which was referred the within Council Bill No. \_\_\_\_\_  
report that we have considered the same and respectfully recommend that the same:

Do pass (Y-SC, JG)

8-11-08 Passed 7-0 (Excused: Licata, McIven)

Jean H. Godden  
Committee Chair



# City of Seattle

Gregory J. Nickels, Mayor

## Office of the Mayor

June 17, 2008

Honorable Richard Conlin  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that provides for enforcement by means of civil infractions for first violations of certain provisions of the City of Seattle's Revenue, Finance and Taxation Code, Title 5 of the Seattle Municipal Code (the "Revenue Code"). Subsequent violations of these provisions would remain a criminal violation. The civil infraction enforcement process was created by the state legislature in 1987 and codified at RCW 7.80.005. The process is often a more expeditious and less expensive method of disposing of minor offenses.

The License and Standards Inspectors (the "Inspectors") are charged with the task of enforcing the Revenue Code. Prior to 2001, the Inspectors issued criminal citations for violations of the Revenue Code, including but not limited to, failure to obtain a business license and failure to file and remit taxes due. However, due process concerns were raised by the lengthy amount of time it took to move the criminal citation cases to hearing and final disposition.

Under current law, Ordinance 120668, businesses that fail to obtain required business licenses are subject to "Notices of Violation" and an eventual criminal citation. The notices of violation have no real effect; as a result, criminal citation is the only means to compel compliance. Prosecuting criminal citations is time-consuming and costly, and thus tends to occur only when a significant amount of money is at stake. State law allows the use of civil citations for license enforcement; and this legislation would permit such a procedure in Seattle. Failure to obtain required licenses would incur fines of \$250 per day. If the civil enforcement process were not successful, the criminal citation is still an option.

Thank you for your consideration of this legislation. Should you have any questions, please contact Denise Movius at (206) 684-9259.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Nickels", written over the word "Sincerely,".

GREG NICKELS  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7<sup>th</sup> Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 615-0476 Fax: (206) 684-5360, Email: [mayors.office@seattle.gov](mailto:mayors.office@seattle.gov)

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ORDINANCE 122764

AN ORDINANCE relating to business licensing; clarifying requirements for filing tax returns and paying tax liability; providing that a first violation for failure to obtain a business license, failure to obtain an amusement device license, failure to obtain an admission tax endorsement, or failure to file a declaration of intent to conduct or operate a gambling activity or fundraising event, shall constitute a civil infraction and that subsequent violations shall constitute a crime and providing punishment and penalties for such violations; adding provisions to specifically identify accountability for unlawful acts committed by individuals acting on behalf of a business entity; repealing SMC Sections 5.55.215 and 5.55.216; and amending sections 5.55.040, 5.55.220, and 5.55.225 of the Seattle Municipal Code, including technical corrections thereto.

WHEREAS, the provisions of SMC Sections 5.55.215 and 5.55.216 have not been effective for enforcement of Title 5 of the Code; and

WHEREAS, enforcing certain licensing provisions through graduated penalties from infractions to criminal violations will provide a more effective enforcement mechanism than enforcing those licensing provisions as criminal violations alone; and

WHEREAS, subsection B of SMC Section 5.55.220 contains an erroneous cross-reference which is corrected through this ordinance; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

**Section 1.** Section 5.55.040 of the Seattle Municipal Code is hereby amended as follows:

**5.55.040 When due and payable -- Reporting periods --Monthly, quarterly, and annual returns -- Threshold provisions -- Computing time periods -- Failure to file returns.**

A. Other than any annual license fee or registration fee assessed under this chapter, the tax imposed by SMC Chapters 5.32 (Amusement Devices), 5.35 (Commercial Parking Tax), ~~((5.37 (Employee Hour Taxes);))~~ 5.40 (Admission Tax((es))), 5.45 (Business License Tax), 5.46 (Square Footage Tax), 5.48 (Utility Tax), and 5.52 (Gambling Tax), shall be due and payable in



1 quarterly installments. (~~At the Director's discretion, businesses may be assigned~~) The Director  
2 may use his or her discretion to assign businesses to a monthly or annual reporting period  
3 depending on the tax amount owing or type of tax. Taxes imposed by SMC Section 5.52.030 A2  
4 and B2 for punchboards and pulltabs shall be due and payable in monthly installments. Tax  
5 returns and payments are due on or before the last day of the next month following the end of the  
6 assigned reporting period covered by the return.  
7

8 B. Taxes shall be paid as provided in this chapter and accompanied by a return on forms  
9 as prescribed by the Director. The return shall be signed by the taxpayer personally or by a  
10 responsible officer or agent of the taxpayer. The individual signing the return shall swear or  
11 affirm that the information in the return is true and complete.  
12

13 C. Tax returns must be filed and taxes must be paid (~~returned by the due date~~) on or  
14 before the last day of the next month following the end of the assigned reporting period covered  
15 by the return. Tax returns must be filed whether or not any tax is owed. Returns not received on  
16 or before the due date are subject to penalties and interest in accordance with this chapter, in  
17 addition to any other civil or criminal sanction or remedy that may be available.  
18

19 D. 1. For purposes of the tax imposed by SMC Chapter 5.45, any person whose  
20 gross proceeds of sales, gross income of the business, and value of products,  
21 including by-products, as the case may be, from all activities conducted within the  
22 city subject to tax after all allowable deductions, is less than the tax threshold  
23 amount defined in subsection D 3 below, in the current calendar year, shall  
24 complete and file a return, declare no tax due on their return, and submit the  
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1 return to the Director. The gross receipts and deduction amounts shall be entered  
2 on the tax return even though no tax may be due.

3 2. Any person who reasonably estimates that the gross proceeds of sales, gross  
4 income of the business, and value of products, including by-products, as the case  
5 may be, from all activities conducted within the ((€))city subject to tax after all  
6 allowable deductions, will be less than the tax threshold amount defined in  
7 subsection D 3((5)) below, in the current calendar year may file a declaration so  
8 stating on a form supplied by the Director at the same time he or she files his or  
9 her application for a business license or a renewal. The Director may assign any  
10 person who files such declaration to an annual reporting ((basis)) period.

11 3. For calendar years prior to 2008, the Business and Occupation tax threshold  
12 amount shall remain at Fifty Thousand Dollars (\$50,000) as established under  
13 Ordinance 116945. For calendar years 2008 and thereafter, the Business and  
14 Occupation tax threshold amount shall be Eighty Thousand Dollars (\$80,000).

15 E. A taxpayer who commences to engage in business activity shall file a return and pay  
16 the tax or fee for the portion of the reporting period during which he or she is engaged in  
17 business activity subject to the conditions set forth in subsection D, above.

18 F. Except as otherwise specifically provided by any other provision of this chapter, in  
19 computing any period of days prescribed by this chapter the day of the act or event from which  
20 the designated period of time runs shall not be included. The last day of the period shall be  
21 included unless it is a Saturday, Sunday, or City or Federal legal holiday, in which case the last  
22



1 day of such period shall be the next succeeding day which is neither a Saturday, Sunday, or City  
2 or Federal legal holiday.

3 G. If any taxpayer fails, neglects or refuses to ((make)) file his or her return as and when  
4 required in this chapter, the Director is authorized to determine the amount of the tax or fees  
5 ((payable)) due by obtaining facts and information upon which to base his or her estimate of the  
6 tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of  
7 tax owed to the City by the taxpayer. The Director shall notify the taxpayer by mail of the  
8 amount of tax so determined, together with any penalty, interest, and fees due; the total of such  
9 amounts shall thereupon become immediately due and payable.  
10

11 **Section 2.** Section 5.55.215 of the Seattle Municipal Code is hereby repealed in its  
12 entirety.  
13

14 **Section 3.** Section 5.55.216 of the Seattle Municipal Code is hereby repealed in its  
15 entirety.  
16

17 **Section 4.** Section 5.55.220 of the Seattle Municipal Code is hereby amended as follows:

18 **5.55.220 Unlawful actions -- Violation -- Penalties.**

19 A. It shall be unlawful for any person subject to the provisions of this chapter, or SMC  
20 Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48 and 5.52:  
21

- 22 1. To violate or fail to comply with any of the provisions of this chapter, SMC  
23 Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48 and 5.52, or any lawful rule or  
24 regulation adopted by the Director;  
25  
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- 1                   2. To make or manufacture any license required by this chapter except upon  
2                   authority of the Director;
- 3                   3. To make any false statement on any license, application or tax return;
- 4                   4. To aid or abet any person in any attempt to evade payment of a license fee or  
5                   tax;
- 6                   5. To refuse admission to the Director to inspect the premises and/or records as  
7                   required by this chapter, or to otherwise interfere with the Director in the  
8                   performance of duties imposed by SMC Chapters 5.32, 5.35, 5.37, 5.40, 5.45,  
9                   5.46, 5.48 and 5.52;
- 10                  6. To fail to appear or testify in response to a subpoena issued pursuant to SMC  
11                  Section 3.02.120 in any proceeding to determine compliance with this chapter and  
12                  SMC Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48 and 5.52;
- 13                  7. To testify falsely in any investigation, audit or proceeding conducted pursuant  
14                  to this chapter; ((or))
- 15                  8. To continue to engage in any business activity, profession, trade or occupation  
16                  after the revocation of or during a period of suspension of a business license  
17                  issued under SMC Section 5.55.030; or
- 18                  9. In any manner, to hinder or delay the City or any of its officers in carrying out  
19                  the provisions of this chapter or SMC Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46,  
20                  5.48 and 5.52.
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1 B. Each violation of or failure to comply with the provisions of this chapter, or SMC  
2 Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48 or 5.52 shall constitute a separate offense.

3 Except as provided in subsection C, ((A))any person who commits an act defined in subsection A  
4 of this section is guilty of a gross misdemeanor, punishable in accordance with SMC Section  
5 12A.02.070. The provisions of Chapters 12A.02 and 12A.04 of the Seattle Municipal Code  
6 apply to the offenses defined in subsection A of this section, except that liability is absolute and  
7 none of the mental states described in SMC Section 12A.04.030 need be proved.

9 C. ~~((Any person, or officer of a corporation, convicted of continuing to engage in~~  
10 ~~business after the revocation of a license shall be guilty of a gross misdemeanor and punishable~~  
11 ~~by a fine not to exceed Five Thousand Dollars (\$5,000), or imprisonment not to exceed one (1)~~  
12 ~~year, or both fine and imprisonment.)) Except as provided in subsections C1 and C2 of this  
13 section, each violation of SMC Sections 5.32.150, 5.40.080, 5.52.020 or 5.55.030 is a Class 1  
14 civil infraction as contemplated by RCW Chapter 7.80, for which the penalty is Two Hundred  
15 Fifty Dollars (\$250.00) plus statutory assessments. Each day a person is in violation of SMC  
16 Sections 5.32.150, 5.40.080, 5.52.020 or 5.55.030 is a separate violation and the monetary  
17 penalties shall accumulate. A civil infraction under these sections shall be processed in the  
18 manner contemplated by RCW Chapter 7.80 and notices of infraction for such violations may be  
19 issued by law enforcement officers or the Director, or the Director's designees, including License  
20 and Standards Inspectors.~~

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23  
24 1. Each person who commits a violation of SMC Sections 5.32.150, 5.40.080,  
25 5.52.020 or 5.55.030 after having been found to have committed a previous  
26



1 violation of the same SMC section is guilty of a gross misdemeanor punishable in  
2 accordance with SMC Section 12A.02.070. Each day a person is in violation of  
3 SMC Sections 5.32.150, 5.40.080, 5.52.020 or 5.55.030 shall be a separate  
4 violation.

5 2. If a corporation commits a violation of SMC Sections 5.32.150, 5.40.080,  
6 5.52.020 or 5.55.030 after having been found to have committed a previous  
7 violation of the same SMC section then any individual who would be criminally  
8 liable for the corporation's acts, pursuant to SMC Sections 12A.04.110,  
9 12A.04.120 12A.04.130 or any other provision of the Seattle Municipal Code, is  
10 guilty of a gross misdemeanor punishable in accordance with SMC Section  
11 12A.02.070, whether or not the individual has been found to have committed a  
12 previous violation of the same SMC section. Each day a person is in violation of  
13 SMC Sections 5.32.150, 5.40.080, 5.52.020 or 5.55.030 shall be a separate  
14 violation. For purposes of this subsection, corporation shall have the meaning as  
15 set forth in SMC 12A.04.110.  
16  
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18

19 D. Prosecution pursuant to this section shall not be commenced more than four (4) years  
20 after the Director knew or should have known that the act(s) constituting the offense occurred.  
21 The penalties and punishments established by this section shall be in addition to all other  
22 penalties provided by law.  
23

24 E. ~~((Any person who violates or fails to comply with any requirement of Section~~  
25 ~~5.55.030; or who fails to make and transmit a return for taxes as required under Section~~  
26  
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1 ~~5.55.040, shall be guilty of a gross misdemeanor and upon conviction shall be fined in a sum not~~  
2 ~~exceeding Five Thousand Dollars (\$5,000), or be imprisoned for a term not exceeding one (1)~~  
3 ~~year, or be both fined and imprisoned. Each day of noncompliance with any of the~~  
4 ~~aforementioned provisions shall constitute a separate offense.))~~

5 ((F-)) Upon a determination that a person is subject to criminal prosecution under this  
6 ((S))section, the Director and agents of the Director, who are commissioned as non-uniformed  
7 special police officers pursuant to SMC Section 5.55.225, may issue citations and make arrests  
8 for criminal violations of this ((S))section.  
9

10 **Section 5.** Section 5.55.225 of the Seattle Municipal Code is hereby amended as follows.  
11

12 **5.55.225 Police powers of special commissioned officers.**

13 For purposes of enforcement, Department employees may be commissioned by the Chief  
14 of Police as special police officers having the power to issue citations, issue civil infractions,  
15 enter and inspect premises and establishments, seize evidence or make arrests for unlawful  
16 conduct as defined in SMC Section 5.55.220.  
17

18 **Section 6.** If any part, provision or section of this ordinance is held to be void or  
19 unconstitutional, all other parts, provisions, and sections of this ordinance not expressly so held  
20 to be void or unconstitutional shall continue in full force and effect.  
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**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
Executive Administration	Denise Movius/4-9259	Lawand Anderson/3-2780

**Legislation Title:**

AN ORDINANCE relating to business licensing; clarifying requirements for filing tax returns and paying tax liability; providing that a first violation for failure to obtain a business license, failure to obtain an amusement device license, failure to obtain an admission tax endorsement, or failure to file a declaration of intent to conduct or operate a gambling activity or fundraising event, shall constitute a civil infraction and that subsequent violations shall constitute a crime and providing punishment and penalties for such violations; adding provisions to specifically identify accountability for unlawful acts committed by individuals acting on behalf of a business entity; repealing SMC Sections 5.55.215 and 5.55.216; and amending sections 5.55.040, 5.55.220, and 5.55.225 of the Seattle Municipal Code, including technical corrections thereto.

• **Summary of the Legislation:**

The proposed legislation amends SMC Chapter 5.55 to provide for enforcement of certain licensing provisions in the City's Revenue, Finance, and Taxation Code (the "Revenue Code") through graduated penalties from civil infractions to criminal violations. SMC Sections 5.55.215 and 5.55.216, which provide for a civil violation enforcement procedure, will be repealed through this ordinance.

Under the proposed amendment, a first violation for failure to obtain a business license, failure to obtain an amusement device license, failure to obtain an admission tax endorsement, or failure to file a declaration of intent to conduct or operate a gambling activity or fundraising event shall constitute a Class 1 civil infraction as established by chapter 7.80 RCW, with a penalty of Two Hundred Fifty Dollars (\$250) plus statutory assessments. The Director of Executive Administration and his designees, as well as law enforcement officers, will be authorized to issue notices of infraction for such violation.

Persons who commit subsequent violations of the same provisions of the Revenue Code shall be found to have committed a gross misdemeanor, punishable in accordance with SMC Section 12A.02.070. The proposed code revisions also specifically identify accountability for unlawful acts committed by individuals acting on behalf of business entities, and make technical corrections to the Revenue Code.

• **Background:**

The Director of Executive Administration and the Director's designees are authorized to enforce the requirements of the Revenue Code. Prior to 2001, the Department of



Executive Administration (“DEA”) inspectors issued criminal citations for violations of the Revenue Code, including but not limited to the failure to obtain a business license and failure to file and remit taxes due. The period of time it took to move the criminal citation cases to hearing and final disposition raised concerns about due process. When the Revenue Code was restructured through Ordinance 120668, effective January 1, 2002, the authority of DEA inspectors to issue civil infractions was introduced. Currently, inspectors may issue only notices of violation and/or criminal complaints. The notices of violation issued for noncompliance are often ignored by violators because there is no immediate consequence. The only other legal recourse available for noncompliance is for the City Attorney to file a criminal complaint. As there are substantial costs associated with the criminal complaint process, it is not cost effective for the City to pursue criminal complaints unless the expected revenue recovery is substantial.

The proposed ordinance corrects the current enforcement obstacles by moving enforcement action to an early point in the collections process, encouraging pursuit of accounts with smaller obligations, and avoiding the delays associated with the current lengthy process involving criminal complaints.

The authority to write civil infractions would be a valuable enforcement tool in the collections process, giving inspectors in the field the ability to immediately cite violations by unlicensed businesses, mobile vendors, transient businesses, residential sellers, unlicensed contractors, nightclub promoters, and regulatory licensees. Currently, inspectors have the authority to issue only a notice to comply and pursue a criminal complaint. Writing infractions would also save time and resources by reducing the number of unsuccessful attempts to collect delinquent taxes and license fees. The infractions would result in more timely compliance. Currently, repeat contacts are necessary for collections.

Replacing these ineffective provisions and providing for a graduated system of enforcement will provide the City with a more effective mechanism of enforcing its Revenue Code and collecting the associated tax and license fee revenue.

- *Please check one of the following:*

**This legislation does not have any financial implications.** *(Stop here and delete the remainder of this document prior to saving and printing.)*

**This legislation has financial implications.** *(Please complete all relevant sections that follow.)*

***Appropriations:*** *This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation, please provide details in the Notes section below.*

<b>Fund Name and Number</b>	<b>Department</b>	<b>Budget Control Level*</b>	<b>2008 Appropriation</b>	<b>2009 Anticipated Appropriation</b>
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<b>TOTAL</b>				

*\*See budget book to obtain the appropriate Budget Control Level for your department.*

**Notes: There are no appropriations associated with this legislation.**

**Anticipated Revenue/Reimbursement: Resulting From This Legislation:** *This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

Fund Name and Number	Department	Revenue Source	2008 Revenue	2009 Revenue
General Subfund (00100)	Executive Administration	Civil infraction penalty fees.	\$28,250*	\$56,250**
<b>TOTAL</b>			<b>\$28,250</b>	<b>\$56,250</b>

\*Projected approximately 113 civil infractions issuable in last 6 months of 2008.

\*\*Projected 225 civil infractions issuable in 2009.

**Notes:** The projected revenue is based on the average number of criminal citations issued from 1993 through 2000 and adjusted to reflect the anticipated demand. These projected revenues do not include tax and license fee revenues recovered as a result of the more effective enforcement provisions contemplated by this legislation, which might otherwise not be collected by the City.

**Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact:** *This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.*

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2008 Positions	2008 FTE	2009 Positions*	2009 FTE*
<b>TOTAL</b>							

\* 2009 positions and FTE are total 2009 position changes resulting from this legislation, not incremental changes. Therefore, under 2009, please be sure to include any continuing positions from 2008.

**Notes: There are no positions associated with this legislation.**

- **Do positions sunset in the future? Not applicable.**

**Spending/Cash Flow:** *This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were*



appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.

Fund Name & #	Department	Budget Control Level*	2008 Expenditures	2009 Anticipated Expenditures
<b>TOTAL</b>				

\* See budget book to obtain the appropriate Budget Control Level for your department.

**Notes: There are no spending/cash flow issues associated with this legislation.**

- **What is the financial cost of not implementing the legislation?** (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)

The City will forego the recovery of uncollected tax and license revenue through the more effective enforcement process contemplated by this legislation.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

None.

- **Is the legislation subject to public hearing requirements:**

No special public hearings.

- **Other Issues** (including long-term implications of the legislation):

**Please list attachments to the fiscal note below:** None.



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**STATE OF WASHINGTON – KING COUNTY**

--SS.

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228257  
CITY OF SEATTLE, CLERKS OFFICE

No.

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

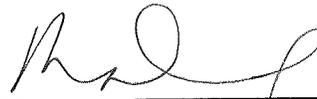
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122764 ORDINANCE

was published on

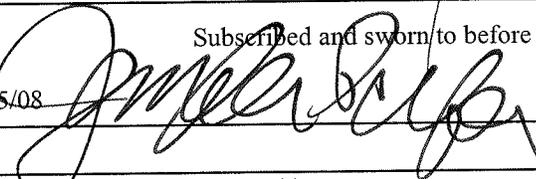
08/25/08

The amount of the fee charged for the foregoing publication is the sum of \$ 449.60, which amount has been paid in full.



Subscribed and sworn to before me on

08/25/08



Notary public for the State of Washington,  
residing in Seattle

Affidavit of Publication



# State of Washington, King County

## City of Seattle

### ORDINANCE 122764

AN ORDINANCE relating to business licensing; clarifying requirements for filing tax returns and paying tax liability; providing that a first violation for failure to obtain a business license, failure to obtain an amusement device license, failure to obtain an admission tax endorsement, or failure to file a declaration of intent to conduct or operate a gambling activity or fundraising event, shall constitute a civil infraction and that subsequent violations shall constitute a crime and providing punishment and penalties for such violations; adding provisions to specifically identify accountability for unlawful acts committed by individuals acting on behalf of a business entity; repealing SMC Sections 5.55.215 and 5.55.216; and amending sections 5.55.040, 5.55.220, and 5.55.225 of the Seattle Municipal Code, including technical corrections thereto.

WHEREAS, the provisions of SMC Sections 5.55.215 and 5.55.216 have not been effective for enforcement of Title 5 of the Code; and

WHEREAS, enforcing certain licensing provisions through graduated penalties from infractions to criminal violations will provide a more effective enforcement mechanism than enforcing those licensing provisions as criminal violations alone; and

WHEREAS, subsection B of SMC Section 5.55.220 contains an erroneous cross-reference which is corrected through this ordinance; NOW, THEREFORE,

#### BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

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- Reporting periods -- Monthly, quarterly, and annual returns -- Threshold provisions -- Computing time periods -- Failure to file returns.

A. Other than any annual license fee or registration fee assessed under this chapter, the tax imposed by SMC Chapters 5.32 (Amusement Devices), 5.35 (Commercial Parking Tax), ~~((5.37 (Employee Hour Taxes)))~~ 5.40 (Admission Tax(es)), 5.45 (Business License Tax), 5.46 (Square Footage Tax), 5.48 (Utility Tax), and 5.52 (Gambling Tax), shall be due and payable in quarterly installments. ~~((At the Director's discretion, businesses may be assigned))~~ The Director may use his or her discretion to assign businesses to a monthly or annual reporting period depending on the tax amount owing or type of tax. Taxes imposed by SMC Section 5.52.030 A2 and B2 for punchboards and pultabs shall be due and payable in monthly installments. Tax returns and 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.

B. 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 true and complete.

C. Tax returns must be filed and taxes must be paid ~~((returned by the due date))~~ on or before the last day of the next month following the end of the assigned reporting period covered by the return. Tax returns must be filed whether or not any tax is owed. Returns not received on or before the due date are subject to penalties and interest in accordance with this chapter, in addition to any other civil or criminal sanction or remedy that may be available.

D. 1. For purposes of the tax imposed by SMC Chapter 5.45, 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 subject to tax after all allowable deductions, is less than the tax threshold amount defined in subsection D 3 below, in the current calendar year, shall ~~complete~~ and 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.

2. Any person who reasonably estimates that the 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 ~~((C))~~ city subject to tax after all allowable deductions, will be less than the tax threshold amount defined in subsection D 3 ~~((C))~~ below, in the current calendar year may file a declaration so stating on a form supplied by the Director at the same time he or she files his or her application for a business license or a renewal. The Director may assign any person who files such declaration to an annual reporting ~~((basis))~~ period.

3. For calendar years prior to 2008, the Business and Occupation tax threshold amount shall remain at Fifty Thousand Dollars (\$50,000) as established under Ordinance 116945. For calendar years 2008 and thereafter, the Business and Occupation tax threshold amount shall be Eighty Thousand Dollars (\$80,000).

E. A taxpayer who commences to engage in business activity shall file a return and pay the tax or fee for the portion of the reporting period during which he or she is engaged in business activity subject to the conditions set forth in subsection D, above.

F. 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.

G. If any taxpayer fails, neglects or refuses to ~~((make))~~ file his or her return as and when required in this chapter, the Director is authorized to determine the amount of the tax or fees ~~((payable))~~ due by obtaining facts and information upon which to base his or her 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.

**Section 2.** Section 5.55.215 of the Seattle Municipal Code is hereby repealed in its entirety.

**Section 3.** Section 5.55.216 of the Seattle Municipal Code is hereby repealed in its entirety.

**Section 4.** Section 5.55.220 of the Seattle Municipal Code is hereby amended as follows:

**5.55.220** Unlawful actions -- Violation -- Penalties.

A. It shall be unlawful for any person subject to the provisions of this chapter, or SMC Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48 and 5.52:

1. To violate or fail to comply with any of the provisions of this chapter, SMC Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48 and 5.52, or any lawful rule or regulation adopted by the Director;

2. To make or manufacture any license required by this chapter except upon authority of the Director;

3. To make any false statement on any license, application or tax return;

4. To aid or abet any person in any attempt to evade payment of a license fee or tax;

5. To refuse admission to the Director to inspect the premises and/or records as required by this chapter, or to otherwise interfere with the Director in the performance of duties imposed by SMC Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48 and 5.52;

6. To fail to appear or testify in response to a subpoena issued pursuant to SMC Section 3.02.120 in any proceeding to determine compliance with this chapter and SMC Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48 and 5.52;

7. To testify falsely in any investigation, audit or proceeding conducted pursuant to this chapter; ~~((or))~~

8. To continue to engage in any business activity, profession, trade or occupation after the revocation of or during a period of suspension of a business license issued under SMC Section 5.55.030; or

9. In any manner, to hinder or delay the City or any of its officers in carrying out the provisions of this chapter or SMC Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48 and 5.52.

B. Each violation of or failure to comply with the provisions of this chapter, or SMC Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48 or 5.52 shall constitute a separate offense. Except as provided in subsection C, ((A))any person who commits an act defined in subsection A of this section is guilty of a gross misdemeanor, punishable in accordance with SMC Section 12A.02.070. The provisions of Chapters 12A.02 and 12A.04 of the Seattle Municipal Code apply to the offenses defined in subsection A of this section, except that liability is absolute and none of the mental states described in SMC Section 12A.04.030 need be proved.

C. ((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 punishable by a fine not to exceed Five Thousand Dollars (\$5,000), or imprisonment not to exceed one (1) year, or both fine and imprisonment.)) Except as provided in subsections C1 and C2 of this section, each violation of SMC Sections 5.32.150, 5.40.080, 5.52.020 or 5.55.030 is a Class 1 civil infraction as contemplated by RCW Chapter 7.80, for which the penalty is Two Hundred Fifty Dollars (\$250.00) plus statutory assessments. Each day a person is in violation of SMC Sections 5.32.150, 5.40.080, 5.52.020 or 5.55.030 is a separate violation and the monetary penalties shall accumulate. A civil infraction under these sections shall be processed in the manner contemplated by RCW Chapter 7.80 and notices of infraction for such violations may be issued by law enforcement officers or the Director, or the Director's designees, including License and Standards Inspectors.

1. Each person who commits a violation of SMC Sections 5.32.150, 5.40.080, 5.52.020 or 5.55.030 after having been found to have committed a previous violation of the same SMC section is guilty of a gross misdemeanor punishable in accordance with SMC Section 12A.02.070. Each day a person is in violation of SMC Sections 5.32.150, 5.40.080, 5.52.020 or 5.55.030 shall be a separate violation.

2. If a corporation commits a violation of SMC Sections 5.32.150, 5.40.080, 5.52.020 or 5.55.030 after having been found to have committed a previous violation of the same SMC section then any individual who would be criminally liable for the corporation's acts, pursuant to SMC Sections 12A.04.110, 12A.04.120, 12A.04.130 or any other provision of the Seattle Municipal Code, is guilty of a gross misdemeanor punishable in accordance with SMC Section 12A.02.070, whether or not the individual has been found to have committed a previous violation of the same SMC section. Each day a person is in violation of SMC Sections 5.32.150, 5.40.080, 5.52.020 or 5.55.030 shall be a separate violation. For purposes of this subsection, corporation shall have the meaning as set forth in SMC 12A.04.110.

D. Prosecution pursuant to this section shall not be commenced more than four (4) years after the Director knew or should have known that the act(s) constituting the offense occurred. The penalties and punishments established by this section shall be in addition to all other penalties provided by law.

E. ((Any person who violates or fails to comply with any requirement of Section 5.55.030, or who fails to make and transmit a return for taxes as required under Section 5.55.040, shall be guilty of a gross misdemeanor and upon conviction shall be fined in a sum not exceeding Five Thousand Dollars (\$5,000), or be imprisoned for a term not exceeding one (1) year, or be both fined and imprisoned. Each day of noncompliance with any of the aforementioned provisions shall constitute a separate offense.))

((F)) Upon a determination that a person is subject to criminal prosecution under this ((S))section, the Director and agents of the Director, who are commissioned as non-uniformed special police officers pursuant to SMC Section 5.55.225, may issue citations and make arrests for criminal violations of this ((S))section.

Section 5. Section 5.55.225 of the Seattle Municipal Code is hereby amended as follows.

#### 5.55.225 Police powers of special commissioned officers.

For purposes of enforcement, Department employees may be commissioned by the Chief of Police as special police officers having the power to issue citations, issue civil infractions, enter and inspect premises and establishments, seize evidence or make arrests for unlawful conduct as defined in SMC Section 5.55.220.

Section 6. If any part, provision or section of this ordinance is held to be void or unconstitutional, all other parts, provisions, and sections of this ordinance not expressly so held to be void or unconstitutional shall continue in full force and effect.

Section 7. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 11th day of August, 2008, and signed by me in open session in authentication of its passage this 11th day of August, 2008.

Richard Conlin

President of the City Council

Approved by me this 18th day of August, 2008.

Gregory J. Nickels, Mayor

Filed by me this 18th day of August, 2008.

(Seal) Judith Pippin

City Clerk

Publication ordered by JUDITH PIPPIN, City Clerk

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