

Ordinance No. 960-04

An ordinance of the City Council of the City of Algona adopting two new City Code Chapters entitled Tax Administrative Code and Business and Occupation Tax Code.

WHEREAS, in recognition of concerns over the business and occupation (B&O) tax, and legislative debates over how to address those concerns, the Association of Washington Cities (AWC) and six B&O tax jurisdictions formed a Task Force to analyze these issues; and

WHEREAS, the Task Force, with the concurrence of the majority of other Washington cities levying gross receipts B&O taxes, has developed a model ordinance that creates greater uniformity and consistency among City gross receipts business and occupation taxes; includes a system of deductions to prevent multiple taxation of the same gross receipts; makes City gross receipts business and occupation taxes simpler, more predictable, and easier to administer; provides examples of activities that constitute “engaging in business” and establishes safe harbors for de minimus activities that a person may engage in without having to register or becoming subject to tax; and contains sufficient flexibility to provide local control over the City tax structure; and

WHEREAS, the model ordinance also strives to minimize any major revenue impact on cities levying gross receipts B&O taxes; retains local control over administration and collection of the B&O tax; and retains local control over B&O tax rates, thus preserving “local control” and revenue-protection measure that are critical to all cities in the State of Washington; and

WHEREAS, adoption of the model ordinance is also vital in demonstrating to the Washington State Legislature that cities are sensitive to legitimate complaints over the local B&O tax and are serious about ensuring that it more fairly, equitably, consistently, and efficiently administered; now, therefore,

THE CITY COUNCIL OF THE CITY OF ALGONA, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. A new Chapter 5.05 of the Algona City Code is hereby adopted, as follows:

**TAX ADMINISTRATIVE CODE
CHAPTER 5.05**

Sections:

- 5.05.010 Purpose.
- 5.05.015 Application of chapter stated.
- 5.05.020 Definitions.
- 5.05.030 Business License requirements.
- 5.05.040 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.
- 5.05.050 Payment methods - Mailing returns or remittances - Time extension – Deposits – Recording payments – Payment must accompany return – NSF checks.
- 5.05.060 Records to be preserved - Examination - Estoppel to question assessment.

- 5.05.070 Accounting methods.
- 5.05.080 Public work contracts - Payment of fee and tax before final payment for work.
- 5.05.090 Underpayment of tax, interest, or penalty - Interest - Limitations
- 5.05.100 Time in which assessment may be made.
- 5.05.110 Over payment of tax, penalty, or interest – Credit or refund – Interest rate - Statute of limitations.
- 5.05.120 Late payment - Disregard of written instructions - Evasion - Penalties.
- 5.05.130 Cancellation of penalties and interest.
- 5.05.140 Taxpayer quitting business - Liability of successor.
- 5.05.150 Administrative Appeal.
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- 5.05.190 Mailing of notices.
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- 5.05.220 Tax constitutes debt.
- 5.05.230 Unlawful actions - Violation - Penalties.
- 5.05.240 Suspension or Revocation of Business License.
- 5.05.250 Closing agreement provisions.
- 5.05.260 Charge-off of uncollectible taxes.
- 5.05.270 Severability.

5.05.010 Purpose.

This Chapter is enacted based upon model administrative provisions developed by a coalition of Washington cities that have enacted a business and occupation tax. By enacting these administrative tax provisions, the City hopes to create greater uniformity and consistence among Washington municipal taxing jurisdictions and, to the extent feasible, make it easier for taxpayers working in multiple Washington taxing jurisdictions. However, the provision of this Chapter are not intended to be exactly the same as other Washington taxing jurisdictions and are not intended to be modified by administrative rulings from other jurisdictions. They are intended to specifically preserve sufficient flexibility for the City of Algona.

5.05.015 Application of chapter stated.

The provisions of this Chapter shall apply with respect to the taxes imposed under Algona City Code Chapter 5.06 Business and Occupation Tax Code and to such other chapters and sections of the Algona City Code in such manner and to such extent as expressly indicated in each such chapter or section.

5.05.020 Definitions.

For purposes of this Chapter:

The definitions contained in 5.06 Business and Occupation Tax Code 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. “Code” shall mean the Algona Municipal Code.

- B. "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").
- C. "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.
- D. "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.
- E. "Tax Year" or "taxable year" means the calendar year.

5.05.030 Business License Requirements.

No person, whether subject to the payment of a tax or not, shall engage in any business or activity in the City for which a fee or tax is imposed by this chapter without having first obtained and being the holder of a valid and subsisting license to do so, known as a business license, issued under chapter 5.04 AMC. Business Licenses shall be issued in accordance with Chapter 5.04 AMC.

5.05.040 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 chapter, the tax imposed by this 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 last day of the next month following the end of the assigned reporting period covered by the return.

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

C. Tax returns must be filed and returned by the due date whether or not any tax is owed.

D. For the purposes of the tax imposed by chapter 5.06 – business and occupation tax, 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 \$10,000 in the current quarter, 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 who commences to engage in business activity shall file a return and pay the tax or fee for the portion of the reporting period during which 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.

5.05.050 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 and administrative fees, 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 which 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 that 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.

5.05.060 Records to be preserved - Examination - Estoppel to question assessment.

A. 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.

B. 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.

C. 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.

5.05.070 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.
5.05.080 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.

5.05.090 Underpayment of tax, interest, or penalty - Interest

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.

- A. Interest imposed after the effective date of this ordinance, shall be computed from the last day of the month following the end of the reporting period and will continue to accrue until payment is made. In case of an audit the interest shall be computed from the first day of the month following each calendar year or portion thereof included in the audit period.
- B. For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year. The rate shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

5.05.100 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.

5.05.110 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 approved by the Director and made by the issuance of a City check 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. Interest on overpayment of taxes for periods beginning on or after January 1, 2005, shall be the average federal short term interest rate plus two percentage points, as outlined for assessments under subsection .090(B).

5.05.120 Late payment - Disregard of written instructions - Evasion - Penalties.

A. If payment of any tax 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 as follows:

1. Five percent (5%) of the amount of the tax if not received by the due date;
2. Fifteen (15%) of the amount of the tax if not received on or before the last day of the month following the due date;
3. Twenty Five (25%) of the amount of the tax if not received on or before the last day of the second month following the due date.
4. No penalty assessed herein shall be less than five dollars (\$5.00).

B. If a tax deficiency is assessed by the Director, there shall be added a penalty equal to five percent (5%) of the amount of the deficiency. If payment of any tax deficiency assessed by the Director is not received by the due date specified in the notice, or any extension thereof, the Director shall assess a penalty equal to fifteen percent (15%) of the amount of the additional tax found due. If payment of any tax deficiency assessed by the Director is not received on or before the thirtieth day following the due date specified in the notice, or any extension thereof,

the Director shall assess a penalty equal to twenty five percent (25%) of the amount of additional tax found due. No penalty added shall be less than five dollars (\$5.00).

C. If a citation or criminal complaint is issued by the City for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty of ten percent (10%) due, but not less than ten dollars (\$10.00).

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 a business license as required by chapter 5.04 AMC, the Director shall impose a penalty of five percent (5%) of the amount of tax due from that person for the period that the person was not licensed. No penalty shall be imposed under this subsection 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 of ten percent (10%) of the amount of the additional tax due.

1. A taxpayer fails to follow specific written tax reporting instructions when the Director has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the Director has not issued final instructions because the matter is under appeal pursuant to this chapter. The Director shall not assess the penalty under this subsection (E) upon any taxpayer that has made a good faith effort to comply with the specific written instructions provided by the Director to that taxpayer.
2. Specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement, provided that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents.
3. Any specific written instructions by the Director shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

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 of fifty percent (50%) of the additional tax found to be due.

G. The penalties imposed under subsections A through E 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 penalties authorized by subsections E and F of this section shall be assessed in accordance with the provisions of this chapter governing assessment of tax deficiencies. 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 Algona 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.

5.05.130 Cancellation of penalties and interest.

- A. The Director may cancel any penalties imposed under subsections 5.05.120(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 of this section.
- B. A request for cancellation of penalties must be received by the Director within thirty days (30) 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 rest upon the taxpayer.
- C. The Director may cancel the penalties in subsections 5.05.120(A) one time if a person:
 - 1. Is not currently licensed and filing returns; and
 - 2. Was unaware of its responsibility to file and pay tax, and
 - 3. 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.

5.05.140 Taxpayer quitting business - Liability of successor.

- A. Whenever any taxpayer quits business, sells out, exchanges, or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable. Such taxpayer shall, within 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:
 - 1. The taxpayer shall produce a receipt from the City showing payment in full of any tax due or a certificate that not tax is due, or
 - 2. More than six months (6) 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.

5.05.150 Administrative Appeal.

Any taxpayer, except one who has failed to comply with section 5.05.060 of this Code, aggrieved by the fee or tax determined by the Director to be required under the provisions of this chapter may pay the amount due and appeal from such determination by filing a written notice of appeal with the City Clerk within thirty (30) days from the date written notice of such amount was mailed to the taxpayer. A \$100.00 filing fee shall be submitted with the appeal, which filing fee is required to process the appeal. The hearing examiner shall, as soon as practical, fix a time and place for the hearing of such appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the parties. The hearing before the hearing examiner shall be held in accordance to the applicable procedures set forth in chapter 1.26 AMC. The decision of the Hearing Examiner shall indicate the correct amount of the fee or tax owing.

5.05.160 Judicial review of Administrative Appeal Decision.

The taxpayer or the City may obtain judicial review of the Hearing Examiner's administrative decision by applying for a Writ of Review in the King County Superior Court within twenty-one (21) days from the date of the Hearing Examiner's decision in accordance with the procedure set forth in Chapter 7.16 RCW, other applicable law, and court rules. The City shall have the same right of review from the administrative decision as does a taxpayer.

5.05.170 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 the 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.

5.05.180 Ancillary allocation authority of Director.

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

1. To conduct a joint audit of a taxpayer by using an auditor employed by the City of Algona, 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.
2. 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.
3. 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.

5.05.190 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.

5.05.200 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 Algona except as herein otherwise expressly provided.

5.05.200 Public disclosure – Confidentiality – Information sharing.

A. The City shall not disclose any tax information that would violate the Washington State Public Disclosure Act (Chapter 42.17 of the Revised Code of Washington) or any other law prohibiting disclosure of tax information, as that term may be defined by law.

B. RCW 82.32.330(3)(i), as currently enacted, allows disclosure of taxpayer information to other certain designated governmental entities for official purposes but only if those governmental entities grant substantially similar disclosure privileges to the City of Algona. Accordingly, Council grants reciprocity to those governmental entities identified in RCW 82.32.330(3)(i), as that section is currently enacted or as it may hereafter be modified, that grant reciprocity to the City of Algona, provided that those governmental entities shall not further disclose the tax information except as authorized by law.

C. Nothing in this section shall prevent the use of tax information by the City or any other agency in any civil or criminal action involving any license, tax, interest, or penalty or as otherwise may be authorized by law.

5.05.220 Tax Constitutes Debt.

Any fee or tax due and unpaid under this chapter, and all interest and penalties thereon, shall constitute a debt to the City of Algona 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.

5.05.230 Unlawful actions - Violation - Penalties.

A. It shall be unlawful for any person under this Chapter:

1. To violate or fail to comply with any of the provisions of this chapter or any other lawful rule or regulation adopted by the Director; or
2. To make any false statement on any license application or tax return; or
3. To aid or abet any person in any attempt to evade payment of a fee or tax; or

4. To fail to appear or testify in response to a subpoena issued pursuant to AMC 1.26; or
5. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this Chapter; or

B. Violation of any of the provisions of this chapter shall be punished as 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.

5.05.240 Suspension or Revocation of Business License.

Suspension or revocation of business licenses shall be as set forth in Chapter 5.04 AMC entitled business licenses.

5.05.250 Closing agreement provisions.

The Director may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the chapters within this title 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 tax liability or tax immunity covered thereby, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

1. The case shall not be reopened as to the matters agreed upon, or the agreement modified, by the Director or the taxpayer, and
2. 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.

5.05.260 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.

5.05.270 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 2. A new Chapter 5.06 of the Algona City Code is hereby adopted, to read as follows:

**BUSINESS AND OCCUPATION TAX CODE
CHAPTER 5.06**

Sections:

- 5.06.010 Exercise of Revenue License Power
- 5.06.020 Administrative Provisions
- 5.06.030 Definitions
- 5.06.040 Imposition of the tax - Tax or fee levied.
- 5.06.050 Doing business with the City.
- 5.06.060 Multiple activities credit when activities take place in one or more cities with eligible gross receipt taxes.
- 5.06.070 Deductions to prevent multiple taxation of transactions involving more than one City with an eligible gross receipts tax.
- 5.06.080 Assignment of gross income derived from intangibles.
- 5.06.090 Exemptions.
- 5.06.100 Deductions.
- 5.06.110 Tax part of overhead.
- 5.06.120 Severability clause.

5.06.010 Exercise of revenue license power.

The provisions of this Chapter shall be deemed an exercise of the power of the City to license for revenue. The provisions of this Chapter are subject to periodic statutory or administrative rule changes or judicial interpretations of the ordinances or rules. The responsibility rests with the licensee or taxpayer to reconfirm tax computation procedures and remain in compliance with the City code.

5.06.020 Administrative provisions.

The administrative provisions contained in Chapter 5.05 shall be fully applicable to the provisions of this Chapter except as expressly stated to the contrary herein.

5.06.030 Definitions.

In construing the provisions of this Chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

A. "Business." includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

B. "Business and occupation tax." or "gross receipts tax" means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business.

C. "Commercial or industrial use." means the following uses of products, including by-products, by the extractor or manufacturer thereof:

1. Any use as a consumer; and
2. The manufacturing of articles, substances or commodities

D. "Director" means the City Clerk/Treasurer of the City or any officer, agent or employee of the City designated to act on the Director's behalf.

E. "Eligible gross receipts tax." means a tax which:

1. Is imposed on the act or privilege of engaging in business activities within section 5.05.040; and
2. Is measured by the gross volume of business, in terms of gross receipts and is not an income tax or value added tax; and
3. Is not, pursuant to law or custom, separately stated from the sales price; and
4. Is not a sales or use tax, business license fee, franchise fee, royalty or severance tax measured by volume or weight, or concession charge, or payment for the use and enjoyment of property, property right or a privilege; and
5. Is a tax imposed by a local jurisdiction, whether within or without the State of Washington, and not by a Country, State, Province, or any other non-local jurisdiction above the County level.

F. "Engaging in business"

1. The term "engaging in business" 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 minimus 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). If an activity is not listed, 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.
- b. Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City.
- 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 or another, acting on its behalf.
 - q. Accepting or executing a contract with the City, irrespective of whether 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" or "multiple vendor events". Persons participating at a trade show shall review the City's trade show or multiple vendor event ordinances.
 - f. Conducting advertising through the mail.
 - g. Soliciting sales by phone from a location outside the City.
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.

G. "Extracting." is the activity engaged in by an extractor and is reportable under the extracting classification.

H. "Extractor." means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product; or fells, cuts or takes timber, Christmas trees, other than plantation Christmas trees, or other natural products; or takes fish, shellfish, or other sea or inland water foods or products. "Extractor" does not include persons performing under

contract the necessary labor or mechanical services for others; or persons meeting the definition of farmer.

I. "Extractor for Hire" "Extractor for hire" means a person who performs under contract necessary labor or mechanical services for an extractor.

J. "Gross income of the business." means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

K. "Gross proceeds of sales." means the value proceeding or accruing from the sale of tangible personal property or for services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

L. "Manufacturing." means the activity conducted by a manufacturer and is reported under the manufacturing classification.

M. "Manufacturer" "To Manufacture"

1. "Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from the person's own materials or ingredients any products. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to less than twenty percent (20%) of the total value of all materials or ingredients that become a part of the finished product, the owner of the equipment or facilities will be deemed to be a processor for hire, and not a manufacturer.
2. "To Manufacture" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials or ingredients so that as a result thereof a new, different or useful product is produced for sale or commercial or industrial use, and shall include:
 - a. The production of special made or custom made articles;
 - b. The production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;
 - c. Crushing and/or blending of rock, sand, stone, gravel, or ore; and
 - d. The producing of articles for sale, or for commercial or industrial use from raw materials or prepared materials by giving such materials, articles, and substances of trade or commerce new forms, qualities, properties or combinations including, but not limited to, such activities as making, fabricating, processing, refining, mixing,

slaughtering, packing, aging, curing, mild curing, preserving, canning, and the preparing and freezing of fresh fruits and vegetables. "To manufacture" shall not include the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

N. "Person." means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the State of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise and the United States or any instrumentality thereof.

O. "Retailing." means the activity of engaging in making sales at retail and is reported under the retailing classification.

P. "Retail Service." shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

1. Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, batting cages, day trips for sightseeing purposes, and others, when provided to consumers. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.
2. Abstract, title insurance, and escrow services;
3. Credit bureau services;
4. Automobile parking and storage garage services;
5. Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;
6. Service charges associated with tickets to professional sporting events; and
7. The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, Turkish bath services, escort services, and dating services.
8. The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

Q. "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 made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis.

R. "Sale at retail," "retail sale."

1. "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers, other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:
 - a. Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or
 - b. Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or
 - c. Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or
 - d. Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or
 - e. Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use.

2. "Sale at retail" or "retail sale" also means every sale of tangible personal property to persons engaged in any business activity which is taxable under 5.06.040(A)(7).
3. "Sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:
 - a. The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;
 - b. The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;
 - c. The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;
 - d. The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;
 - e. The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;
 - f. The sale of and charge made for the furnishing of lodging and all other services, except network telephone service and cable service, by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or

leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

- g. The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

4. "Sale at retail" or "retail sale" shall also include the providing of competitive telephone service to consumers.

5. "Sale at retail" or "retail sale" shall also include the sale of canned software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of canned software.

6. "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state, the State of Washington, or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind. (Public road construction)

7. "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or City housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation (government contracting).

8. "Sale at retail" or "retail sale" shall not include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or City housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development. (This should be reported under the service and other classification.)

9. "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and services rendered for environmental remedial action as defined in RCW 82.04.2635(2). (This should be reported under the service and other classification.)

S. "Sale at wholesale," "wholesale sale." means any sale of tangible personal property which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of network telephone service to a telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715.

T. "Services."

U. "Taxpayer." means any "person", as herein defined, required to have a business license under this chapter or liable for the collection of any tax or fee under this chapter, or who engages in any business or who performs any act for which a tax or fee is imposed by this chapter.

V. "Value proceeding or accruing." "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. The value proceeding or accruing from sales on the installment plan under conditional contracts of sale shall be reported as of the dates when the payments become due.

W. "Value of products."

1. The value of products, including by-products, extracted or manufactured, shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or by-products by the seller.
2. Where such products, including by-products, are extracted or manufactured for commercial or industrial use; and where such products, including by-products, are shipped, transported or transferred out of the City, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products. In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs. The Director may prescribe rules for the purpose of ascertaining such values.

3. Notwithstanding subsection (2) above, the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond to (a) the retail selling price of such new or improved product when first offered for sale; or (b) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

X. “Wholesaling.” means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification.

5.06.040 Imposition of the tax - Tax or fee levied.

A. Except as provided in subsection (B) of this section, there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the City, whether the person’s office or place of business is within or without the City. The tax shall be in amounts to be determined by application of rates against the square footage of office space in Algona and/or gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as follows:

1. Square footage tax - Upon every person within this City who maintains an office(s) or facility(s) in excess of three thousand (3,000) square feet, the amount of tax shall be equal to \$0.15 for each quarterly period of a calendar year for each square foot of building floor space calculated to the nearest square foot. Any person subject to taxes under subsections 2 through 7 shall be exempt from the square footage tax.
2. Upon every person engaging within the City in business as an extractor, the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, extracted for sale or for commercial or industrial use, multiplied by the rate of .045 of one percent (.00045). The measure of the tax is the value of the products, including by-products, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the City.
3. Upon every person engaging within the City in business as a manufacturer, the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured within the City, multiplied by the rate of .045 of one percent (.00045). The measure of the tax is the value of the products, including by-products, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the City.
4. Upon every person engaging within the City in the business of making sales at wholesale, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of .045 of one percent (.00045).

5. Upon every person engaging within the City in the business of (i) printing, (ii) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (iii) publishing newspapers, magazines and periodicals, (iv) extracting for hire, and (v) processing for hire; as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of .045 of one percent (.00045).
6. Upon every person engaging within the City in the business of making sales at retail, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of .045 of one percent (.00045).
7. Upon every person engaging within the City in the business of sales of retail services, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales shall be equal to the gross proceeds of sales multiplied by the rate of .045 of one percent (.00045).
8. Upon every other person engaging within the City in any business activity other than or in addition to those enumerated in the above subsections, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of .045 of one percent (.00045). This subsection includes, among others, and without limiting the scope hereof (whether or not title to material used in the performance of such business passes to another by accession, merger or other than by outright sale), persons engaged in the business of developing, or producing custom software or of customizing canned software, producing royalties or commissions, and person engaged in the business of rendering any type of service which does not constitute a sale at retail, a sale at wholesale, or a retail service.

B. The gross receipt tax imposed in this section shall not apply to any person whose gross proceeds of sales, gross income of business, and value of products, including by-products, from all activities conducted within the City during any calendar year is equal to or less than forty-thousand dollars (\$40,000), or is equal to or less than ten thousand dollars (\$10,000) during any quarter if on a quarterly reporting basis.

5.06.050 Doing business with the City.

A. Except where such a tax is otherwise levied and collected by the City from such person, there is hereby levied a tax on the privilege of accepting or executing a contract with the City. Such tax shall be levied and collected whether goods or services are delivered within or without the City and whether or not such person has an office or place of business within or without the City.

B. As to such persons the amount of tax shall be equal to the gross contract price multiplied by the rate under section 5.06.040 that would otherwise apply if the sale or service were taxable pursuant to that section.

5.06.060 Multiple activities credit when activities take place in one or more cities with eligible gross receipt taxes.

- A. Persons who engage in business activities that are within the purview of two (2) or more subsections of 5.06.040 shall be taxable under each applicable subsection.
- B. Notwithstanding anything to the contrary herein, if the Director finds that the imposition of the City's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the City's tax, and still apply the City tax to as much of the taxpayer's activities as may be subject to the City's taxing authority.
- C. To take the credit authorized by this section, a taxpayer must be able to document that the amount of tax sought to be credited was paid upon the same gross receipts used in computing the tax against which the credit is applied.
- D. Credit for persons that sell in the City products that they extract or manufacture. Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid (1) with respect to the manufacturing of the products sold in the City, and (2) with respect to the extracting of the products, or the ingredients used in the products, sold in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.
- E. Credit for persons that manufacture products in the City using ingredients they extract. Persons taxable under the manufacturing classification with respect to manufacturing products in this City shall be allowed a credit against those taxes for any eligible gross receipts tax paid with respect to extracting the ingredients of the products manufactured in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.
- F. Credit for persons that sell within the City products that they print, or publish and print. Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid with respect to the printing, or the printing and publishing, of the products sold within the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

5.06.070 Deductions to prevent multiple taxation of transactions involving more than one City with an eligible gross receipts tax.

- A. Amounts subject to an eligible gross receipts tax in another City that also maintains nexus over the same activity. A taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:
 - 1. A taxpayer that has paid an eligible gross receipts tax, with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the City.

2. Notwithstanding the above, a person that is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties, trademarks, patents, or goodwill may deduct from the measure of the tax on those amounts the gross income used in measuring the eligible gross receipts tax paid to the other jurisdiction where the person's headquarters is located.
3. A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with another City may deduct an amount equal to the contract price used to measure the tax due to the other City from the measure of the tax owed to the City.

B. Person manufacturing products within and without the City. A person manufacturing products within the City using products manufactured by the same person outside the City may deduct from the measure of the manufacturing tax the value of products manufactured outside the City and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products.

5.06.080 Assignment of gross income derived from intangibles.

Gross income derived from the sale of intangibles such as royalties, trademarks, patents, or goodwill shall be assigned to the jurisdiction where the person is located.

5.06.090 Exemptions

A. Non-profit corporations or non-profit organizations. This chapter shall not apply to non-profit organizations exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as hereafter amended, except with respect to retain sales of such persons.

B. City exempt from Tax. The City of Algona is exempt from the tax levied by this chapter.

C. Public Utilities. This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of Chapter 5.08 AMC.

D. 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.

E. Employees.

1. This chapter shall not apply to any person in respect to the person's employment in the capacity as an employee or servant as distinguished from that of an independent contractor. For the purposes of this subsection, the definition of employee shall include those persons that are defined in the Internal Revenue Code, as may be amended hereafter.
2. A booth renter, as defined by RCW 18.16.020, is an independent contractor for purposes of this chapter.

F. Amounts derived from sale, lease or rental of real estate. This chapter shall not apply to gross proceeds derived from the sale, lease or rental of real estate. This, however, shall not be construed to allow an exemption of amounts received as commissions from the sale of real estate, nor as fees, handling charges, discounts, interest or similar financial charges resulting from, or relating to, real estate transactions. This chapter shall also not apply to amounts received for the rental of real estate if the rental income is derived from a contract to rent for a continuous period of thirty (30) days or longer.

G. Mortgage brokers' third-party provider services trust accounts. This chapter shall not apply to amounts received from trust accounts to mortgage brokers for the payment of third-party costs if the accounts are operated in a manner consistent with RCW 19.146.050 and any rules adopted by the director of financial institutions.

H. Amounts derived from manufacturing, selling or distributing motor vehicle fuel. This chapter shall not apply to the manufacturing, selling, or distributing motor vehicle fuel, as the term "motor vehicle fuel" is defined in RCW 82.36.010 and exempt under RCW 82.36.440, provided that any fuel not subjected to the state fuel excise tax, or any other applicable deduction or exemption, will be taxable under this chapter.

I. Amounts derived from liquor, and the sale or distribution of liquor. This chapter shall not apply to liquor as defined in RCW 66.04.010 and exempt in RCW 66.08.120.

J. Casual and isolated sales. This chapter shall not apply to the gross proceeds derived from casual or isolated sales.

K. Accommodation sales. This Chapter shall not apply to sales for resale by persons regularly engaged in the business of making retail sales of the type of property so sold to other persons similarly engaged in the business of selling such property where:

1. The amount paid by the buyer does not exceed the amount paid by the seller to the vendor in the acquisition of the article, and
2. The sale is made as an accommodation to the buyer to enable the buyer to fill a bona fide existing order of a customer or is made within fourteen (14) days to reimburse in kind a previous accommodation sale by the buyer to the seller.

L. Taxes collected as trust funds. This Chapter shall not apply to amounts collected by the taxpayer from third parties to satisfy third party obligations to pay taxes such as the retail sales tax, use tax, and admission tax.

5.06.100 Deductions

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

A. Receipts from tangible personal property delivered outside the State. In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property that is received by the purchaser or its agent outside the State of Washington.

B. Cash discount taken by purchaser. In computing tax, there may be deducted from the measure of tax the cash discount amounts actually taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extracting or manufacturing classifications with respect to articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the "value of product" provisions.

C. Credit losses of accrual basis taxpayers. In computing tax, there may be deducted from the measure of tax the amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis.

D. 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.

5.06.110 Tax Part of Overhead

It is not the intention of this chapter that the taxes or fees herein levied upon persons engaging in business be construed as taxes or fees upon the purchasers or customer, but that such taxes or fees shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes or fees shall constitute a part of the cost of doing business of such persons.

5.06.120 Severability Clause

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 4. Referendum Procedure

A referendum petition with respect to this ordinance may be filed with the City Clerk within seven days of the passage of this ordinance. The referendum procedures set forth in RCW 36.17.240 through 35.17.360, as hereafter amended shall apply, with the following additions and amendments as required by 35.21.706:

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

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

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

Section 3. This Ordinance shall take effect January 1, 2005.

PASSED this 7th day of December 2004 and signed in authentication of its passage this 7th day of December 2004.

Joe Scholz, Mayor

Attest:

Danielle M. Stafford, City Clerk/Treasurer

Approved as to Form:

George S. Kelley, City Attorney