

Ordinance No. 123063

Council Bill No. 116603

AN ORDINANCE relating to taxation; adding two minor exemptions from the parking tax; adding a new section 5.45.085 relating to the taxation of business transactions between related parties; deleting section 5.45.060 relating to the taxation of business conducted with the City when there is no physical nexus; amending the definition of casual sale; expanding the adult family homes business license tax exemption to include for-profit adult family homes; deleting the boarding homes deduction under the business license tax; amending certain exemption, credit and deduction provisions of the square footage business tax; changing the gambling tax rate from 10% to 5% for bingo and raffles; making technical corrections to reference the proper Utility Tax section and amending sections 5.30.010, 5.30.020, 5.30.030, 5.30.050, 5.30.060, 5.35.050, 5.37.020, 5.45.090, 5.45.100, 5.46.030, 5.46.040, 5.46.050, 5.46.060, 5.52.030, 5.55.010, 5.55.040, 5.55.080, 5.68.020 and 3.02.125, respectively, of the Seattle Municipal Code.

CF No. \_\_\_\_\_

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Date Re - Referred:	To: (committee)	
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# The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: \_\_\_\_\_ *[Signature]*

Councilmember

## Committee Action:

Y - JG, NL

8-10-09 Passed 9-0

This file is complete and ready for presentation to Full Council. Committee: \_\_\_\_\_ (initial/date)

Law Dept. Review

OMP Review

City Clerk Review

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Indexed

ORDINANCE 123063

AN ORDINANCE relating to taxation; adding two minor exemptions from the parking tax; adding a new section 5.45.085 relating to the taxation of business transactions between related parties; deleting section 5.45.060 relating to the taxation of business conducted with the City when there is no physical nexus; amending the definition of casual sale; expanding the adult family homes business license tax exemption to include for-profit adult family homes; deleting the boarding homes deduction under the business license tax; amending certain exemption, credit and deduction provisions of the square footage business tax; changing the gambling tax rate from 10% to 5% for bingo and raffles; making technical corrections to reference the proper Utility Tax section and amending sections 5.30.010, 5.30.020, 5.30.030, 5.30.050, 5.30.060, 5.35.050, 5.37.020, 5.45.090, 5.45.100, 5.46.030, 5.46.040, 5.46.050, 5.46.060, 5.52.030, 5.55.010, 5.55.040, 5.55.080, 5.68.020 and 3.02.125, respectively, of the Seattle Municipal Code.

WHEREAS, recently the City imposed the commercial parking tax, the employee hours tax, and the square footage business tax and the City would now like to amend certain language as well as make technical corrections to these tax chapters; and

WHEREAS, some businesses are creating related business entities and conducting business activities through the related entities to avoid tax obligations and the City needs clear authority to tax such related business transactions as if those transactions were conducted in an arms-length manner; and

WHEREAS, the City desires to add two minor exemptions dealing with government transactions to the parking tax, expand the adult family home exemption under the business license tax to include for-profit adult family homes, and delete the boarding home deduction because of changes to the State's definition of a boarding home; and

WHEREAS, the City would like to repeal Seattle Municipal Code (SMC) Section 5.45.060 relating to the taxation of business conducted with the City when there is no physical nexus; and

WHEREAS, the City would like to amend SMC 5.68 to make technical corrections to (SMC) Section 5.68.020 to reference the proper Utility Tax code section. NOW, THEREFORE,

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





1 a. The organization must be managed by a governing board of not less  
2 than eight (8) individuals none of whom is a paid employee of the  
3 organization or by a corporation sole under RCW Chapter 24.12.

4 b. No part of the organization's income may be paid directly or  
5 indirectly to its members, stockholders, officers, directors, or trustees  
6 except in the form of services rendered by the organization in accordance  
7 with its purposes and bylaws.

8 c. Salary or compensation paid to its officers and executives must be  
9 only for actual services rendered, and at levels comparable to the salary  
10 or compensation of like positions within the state.

11 d. Assets of the organization must be irrevocably dedicated to the  
12 activities for which the exemption is granted and, on the liquidation,  
13 dissolution, or abandonment by the organization, may not inure directly  
14 or indirectly to the benefit of any member or individual except a non-  
15 profit organization, association, or corporation which also would be  
16 entitled to the exemption.

17 e. The organization must be duly licensed or certified when licensing or  
18 certification is required by law or regulation.

19 f. The amounts received that qualify for exemption must be used for the  
20 activities for which the exemption is granted.

21 g. Services must be available regardless of race, color, national origin,  
22 or ancestry.  
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1 business activities in the City without having to register and obtain a business  
2 license or pay City business and occupation taxes. The activities listed in this  
3 section are illustrative only and are not intended to narrow the definition of  
4 "engaging in business" in subsection (1), above. If an activity is not listed, the  
5 issue of whether it constitutes engaging in business in the City shall be  
6 determined by considering all the facts and circumstances and applicable law.

7  
8 3. Without being all inclusive, any one of the following activities conducted  
9 within the City by a person, or its employee, agent, representative, independent  
10 contractor, broker or another acting on its behalf constitutes engaging in  
11 business and requires a person to register and obtain a business license:

12 a. Owning, renting, leasing, maintaining, or having the right to use, or  
13 using, tangible personal property, intangible personal property, or real  
14 property permanently or temporarily located in the City, in connection  
15 with a business activity;

16  
17 b. Owning, renting, leasing, using, or maintaining, an office, place of  
18 business, or other establishment in the City in which business activities  
19 are conducted;

20  
21 c. Soliciting sales;

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23 d. Making repairs or providing maintenance or service to real or tangible  
24 personal property, including warranty work and property maintenance;

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

3 f. Installing, constructing, or supervising installation or construction of,  
4 real or tangible personal property;

5 g. Soliciting, negotiating, or approving franchise, license, or other  
6 similar agreements;

7 h. Collecting current or delinquent accounts;

8 i. Picking up and transporting tangible personal property, solid waste  
9 construction debris, or excavated materials;

10 j. Providing disinfecting and pest control services, employment and  
11 labor pool services, home nursing care, janitorial services, appraising,  
12 landscape architectural services, security system services, surveying, and  
13 real estate services including the listing of homes and managing real  
14 property;

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

20 l. Meeting with customers or potential customers, even when no sales or  
21 orders are solicited at the meetings;  
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1 m. Training or recruiting agents, representatives, independent  
2 contractors, brokers or others domiciled or operating on a job in the City,  
3 acting on its behalf, or for customers or potential customers;

4 n. Investigating, resolving, or otherwise assisting in resolving customer  
5 complaints;

6 o. In-store stocking or manipulating products or goods, sold to and  
7 owned by a customer, regardless of where sale and delivery of the goods  
8 took place;

9 p. Delivering goods in vehicles owned, rented, leased, used, or  
10 maintained by the person who sold the goods or another acting on its  
11 behalf; or

12 q. Accepting or executing a contract with the City, irrespective of  
13 whether the goods or services are delivered within or without the City, or  
14 whether the person's office or place of business is within or without the  
15 City.

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18 4. If a person, or its employee, agent, representative, independent contractor,  
19 broker or another acting on the person's behalf, engages in no other activities in  
20 or with the City but the following, it need not register and obtain a business  
21 license and pay tax.

22 a. Meeting with suppliers of goods and services as a customer;

23 b. Meeting with government representatives in their official capacity,  
24 other than those performing contracting or purchasing functions;  
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1 c. Attending meetings, such as board meetings, retreats, seminars, and  
2 conferences, or other meetings wherein the person does not provide  
3 training in connection with tangible personal property sold by the person  
4 or on its behalf;

5 d. Renting tangible or intangible property as a customer when the  
6 property is not used in the City;

7 e. Attending, but not participating in, a "trade show."~~(-)~~ Persons  
8 participating at a trade show shall review the City's trade show  
9 ordinance, SMC Chapter 6.20;

10 f. Conducting advertising through the mail; ~~((ø))~~

11 g. Soliciting sales by phone from a location outside the City~~((;))~~ or

12 h. Accepting or executing a contract with the City when:

13 1. The aggregate value of all City contracts with the person during  
14 the calendar year is Five Thousand Dollars (\$5,000) or less and the  
15 person is engaged in no other business within the City; or

16 2. The person's only source of revenue consists of contracts with  
17 the City for neighborhood planning purposes, sister city  
18 associations, or Arts Commission grants, and is less than the  
19 taxable threshold amount provided in SMC Section 5.55.040D.

20 5. A seller located outside the City merely delivering goods into the City by  
21 means of common carrier is not required to register and obtain a business license  
22 provided that it engages in no other business activities in the City.  
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1 The City expressly intends that engaging in business include any activity sufficient to  
2 establish nexus for purposes of applying the tax under the law and the constitutions of the  
3 United States and the State of Washington.

4 Nexus is presumed to continue as long as the taxpayer benefits from the activity that  
5 constituted the original nexus generating contact or subsequent contacts.

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8 **Section 4.** Subsection A of section 5.30.050 of the Seattle Municipal Code is hereby  
9 amended as follows:

10 **5.30.050 Definitions, S.**

11 A. "Sale," "casual or isolated sale."

12 1. "Sale" means any transfer of the ownership of, title to, or possession of,  
13 property for a valuable consideration and includes any activity classified as a "sale at retail,"  
14 "retail sale," or "retail service." It includes renting or leasing, conditional sale contracts, leases  
15 with option to purchases, and any contract under which possession of the property is given to  
16 the purchaser but title is retained by the vendor as security for the payment of the purchase  
17 price. It also includes the furnishing of food, drink, or meals for compensation whether  
18 consumed upon the premises or not.

19  
20 2. "Casual or isolated sale" means a sale of tangible personal property made by  
21 a person who is not engaged in the business of selling the type of tangible personal property  
22 involved on a routine or continuous basis.

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25 **Section 5.** Subsection B of section 5.30.060 of the Seattle Municipal Code is hereby  
26 amended as follows:  
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1 The purpose of this section is to ensure taxpayers clearly reflect their true gross income  
2 attributable to business activities or transactions between related, controlled or affiliated  
3 persons, and to prevent the avoidance of taxes in regards to such activities or transactions.  
4 Business activities or transactions between one related, controlled or affiliated person and  
5 another will be subject to special scrutiny by the Director to ascertain whether common control  
6 is being used to reduce, avoid, or escape taxes. The authority of the Director to determine true  
7 taxable income extends to any case in which either by inadvertence, sham, or design the taxable  
8 income of a related, controlled or affiliated person is other than it would have been had the  
9 person, in the conduct of its affairs, been dealing at arm's length with an unrelated,  
10 uncontrolled or unaffiliated person. The Director will consider whether the persons are  
11 motivated by business purposes other than tax avoidance or are principally motivated by the  
12 desire to avoid taxes.  
13  
14

15 B. The Director will consider the following to determine whether an arrangement  
16 between related, controlled, or affiliated persons results in an improper or inaccurate valuation  
17 of the activity:

- 18 1. Whether the persons are motivated by business purposes other than tax  
19 avoidance or are principally motivated by tax avoidance. In no case shall the  
20 mere evasion or avoidance of taxation be regarded as a business purpose.
- 21 2. Whether the separate businesses of the related, controlled or affiliated  
22 persons have economic substance because a reasonable possibility of obtaining a  
23 profit exists, apart from achieving tax benefits.
- 24 3. Whether one person has a significant amount of capital gains, interest,  
25 dividend or similar income, but minimal capital, activity, or expenses, because  
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1 essential business functions are performed for the person by another without  
2 arm's length consideration.

3 4. In determining whether the related persons or entities are motivated by tax  
4 avoidance or whether they possess economic substance, the Director shall  
5 consider the following:

- 6 a. The related person has an identifiable place of business with  
7 supporting business records.  
8  
9 b. The related person maintains books and related accounting records.  
10  
11 c. The related person has a staff of employees or has engaged  
12 independent contractors adequate in number and with sufficient expertise  
13 to conduct its business activities.  
14  
15 d. The controlling person so controls and dominates the finances, policy  
16 and business activities of the related person that the related person has  
17 virtually no separate existence.  
18  
19 e. The form employed for conducting business is a sham.

20 C. The Director will use the following methods to assign a value to business activities  
21 or transactions between related, controlled, or affiliated persons when the Director determines  
22 that a true or market value has not been reported on a tax return:

- 23 1. Fair market valuation. A value determined by comparing charges made for  
24 similar goods or services of like quality and character, in similar quantities,  
25 under comparable conditions of sale, to comparable unrelated party purchasers,  
26 including subsidies and bonuses.  
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1 2. Cost basis. If no comparable goods or services can guide the Director in  
2 ascertaining the value, then such value may be determined upon a cost plus  
3 margin basis. All costs – including direct and indirect overhead costs --  
4 attributable to the particular article, good or service shall be included. An  
5 appropriate profit margin shall also be added to the costs.

6 3. Amount of dividends or loans received. If a parent corporation or controlling  
7 person provides services that are more than general oversight duties to a  
8 subsidiary or controlled person and receives no payments, or such payments are  
9 not at market value, but then receives dividends or loans from the subsidiary or  
10 controlled person for the services rendered, the Director shall deem the  
11 dividends or loans received to be compensation for the services rendered. If the  
12 total amount received from the subsidiary or controlled person, including such  
13 dividends or loans, is less than the market value of such service, the Director  
14 will tax the services rendered at the market value. If the amount of dividends or  
15 loans can be shown to be higher than the market value of the services then the  
16 market value will be used.

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20 General oversight duties of a parent corporation include high level management  
21 direction, strategic planning, stewardship duties or assisting in the financing of the controlled  
22 persons. These duties can be provided without taxation of the dividends, loans or  
23 compensation from subsidiaries or controlled persons. However, providing services for a  
24 subsidiary's or controlled person's customers, or providing accounting and administrative  
25 services, or providing marketing services, or providing other lower level management duties for  
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1 a subsidiary or controlled person, or any similar activities will be subject to a market value  
2 determination and taxation.

3 D. The following definitions apply within this section:

4 1. "Market value" or "arms length consideration" is the amount that would be  
5 paid or received for similar activities or transactions of like quantity, quality, or  
6 character under similar circumstances and conditions by other persons where no  
7 common interest exists between the persons involved in the activities or  
8 transactions.  
9

10 2. "Related, controlled or affiliated person" means a person or entity that  
11 controls, or is controlled as the case may be, through common ownership.

12 "Related," "controlled" and "affiliated" are used interchangeably when  
13 describing a subsidiary, however, related and affiliated can also mean the parent  
14 entity. The degree of ownership is unimportant, however the ability to control  
15 or influence the related, controlled or affiliated person is important in  
16 establishing whether relationships and transactions serve a business purpose,  
17 produce income, or merely avoid taxes.  
18

19 **Section 10.** Section 5.45.090 of the Seattle Municipal Code is hereby amended as  
20 follows:  
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22 **5.45.090 Exemptions.**

23 The provisions of this Chapter 5.45 and the licensing requirement in SMC 5.55.030  
24 shall not apply to the following:  
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1 A. ~~((Nonprofit))~~ Adult Family Homes. This chapter does not apply to ~~((nonprofit))~~  
2 adult family homes which are licensed as such, or which are specifically exempt from  
3 licensing, under rules of the Washington State Department of Social and Health Services.

4 \*\*\*

5 I. Investments—Dividends From Subsidiary Corporations. This chapter shall not  
6 apply to amounts derived by persons, other than those engaging in banking, loan, security or  
7 other financial businesses, from investments or the use of money as such, and also amounts  
8 derived as dividends by a parent from its subsidiary corporations, provided that, dividends  
9 subject to tax pursuant to SMC 5.45.085 will not be exempt.

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12 **Section 11.** Section 5.45.100 of the Seattle Municipal Code is hereby amended as  
13 follows:

14 **5.45.100 Deductions.**

15  
16 In computing the license fee or tax, the following may be deducted from the measure of  
17 tax:

18 \*\*\*

19 ~~((O. Amounts Representing Rental of Real Estate for Boarding Homes. In computing~~  
20 ~~tax, there may be deducted from the measure of the tax amounts representing the value of the~~  
21 ~~rental of real estate for "boarding homes." To qualify for the deduction, the boarding home~~  
22 ~~must meet the definition of "boarding home" found in RCW 18.20.020, and must be licensed~~  
23 ~~by the State of Washington under RCW Chapter 18.20. The deduction shall be in the amount of~~  
24 ~~twenty-five (25) percent of the gross monthly billing when the boarder has resided within the~~  
25 ~~boarding home for longer than thirty (30) days.))~~



1           ~~((P-))~~Q. Radio and Television Broadcasting -- Advertising Agency Fees -- National,  
2 Regional, and Network Advertising -- Interstate Allocations. In computing tax, there may be  
3 deducted from the measure of the tax by radio and television broadcasters amounts representing  
4 the following:

- 5           1. Advertising agencies' fees when such fees or allowances are shown as a  
6 discount or price reduction in the billing or that the billing is on a net basis, i.e.,  
7 less the discount;
- 8           2. Actual gross receipts from national network, and regional advertising or a  
9 "standard deduction" as provided by RCW 82.04.280; and
- 10           3. Local advertising revenue that represents advertising which is intended to  
11 reach potential customers of the advertiser who are located outside the State of  
12 Washington. The Director of Finance may issue a rule that provides detailed  
13 guidance as to how these deductions are to be calculated.

14           ~~((Q-))~~P. Constitutional Prohibitions. In computing tax, there may be deducted from the  
15 measure of the tax amounts derived from business which the City is prohibited from taxing  
16 under the Constitution of the State of Washington or the Constitution of the United States.

17           ~~((R-))~~Q. Distribution Affiliate or Cooperative. In computing tax, there may be  
18 deducted from the measure of the tax an amount equal to the actual cost of the merchandise that  
19 a distribution cooperative or its distribution affiliate sells to a customer-owner of the  
20 distribution cooperative for the customer-owner's resale at retail. Actual cost means the cost  
21 actually paid by the distribution cooperative or distribution affiliate after taking into account all  
22 cash discounts and other price reductions.



1           ~~((S-))~~R. In computing tax imposed by SMC 5.45.050 F, there may be deducted from the  
2 measure of the tax gross income from the transport of empty containers picked up in the City if  
3 1) a full container transported from outside the City is exchanged for the empty container at the  
4 time of pick-up, and 2) the job is billed to the customer as a round trip charge.

5           ~~((T-))~~S. Interstate Trucking. The tax imposed on motor carriers under SMC 5.45.050 F  
6 shall not apply to gross income from freight picked up in the City and transported by the  
7 taxpayer to a location outside the State of Washington. A motor carrier that does not transport  
8 freight across the state boundary is not entitled to a deduction, even though the freight is  
9 destined for~~((;))~~ and is ultimately transported~~((;))~~ to a location outside Washington.

10           ~~((U-))~~T. Sales of Water to Water Districts, Municipalities and other Political  
11 Subdivisions of the State of Washington for Resale. In computing tax, there may be deducted  
12 from the measure of the tax under the wholesaling classification, amounts derived from the sale  
13 of water to any water district, municipality or other political subdivision of the State of  
14 Washington.

15           ~~((V-))~~U. Sales of Electricity for Resale. In computing tax, there may be deducted from  
16 the measure of the tax amounts derived from the sale of electricity to any purchaser of  
17 electricity for resale.

18           ~~((W-))~~V. Receipts From the Sale of Tangible Personal Property or Retail Services  
19 Delivered Outside the City but Within Washington. Effective January 1, 2008, amounts  
20 included in the gross receipts reported on the tax return and which are derived from the sale of  
21 tangible personal property or retail services delivered to the buyer or the buyer's representative  
22 outside the city but within the State of Washington may be deducted from the measure of tax  
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1 under the retailing or wholesaling classifications. Retail services include those services defined  
2 as ~~((a retail service))~~ such pursuant to SMC 5.30.040 ((Θ)).

3 ~~((X))~~W. Amounts collected by grocery stores, drug stores, and convenience stores  
4 from customers to pay the Green Fee imposed under SMC 21.40.075, including that portion of  
5 the fee that the store is entitled to retain to offset costs incurred to implement and administer  
6 the Green Fee.

7  
8 **Section 12.** Section 5.46.030 of the Seattle Municipal Code is hereby amended as  
9 follows:

10 **5.46.030 Tax Imposed-Measure of the Tax.**

11 A. A square footage business tax for the act or privilege of engaging in business  
12 activities within the city is hereby levied upon and shall be collected from every person that  
13 leases, owns, occupies or otherwise maintains an office or place of business within the city.

14 The tax shall be measured by the number of square feet of business floor space and  
15 other floor space for each office or place of business leased, owned, occupied or otherwise  
16 maintained within the city during the reporting period.

17  
18 B. The amount of the tax due shall be equal to the sum of the number of square feet of  
19 business floor space for each office or place of business leased, owned, occupied or otherwise  
20 maintained within the city multiplied by the rate of \$0.39 quarterly (\$1.56 annually), and the  
21 number of square feet of other floor space for each office or place of business leased, owned,  
22 occupied or otherwise maintained within the city multiplied by the rate of \$0.13 quarterly  
23 (\$0.52 annually). The Director will adjust the square footage business tax rate annually for  
24 inflation as follows: the tax rate for a year will be equal to the tax rate for the previous year  
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1 increased (or decreased) by the percentage change in the annual Seattle-Tacoma-Bremerton,  
2 WA consumer price index for all urban consumers (CPI-U) for the previous year.

3 C. Persons with more than one office or place of business must include all business  
4 floor space and other floor space for all locations. When a person rents space to another  
5 person, the person occupying the rental space is responsible for the square footage business tax  
6 on that rental space only if the renter has exclusive right of possession in the space as against  
7 the landlord. Space rented for the storage of goods in a warehouse where no walls separate the  
8 goods, and where the exclusive right of possession in the space is not held by the person to  
9 whom the space is rented, shall be included in the other floor space of the person that operates  
10 the warehouse business, and not by the business renting the warehouse space.

11 D. Persons whose business floor space, other floor space, or period of occupancy  
12 changes during a reporting period shall prorate the business floor space or other floor space for  
13 the reporting period. A change in the period of occupancy during the reporting period shall be  
14 prorated using a ratio of the number of days of occupancy during the reporting period  
15 compared to the total number of days within the reporting period. If the amount of business  
16 floor space or other floor space changes during the reporting period, floor space for the period  
17 shall be computed as a weighted average of the rentable space occupied during different  
18 segments of the reporting period. Weighting will be based upon the percentage of the reporting  
19 period that a given amount of space was leased, owned, occupied, or otherwise maintained  
20 within the city.

21 E. Any person required to pay the square footage business tax imposed in this chapter  
22 that also pays the business license tax as imposed in SMC 5.45.050 may take a credit against  
23 the square footage business tax computed as follows:  
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1           1. The credit is equal to the square footage business tax owed for the reporting  
2           period multiplied by the ratio of adjusted gross income derived from the Seattle  
3           business location(s) for the reporting period to the total gross income derived  
4           from the Seattle business location(s) for the reporting period.

5           2. For the purpose of this section, "total gross income derived from the Seattle  
6           business location(s)" is equal to the total gross income derived from the business  
7           activities rendered by, generated from, or attributable to the place(s) of business  
8           located within the city.

9           3. For the purpose of this section, "adjusted gross income derived from the  
10          Seattle business location(s)" shall include total gross income derived from the  
11          Seattle business location(s) less:  
12          Seattle business location(s) less:

13               (a) income derived from the sales of tangible personal property and  
14               retail services by the Seattle business location(s) delivered to a location  
15               within the State of Washington where no local jurisdiction imposes an  
16               eligible gross receipts tax; and  
17               and

18               (b) the gross income of the Seattle business location(s) subject to the  
19               business license tax under SMC 5.45.050G as determined by SMC  
20               5.45.060 through SMC 5.45.080 less the gross income of the Seattle  
21               business location(s) subject to the business license tax under SMC  
22               5.45.050G as determined by SMC 5.45.060 through SMC 5.45.076 and  
23               SMC 5.45.081.

24           When the change in income calculated in subsection 3(b) is a negative number,  
25           the amount so calculated shall reduce the amount calculated in subsection 3(a);  
26           the amount so calculated shall reduce the amount calculated in subsection 3(a);  
27           the amount so calculated shall reduce the amount calculated in subsection 3(a);  
28           the amount so calculated shall reduce the amount calculated in subsection 3(a);



1                   however, if the sum of the totals calculated under subsections 3(a) and 3(b) is a  
2                   negative number, then the adjusted gross income derived from the Seattle  
3                   business location(s) shall be equal to the total gross income derived from the  
4                   Seattle business location(s).

5                   4. In computing the tax credit, any gross receipts from manufacturing, extracting, and  
6                   printing, and also subject to a selling tax (such as retailing and wholesaling) according  
7                   to the Multiple Activity Tax Credit (SMC 5.45.070), shall be included in the gross  
8                   income and the adjusted gross income only once.

9                   **Section 13.** Section 5.46.040 of the Seattle Municipal Code is hereby amended as  
10                   follows:

11                   **5.46.040 Square footage business tax -When due.**

12                   The tax imposed by this chapter shall be due and payable in accordance with SMC  
13                   5.55.040 in the same manner as the business license tax under SMC 5.45. Taxpayers filing  
14                   their business license tax on a quarterly basis shall file the square footage business tax on a  
15                   quarterly basis and taxpayers filing their business license tax on an annual basis shall file the  
16                   square footage business tax on an annual basis on forms prescribed by the Director. Persons  
17                   discontinuing their business activities in Seattle shall report and pay the square footage  
18                   business tax at the same time as they file their final business license tax return.

19                   **Section 14.** Section 5.46.050 of the Seattle Municipal Code is hereby amended as  
20                   follows:

21                   **5.46.050 Exemptions, credits and deductions from the square footage business tax.**

22                   A. The following persons are exempt from the square footage business tax:



1           1. (~~Any person qualifying under the tax threshold as provided in SMC 5.55.040~~  
2           ~~D 1 shall be exempt from the square footage tax in the year which they qualify~~  
3           ~~under the tax threshold.~~)

4           ((2.)) Persons that are exempted from taxation by cities pursuant to federal or  
5           state statutes or regulations, including, but not limited to, the following:

6                   (a) Insurance businesses and their agents as defined by RCW 48.01.050  
7                   and 48.17.010, respectively, and whose total revenue is exempt from the  
8                   business license tax per SMC 5.45;  
9                   

10                   (b) Businesses that only sell, manufacture, or distribute motor vehicle  
11                   fuel as defined in RCW 82.36.010 and exempted under RCW 82.36.440;

12                   (c) Businesses that distribute or sell only liquor as defined in RCW  
13                   66.04.010 and exempted in RCW 66.08.120; and

14                   (d) Banks, whose income is apportioned according to WAC Chapter  
15                   458-28.

16  
17           B. The following persons may take a one hundred percent credit against the square  
18           footage business tax:

19                   1. A person not engaged in any business activity during the reporting period.

20                   2. Any person qualifying under the annual business license tax threshold

21                   pursuant to SMC 5.55.040 D 1, provided that the person's taxable gross income  
22                   was not reduced below the threshold by the intrastate deduction allowed in SMC

23                   5.45.100 V or by using the two-factor formula pursuant to SMC 5.45.081 C. If

24                   the person's taxable gross income was reduced under the threshold by the

25                   intrastate deduction or two-factor formula, the person must compute its square  
26  
27  
28



1                   footage business tax using the tax credits available under SMC 5.46.030 E and  
2                   SMC 5.46.060.

3                   3. Persons owing no business license tax during the reporting period pursuant to  
4                   SMC 5.45.050 due to exemptions or deductions contained in SMC 5.45.090 or  
5                   SMC 5.45.100 (~~((with the exception of subsection SMC 5.45.100 W)))~~) may take  
6                   a credit against the square footage business tax for the total amount of the tax,  
7                   provided that the person's taxable gross income was not reduced by the  
8                   intrastate deduction allowed in SMC 5.45.100 V or reduced by using the two-  
9                   factor formula pursuant to SMC 5.45.081 C. If such a reduction was claimed,  
10                   the person must compute its square footage business tax using the tax credits  
11                   available under SMC 5.46.030 E and SMC 5.46.060.

12  
13  
14                   C. The portion of the business floor space and other floor space that is used exclusively  
15 to administer and manage other offices or places of business outside of Seattle shall be  
16 considered headquarters activities and shall not be included in the square footage business tax  
17 calculation.

18                   D. Persons taxable under the utility tax pursuant to SMC 5.48 are exempt from the  
19 square footage business tax provided they generate no gross income from activities taxable  
20 under SMC 5.45.050. If taxpayers subject to the utility tax generate gross income from  
21 activities taxable under SMC 5.45.050, only the floor space used in generating such gross  
22 income will be subject to the square footage business tax provisions of this chapter.

23                   E. Persons may exempt from the square footage business tax computations the square  
24                   footage they use in conducting their business activities taxable under the manufacturing,  
25  
26  
27  
28



1 printing and publishing, tour operators, transporting freight for hire, and processor for hire tax  
2 classifications of the business license tax.

3 **Section 15.** Section 5.46.060 of the Seattle Municipal Code is hereby amended as  
4 follows:

5 **5.46.060 Maximum Square Footage Business Tax Credit.**

6 After application of the square footage business tax credit provided in SMC 5.46.030 E,  
7 if the gross receipts business license tax assessed under SMC Chapter 5.45 and the square  
8 footage business tax assessed under SMC Chapter 5.46 combine to result in a tax increase for  
9 the taxpayer when compared to the amount of tax that would have been due under the  
10 requirements of SMC Chapter 5.45 in effect prior to the implementation of RCW 35.102.130  
11 on January 1, 2008, then an additional credit may be taken against the square footage business  
12 tax for the amount of such tax increase.  
13

14 **Section 16.** Section 5.52.030 of the Seattle Municipal Code is hereby amended as  
15 follows:  
16

17 **5.52.030 Tax Levied.**

18 A. In accordance with RCW Chapter 9.46, as amended, a tax or fee is levied upon all  
19 persons, corporations, associations, or organizations conducting or operating within the City  
20 any of the following gambling activities authorized by RCW 9.46.010, as amended, and RCW  
21 9.46.033, as follows:  
22

- 23 1. For the conduct of amusement games, a tax equal to two (~~((2))~~) percent of the  
24 net gambling receipts; and  
25



1           2. For punch boards and pull-tabs, as defined in RCW 9.46.0273, except for  
2           those punch boards and pull-tabs taxed under subsection B2 of this section  
3           below, a tax equal to five (~~((5))~~) percent of the gross gambling receipts.

4           B. In accordance with RCW Chapter 9.46, as amended, a tax or fee is levied on all  
5           bona fide charitable or nonprofit organizations, as defined in RCW 9.46.0209, conducting or  
6           operating in the City any of the following gambling activities, as follows:  
7

8           1. Upon and for the conduct of bingo games, as defined in RCW 9.46.0205, and  
9           raffles, as defined in RCW 9.46.0277, a tax equal to (~~((ten-10))~~) five percent of  
10           the net gambling receipts; and

11           2. For punch boards and pull-tabs, as defined in RCW 9.46.0273, a tax equal to  
12           ten (~~((10))~~) percent of the net gambling receipts; and

13           3. Upon and for the conduct of a fund-raising event, as defined in RCW  
14           9.46.0233, a tax equal to ten (~~((10))~~) percent of the net gambling receipts.

15           C. Except, no tax shall be imposed:  
16

17           1. On bingo or amusement games when such activity, or any combination  
18           thereof, is conducted by a bona fide charitable or nonprofit organization as  
19           defined in RCW 9.46.0209, when such organization has no paid operating or  
20           management personnel and when net gambling receipts from bingo or  
21           amusement games or any combination thereof, do not exceed Five Thousand  
22           Dollars (~~((5,000))~~) per year;

23           2. On the first Ten Thousand Dollars (~~((10,000))~~) of net gambling receipts  
24           from raffles conducted by any bona fide charitable or nonprofit organization as  
25           defined in this chapter;  
26  
27  
28



1                   3. On the conduct of amusement games at the Seattle Center pursuant to a  
2                   concession agreement with the City.

3                   **Section 17.** Section 2 of Ordinance 118665 (contained in footnote 1 to Seattle  
4 Municipal Code 5.52.030) is hereby repealed.

5                   **Section 18.** Section 5.55.010 of the Seattle Municipal Code is hereby amended as  
6 follows:

7                   **5.55.010 Application of chapter stated.**

8                   Unless expressly stated to the contrary in each chapter, the provisions of this chapter  
9 shall apply with respect to the licenses and taxes imposed under this chapter and SMC Chapters  
10 5.32 (Amusement Devices), 5.35 (Commercial Parking Taxes), 5.37 (Employee Hours Taxes),  
11 5.40 (Admission Taxes), 5.45 (Business License Tax), 5.46 (Square Footage Business Tax),  
12 5.48 (Utility Tax), and 5.52 (Gambling Tax) and under other titles, chapters and sections in  
13 such manner and to such extent as indicated in each such title, chapter or section.  
14

15                   **Section 19.** Subsection A of section 5.55.040 of the Seattle Municipal Code is hereby  
16 amended as follows:  
17

18                   **5.55.040 When due and payable - Reporting Periods – Monthly, quarterly, and**  
19 **annual returns - Threshold provisions - Computing time periods - Failure to file**  
20 **returns.**

21                   A. Other than any annual license fee or registration fee assessed under this chapter, the  
22 tax imposed by SMC Chapters 5.32 (Amusement Devices), 5.35 (Commercial Parking  
23 Tax((es))), (~~5.37 (Employee Hour Taxes),~~) 5.40 (Admission Tax((es))), 5.45 (Business  
24 License Tax), 5.46 (Square Footage Business Tax), 5.48 (Utility Tax), and 5.52 (Gambling  
25 Tax), shall be due and payable in quarterly installments. At the Director's discretion,  
26  
27  
28



1 businesses may be assigned to a monthly or annual reporting period depending on the tax  
2 amount owing or type of tax. Taxes imposed by SMC Section 5.52.030 A2 and B2 for  
3 punchboards and pulltabs shall be due and payable in monthly installments. Tax returns and  
4 payments are due on or before the last day of the next month following the end of the assigned  
5 reporting period covered by the return.

6 \*\*\*

7  
8 **Section 20.** Section 5.55.080 of the Seattle Municipal Code is hereby amended as  
9 follows:

10 **5.55.080 ((Public work)) City contracts—Payment of fee and tax before final**  
11 **payment for work.**

12 ((The Director, b)) Before ((issuing any)) the final payment is issued to any person  
13 performing any ((public work)) contract for the City((;)) the Director may require such person  
14 to pay in full all license fees or taxes due under SMC Title 5 from such person on account of  
15 such contract ((or otherwise, and)). In regards to a person performing a public work contract  
16 for the City, the Director may require such taxpayer to file with the Director a verified list of all  
17 subcontractors supplying labor and/or materials ((to the person)) in connection with said public  
18 work.  
19  
20

21 **Section 21.** Section 5.68.010 of the Seattle Municipal Code is hereby amended as  
22 follows:

23 **5.68.010 Imposition of use tax.**

24 There is hereby imposed upon every person a use tax for the privilege of using natural  
25 gas or manufactured gas in the City as a consumer at the rate of six percent (((6%))) of the  
26 value of the gas used, as authorized by RCW 82.14.230.  
27  
28



1           **Section 22.** Section 5.68.020 of the Seattle Municipal Code is hereby amended as  
2 follows:

3           **5.68.020 Exceptions and credits**

4           A. The "Value of the gas used," does not include any amounts that are paid for the hire  
5 or use of a natural gas business in transporting the gas subject to tax under this subsection if  
6 those amounts are subject to tax under subsection ((C)) B of Section 5.48.050.

7  
8           B. The tax imposed under this section shall not apply to the use of natural or  
9 manufactured gas if the person who sold the gas to the consumer has paid a tax under  
10 subsection ((C)) B of Section 5.48.050 with respect to the gas for which exemption is sought  
11 under this section.

12           C. There shall be allowed a deduction against the value of the gas used when: (1) the  
13 person who sold the gas to the consumer has paid a gross receipts tax similar to that imposed  
14 under this section to another state or (2) the person consuming the gas has paid a gross receipts  
15 tax similar to that imposed under this section to another state. The deduction shall be with  
16 respect to and in the amount of the value of the gas for which the gross receipts ~~or use tax~~ was  
17 paid.  
18

19           D. The use tax shall be paid by the consumer.

20  
21           **Section 23.** Subsection A of section 3.02.125 of the Seattle Municipal Code is hereby  
22 amended as follows:

23           **3.02.125 Hearing Examiner filing fees.**

24           A. Filing fees for hearings before the City Hearing Examiner are as follows:

Basis for Hearing	Fee
Admission Tax Deficiency (Ch. 5.40)	\$50



1	Admission Tax, Revocation of Exemption (Sec. 5.40.085)	No fee
2	Ballard Avenue Landmark District (Ch. 25.16)	50
3	Business License Tax Deficiency (Ch. 5.45)	50
4	Cable Television Ordinance (Ch. 21.60)	No fee
5	Columbia City Landmark District (Ch. 25.20)	50
6	Commercial Parking Tax Deficiency (Ch. 5.35)	50
7	Design Decision in Multiple Residence - Mixed Density	50
8	Zone (Ch. 24.38)	
9	Employee Hours Tax (Ch. 5.37)	50
10	Fair Employment Practices Ordinance (Ch. 14.04)	No fee
11	Floating Home Moorages (Ch. 7.20)	50
12	/petitioner; maximum fee	150
13	Gambling Tax Deficiency (Ch. 5.52)	50
14	Grading Ordinance (Title 22, Subtitle VIII)	50
15	Harvard/Belmont Landmark District (Ch. 25.22)	50
16	Housing Code (Ch. 22.206)	50
17	Land Use Code Enforcement (Ch. 23.90)	50
18	Landmark Preservation Controls and Incentives (Sec. 25.12.530)	No fee
19	Landmarks Preservation (Sec. 25.12.740 and Sec. 25.12.835)	50
20	License Code (Title 6, Subtitle I)	50
21	Master Use Permit (Ch. 23.76)	50
22		
23		
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28		



1	Noise Ordinance (Ch. 25.08)	50
2	Open Housing Ordinance (Ch. 14.08)	No fee
3	Pike Place Market Historical District (Ch. 25.24)	50
4	Pioneer Square Minimum Maintenance Ordinance	50
5	(Ch. 25.28, Subchapter II)	
6	Planned Unit Development (Ch. 24.66)	50
7		
8	Plumbing Code (Ch. 20.16, Uniform Plumbing Code, Ord.	50
9	116594)	
10	Property Tax Exemption, Cancellation of Exemption	50
11	(Ch. 5.72)	
12	Radiofrequency Radiation Ordinance (Ch. 25.10)	50
13		
14	Refund Anticipation Loan (Ch. 7.26)	5
15	Relocation Assistance (Ch. 20.84)	No fee
16	Seizure of Property; Controlled Substances (RCW	No fee
17	69.50.505(e))	
18	Special Review Districts (Ch. 23.66)	50
19		
20	Square Footage <u>Business</u> Tax (Ch. 5.46)	50
21	State Environmental Policy Act (SEPA)	50
22	(when not a Master Use Permit component) (Ch. 25.04)	
23	Utility tax (Ch. 5.48)	50
24	Zoning Map Amendments (Rezones) (Ch. 23.34)	No fee
25		
26	Zoning Rulings and Interpretations (Ch. 23.88)	50

\* \* \*



1           **Section 24.** This ordinance does not affect any existing right acquired or liability or  
2 obligation incurred under the sections amended or repealed in this ordinance or under any rule  
3 or order adopted under those sections nor does it affect any proceeding instituted under those  
4 sections.

5           **Section 25.** This ordinance shall take effect and be in force thirty (30) days from and  
6 after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10)  
7 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.  
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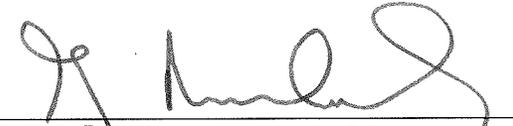
1 Passed by the City Council the 10<sup>th</sup> day of August, 2009, and

2 signed by me in open session in authentication of its passage this

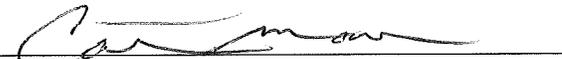
3 10<sup>th</sup> day of August, 2009.

4   
5 \_\_\_\_\_  
6 President \_\_\_\_\_ of the City Council

7 Approved by me this 17<sup>th</sup> day of August, 2009.

8  
9   
10 \_\_\_\_\_  
11 Gregory J. Nickels, Mayor

12 Filed by me this 17<sup>th</sup> day of August, 2009.

13   
14 \_\_\_\_\_  
15 City Clerk Intervis

16 (Seal)



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

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

**Legislation Title:**

AN ORDINANCE relating to taxation; adding two minor exemptions from the parking tax; adding a new section 5.45.085 relating to the taxation of business transactions between related parties; deleting section 5.45.060 relating to the taxation of business conducted with the City when there is no physical nexus; amending the definition of casual sale; expanding the adult family homes business license tax exemption to include for-profit adult family homes; deleting the boarding homes deduction under the business license tax; amending certain exemption, credit and deduction provisions of the square footage business tax; changing the gambling tax rate from 10% to 5% for bingo and raffles; making technical corrections to reference the proper Utility Tax section and amending sections 5.30.010, 5.30.020, 5.30.030, 5.30.050, 5.30.060, 5.35.050, 5.37.020, 5.45.090, 5.45.100, 5.46.030, 5.46.040, 5.46.050, 5.46.060, 5.52.030, 5.55.010, 5.55.040, 5.55.080, 5.68.020 and 3.02.125, respectively, of the Seattle Municipal Code.

• **Summary of the Legislation:**

The proposed amendments add needed exemptions to the commercial parking tax, make a minor change to the definition of “employee” for the employee hours tax, delete the requirement that businesses conducting business with the City but without a physical presence within the city acquire a license and pay the business license tax, amend the definition of casual sale, expand the adult family home exemption to include for-profit businesses, delete the boarding home deduction, make technical changes to the business license tax, and adjust the exemptions and credits within the square footage business tax. The proposed amendments also correct the gambling tax rate for bingo and raffles.

There are numerous small technical changes to correct references or add the word “business” after “square footage” when referring to the square footage business tax. The correction of the gambling tax rate is necessary due to an oversight by the City in changing the gambling rate in the Seattle Municipal Code after the State changed the mandatory rate for cities in 2000.

• **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

In 2006 and 2007, the commercial parking tax, the employee hours tax, and the square footage business tax were adopted and codified into Title 5 of the Seattle Municipal Code. After imposing the taxes for several tax reporting periods, several exemption and deduction issues and technical inconsistencies were identified, requiring specific



amendments to the applicable tax chapters. This legislation incorporates the needed amendments and technical corrections.

Gambling tax rates are controlled by the State of Washington. In 1999, the legislature mandated a change in the gambling tax rate for bingo and raffles from 10% to 5%. The City was not aware of this change and therefore did not change its bingo and raffle gambling tax rate. The City is in the process of refunding all taxes collected erroneously since January 1, 2000, the date the new tax rate became effective. This is a mandatory rate change. The refunds total \$105,000 for seven years.

The proposed amendment relating to the taxation of business activities between related businesses needs to be addressed to provide the City clear authority to value these transactions in a manner that would reflect an arms-length transaction. Some businesses are forming out-of-state related business entities to aggressively avoid taxation of their business activities by funneling their business transactions through the out-of-state related party at a reduced price. This practice is becoming more prevalent, and the clarifications contained in this Bill would curtail any loss of future revenues and reduce the number of court challenges.

SMC 5.45.060, which requires all businesses conducting business with the City to acquire a business license and pay taxes even though the business has no physical presence within the city (super nexus) is being deleted to conform to the new allocation and apportionment requirements mandated by the State of Washington. This will result in a very small loss of tax revenue (less than \$20,000 per year); however, it should also result in a similar small decrease in expenditures since these businesses add the license fee and tax into their bid or invoice charge to the City. This will only affect those businesses that never enter into the City of Seattle. The requirement for these businesses to get a business license and pay the tax has always been subject to complaints since it is a tax requirement that few states or cities impose.

The proposed amendment to the definition of casual sale restricts the casual sale deduction to only the casual sale of tangible personal property. This eliminates any chance that a service or sale of intangibles will be considered a casual sale. A taxpayer who provides a service or receives royalties from intangibles is considered to be engaging in the business of selling those services or rights.

The proposed amendment to expand the exemption for adult family homes to include for-profit homes would bring Seattle in line with the State's taxation of such businesses. Adult family homes are limited to six persons per home, so these are small in-home businesses. This proposed change would result in very little revenue loss.

The proposed amendment deleting the deduction for boarding homes would result in very little change. As it currently exists, the definition of boarding homes under state law is very confusing and the City already has a deduction for the rental of real estate for a period of longer than 30 days. The present 25% deduction for "room rental" appears arbitrary and some businesses can show that room rental is valued at a higher



percentage. The percentage also depends on what services, beyond room and board, the boarding home supplies. Because of the multiple services provided by boarding home and similar businesses, it is very difficult to measure how much of an impact this will make on our yearly revenues, but it is estimated to be less than \$5,000.

- 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.*

Fund Name and Number	Department	Budget Control Level*	2009 Appropriation	2010 Anticipated Appropriation
<b>TOTAL</b>				

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

**Notes:** There are no budget appropriations or budget decreases associated with the ordinance.



**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	2009 Revenue	2010 Revenue
General Fund 00100	DEA	Estimated tax revenue lost from for-profit adult family homes.	\$(25,000)	\$(25,000)
General Fund 00100	DEA	Estimated tax revenue lost for gambling rate adjustment.	\$(15,000)	\$(15,000)
General Fund 00100	DEA	Estimated tax revenue increase for boarding homes adjustment.	\$5,000	\$5,000
General Fund 00100	DEA	Estimate tax revenue lost from loss of super nexus.	\$(20,000)	\$(20,000)
<b>TOTAL</b>			<b>\$(55,000)</b>	<b>\$(55,000)</b>

**Notes:**

There will be a very small gain in tax revenue generated by eliminating the boarding home deduction (estimated at less than \$5,000 per year). A review of taxpayer accounts classified as boarding homes indicate that most taxpayers under this classification were not taking this 25% deduction for rental of real estate. Additionally, we expect a small decrease in the amount of expenditures (approx. \$20,000 per year) due to the elimination of super nexus requirements, however the decreases would be spread across many departments and accounts, and have little impact. These decreases in expenditures would be equal to the loss of revenue from the business license fees and taxes that had been paid by businesses doing business with the City that had no physical taxing nexus (line four in the box above).

**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	2009 Positions	2009 FTE	2010 Positions*	2010 FTE*
<b>TOTAL</b>							

\* 2010 positions and FTE are total 2010 position changes resulting from this legislation, not



*incremental changes. Therefore, under 2010, please be sure to include any continuing positions from 2009.*

*Notes: N/A*

- **Do positions sunset in the future?** *(If yes, identify sunset date):*

**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*	2009 Expenditures	2010 Anticipated Expenditures
<b>TOTAL</b>				

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

*Notes: N/A*

- **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 would retain up to \$60,000 in current tax revenue, and forgo up to \$5,000 in new tax revenue, but would not achieve the goal of aligning the City with the state's current taxation procedures. There is also a potential of future lost revenue on transactions between related companies.
- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** *(Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)* None
- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)* No
- **Other Issues** *(including long-term implications of the legislation):*

**Please list attachments to the fiscal note below:**





# City of Seattle

Gregory J. Nickels, Mayor

## Office of the Mayor

May 6, 2009

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

Dear Council President Conlin:

I am pleased to transmit the proposed Council Bill amending certain tax provisions contained within Title 5 of the Seattle Municipal Code.

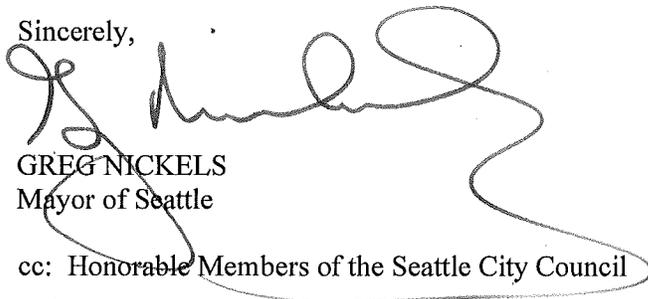
The proposed amendments include numerous small technical changes. Most notable are the addition of exemptions to the commercial parking tax including:

- adjustments to the exemptions and credits within the square footage business tax;
- deletion of the requirement that entities that conduct business with the City, but that don't have a physical presence within the city, acquire a license and pay the business license tax;
- amendment of the definition of "casual sale";
- expansion of the adult family home exemption to include for-profit businesses;
- deletion of the boarding home deduction;
- changes to the business license tax to correct references and adding the word "business" after "square footage" when referring to the square footage business tax.

The proposed amendments also correct the gambling tax rate for bingo games and raffles, and add a clarifying definition in connection with the use tax on natural or manufactured gas. Detailed explanations of the various changes implemented by the proposed Bill can be found in the fiscal note accompanying this legislation.

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

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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**STATE OF WASHINGTON – KING COUNTY**

--SS.

243762  
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:123063 ORDINANCE

was published on

08/21/09

The amount of the fee charged for the foregoing publication is the sum of \$1,698.00, which amount has been paid in full.



*Valery Wald*

Subscribed and sworn to before me on

08/21/09

*[Signature]*

Notary public for the State of Washington,  
residing in Seattle

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# State of Washington, King County

## City of Seattle

### ORDINANCE 123063

AN ORDINANCE relating to taxation; adding two minor exemptions from the parking tax; adding a new section 5.45.085 relating to the taxation of business transactions between related parties; deleting section 5.45.060 relating to the taxation of business conducted with the City when there is no physical nexus; amending the definition of casual sale; expanding the adult family homes business license tax exemption to include for-profit adult family homes; deleting the boarding homes deduction under the business license tax; amending certain exemption, credit and deduction provisions of the square footage business tax; changing the gambling tax rate from 10% to 5% for bingo and raffles; making technical corrections to reference the proper Utility Tax section and amending sections 5.30.010, 5.30.020, 5.30.030, 5.30.050, 5.30.060, 5.35.050, 5.37.020, 5.45.090, 5.45.100, 5.46.030, 5.46.040, 5.46.050, 5.46.060, 5.52.030, 5.55.010, 5.55.040, 5.55.080, 5.68.020 and 3.02.125, respectively, of the Seattle Municipal Code.

WHEREAS, recently the City imposed the commercial parking tax, the employee hours tax, and the square footage business tax and the City would now like to amend certain language as well as make technical corrections to these tax chapters; and

WHEREAS, some businesses are creating related business entities and conducting business activities through the related entities to avoid tax obligations and the City needs clear authority to tax such related business transactions as if those transactions were conducted in an arms-length manner; and

WHEREAS, the City desires to add two minor exemptions dealing with government transactions to the parking tax, expand the adult family home exemption under the business license tax to include for-profit adult family homes, and delete the boarding home deduction because of changes to the State's definition of a boarding home; and

WHEREAS, the City would like to repeal Seattle Municipal Code (SMC) Section 5.45.060 relating to the taxation of business conducted with the City when there is no physical nexus; and

WHEREAS, the City would like to amend SMC 5.68 to make technical corrections to (SMC) Section 5.68.020 to reference the proper Utility Tax code section. NOW, THEREFORE,

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

Section 1. Section 5.30.010 of the Seattle Municipal Code is hereby amended as follows:

#### 5.30.010 Definition provisions.

The definitions contained in this chapter shall apply to the following chapters of the Seattle Municipal Code: Chapters 5.32 (Amusement Devices), 5.35 (Commercial Parking Taxes), 5.37 (Employee Hour Taxes), 5.40 (Admission Taxes), 5.45 (Business License Taxes), 5.46 (Square Footage Business Tax), 5.48 (Utility Taxes), 5.52 (Gambling Taxes), and 5.55 (Administrative Provisions) unless expressly provided for otherwise therein, and shall also apply to other chapters and sections of the Seattle Municipal Code in the manner and to the extent ((as)) expressly indicated in each chapter or section. Words in the singular number shall include the plural and the plural shall include the singular. Words in one gender shall include both genders.

Section 2. Subsection D of section 5.30.020 of the Seattle Municipal Code is hereby amended as follows:

#### 5.30.020 Definitions, A - B.

\*\*\*

D. "Artistic or cultural organization." The term "artistic or cultural organization" means an organization which is organized and operated exclusively for the purpose of providing "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs," as defined in subsection ((b)) (2), below, of this subsection, for viewing or attendance by the general public. The organization must be:

1. A not-for-profit corporation under RCW Chapter 24.03 that meets all of the following criteria:

a. The organization must be managed by a governing board of not less than eight (8) individuals none of whom is a paid employee of the organization or by a corporation sole under RCW Chapter 24.12.

b. No part of the organization's income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the organization in accordance with its purposes and bylaws.

c. Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state.

d. Assets of the organization must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the organization, may not inure directly or indirectly to the benefit of any member or individual except a non-profit organization, association, or corporation which also would be entitled to the exemption.

e. The organization must be duly licensed or certified when licensing or certification is required by law or regulation.

f. The amounts received that qualify for exemption must be used for the activities for which the exemption is granted.

g. Services must be available regardless of race, color, national origin, or ancestry.

2. The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" is limited to:

a. An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

b. A musical or dramatic performance or series of performances; or

c. An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject((r-orr)).

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Section 3. Subsection B of section 5.30.030 of the Seattle Municipal Code is hereby amended as follows:

#### 5.30.030 Definitions, E - F.

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#### B. "Engaging in business."

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

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

3. Without being all inclusive, any one of the following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license:

a. Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City, in connection with a business activity;

b. Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City in which business activities are conducted;

c. Soliciting sales;

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

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

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

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

h. Collecting current or delinquent accounts;

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

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

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

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

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

n. Investigating, resolving, or otherwise assisting in resolving customer complaints;

o. In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place;

p. Delivering goods in vehicles owned, rented, leased, used, or maintained by the person who sold the goods or another acting on its behalf; or

q. Accepting or executing a contract with the City, irrespective of whether the goods or services are delivered within or without the City, or whether the person's office or place of business is within or without the City.

4. If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license and pay tax.

a. Meeting with suppliers of goods and services as a customer;

b. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions;

c. Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf;

d. Renting tangible or intangible property as a customer when the property is not used in the City;

e. Attending, but not participating in, a "trade show," ((c)) Persons participating at a trade show shall review the City's trade show ordinance, SMC Chapter 6.20;

f. Conducting advertising through the mail; ((or))

g. Soliciting sales by phone from a location outside the City((c)) or

h. Accepting or executing a contract with the City when:

1. The aggregate value of all City contracts with the person during the calendar year is Five Thousand Dollars (\$5,000) or less and the person is engaged in no other business within the City; or

2. The person's only source of revenue consists of contracts with the City for neighborhood planning purposes, sister city associations, or Arts Commission grants, and is less than the taxable threshold amount provided in SMC Section 5.55.040D.

5. A seller located outside the City merely delivering goods into the City by means of common carrier is not required to register and obtain a business license provided that it engages in no other business activities in the City.

The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the tax under the law and the constitutions of the United States and the State of Washington.

Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

\*\*\*

Section 4. Subsection A of section 5.30.050 of the Seattle Municipal Code is hereby amended as follows:

#### 5.30.050 Definitions, S.

#### A. "Sale," "casual or isolated sale."

1. "Sale" means any transfer of the ownership of, title to, or possession of, property for a valuable consideration and includes any activity classified as a "sale at retail," "retail sale," or "retail service." It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

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

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Section 5. Subsection B of section 5.30.060 of the Seattle Municipal Code is hereby amended as follows:

**5.30.060 Definitions, T-Z.**

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B. "Taxpayer" means any "person," as herein defined, required by SMC Chapter 5.55 to have a business license, or liable for any license, tax or fee, or for the collection of any tax or fee, under SMC Chapters 5.32 (Amusement Devices), 5.35 (Commercial Parking Taxes), 5.37 (Employee Hourly Taxes), 5.40 (Admission Taxes), 5.45 (Business License Tax), 5.46 (Square Footage Business Tax), 5.48 (Utility Tax), and 5.52 (Gambling Tax), or who engages in any business or who performs any act for which a tax or fee is imposed under those chapters.

\*\*\*

Section 6. Section 5.35.050 of the Seattle Municipal Code is hereby amended as follows:

[The following are exempt from the parking tax:](http://clerk.ci.seattle.wa.us/scripts/nph-brs.exe?sl=&S2=5.35.050&S3=&S4=AND&l=20&Sect3=PLURON&Sect5=CODE1&d=CODE&p=1&u=%2F%7Epublic%2Fcode1.htm&r=2&Sect6=HITOFF&f=G-h0#h0http://clerk.ci.seattle.wa.us/scripts/nph-brs.exe?sl=&S2=5.35.050&S3=&S4=AND&l=20&Sect3=PLURON&Sect5=CODE1&d=CODE&p=1&u=%2F%7Epublic%2Fcode1.htm&r=2&Sect6=HITOFF&f=G-h2#h25.35.050 Exemptions from the Parking Tax.</a></p></div>
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A. Parking by a person in a stall reserved exclusively for that person for a period of 30 days or longer.

B. Parking of a motor vehicle owned or controlled by a natural person in a stall provided with that person's residence.

C. Parking at stadiums and exhibition centers which the City is precluded from taxing pursuant to RCW 36.38.040.

D. Parking on City of Seattle streets.

E. Parking of vehicles under federal government contracts that is exempt from the retail sales tax.

F. Parking charges directly billed to and paid by federal, state, or local government.

Section 7. Subsection B of section 5.37.020 of the Seattle Municipal Code is hereby amended as follows:

**5.37.020 Definitions.**

The definitions contained in Chapter 5.30 of the Seattle Municipal Code shall be fully applicable to this chapter except as may be expressly stated to the contrary herein. The following additional definitions shall apply throughout this Chapter:

\*\*\*

B. "Employee" means any (person) individual who performs work, labor, or services for a business and is on the business' payroll, and who performs any part of their duties within the city of Seattle. For purposes of this chapter, the term "employee" also includes all full-time, part-time, and temporary employees or workers on the business' payroll. A business' payroll includes the payroll of any related company that acts as a paymaster for the related entities.

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Section 8. Effective January 1, 2009, Section 5.45.060 of the Seattle Municipal Code is hereby repealed.

Section 9. A new section 5.45.085 is hereby added to the Seattle Municipal Code as follows:

**5.45.085 Related person transactions.**

A. When the relationship between related, controlled or affiliated persons is such that the gross income from business activities between such persons is not indicative of the market value of the activities or transactions, the Director shall determine the market value upon which the Seattle business license tax shall be levied.

The purpose of this section is to ensure taxpayers clearly reflect their true gross income attributable to business activities or transactions between related, controlled or affiliated persons, and to prevent the avoidance of taxes in regards to such activities or transactions. Business activities or transactions between one related, controlled or affiliated person and another will be subject to special scrutiny by the Director to ascertain whether common control is being used to reduce, avoid, or escape taxes. The authority of the Director to determine true taxable income extends to any case in which either by inadvertence, sham, or design the taxable income of a related, controlled or affiliated person is other than it would have been had the person, in the conduct of its affairs, been dealing at arm's length with an unrelated, uncontrolled or unaffiliated person. The Director will consider whether the persons are motivated by business purposes other than tax avoidance or are principally motivated by the desire to avoid taxes.

B. The Director will consider the following to determine whether an arrangement between related, controlled, or affiliated persons results in an improper or inaccurate valuation of the activity:

1. Whether the persons are motivated by business purposes other than tax avoidance or are principally motivated by tax avoidance. In no case shall the mere evasion or avoidance of taxation be regarded as a business purpose.

2. Whether the separate businesses of the related, controlled or affiliated persons have economic substance because a reasonable possibility of obtaining a profit exists, apart from achieving tax benefits.

3. Whether one person has a significant amount of capital gains, interest, dividend or similar income, but minimal capital, activity, or expenses, because essential business functions are performed for the person by another without arm's length consideration.

4. In determining whether the related persons or entities are motivated by tax avoidance or whether they possess economic substance, the Director shall consider the following:

a. The related person has an identifiable place of business with supporting business records.

b. The related person maintains books and related accounting records.

c. The related person has a staff of employees or has engaged independent contractors adequate in number and with sufficient expertise to conduct its business activities.

d. The controlling person so controls and dominates the finances, policy and business activities of the related person that a related person has virtually no separate existence.

e. The form employed for conducting business is a sham.

C. The Director will use the following methods to assign a value to business activities or transactions between related, controlled, or affiliated persons when the Director determines that a true or market value has not been reported on a tax return:

1. Fair market valuation. A value determined by comparing charges made for similar goods or services of like quality and character, in similar quantities, under comparable conditions of sale, to comparable unrelated party purchasers, including subsidies and bonuses.

2. Cost basis. If no comparable goods or services can guide the Director in ascertaining the value, then such value may be determined upon a cost plus margin basis. All costs - including direct and indirect overhead costs - attributable to the particular article, good or service shall be included. An appropriate profit margin shall also be added to the costs.

3. Amount of dividends or loans received. If a parent corporation or controlling person provides services that are more than general oversight duties to a subsidiary or controlled person and receives no payments, or such payments are not at market value, but then receives dividends or loans from the subsidiary or controlled person for the services rendered, the Director shall deem the dividends or loans received to be compensation for the services rendered. If the total amount received from the subsidiary or controlled person, including such dividends or loans, is less than the market value of such service, the Director will tax the services rendered at the market value. If the amount of dividends or loans can be shown to be higher than the market value of the services then the market value will be used.

General oversight duties of a parent corporation include high level management direction, strategic planning, stewardship duties or assisting in the financing of the controlled persons. These duties can be provided without taxation of the dividends, loans or compensation from subsidiaries or controlled persons. However, providing services for a subsidiary's or controlled person's customers, or providing accounting and administrative services, or providing marketing services, or providing other lower level management duties for a subsidiary or controlled person, or any similar activities will be subject to a market value determination and taxation.

D. The following definitions apply within this section:

1. "Market value" or "arms length consideration" is the amount that would be paid or received for similar activities or transactions of like quantity, quality, or character under similar circumstances and conditions by other persons where no common interest exists between the persons involved in the activities or transactions.

2. "Related, controlled or affiliated person" means a person or entity that controls, or is controlled as the case may be, through common ownership. "Related," "controlled" and "affiliated" are used interchangeably when describing a subsidiary, however, related and affiliated can also mean the parent entity. The degree of ownership is unimportant, however the ability to control or influence the related, controlled or affiliated person is important in establishing whether relationships and transactions serve a business purpose, produce income, or merely avoid taxes.

Section 10. Section 5.45.090 of the Seattle Municipal Code is hereby amended as follows:

**5.45.090 Exemptions.**

The provisions of this Chapter 5.45 and the licensing requirement in SMC 5.65.030 shall not apply to the following:

A. (Nonprofit) Adult Family Homes. This chapter does not apply to (nonprofit) adult family homes which are licensed as such, or which are specifically exempt from licensing, under rules of the Washington State Department of Social and Health Services.

\*\*\*

I. Investments—Dividends From Subsidiary Corporations. This chapter shall not apply to amounts derived by persons, other than those engaging in banking, loan, security or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations, provided that dividends subject to tax pursuant to SMC 5.45.085 will not be exempt.

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Section 11. Section 5.45.100 of the Seattle Municipal Code is hereby amended as follows:

**5.45.100 Deductions.**

In computing the license fee or tax, the following may be deducted from the measure of tax:

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(O) Amounts Representing Rental of Real Estate for Boarding Homes. In computing tax, there may be deducted from the measure of the tax amounts representing the value of the rental of real estate for "boarding homes." To qualify for the deduction, the boarding home must meet the definition of "boarding home" found in RCW 18.29.020, and must be licensed by the State of Washington under RCW Chapter 18.29. The deduction shall be in the amount of twenty-five (25) percent of the gross monthly billing when the boarder has resided within the boarding home for longer than thirty (30) days.)

(P) Q. Radio and Television Broadcasting - Advertising Agency Fees - National, Regional, and Network Advertising - Interstate Allocations. In computing tax, there may be deducted from the measure of the tax by radio and television broadcasters amounts representing the following:

1. Advertising agencies' fees when such fees or allowances are shown as a discount or price reduction in the billing or that the billing is on a net basis, i.e., less the discount;

2. Actual gross receipts from national network, and regional advertising or a "standard deduction" as provided by RCW 82.04.280; and

3. Local advertising revenue that represents advertising which is intended to reach potential customers of the advertiser who are located outside the State of Washington. The Director of Finance may issue a rule that provides detailed guidance as to how these deductions are to be calculated.

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

(R) Q. Distribution Affiliate or Cooperative. In computing tax, there may be deducted from the measure of the tax an amount equal to the actual cost of the merchandise that a distribution cooperative or its distribution affiliate sells to a customer-owner of the distribution cooperative for the customer-owner's resale at retail. Actual cost means the cost actually paid by the distribution cooperative or distribution affiliate after taking into account all cash discounts and other price reductions.

(S) R. In computing tax imposed by SMC 5.45.050 F, there may be deducted from the measure of the tax gross income from the transport of empty containers picked up in the City if 1) a full container transported from outside the City is exchanged for the empty container at the time of pick-up, and 2) the job is billed to the customer as a round trip charge.

(T) S. Interstate Trucking. The tax imposed on motor carriers under SMC 5.45.050 F shall not apply to gross income from freight picked up in the City and transported by the taxpayer to a location outside the State of Washington. A motor carrier that does not transport freight across the state boundary is not entitled to a deduction, even though the freight is destined for (C) and is ultimately transported (C) to a location outside Washington.

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(U) Sales of Water to Water Districts, Municipalities and other Political Subdivisions of the State of Washington for Resale. In computing tax, there may be deducted from the measure of the tax under the wholesaling classification, amounts derived from the sale of water to any water district, municipality or other political subdivision of the State of Washington.

(V) Sales of Electricity for Resale. In computing tax, there may be deducted from the measure of the tax amounts derived from the sale of electricity to any purchaser of electricity for resale.

(W) Receipts From the Sale of Tangible Personal Property or Retail Services Delivered Outside the City but Within Washington. Effective January 1, 2008, amounts included in the gross receipts reported on the tax return and which are derived from the sale of tangible personal property or retail services delivered to the buyer or the buyer's representative outside the city but within the State of Washington may be deducted from the measure of tax under the retailing or wholesaling classifications. Retail services include those services defined as (a retail service) such pursuant to SMC 5.30.040 (E).

(X) Amounts collected by grocery stores, drug stores, and convenience stores from customers to pay the Green Fee imposed under SMC 21.40.075, including that portion of the fee that the store is entitled to retain to offset costs incurred to implement and administer the Green Fee.

Section 12. Section 5.46.030 of the Seattle Municipal Code is hereby amended as follows:

**5.46.030 Tax Imposed-Measure of the Tax.**

A. A square footage business tax for the act or privilege of engaging in business activities within the city is hereby levied upon and shall be collected from every person that leases, owns, occupies or otherwise maintains an office or place of business within the city.

The tax shall be measured by the number of square feet of business floor space and other floor space for each office or place of business leased, owned, occupied or otherwise maintained within the city during the reporting period.

B. The amount of the tax due shall be equal to the sum of the number of square feet of business floor space for each office or place of business leased, owned, occupied or otherwise maintained within the city multiplied by the rate of \$0.39 quarterly (\$1.56 annually), and the number of square feet of other floor space for each office or place of business leased, owned, occupied or otherwise maintained within the city multiplied by the rate of \$0.13 quarterly (\$0.52 annually). The Director will adjust the square footage business tax rate annually for inflation as follows: the tax rate for a year will be equal to the tax rate for the previous year increased (or decreased) by the percentage change in the annual Seattle-Tacoma-Bremerton, WA consumer price index for all urban consumers (CPI-U) for the previous year.

C. Persons with more than one office or place of business must include all business floor space and other floor space for all locations. When a person rents space to another person, the person occupying the rental space is responsible for the square footage business tax on that rental space only if the renter has exclusive right of possession in the space as against the landlord. Space rented for the storage of goods in a warehouse where no walls separate the goods, and where the exclusive right of possession in the space is not held by the person to whom the space is rented, shall be included in the other floor space of the person that operates the warehouse business, and not by the business renting the warehouse space.

D. Persons whose business floor space, other floor space, or period of occupancy changes during a reporting period shall prorate the business floor space or other floor space for the reporting period. A change in the period of occupancy during the reporting period shall be prorated using a ratio of the number of days of occupancy during the reporting period compared to the total number of days within the reporting period. If the amount of business floor space or other floor space changes during the reporting period, floor space for the period shall be computed as a weighted average of the rentable space occupied during different segments of the reporting period. Weighting will be based upon the percentage of the reporting period that a given amount of space was leased, owned, occupied, or otherwise maintained within the city.

E. Any person required to pay the square footage business tax imposed in this chapter that also pays the business license tax as imposed in SMC 5.45.050 may take a credit against the square footage business tax computed as follows:

1. The credit is equal to the square footage business tax owed for the reporting period multiplied by the ratio of adjusted gross income derived from the Seattle business location(s) for the reporting period to the total gross income derived from the Seattle business location(s) for the reporting period.

2. For the purpose of this section, "total gross income derived from the Seattle business location(s)" is equal to the total gross income derived from the business activities rendered by, generated from, or attributable to the place(s) of business located within the city.

3. For the purpose of this section, "adjusted gross income derived from the Seattle business location(s)" shall include total gross income derived from the Seattle business location(s) less:

(a) income derived from the sales of tangible personal property and retail services by the Seattle business location(s) delivered to a location within the State of Washington where no local jurisdiction imposes an eligible gross receipts tax; and

(b) the gross income of the Seattle business location(s) subject to the business license tax under SMC 5.45.050 as determined by SMC 5.45.060 through SMC 5.45.080 less the gross income of the Seattle business location(s) subject to the business license tax under SMC 5.45.050G as determined by SMC 5.45.060 through SMC 5.45.076 and SMC 5.45.081.

When the change in income calculated in subsection 3(b) is a negative number, the amount so calculated shall reduce the amount calculated in subsection 3(a); however, if the sum of the totals calculated under subsections 3(a) and 3(b) is a negative number, then the adjusted gross income derived from the Seattle business location(s) shall be equal to the total gross income derived from the Seattle business location(s).

4. In computing the tax credit, any gross receipts from manufacturing, extracting, and printing, and also subject to a selling tax (such as retailing and wholesaling) according to the Multiple Activity Tax Credit (SMC 5.45.070), shall be included in the gross income and the adjusted gross income only once.

Section 13. Section 5.46.040 of the Seattle Municipal Code is hereby amended as follows:

**5.46.040 Square footage business tax -When due.**

The tax imposed by this chapter shall be due and payable in accordance with SMC 5.56.040 in the same manner as the business license tax under SMC 5.45. Taxpayers filing their business license tax on a quarterly basis shall file the square footage business tax on a quarterly basis and taxpayers filing their business license tax on an annual basis shall file the square footage business tax on an annual basis on forms prescribed by the Director. Persons discontinuing their business activities in Seattle shall report and pay the square footage business tax at the same time as they file their final business license tax return.

Section 14. Section 5.46.050 of the Seattle Municipal Code is hereby amended as follows:

**5.46.050 Exemptions, credits and deductions from the square footage business tax.**

A. The following persons are exempt from the square footage business tax:

1. (Any person qualifying under the tax threshold as provided in SMC 5.55.040-D-1 shall be exempt from the square footage tax in the year which they qualify under the tax threshold.)

(2) Persons that are exempted from taxation by cities pursuant to federal or state statutes or regulations, including, but not limited to, the following:

(a) Insurance businesses and their agents as defined by RCW 48.01.050 and 48.17.010, respectively, and whose total revenue is exempt from the business license tax per SMC 5.45;

(b) Businesses that only sell, manufacture, or distribute motor vehicle fuel as defined in RCW 82.36.010 and exempted under RCW 82.36.440;

(c) Businesses that distribute or sell only liquor as defined in RCW 66.04.010 and exempted in RCW 66.08.120; and

(d) Banks, whose income is apportioned according to WAC Chapter 458.28.

B. The following persons may take a one hundred percent credit against the square footage business tax:

1. A person not engaged in any business activity during the reporting period.

2. Any person qualifying under the annual business license tax threshold pursuant to SMC 5.55.040 D.1, provided that the person's taxable gross income was not reduced below the threshold by the intrastate deduction allowed in SMC 5.45.100 V or by using the two-factor formula pursuant to SMC 5.45.081 C. If the person's taxable gross income was reduced under the threshold by the intrastate deduction or two-factor formula, the person must compute its square footage business tax using the tax credits available under SMC 5.46.030 E and SMC 5.46.060.

3. Persons owing no business license tax during the reporting period pursuant to SMC 5.45.050 due to exemptions or deductions contained in SMC 5.45.090 or SMC 5.45.100 ((with the exception of subsection SMC 5.45.100-W)) may take a credit against the square footage business tax for the total amount of the tax, provided that the person's taxable gross income was not reduced by the intrastate deduction allowed in SMC 5.45.100 V or reduced by using the two-factor formula pursuant to SMC 5.45.081 C. If such a reduction was claimed, the person must compute its square footage business tax using the tax credits available under SMC 5.46.030 E and SMC 5.46.060.

C. The portion of the business floor space and other floor space that is used exclusively to administer and manage other offices or places of business outside of Seattle shall be considered headquarters activities and shall not be included in the square footage business tax calculation.

D. Persons taxable under the utility tax pursuant to SMC 5.48 are exempt from the square footage business tax provided they generate no gross income from activities taxable under SMC 5.45.050. If taxpayers subject to the utility tax generate gross income from activities taxable under SMC 5.45.050, only the floor space used in generating such gross income will be subject to the square footage business tax provisions of this chapter.

E. Persons may exempt from the square footage business tax computations the square footage they use in conducting their business activities taxable under the manufacturing, printing and publishing, tour operators, transporting freight for hire, and processor for hire tax classifications of the business license tax.

Section 15. Section 5.46.060 of the Seattle Municipal Code is hereby amended as follows:

**5.46.060 Maximum Square Footage Business Tax Credit.**

After application of the square footage business tax credit provided in SMC 5.46.030 E, if the gross receipts business license tax assessed under SMC Chapter 5.45 and the square footage business tax assessed under SMC Chapter 5.46 combine to result in a tax increase for the taxpayer when compared to the amount of tax that would have been due under the requirements of SMC Chapter 5.45 in effect prior to the implementation of RCW 35.102.130 on January 1, 2008, then an additional credit may be taken against the square footage business tax for the amount of such tax increase.

Section 16. Section 5.52.030 of the Seattle Municipal Code is hereby amended as follows:

**5.52.030 Tax Levied.**

A. In accordance with RCW Chapter 9.46 as amended, a tax or fee is levied upon all persons, corporations, associations, or organizations conducting or operating within the City any of the following gambling activities authorized by RCW 9.46.010, as amended, and RCW 9.46.033, as follows:

1. For the conduct of amusement games, a tax equal to two ((2)) percent of the net gambling receipts; and

2. For punch boards and pull-tabs, as defined in RCW 9.46.0273, except for those punch boards and pull-tabs taxed under subsection B2 of this section below, a tax equal to five ((5)) percent of the gross gambling receipts.

B. In accordance with RCW Chapter 9.46, as amended, a tax or fee is levied on all bona fide charitable or nonprofit organizations, as defined in RCW 9.46.0209, conducting or operating in the City any of the following gambling activities, as follows:

1. Upon and for the conduct of bingo games, as defined in RCW 9.46.0205, and raffles, as defined in RCW 9.46.0277, a tax equal to ((4)) five percent of the net gambling receipts; and

2. For punch boards and pull-tabs, as defined in RCW 9.46.0273, a tax equal to ten ((10)) percent of the net gambling receipts; and

3. Upon and for the conduct of a fund-raising event, as defined in RCW 9.46.0273, a tax equal to ten ((10)) percent of the net gambling receipts.

C. Except, no tax shall be imposed:

1. On bingo or amusement games when such activity, or any combination thereof, is conducted by a bona fide charitable or nonprofit organization as defined in RCW 9.46.0209, when such organization has no paid operating or management personnel and when net gambling receipts from bingo or amusement games, or any combination thereof, do not exceed Five Thousand Dollars ((\$5,000)) per year;

2. On the first Ten Thousand Dollars ((\$10,000)) of net gambling receipts from raffles conducted by any bona fide charitable or nonprofit organization as defined in this chapter;

3. On the conduct of amusement games at the Seattle Center pursuant to a concession agreement with the City.

Section 17. Section 2 of Ordinance 118665 (contained in footnote 1 to Seattle Municipal Code 5.52.030) is hereby repealed.

Section 18. Section 5.55.010 of the Seattle Municipal Code is hereby amended as follows:

**5.55.010 Application of chapter stated.**

Unless expressly stated to the contrary in each chapter, the provisions of this chapter shall apply with respect to the licenses and taxes imposed under this chapter and SMC Chapters 5.32 (Amusement Devices), 5.35 (Commercial Parking Taxes), 5.37 (Employee Hours Taxes),

5.40 (Admission Taxes), 5.45 (Business License Tax), 5.46 (Square Footage Business Tax), 5.48 (Utility Tax), and 5.52 (Gambling Tax) and under other titles, chapters and sections in such manner and to such extent as indicated in each such title, chapter or section.

Section 19. Subsection A of 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((es))), (5.37 (Employee Hour Taxes)), 5.40 (Admission Tax((es))), 5.45 (Business License Tax), 5.46 (Square Footage Business Tax), 5.48 (Utility Tax), and 5.52 (Gambling Tax), shall be due and payable in quarterly installments. At the Director's discretion, installments may be assigned 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 pulltabs 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.

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Section 20. Section 5.55.080 of the Seattle Municipal Code is hereby amended as follows:

**5.55.080 ((Public-work)) City contracts - Payment of fee and tax before final payment for work.**

((The Director, b) Before (issuing any) the final payment is issued to any person performing any (public work) contract for the City ((:)) the Director may require such person to pay in full all license fees or taxes due under SMC Title 5 from such person on account of such contract (or otherwise; and). In regards to a person performing a public work contract for the City, the Director may require such taxpayer to file with the Director a verified list of all subcontractors supplying labor and/or materials ((to the person)) in connection with said public work.

Section 21. Section 5.68.010 of the Seattle Municipal Code is hereby amended as follows:

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**5.68.010 Imposition of use tax.**

There is hereby imposed upon every person a use tax for the privilege of using natural gas or manufactured gas in the City as a consumer at the rate of six percent ((6%)) of the value of the gas used, as authorized by RCW 82.14.230.

**Section 22.** Section 5.68.020 of the Seattle Municipal Code is hereby amended as follows:

**5.68.020 Exceptions and credits**

A. The "Value of the gas used," does not include any amounts that are paid for the hire or use of a natural gas business in transporting the gas subject to tax under this subsection if those amounts are subject to tax under subsection ((E)) B of Section 5.48.050.

B. The tax imposed under this section shall not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under subsection ((E)) B of Section 5.48.050 with respect to the gas for which exemption is sought under this section.

C. There shall be allowed a deduction against the value of the gas used when: (1) the person who sold the gas to the consumer has paid a gross receipts tax similar to that imposed under this section to another state or (2) the person consuming the gas has paid a gross receipts tax similar to that imposed under this section to another state. The deduction shall be with respect to and in the amount of the value of the gas for which the gross receipts tax was paid.

D. The use tax shall be paid by the consumer.

**Section 23.** Subsection A of section 3.02.125 of the Seattle Municipal Code is hereby amended as follows:

**3.02.125 Hearing Examiner filing fees.**

A. Filing fees for hearings before the City Hearing Examiner are as follows:

- Basis for Hearing Fee
- Admission Tax Deficiency (Ch. 5.40) \$50
- Admission Tax, Revocation of Exemption (Sec. 5.40.085) No fee
- Ballard Avenue Landmark District (Ch. 25.16) 50
- Business License Tax Deficiency (Ch. 5.46) 50
- Cable Television Ordinance (Ch. 21.60) No-fee
- Columbia City Landmark District (Ch. 25.20) 50
- Commercial Parking Tax Deficiency (Ch. 5.35) 50
- Design Decision in Multiple Residence - Mixed Density 50
- Zone (Ch. 24.38)
- Employee Hours Tax (Ch. 5.37) 50
- Fair Employment Practices Ordinance (Ch. 14.04) No fee
- Floating Home Moorages (Ch. 7.20) 50 /petitioner; maximum fee 150
- Gambling Tax Deficiency (Ch. 5.52) 50
- Grading Ordinance (Title 22, Subtitle VIII) 50
- Harvard/Belmont Landmark District (Ch. 25.22) 50
- Housing Code (Ch. 22.206) 50
- Land Use Code Enforcement (Ch. 23.90) 50
- Landmark Preservation Controls and Incentives (Sec. No fee 25.12.530)
- Landmarks Preservation (Sec. 25.12.740 and Sec. 50 25.12.835)
- License Code (Title 6, Subtitle I) 50
- Master Use Permit (Ch. 23.76) 50
- Noise Ordinance (Ch. 25.08) 50
- Open Housing Ordinance (Ch. 14.08) No fee

Pike Place Market Historical District (Ch. 25.24) 50

Pioneer Square Minimum Maintenance Ordinance 50

(Ch. 25.28, Subchapter II)

Planned Unit Development (Ch. 24.66) 50

Plumbing Code (Ch. 20.16, Uniform Plumbing Code, Ord. 50 116594)

Property Tax Exemption, Cancellation of Exemption 50 (Ch. 5.72)

Radiofrequency Radiation Ordinance (Ch. 25.10) 50

Refund Anticipation Loan (Ch. 7.26) 5

Relocation Assistance (Ch. 20.84) No fee

Seizure of Property; Controlled Substances (RCW No fee 69.50.505(e))

Special Review Districts (Ch. 23.66) 50

Square Footage Business Tax (Ch. 5.46) 50

State Environmental Policy Act (SEPA) 50

(when not a Master Use Permit component) (Ch. 25.04)

Utility tax (Ch. 5.48) 50

Zoning Map Amendments (Rezones) (Ch. 23.34) No fee

Zoning Rulings and Interpretations (Ch. 23.88) 50

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**Section 24.** This ordinance does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this ordinance or under any rule or order adopted under those sections nor does it affect any proceeding instituted under those sections.

**Section 25.** 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 10th day of August, 2009, and signed by me in open session in authentication of its passage this 10th day of August, 2009.

Richard Conlin  
President of the City Council

Approved by me this 17th day of August, 2009.

Gregory J. Nickels, Mayor  
Date of publication in the Seattle Daily Journal of Commerce, August 21, 2009.  
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