

11/18/2024 (Date of First Reading)
12/02/2024 (Date of Public Hearing)

ORDINANCE NO. M- 4475

AN ORDINANCE relating to tax administration; adding a new chapter 5.01 to the Vancouver Municipal Code; enacting new sections 5.01.010, 5.01.015, 5.01.020, 5.01.040, 5.01.050, 5.01.060, 5.01.070, 5.01.080, 5.01.090, 5.01.095, 5.01.100, 5.01.110, 5.01.120, 5.01.130, 5.01.140, 5.01.160, 5.01.170, 5.01.180, 5.01.190, 5.01.200, 5.01.210, 5.01.220, 5.01.240, 5.01.250, 5.01.260; repealing sections 5.04.100, 5.04.150, 5.04.155, 5.04.160, 5.04.170, 5.04.180, 5.04.190, 5.04.200, 5.04.210, 5.04.220, 5.04.230, 5.04.240, 5.04.250, 5.87.010, 5.87.020, 5.87.030, 5.87.040, 5.87.050, 5.87.060, 5.87.070, 5.87.080, 5.87.090, 5.87.100, 5.87.110, and 5.87.120; and providing for savings, severability and effective date.

WHEREAS, as a first class city, Vancouver has authority to license for revenue under Article XI, Sec. 12 of the Washington Constitution and RCW 35.22.280(32); and

WHEREAS, since the City eliminated its Business and Occupation (B&O) tax in 2001, the Washington State Legislature adopted RCW 35.102.040, which required the Association of Washington Cities (AWC) and the Association of Washington Businesses (AWB) to develop a model ordinance consistent with specified requirements for business and occupation taxation; and

WHEREAS, the AWC, in conjunction with a majority of the Washington cities with a business and occupation tax, developed a model ordinance consistent with RCW 35.102.040's requirements to achieve a fairer and more consistent state-wide implementation of business and occupation taxes and to help prevent against multiple taxation among various jurisdictions to the extent possible; and

WHEREAS, RCW 35.102.040 requires cities wishing to impose B&O taxes to adopt the model ordinance developed by AWC and consistent with requirements as stated in RCW 35.102.040; and,

WHEREAS, to comply with the requirements of RCW 35.102.040 to impose a B&O tax, the City must adopt certain provisions relating to tax administration; and

WHEREAS, the City wishes to substantially adopt the most recent version of AWC's model ordinance for tax administration, while tailoring it where permitted to reflect the unique local characteristics of Vancouver; and

WHEREAS, as related in Staff Report 238-24, adopting said model ordinance will improve consistency in the administration of excise taxes;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. The intent of this Ordinance is to provide a consistent method of administering the excise taxes levied by the City of Vancouver by adopting the provisions of the Model Tax Administrative Code in a newly created chapter prepared by the Association of Washington Cities and replacing outdated provisions found in chapters 5.04 and 5.87 of the Vancouver Municipal Code.

Section 2. A new chapter is created in Title 5 VMC, to be codified as chapter 5.01 VMC, which shall be entitled "Administrative Provisions for Business Taxes."

Section 3. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.010, and shall read as follows:

5.01.010 Purpose

This chapter provides for consistent administration of taxes identified in Title 5 VMC.

This section implements Washington Constitution Article XI, Section 12 and RCW 35.22.280(32) (first class cities), which give municipalities the authority to license for revenue. In the absence of a legal or constitutional prohibition, municipalities have the power to define taxation categories as they see fit in order to respond to the unique concerns and responsibilities of local government. It is intended that this chapter be as uniform as possible among the various municipalities. Uniformity with provisions of state tax laws should not be presumed, and references in this section to statutory or administrative rule changes do not mean state tax statutes or rules promulgated by the Department of Revenue.

Section 4. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.015, and shall read as follows:

5.01.015 Application of chapter stated.

The provisions of this chapter shall apply with respect to the taxes imposed under Title 5 VMC. This Chapter shall also apply where no procedure is specifically provided for administration of taxes. These procedures may supplement those provided for taxes imposed by other chapters if such chapters provide for no equivalent procedure.

Section 5. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.020, and shall read as follows:

5.01.020 Definitions.

The definitions contained in chapter 5.03 VMC shall apply equally to the provisions of this chapter unless the term is defined otherwise in this chapter. In addition, the following definitions will apply:

- A. “Applicable Chapter” means any chapter listed at 5.01.015 and any other VMC chapter providing for administration under this chapter.
- B. “Clerk” means the Vancouver City Clerk.

- C. “Director” means the Chief Financial Officer of the City, or the Director of any successor department of the City, or any officer, agent, or employee of the City designated to act on the Director’s behalf.
- D. “Reporting period” means:
 - 1. A one-month period beginning the first day of each calendar month (monthly); or
 - 2. A three-month period beginning the first day of January, April, July or October of each year (quarterly); or
 - 3. A twelve-month period beginning the first day of January of each year (annual)
- E. “Return” means any document a person is required by the City to file to satisfy or establish a tax or fee obligation that is administered or collected by the City and that has a statutorily defined due date.
- F. “Successor” means any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, any part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.
- G. “Tax” means any tax, fee, charge, interest, or penalty imposed under an Applicable Chapter.
- H. “Tax year” or “taxable year” means the calendar year.
- I. “VMC” means the Vancouver Municipal Code.

Section 6. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.040, and shall read as follows:

5.01.040 When due and payable – Reporting periods – Monthly, quarterly, and annual returns – Threshold provisions or Relief from filing requirements – Computing time periods – Failure to file returns.

- A. Other than any annual license fee or registration fee assessed under this title, the tax imposed by an Applicable Chapter shall be due and payable in quarterly installments. At the Director’s discretion, businesses may be assigned to a monthly or annual reporting period depending on the tax amount owing or type of tax. Tax payments are due on or before the time as provided in RCW 82.32.045(1), (2), and (3).

- B. Taxes shall be paid as provided in this chapter and accompanied by a return on forms as prescribed by the Director. The return shall be signed by the taxpayer personally or by a responsible officer or agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is complete and true.
- C. Tax returns must be filed and returned by the due date whether or not any tax is owed.
- D. For purposes of the tax imposed by chapter 5.03 VMC, any person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, is equal to or less than Fifty Thousand Dollars (\$50,000) in the current calendar year) shall file a return, declare no tax due on their return, and submit the return to the Director. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due.
- E. A taxpayer that commences to engage in business activity shall file a return and pay the tax or fee for the portion of the reporting period during which the taxpayer is engaged in business activity.
- F. Except as otherwise specifically provided by any other provision of this chapter, in computing any period of days prescribed by this chapter the day of the act or event from which the designated period of time runs shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or City or Federal legal holiday, in which case the last day of such period shall be the next succeeding day which is neither a Saturday, Sunday, or City or Federal legal holiday.
- G. If any taxpayer fails, neglects or refuses to make a return as and when required in this chapter, the Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the Director's estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the City by the taxpayer. The Director shall notify the taxpayer by mail of the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

Section 7. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.050, and shall read as follows:

5.01.050 Payment methods – Mailing returns or remittances – Time extension – Deposits – Recording payments – Payment must accompany return – NSF checks.

- A. Taxes shall be paid to the Director in United States currency by bank draft, certified check, cashier's check, personal check, money order, cash, or by wire transfer or electronic payment if such wire transfer or electronic payment is authorized by the Director. If payment so received is not paid by the bank on which it is drawn, the taxpayer, by whom such payment is tendered, shall remain liable for payment of the tax and for all legal penalties, the same as if such payment had not been tendered. Acceptance of any sum by the Director shall not discharge the tax or fee due unless the amount paid is the full amount due.
- B. A return or remittance that is transmitted to the City by United States mail shall be deemed filed or received on the date shown by the cancellation mark stamped by the Post Office upon the envelope containing it. The Director may allow electronic filing of returns or remittances from any taxpayer. A return or remittance which is transmitted to the City electronically shall be deemed filed or received according to procedures set forth by the Director.
- C. If a written request is received prior to the due date, the Director, for good cause, may grant, in writing, additional time within which to make and file returns.
- D. The Director shall keep full and accurate records of all funds received or refunded. The Director shall apply payments first against all penalties and interest owing, and then upon the tax, without regard to any direction of the taxpayer.
- E. For any return not accompanied by a remittance of the tax shown to be due thereon, the taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the penalties and interest provided in this chapter.
- F. Any payment made that is returned for lack of sufficient funds or for any other reason will not be considered received until payment by certified check, money order, or cash of the original amount due, plus a "non-sufficient funds" (NSF) charge of twenty dollars (\$20.00) is received by the Director. Any license issued upon payment with a NSF check will be considered void, and shall be returned to the Director. No license shall be reissued until payment (including the twenty dollars (\$20.00) NSF fee) is received.
- G. The Director is authorized, but not required, to mail tax return forms to taxpayers, but failure of the taxpayer to receive any such forms shall not excuse the taxpayer from filing returns and making payment of the taxes or fees, when and as due under this chapter.

Section 8. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.060, and shall read as follows:

5.01.060 Records to be preserved – Examination – Estoppel to question assessment.

Every person liable for any fee or tax imposed by this chapter shall keep and preserve, for a period of five (5) years after filing a tax return, such records as may be necessary to determine the amount of any fee or tax for which the person may be liable; which records shall include copies of all federal income tax and state tax returns and reports made by the person. All books, records, papers, invoices, vendor lists, inventories, stocks of merchandise, and other data including federal income tax and state tax returns and reports shall be open for examination at any time by the Director or its duly authorized agent. Every person's business premises shall be open for inspection or examination by the Director or a duly authorized agent.

- A. If a person does not keep the necessary books and records within the City, it shall be sufficient if such person (a) produces within the City such books and records as may be required by the Director, or (b) bears the cost of examination by the Director's agent at the place where such books and records are kept; provided that the person electing to bear such cost shall pay in advance to the Director the estimated amount thereof including round-trip fare, lodging, meals and incidental expenses, subject to adjustment upon completion of the examination.
- B. Any person who fails, or refuses a Department request, to provide or make available records, or to allow inspection or examination of the business premises, shall be forever barred from questioning in any court action, the correctness of any assessment of taxes made by the City for any period for which such records have not been provided, made available or kept and preserved, or in respect of which inspection or examination of the business premises has been denied. The Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the estimate of the tax or fees due. Such fee or tax assessment shall be deemed prima facie correct and shall be the amount of tax owing the City by the taxpayer. The Director shall notify the taxpayer by mail the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

Section 9. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.070, and shall read as follows:

5.01.070 Accounting methods.

- A. A taxpayer may file tax returns in each reporting period with amounts based upon cash receipts only if the taxpayer's books of account are kept on a cash receipts basis. A taxpayer that does not regularly keep books of account on a cash receipts basis must file returns with amounts based on the accrual method.
- B. The taxes imposed and the returns required hereunder shall be upon a calendar year basis.

Section 10. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.080, and shall read as follows:

5.01.080 Public work contracts – Payment of fee and tax before final payment for work.

The Director may, before issuing any final payment to any person performing any public work contract for the City, require such person to pay in full all license fees or taxes due under this title from such person on account of such contract or otherwise, and 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 11. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.090, and shall read as follows:

5.01.090 Underpayment of tax, interest, or penalty – Interest.

- A. If, upon examination of any returns, or from other information obtained by the Director, it appears that a tax or penalty less than that properly due has been paid, the Director shall assess the additional amount found to be due and shall add thereto interest on the tax only. The Director shall notify the person by mail of the additional amount, which shall become due and shall be paid within thirty (30) days from the date of the notice, or within such time as the Director may provide in writing.
- B. For tax periods after December 31, 2025, the Director shall compute interest in accordance with RCW 82.32.050 as it now exists or as it may be amended.

- C. If VMC 5.03.190(B) is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of this ordinance shall apply.

Section 12. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.095, and shall read as follows:

5.01.095 Time in which assessment may be made.

The Director shall not assess, or correct an assessment for, additional taxes, penalties, or interest due more than four years after the close of the calendar year in which they were incurred, except that the Director may issue an assessment:

- A. Against a person who is not currently registered or licensed or has not filed a tax return as required by this chapter for taxes due within the period commencing 10 years prior to the close of the calendar year in which the person was contacted in writing by the Director;
- B. Against a person that has committed fraud or who misrepresented a material fact; or
- C. Against a person that has executed a written waiver of such limitations.

Section 13. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.100, and shall read as follows:

5.01.100 Over payment of tax, penalty, or interest – Credit or refund – Interest rate – Statute of limitations.

- A. If, upon receipt of an application for a refund, or during an audit or examination of the taxpayer's records and tax returns, the Director determines that the amount of tax, penalty, or interest paid is in excess of that properly due, the excess amount shall be credited to the taxpayer's account or shall be refunded to the taxpayer. Except as provided in subsection B of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four (4) years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.
- B. The execution of a written waiver shall extend the time for applying for, or making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an

application for refund of such taxes is made by the taxpayer or the Director discovers that a refund or credit is due.

- C. Refunds shall be made by means of vouchers approved by the Director and by the issuance of a City check or warrants drawn upon and payable from such funds as the City may provide.
- D. Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest, or costs paid by any person shall be paid in the same manner, as provided in subsection C of this section, upon the filing with the Director a certified copy of the order or judgment of the court.
- E.
 - 1. For tax periods after December 31, 2025, the Director shall compute interest on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060 as it now exists or as it may be amended.
 - 2. If VMC 5.03.200(E)(2) is held to be invalid, then the provisions of RCW 82.32.060 existing at the effective date of this ordinance shall apply.

Section 14. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.110, and shall read as follows:

5.01.110 Late payment – Disregard of written instructions – Evasion – Penalties.

- A. If payment of any tax due on a return to be filed by a taxpayer is not received by the Director by the due date, the Director shall add a penalty in accordance with RCW 82.32.090(1), as it now exists or as it may be amended.
- B. If the Director determines that any tax has been substantially underpaid as defined in RCW 82.32.090(2), there shall be added a penalty in accordance with RCW 82.32.090(2), as it now exists or as it may be amended.
- C. If a citation or criminal complaint is issued by the Director for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty in accordance with RCW 82.32.090(3), as it now exists or as it may be amended.
- D. If the Director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the Director a license as required by chapter 5.04, the Director shall impose a penalty in accordance with RCW 82.32.090(4), as it now exists or as it may be amended. No penalty shall be imposed under this subsection D if the person who

has engaged in business without a license obtains a license prior to being notified by the Director of the need to be licensed.

- E. If the Director determines that all or any part of a deficiency resulted from the taxpayer's failure to follow specific written tax reporting instructions, there shall be assessed a penalty in accordance with RCW 82.32.090(5), as it now exists or as it may be amended.
- F. If the Director finds that all or any part of the deficiency resulted from an intent to evade the tax payable, the Director shall assess a penalty in accordance with RCW 82.32.090(6), as it now exists or as it may be amended.
- G. The penalties imposed under subsections A through E above of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.
- H. The Director shall not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.
- I. For the purposes of this section, "return" means any document a person is required by the City of Vancouver to file to satisfy or establish a tax or fee obligation that is administered or collected by the City, and that has a statutorily defined due date.
- J. If incorporation into the City of Vancouver code of future changes to RCW 82.32.090 is deemed invalid, then the provisions of RCW 82.32.090 existing at the time this ordinance is effective shall apply.

Section 15. A new section is enacted and added to chapter 5.01 VMC, to be codified at

VMC 5.01.120, and shall read as follows:

5.01.120 Cancellation of penalties.

- A. The Director may cancel any penalties imposed under VMC 5.01.110(A) if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the taxpayer shows that it exercised ordinary business care and prudence in making arrangements to file the return and pay the tax but was, nevertheless, due to circumstances beyond the taxpayer's control, unable to file or pay by the due date. The Director has no authority to cancel any other penalties or to cancel penalties for any other reason except as provided in subsection C.
- B. A request for cancellation of penalties must be received by the Director within 30 days after the date the Department mails the notice that the penalties are due. The

request must be in writing and contain competent proof of all pertinent facts supporting a reasonable cause determination. In all cases the burden of proving the facts rests upon the taxpayer.

- C. The Director may cancel the penalties in VMC 5.01.110(A) one time if a person:
(a) Is not currently licensed and filing returns, (b) Was unaware of its responsibility to file and pay tax, and (c) Obtained business licenses and filed past due tax returns within 30 days after being notified by the Department.
- D. The Director shall not cancel any interest charged upon amounts due.

Section 16. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.130, and shall read as follows:

5.01.130 Taxpayer quitting business – Liability of successor.

- A. Whenever any taxpayer quits business, sells out, exchanges, or otherwise disposes of their business or stock of goods, any tax payable hereunder shall become immediately due and payable. Such taxpayer shall, within ten (10) days thereafter, make a return and pay the tax due.
- B. Any person who becomes a successor shall become liable for the full amount of any tax owing. The successor shall withhold from the purchase price a sum sufficient to pay any tax due to the city from the taxpayer until such time as: a) the taxpayer shall produce a receipt from the City showing payment in full of any tax due or a certificate that no tax is due, or b) more than six (6) months has passed since the successor notified the Director of the acquisition and the Director has not issued and notified the successor of an assessment.
- C. Payment of the tax by the successor shall, to the extent thereof, be deemed a payment upon the purchase price. If such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due such successor from the taxpayer.
- D. Notwithstanding the above, if a successor gives written notice to the Director of the acquisition, and the Department does not within six (6) months of the date it received the notice issue an assessment against the taxpayer and mail a copy of that assessment to the successor, the successor shall not be liable for the tax.

Section 17. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.140, and shall read as follows:

5.01.140 Director Review -- Administrative Appeal -- Judicial Review

- A. *Director Review.*
1. Any person seeking an exemption, waiver or interpretation under this chapter, or aggrieved by a presumption or rule in this chapter or review of the amount of tax due, may request review by the Director of the same.
 2. The request for review shall be delivered in writing to the Director within fourteen (14) calendar days after the person discovers the issue of concern and shall be submitted under penalty of perjury on forms to be provided by the City.
 3. The Director may require the person to submit additional background information and may hold a conference with the person. After review and the conference, if one is held, the Director will make a determination regarding the issue of concern. The Director shall mail notice of the determination to the person. This determination is subject to appeal pursuant to subsection B of this section. If no such appeal is filed, the determination shall become final.
- B. *Administrative appeal.* Any taxpayer aggrieved by the determination or regarding the amount of the fee, tax, interest or penalty finally found by the Director to be due under the provisions of this chapter may appeal from such determination by filing a written notice of appeal with the Clerk.
- C. *Form of appeal.* Any appeal must be in writing and must contain the following:
1. The name and address of the taxpayer.
 2. A statement identifying the determination of the Director from which the appeal is taken.
 3. A statement setting forth the grounds upon which the appeal is taken and identifying specific errors the Director is alleged to have made in making the determination.
 4. A statement identifying the specific relief from the determination being appealed.
- D. *Time and place of appeal.* Any appeal shall be filed with the City Clerk no later than ten (10) days following the date on which the taxpayer was given notice of such determination. Failure to follow the appeal procedures in this section shall preclude the taxpayer's right to appeal.

E. *Appeal Hearing.* The clerk shall, as soon as practicable, fix a time and place for the hearing of such appeal before a hearing examiner as created and appointed under chapter 2.51 VMC, and the clerk shall cause a notice of the time and place thereof to be mailed to the appellant. Hearings shall be conducted in accordance with the provisions of VMC 22.03.040; provided that:

1. The Director's determination shall be regarded as prima facie correct, and the appellant taxpayer shall have the burden of proving by a preponderance of the evidence that the determination of the Director is incorrect, either in whole or in part, and to establish the correct amount of tax, if any.
2. The hearing shall be conducted in the following order:
 - a. Preliminary motions;
 - b. Appellant taxpayer's case in chief. After each witness, the City has the right to cross-examine;
 - c. City's case in chief. After each witness the appellant taxpayer has the right to cross-examine;
 - d. Appellant taxpayer's rebuttal;
 - e. City's rebuttal;
 - f. Appellant taxpayer's closing argument;
 - g. City's closing argument

F. *Decision of hearing examiner.* Following the hearing, the hearing examiner shall thereupon ascertain the correct determination regarding any presumption or rule or the amount of the tax and shall enter a decision on the appeal stating the correct presumption or rule or amount of the tax owing, supported by written findings and conclusions. The Clerk shall immediately notify the appellant of the decision by mail. The amount found to be due, together with costs of the appeal, if appellant is unsuccessful therein, must be paid within ten (10) days after such notice is given.

In the event the hearing examiner finds that a fee, tax, interest or penalty paid by the taxpayer is more than the amount required, the Director shall refund or credit the amount overpaid within ten (10) business days following receipt of the hearing examiner's decision, unless upon motion of the City, the hearing examiner stays the decision pending judicial review.

G. *Judicial review.*

1. The appellant taxpayer, any other person beneficially interested, or the Director of Financial and Management Services, may obtain judicial review of the decision of the hearing examiner by applying for a writ of review in the Clark County Superior Court within fourteen (14) days from

the date of service the hearing examiner's decision in accordance with the procedure set forth in Chapter 7.16 RCW, or other applicable law and court rules.

2. The decision of the hearing examiner shall be final and conclusive unless review is sought in compliance with this section.

Section 18. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.160, and shall read as follows:

5.01.160 Director to make rules.

The Director shall have the power, from time to time, to adopt, publish and enforce rules and regulations not inconsistent with this chapter or with law for the purpose of carrying out the provisions of this chapter and it shall be unlawful to violate or fail to comply with, any such rule or regulation.

Section 19. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.170, and shall read as follows:

5.01.170 Ancillary allocation authority of Director.

The Director is authorized to enter into agreements with other Washington cities which impose an "eligible gross receipts tax":

- A. To conduct an audit or joint audit of a taxpayer by using an auditor employed by the City of Vancouver, another city, or a contract auditor, provided, that such contract auditor's pay is not in any way based upon the amount of tax assessed;
- B. To allocate or apportion in a manner that fairly reflects the gross receipts earned from activities conducted within the respective cities the gross proceeds of sales, gross receipts, or gross income of the business, or taxes due from any person that is required to pay an eligible gross receipts tax to more than one Washington city.
- C. To apply the City's tax prospectively where a taxpayer has no office or place of business within the City and has paid tax on all gross income to another Washington city where the taxpayer is located; provided that the other city maintains an eligible gross receipts tax, and the income was not derived from contracts with the City.

Section 20. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.180, and shall read as follows:

5.01.180 Mailing of Notices.

Any notice required by this chapter to be mailed to any taxpayer or licensee shall be sent by ordinary mail, addressed to the address of the taxpayer or licensee as shown by the records of the Director. Failure of the taxpayer or licensee to receive any such mailed notice shall not release the taxpayer or licensee from any tax, fee, interest, or any penalties thereon, nor shall such failure operate to extend any time limit set by the provisions of this chapter. It is the responsibility of the taxpayer to inform the Director in writing about a change in the taxpayer's address.

Section 21. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.190, and shall read as follows:

5.01.190 Tax declared additional.

The license fee and tax herein levied shall be additional to any license fee or tax imposed or levied under any law or any other ordinance of the City of Vancouver except as herein otherwise expressly provided.

Section 22. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.200, and shall read as follows:

5.01.200 Public disclosure – Confidentiality – Information sharing.

- A. For purposes of this section, unless a different meaning is clearly established by context, the following definitions apply:
1. "Disclose" means to make known to any person in any manner whatever a return or tax information.
 2. "Tax information" means:
 - a. A taxpayer's identity;
 - b. The nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemption, credits, assets, liability, net worth, tax liability deficiencies, over assessments, or tax payments, whether taken from the taxpayer's books and records or any other source;

- c. Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or
 - d. Other data received by, recorded by, prepared by, or provided to the City with respect to the determination or the existence, or possible existence, of liability, or the amount thereof, of a person under an Applicable Chapter for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Nothing in this chapter requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material or documents so as to permit its disclosure.
 3. "City agency" means every City office, department, division, bureau, board, commission, or other City agency.
 4. "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer.
- B. Returns and tax information are confidential and privileged, and except as authorized by this section, neither the Director nor any other person may disclose any return or tax information.
- C. This section does not prohibit the Director from:
 1. Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:
 - a. In respect of any tax imposed under Title 5 VMC if the taxpayer or its officer or other person liable under this title is a party in the proceeding; or
 - b. In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding.
 2. Disclosing, subject to such requirements and conditions as the Director prescribes by rules adopted pursuant to section 5.03.260, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or

criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

3. Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;
4. Disclosing such return or tax information, for official purposes only, to the mayor or city attorney, or to any City agency, or to any member of the city council or their authorized designees dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;
5. Permitting the City's records to be audited and examined by the proper state officer, his or her agents and employees;
6. Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought or where otherwise allowed to be disclosed under this Section;
7. Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of the City;
8. Disclosing any such return or tax information to the United States department of justice, including the bureau of alcohol, tobacco, firearms and explosives, the department of defense, the immigration and customs enforcement and the customs and border protection agencies of the United States department of homeland security, the United States coast guard, the alcohol and tobacco tax and trade bureau of the United States department of treasury, and the United States department of transportation, or any

authorized representative of these federal agencies or their successors, for official purposes

9. Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;
10. Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers and the active/closed status of such registrations, state or local business license registration identification and the active/closed status and effective dates of such licenses, reseller permit numbers and the expiration date and status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. Except that this subsection may not be construed as giving authority to the City or any recipient to give, sell, or provide access to any list of taxpayers for any commercial purpose;
11. Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;
12. Disclosing such return or tax information to the United States department of agriculture, or successor department or agency, for the limited purpose of investigating food stamp fraud by retailers;
13. Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the City for a filed tax warrant, judgment, or lien against the real property;
14. Disclosing to a person against whom the department has asserted liability as a successor under section 5.03.230 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;
15. Disclosing real estate excise tax affidavit forms filed under chapter 3.20 VMC in the possession of the City, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;
16. Disclosing such return or tax information to the court or hearing examiner in respect to the City's application for a subpoena if there is probable cause to believe that the records in possession of a third party will aid the Director in connection with its official duties under this title or a civil or criminal investigation.

D.

1. The Director may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection D. The disclosure must be in connection with the department's official duties under this Title, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.
2. Before disclosure of any tax return or tax information under this subsection D, the Director must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The Director may not disclose any tax return or tax information under this subsection D until the time period allowed in subsection (D)(3) of this section has expired or until the court has ruled on any challenge brought under subsection (D)(3) of this section.
3. The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (D)(2) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court must limit or deny the request of the Director if the court determines that:
 - a. The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;
 - b. The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or
 - c. The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

4. The Director must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.
 5. Requesting information under subsection (D)(2) of this section that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.
- E. Service of a subpoena issued by the court or under VMC 22.03.030(C) does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena issued by the court or under VMC 22.03.030(C) may disclose the existence or content of the subpoena to that person's legal counsel.
- F. Any person acquiring knowledge of any return or tax information in the course of his or her employment with the City and any person acquiring knowledge of any return or tax information as provided under subsections (C)(4), (C)(5), (C)(6), (C)(7), (C)(8), (C)(9), or (C)(11) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the city, such person must forfeit such office or employment and is incapable of holding any public office or employment in this city for a period of two years thereafter.

Section 23. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.210, and shall read as follows:

5.03.210 Tax constitutes debt.

Any license fee or tax due and unpaid under this chapter, and all interest and penalties thereon, shall constitute a debt to the City of Vancouver and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

Section 24. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.220, and shall read as follows:

5.01.220 Unlawful actions – Violation – Penalties.

- A. It shall be unlawful for any person liable for fees under this chapter (or other chapters as listed):
 1. To violate or fail to comply with any of the provisions of this chapter or any lawful rule or regulation adopted by the Director;

2. To make any false statement on any license application or tax return;
 3. To aid or abet any person in any attempt to evade payment of a license fee or tax;
 4. To fail to appear or testify in response to a subpoena issued pursuant to VMC 22.03.030(C);
 5. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this Chapter.
- B. Violation of any of the provisions of this chapter is a gross misdemeanor. Any person convicted of a violation of this chapter may be punished by a fine not to exceed \$1,000, imprisonment not to exceed one year, or both fine and imprisonment. Penalties or punishments provided in this chapter shall be in addition to all other penalties provided by law.
- C. Any person, or officer of a corporation, convicted of continuing to engage in business after the revocation of a license shall be guilty of a gross misdemeanor and may be punished by a fine not to exceed \$5,000, or imprisonment not to exceed one year, or both fine and imprisonment.

Section 25. A new section is enacted and added to chapter 5.01 VMC, to be codified at

VMC 5.01.240, and shall read as follows:

5.01.240 Settlement agreement provisions.

The Director may enter into an agreement, in writing, with any person relating to the liability of such person with respect of any tax, interest, or penalties imposed by any Applicable Chapter and administered by this chapter for any taxable period(s). Upon approval of such agreement, evidenced by execution thereof by the Director and the person so agreeing, the agreement shall be final and conclusive as to the liability or immunity covered thereby, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

- A. The case shall not be reopened as to the matters agreed upon, or the agreement modified, by the Director or the taxpayer, and
- B. In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

Section 26. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.250, and shall read as follows:

5.01.250 Charge-off of uncollectible taxes.

The Director may charge off any tax, penalty, or interest that is owed by a taxpayer, if the Director reasonably ascertains that the cost of collecting such amounts would be greater than the total amount that is owed or likely to be collected from the taxpayer. Charge-offs in excess of \$25,000 require City Council approval.

Section 27. A new section is enacted and added to chapter 5.01 VMC, to be codified at VMC 5.01.260, and shall read as follows:

5.01.260 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances shall not be affected.

Section 28. The following sections of Chapter 5.04 VMC are hereby repealed in their entirety: 5.04.100, 5.04.150, 5.04.155, 5.04.160, 5.04.170, 5.04.180, 5.04.190, 5.04.200, 5.04.210, 5.04.220, 5.04.230, 5.04.240, 5.04.250.

~~5.04.100 — Periodic payment or report.~~

~~The license fee or tax imposed by this chapter, except the fee required by Section 5.04.090 of this chapter to accompany the application for the license, shall be due and payable in quarterly installments. Remittance therefore shall be made on or before the fifteenth day of the month next succeeding the end of the quarterly period in which the tax accrued. The remittance shall be made as hereinafter provided and shall be accompanied by a return on a form to be provided and prescribed by the Director of Financial & Management Services. To the return the taxpayer shall be required to swear or affirm that the information therein given is full and true and that the taxpayer knows the same to be so.~~

~~Whenever the total gross income for which any person is liable under this chapter does not exceed the sum of fourteen thousand dollars in case of a retailer or wholesaler reporting on a quarterly basis, or seven thousand dollars in case of one providing professional services and reporting on a quarterly basis, or seventy thousand dollars in the case of a manufacturer reporting on a quarterly basis, no tax is due but a properly~~

~~completed tax return must in each case be filed on an annual or quarterly basis, consistent with rules to be adopted by the department of finance.~~

~~Whenever a taxpayer commences to engage in business during any quarterly period, his first return and the license fee or tax shall be based upon and cover the portion of the quarterly period during which he is engaged in business.~~

~~5.04.150 — Sale or transfer of business.~~

~~Upon the sale or transfer during any quarterly period of a business on account of which a license fee or tax is required by this chapter, the purchaser or transferee shall, if the fee or tax has not been paid in full for that period, be responsible for the payment of the fee or tax for that portion of the quarterly period during which he carries on such business.~~

~~5.04.155 — Return confidential — Penalty for violation.~~

~~Except as hereinafter provided, it is unlawful for the city council or any member, deputy, clerk, agent, employee or representative thereof, or for any city official or any other person, to make known or reveal any facts or information contained in any return filed by any license payer pursuant to the provisions of this chapter or disclosed in any investigation or examination of the license payer's books or records made in connection with the administration of this chapter. The foregoing, however, shall not be construed to prohibit the city council, or a member or employee thereof, from:~~

~~a. Giving such facts or information in evidence in any court action involving license fees imposed under this chapter or involving a violation of the provisions of this chapter, or involving any department of the State of Washington if such facts and information are relevant to the issues in such cases;~~

~~b. Giving such facts and information to the license payer or his duly authorized agent;~~

~~c. Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;~~

~~d. Permitting the records to be audited by proper state or city officers, agents and employees;~~

~~e. Giving any such facts or information to the Commissioner of Internal Revenue of the United States or the proper officers of any tax department of the State of Washington for official purposes.~~

~~Any person acquiring knowledge of such facts and information in the course of his employment or duties with the city council, and any person acquiring knowledge of such facts and information as provided under subsections (d) and (e) of this section, who shall reveal or make known any such facts or information to another not entitled to knowledge of such facts or information under the provisions of this section, shall be punished by a fine not exceeding three hundred dollars, or imprisonment in the city jail not exceeding~~

~~ninety days, or both such fine and imprisonment. If the offender or person guilty of such violation by an employee of the city, he shall, in addition to the penalty above mentioned set forth in this paragraph, forfeit such employment and shall not be eligible to employment by the city in any capacity for a period of two years thereafter.~~

~~5.04.160 — Over or under payment of tax.~~

~~If the Director of Financial & Management Services upon investigation or upon checking returns finds that the fee paid or tax paid on any of them is more than the amount required of the taxpayer, he shall refund the amount overpaid by a warrant upon the general fund, or credit the amount on the next payment. If the Director of Financial & Management Services finds that the fee or tax paid is less than required, he shall mail a statement to the taxpayer showing the balance due, who shall within three days pay the amount shown thereon.~~

~~5.04.170 — Failure to make return.~~

~~If any taxpayer fails, neglects or refuses to make his return as and when required herein, the Director of Financial & Management Services is authorized to determine the amount of the tax payable, and by mail to notify such taxpayer of the amount so determined. The amount so fixed shall thereupon become the tax and be immediately due and payable.~~

~~5.04.180 — Director Review — Administrative Appeals.~~

~~A. *Director Review.*~~

- ~~1. Any person seeking an exemption, waiver or interpretation under this chapter, or aggrieved by a presumption or rule in this chapter, may request review by Director of Financial and Management Services of the same.~~
- ~~2. The request for review shall be delivered in writing to the Director within fourteen (14) calendar days after the person discovers the issue of concern and shall be submitted under penalty of perjury on forms to be provided by the city.~~
- ~~3. The director may require the person to submit additional background information and may hold a conference with the person. After review, and the conference if one is held, the director will make a determination regarding the issue of concern. The director will mail notice of the determination to the person. This determination is subject to appeal pursuant to subsection B of this section. If no such appeal is filed, the determination shall become final.~~

~~B. *Administrative appeal.* Any taxpayer aggrieved by the determination under Section VMC 5.04.095 or regarding the amount of the fee, tax, interest or penalty finally found by the Director of Financial and Management Services to be due under the provisions of this chapter may appeal from such determination by filing a written notice of appeal with the City Clerk.~~

~~C. *Form of appeal.* Any appeal must be in writing and must contain the following:~~

- ~~1. The name and address of the taxpayer.~~
- ~~2. A statement identifying the determination of the Director of Financial and Management Services from which the appeal is taken.~~
- ~~3. A statement setting forth the grounds upon which the appeal is taken and identifying specific errors the Director of Financial and Management Services is alleged to have made in making the determination.~~
- ~~4. A statement identifying the specific relief from the determination being appealed.~~

~~D. *Time and place of appeal.* Any appeal shall be filed with the City Clerk no later than five (5) days following the date on which the taxpayer was given notice of such determination. Failure to follow the appeal procedures in this section shall preclude the taxpayer's right to appeal.~~

~~E. *Appeal Hearing.* The clerk shall, as soon as practicable, fix a time and place for the hearing of such appeal before a hearing examiner as created and appointed under VMC Ch 2.51, and the clerk shall cause a notice of the time and place thereof to be mailed to the appellant. Hearings shall be conducted in accordance with the provisions of VMC 22.03.040; provided that:~~

- ~~1. The Director's determination shall be regarded as prima facie correct, and the appellant taxpayer shall have the burden of proving by a preponderance of the evidence that the determination of the Director is incorrect, either in whole or in part, and to establish the correct amount of tax, if any.~~
- ~~2. The hearing shall be conducted in the following order:
 - ~~a. Preliminary motions;~~
 - ~~b. Appellant taxpayer's case in chief. After each witness, the City has the right to cross-examine;~~
 - ~~c. City's case in chief. After each witness the appellant taxpayer has the right to cross-examine;~~
 - ~~d. Appellant taxpayer's rebuttal;~~
 - ~~e. City's rebuttal;~~
 - ~~f. Appellant taxpayer's closing argument;~~
 - ~~g. City's closing argument;~~~~

~~F. *Decision of hearing examiner.* Following the hearing, the hearing examiner shall thereupon ascertain the correct determination regarding any presumption or rule or the amount of the fee, tax, interest or penalty and shall enter a decision on the appeal stating the correct presumption or rule or amount of the fee, tax, interest or penalty owing, supported by written findings and conclusions. The City Clerk shall immediately notify the appellant of the decision by mail. The amount found to be due, together with costs of the appeal, if appellant is unsuccessful therein, must be paid within three (3) days after such notice is given.~~

~~In the event the hearing examiner finds that a fee, tax, interest or penalty paid by the taxpayer is more than the amount required, the Director of Financial and Management Services shall refund or credit the amount over paid as set forth in VMC 5.04.160.~~

~~G. *Judicial review.*~~

~~1. The appellant taxpayer, any other person beneficially interested, or the Director of Financial and Management Services, may obtain judicial review of the decision of the hearing examiner by applying for a writ of review in the Clark County Superior Court within fourteen (14) days from the date of the hearing examiner's decision in accordance with the procedure set forth in Chapter 7.16 RCW, or other applicable law and court rules.~~

~~2. The decision of the hearing examiner shall be final and conclusive unless review is sought in compliance with this section.~~

~~5.04.190 — Adoption of rules.~~

~~The Director of Financial & Management Services shall have authority to adopt written rules and regulations not inconsistent with this chapter for the purpose of administering the business and occupation tax here imposed. Such rules shall be consistent, insofar as possible, with rules promulgated by the State of Washington Department of Revenue under RCW Ch. 82.04, the state Business and Occupation Tax. A copy of such written rules and regulations shall be made available to any taxpayer requesting the same. They may be amended from time to time by the Director of Financial & Management Services as he finds necessary.~~

~~5.04.200 — Mailing of notices.~~

~~Any notice required by this chapter to be mailed to any taxpayer shall be sent by ordinary mail, addressed to the address of the taxpayer as shown by the records of the Director of Financial & Management Services or, if no such address is shown, to such address as the Director of Financial & Management Services is able to ascertain by reasonable effort. Failure of the taxpayer to receive such mailed notice shall not release the taxpayer from any tax or any penalties thereon, nor shall such failure operate to extend any time limit set by the provisions of this chapter.~~

~~5.04.210 — False returns.~~

~~It shall be unlawful for any person liable to tax hereunder to fail or refuse to secure the license, to make the returns as and when required, or to pay the fee or tax when due, or for any person to make any false or fraudulent application or return or any false statement or representation in, or in connection with, any such application or return, or to aid or abet another in any attempt to evade payment of the fee or tax, or any part thereof, or for any person to fail to appear and/or testify falsely upon any investigation of the correctness of a return, or upon the hearing of any appeal, or in any manner to hinder the city or any of its officers in carrying out the provisions of this chapter.~~

~~5.04.220 — License fee additional.~~

~~The license fee and tax herein levied shall be additional to any license fee or tax imposed or levied under any law or any other ordinances of the City of Vancouver except as herein otherwise expressly provided.~~

~~5.04.230 — Tax constitutes debt.~~

~~Any license fee or tax due and unpaid under this chapter, and all penalties thereon, shall constitute a debt to the City of Vancouver and may be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.~~

~~5.04.240 — License revocation.~~

~~The Director of Financial & Management Services may revoke the license issued to any taxpayer who is in default in any payment of any license fee or tax hereunder, or who shall fail to comply with any of the provisions of this chapter. Notice of such revocation shall be mailed to the taxpayer by the Director of Financial & Management Services, and on and after the date thereof any such taxpayer who continues to engage in business shall be deemed to be operating without a license and shall be subject to any or all penalties herein provided.~~

~~5.04.250 — Penalties for violations.~~

~~Any person violating or failing to comply with any of the provisions of this chapter or any lawful rule or regulation adopted by the Director of Financial & Management Services pursuant thereto, upon conviction thereof, shall be punished by a fine in any sum not to exceed one thousand dollars, or by imprisonment for a term not exceeding ninety days, or by both such fine and imprisonment.~~

Section 29. Chapter 5.87 VMC, and specifically VMC 5.87.010, 5.87.020, 5.87.030, 5.87.040, 5.87.050, 5.87.060, 5.87.070, 5.87.080, 5.87.090, 5.87.100, 5.87.110, and 5.87.120, are hereby repealed in their entirety:

~~5.87.010 — Applicability.~~

~~This Chapter shall govern the administration of taxes imposed under Chapters 5.59, 5.60, 5.68, 5.88, 5.92, 5.94, and 5.96 VMC. This Chapter shall also apply where no procedure is specifically provided for administration of taxes. These procedures may supplement those provided for taxes imposed by other chapters if such chapters provide for no equivalent procedure.~~

~~5.87.020 — Definitions.~~

~~“Applicable Chapter” means any chapter listed at 5.87.010 and any other VMC chapter providing for administration under this chapter.~~

~~“Clerk” means the Vancouver City Clerk.~~

~~“Director” means the Director or Financial and Management Services or the Director of any successor department of the City of Vancouver.~~

~~“Tax” means any tax, fee, charge, interest, or penalty imposed under an Applicable Chapter.~~

~~“VMC” means the Vancouver Municipal Code.~~

~~5.87.030 — Rules Authorized.~~

~~The Director is authorized to adopt rules for implementation of this Chapter~~

~~5.87.040 — Director review — Administrative appeals.~~

~~A. *Director Review.*~~

~~1. Any person seeking an exemption, waiver or interpretation under this chapter, or aggrieved by a presumption or rule in this chapter or review of the amount of tax due, may request review by the Director of the same.~~

~~2. The request for review shall be delivered in writing to the Director within fourteen (14) calendar days after the person discovers the issue of concern and shall be submitted under penalty of perjury on forms to be provided by the City.~~

~~3. The Director may require the person to submit additional background information and may hold a conference with the person. After review and the conference, if one is held, the director will make a determination regarding the issue of concern. The Director shall mail notice of the determination to the person. This determination is subject to appeal pursuant to subsection B of this section. If no such appeal is filed, the determination shall become final.~~

~~B. *Administrative appeal.* Any taxpayer aggrieved by the determination or regarding the amount of the fee, tax, interest or penalty finally found by the Director to be due under the provisions of this chapter may appeal from such determination by filing a written notice of appeal with the Clerk.~~

~~C. *Form of appeal.* Any appeal must be in writing and must contain the following:~~

- ~~1. The name and address of the taxpayer.~~
- ~~2. A statement identifying the determination of the Director from which the appeal is taken.~~
- ~~3. A statement setting forth the grounds upon which the appeal is taken and identifying specific errors the Director is alleged to have made in making the determination.~~
- ~~4. A statement identifying the specific relief from the determination being appealed.~~

~~D. *Time and place of appeal.* Any appeal shall be filed with the City Clerk no later than ten (10) days following the date on which the taxpayer was given notice of such determination. Failure to follow the appeal procedures in this section shall preclude the taxpayer's right to appeal.~~

~~E. *Appeal Hearing.* The clerk shall, as soon as practicable, fix a time and place for the hearing of such appeal before a hearing examiner as created and appointed under VMC Ch. 2.51, and the clerk shall cause a notice of the time and place thereof to be mailed to the appellant. Hearings shall be conducted in accordance with the provisions of VMC 22.03.040; provided that:~~

- ~~1. The Director's determination shall be regarded as prima facie correct, and the appellant taxpayer shall have the burden of proving by a preponderance of the evidence that the determination of the Director is incorrect, either in whole or in part, and to establish the correct amount of tax, if any.~~
- ~~2. The hearing shall be conducted in the following order:
 - ~~a. Preliminary motions;~~
 - ~~b. Appellant taxpayer's case in chief. After each witness, the City has the right to cross-examine;~~
 - ~~c. City's case in chief. After each witness the appellant taxpayer has the right to cross-examine;~~
 - ~~d. Appellant taxpayer's rebuttal;~~
 - ~~e. City's rebuttal;~~~~

~~f.—Appellant taxpayer’s closing argument;~~

~~g.—City’s closing argument~~

~~F.—Decision of hearing examiner.~~ Following the hearing, the hearing examiner shall thereupon ascertain the correct determination regarding any presumption or rule or the amount of the tax and shall enter a decision on the appeal stating the correct presumption or rule or amount of the tax owing, supported by written findings and conclusions. The Clerk shall immediately notify the appellant of the decision by mail. The amount found to be due, together with costs of the appeal, if appellant is unsuccessful therein, must be paid within ten (10) days after such notice is given.

~~In the event the hearing examiner finds that a fee, tax, interest or penalty paid by the taxpayer is more than the amount required, the Director shall refund or credit the amount overpaid within ten (10) business days following receipt of the hearing examiner’s decision, unless upon motion of the City, the hearing examiner stays the decision pending judicial review.~~

~~G.—Judicial review.~~

~~1.—The appellant taxpayer, any other person beneficially interested, or the Director of Financial and Management Services, may obtain judicial review of the decision of the hearing examiner by applying for a writ of review in the Clark County Superior Court within fourteen (14) days from the date of service the hearing examiner’s decision in accordance with the procedure set forth in Chapter 7.16 RCW, or other applicable law and court rules.~~

~~2.—The decision of the hearing examiner shall be final and conclusive unless review is sought in compliance with this section.~~

~~5.87.050 — Return confidential — Penalty violation.~~

~~Except as hereinafter provided, it is unlawful for the City Council or any member, deputy, clerk, agent, employee or representative thereof, or for any City official or any other person, to make known or reveal any facts or information contained in any return filed by any tax payer pursuant to the provisions of this chapter or disclosed in any investigation or examination of the license payer’s books or records made in connection with the administration of this chapter. The foregoing, however, shall not be construed to prohibit the City Council, or a member or employee thereof, from:~~

~~a.—Giving such facts or information in evidence in any court action involving taxes imposed under this chapter or involving a violation of the provisions of this chapter, or involving any department of the State of Washington if such facts and information are relevant to the issues in such cases;~~

~~b.—Giving such facts and information to the taxpayer or duly authorized agent thereof;~~

~~e. Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;~~

~~d. Permitting the records to be audited by proper state or city officers, agents and employees;~~

~~e. Giving any such facts or information to the Commissioner of Internal Revenue of the United States or the proper officers of any tax department of the State of Washington for official purposes.~~

~~Any person acquiring knowledge of such facts and information in the course of his employment or duties with the City Council, and any person acquiring knowledge of such facts and information as provided under subsections (d) and (e) of this section, who shall reveal or make known any such facts or information to another not entitled to knowledge of such facts or information under the provisions of this section, shall be punished by a fine not exceeding one thousand dollars, or imprisonment in the county jail not exceeding one year for each violation, or both such fine and imprisonment. If the offender or person guilty of such violation by an employee of the City, he shall, in addition to the penalty above mentioned set forth in this paragraph, forfeit such employment and shall not be eligible to employment by the City in any capacity for a period of two years thereafter.~~

~~5.87.060 — Record of Revenue Required.~~

~~1. Anyone liable for the payment of any tax imposed by an Applicable Chapter shall keep and maintain for a period of five years such books and records as will accurately reflect the gross operating revenue.~~

~~2. All books and records required to be kept or maintained under an Applicable Chapter shall be subject to inspection and audit at any reasonable time, with or without notice, at the place where such records are kept, upon demand by the Director or his designees, for the purpose of determining compliance or noncompliance with the provisions of the taxing ordinance codified herein.~~

~~3. In the event a taxpayer fails to keep such books and records or refuses to provide such for audit, the Director may use any reasonable means based on information available to the Director to calculate the amount of tax due. The Director is authorized to issue an administrative subpoena for such records.~~

~~5.87.070 — Director Investigation and examination of data.~~

~~If any taxpayer fails to make his return, or if the Director is dissatisfied as to the correctness of the statements made in the return of any taxpayer, he or his authorized agent may enter the premises of such taxpayer at any reasonable time for the purpose of inspecting books or records of account to ascertain the amount of tax or to determine the correctness of such statements, as the case may be, and may examine any person under oath administered by said officer or his agent, touching the matters inquired into, or said~~

~~officer or his authorized agent may fix a time and place for an investigation of the correctness of the return and may issue a subpoena to the taxpayer or any other person, to attend upon such investigation and there testify under oath administered by said officer or his agent in regard to the matters inquired into, and may by subpoena require him or any person to bring with him such books, records or papers as may be necessary. It is a misdemeanor to knowingly defy the directives of a subpoena under this subsection.~~

~~5.87.080 — Director Determination of tax.~~

~~If any taxpayer fails, neglects or refuses to make his return as and when required herein, the Director is authorized to determine the amount of the tax payable, and by mail to notify such taxpayer of the amount so determined. The amount so determined shall thereupon become the tax due and be immediately payable.~~

~~5.87.090 — Credit against future taxes.~~

~~Any money paid to the city through error or otherwise not in payment of the tax imposed by this chapter or in excess of such tax shall, upon request of the taxpayer, be credited against any tax due or to become due from such taxpayer under this chapter, or, upon the taxpayer's ceasing to do business in the city, shall be refunded to the taxpayer. The right of recovery against the city because of overpayment of tax by any taxpayer shall be prohibited after the expiration of three years from the date the tax was due.~~

~~5.87.100 — Penalty for violation.~~

~~Any person willfully violating or willfully failing to comply with any of the provisions of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall be punished as prescribed in VMC 7.00.010(M).~~

~~5.87.110 — Tax Owed is a Debt to the City.~~

~~The tax imposed by this chapter shall, when due, be a debt of the taxpayer to the City and may be collected as such. The Director may, in addition to the tax owed, add an additional charge for interest at a rate not to exceed 1% per month commencing thirty days from the date the tax was due.~~

~~5.87.120 — Failure to file return, register, or pay tax.~~

~~It is unlawful for any person liable to pay a tax under an Applicable Chapter to fail or refuse to register, file a return, or to pay the tax or installment thereof when due, or for any person to make any false or fraudulent application or return or any false statement or representation in, or in connection with, any such application or return, or to aid or abet another in any attempt to evade payment of the tax or any part thereof, or in any manner to hinder or delay the City or any of its officers or agents in carrying out the provisions of this chapter.~~

~~If any person, firm or corporation subject to this chapter fails to pay any tax required by an Applicable Chapter within thirty days after the due date thereof, there shall be added to such tax a penalty of ten percent of the amount of such tax, and any tax due under this chapter and unpaid, and all penalties thereon, shall constitute a debt to the City and may be collected by court proceedings, which remedy shall be in addition to all other remedies.~~

~~The Director for good cause shown may allow an extension of not more than ninety (90) days for filing a return, registering, or paying a tax. In such cases, the Director shall charge interest on the amount of unpaid tax of not less than one half percent per month and not more than one percent per month.~~

Section 30. Savings. Those ordinances or parts of ordinances which are amended or repealed by this ordinance shall remain in full force and effect until the effective date of this ordinance.

Section 31. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Section 32. This ordinance shall take effect January 1, 2025.

DATE OF FINAL PASSAGE at a Regular Meeting of the Vancouver City Council:

December 2, 2024, 2024.

SIGNED this 2nd day of December, 2024.

DocuSigned by:
Anne McEnerny-Ogle
6C89D9999EC5424...
Anne McEnerny-Ogle, Mayor

Attest:

DocuSigned by:
Natasha Ramras
493E949414AE4BB...
Natasha Ramras, City Clerk

Approved as to form:

DocuSigned by:
Jonathan Young
9A7DC2E31F694A2...
Jonathan Young, City Attorney

SUMMARY

ORDINANCE NO. M- 4475

AN ORDINANCE relating to tax administration; adding a new chapter 5.01 to the Vancouver Municipal Code; enacting new sections 5.01.010, 5.01.015, 5.01.020, 5.01.040, 5.01.050, 5.01.060, 5.01.070, 5.01.080, 5.01.090, 5.01.095, 5.01.100, 5.01.110, 5.01.120, 5.01.130, 5.01.140, 5.01.160, 5.01.170, 5.01.180, 5.01.190, 5.01.200, 5.01.210, 5.01.220, 5.01.240, 5.01.250, 5.01.260; repealing sections 5.04.100, 5.04.150, 5.04.155, 5.04.160, 5.04.170, 5.04.180, 5.04.190, 5.04.200, 5.04.210, 5.04.220, 5.04.230, 5.04.240, 5.04.250, 5.87.010, 5.87.020, 5.87.030, 5.87.040, 5.87.050, 5.87.060, 5.87.070, 5.87.080, 5.87.090, 5.87.100, 5.87.110, and 5.87.120; and providing for savings, severability and effective date.

The full text of this ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at 487-8711, or via www.cityofvancouver.us (Go to City Government and Public Records).