



Legislation Details (With Text)

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On agenda: 5/14/2018
Final Action: 5/21/2018 **Ord. No.** Ord 125578
Title: AN ORDINANCE relating to taxation; adding a new Chapter 5.37 and a new Chapter 5.38 to Title 5 of the Seattle Municipal Code; and amending Sections 5.30.010, 5.30.060, 5.55.010, 5.55.040, 5.55.060, 5.55.150, 5.55.165, 5.55.220, and 5.55.230 of the Seattle Municipal Code.
Sponsors: M. Lorena González, Lisa Herbold, Teresa Mosqueda, Mike O'Brien

Indexes:

Attachments: 1. Summary and Fiscal Note, 2. Amendment 22B (added; 5/15/18), 3. Amendment 24 (added; 5/15/18), 4. Amendment 1 (v2; updated 5/11/18), 5. Amendment 2, 6. Amendment 5a, 7. Amendment 6, 8. Amendment 8, 9. Amendment 9, 10. Amendment 17 (added; 5/11/18), 11. Amendment 19 (added; 5/11/18), 12. Memo - McKinsey Report (added; 5/11/18), 13. Central Staff Memo - Business Tax Issue ID (5/9/18), 14. Signed Ordinance 125578, 15. Affidavit of Publication

Date	Ver.	Action By	Action	Result
5/16/2018	3	City Clerk	attested by City Clerk	
5/16/2018	3	Mayor	returned	
5/16/2018	3	Mayor	Signed	
5/15/2018	3	City Clerk	submitted for Mayor's signature	
5/14/2018	1	City Council	passed as amended	Pass
5/11/2018	1	Finance and Neighborhoods Committee	pass as amended	Pass
5/9/2018	1	Finance and Neighborhoods Committee	discussed	
5/7/2018	1	City Council	referred	
5/7/2018	1	Council President's Office	sent for review	
5/7/2018	1	City Clerk	sent for review	

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to taxation; adding a new Chapter 5.37 and a new Chapter 5.38 to Title 5 of the Seattle Municipal Code; and amending Sections 5.30.010, 5.30.060, 5.55.010, 5.55.040, 5.55.060, 5.55.150, 5.55.165, 5.55.220, and 5.55.230 of the Seattle Municipal Code.

WHEREAS, Seattle is a city of great prosperity that has experienced tremendous growth of its economy and population; however, this growth and prosperity has directly contributed to the rapid increase in the

number of individuals and families experiencing homelessness; and

WHEREAS, a national study published in the *Journal of Urban Affairs* established the correlation between increasing rent and homelessness. Some of the report findings include: (1) Washington is the tenth most expensive state for renters; (2) the high cost of rental housing is driving increases in homelessness; and (3) an increase of \$100 in median rent for an area results in a 15 percent (metro areas) and a 39 percent (nearby suburbs and rural areas) increase in homelessness; and

WHEREAS, the U.S. Internal Revenue Service states that “a progressive tax takes a larger percentage of income from high-income groups than from low-income groups and is based on the concept of ability to pay”; and

WHEREAS, the *Seattle Times* recently wrote that “Seattle rents have soared 65 percent since 2010. The typical Seattle renter now pays about \$21,900 for rent over the course of a year, up from \$13,200 at the start of the decade.” That same article also highlighted that the average two-bedroom apartment in Seattle costs \$2,000 a month for the first time in Seattle’s history and that “rents across the Puget Sound region are still rising faster than the historical norm, and the market remains hotter than most other U.S. cities”; and

WHEREAS, according to the 2017 Seattle/King County Point-in-Time Count, there are at least 3,857 individuals living unsheltered in Seattle, in addition to at least 4,665 more individuals who are experiencing homelessness but are sheltered, for a total of no fewer than 8,522 individuals in the City who are experiencing homelessness on any given night; and

WHEREAS, on November 2, 2015, the Mayor of Seattle issued a Proclamation of Civil Emergency related to homelessness; on November 3, 2015, the City Council adopted Resolution 31630 ratifying and confirming the Mayoral Proclamation of Civil Emergency; and the civil emergency remains in effect. More than two years later, the City has not received additional support from Washington State or the federal government, and there are now roughly 38 percent more Seattle residents who are homeless and

living unsheltered than just two years ago; and

WHEREAS, according to the Housing Development Consortium, Seattle households at or below 30 percent of Area Median Income (AMI) had a “housing gap” of 17,161 units in 2016, and this “housing gap” is projected to grow to 27,481 units by 2030; and

WHEREAS, the City’s Housing Affordability and Livability Agenda is projected to create approximately 6,000 new housing units affordable to households with at or below 30 percent AMI over the next ten years, which will still leave a severe shortage of housing for low-income residents who are either currently unhoused or at risk of becoming unhoused; and

WHEREAS, The City of Seattle and the non-profit sector cannot address the twin crises of homelessness and lack of affordable housing on their own. In addition, existing resources at the City’s disposal-including state, county, federal, and private resources-have been inadequate despite the best efforts of many individuals and publicly and privately managed programs; and

WHEREAS, all sectors of our society must work together to address and resolve the civil emergency related to homelessness, and to ensure that there are sufficient resources to realize Seattle’s and King County’s commitment to making sure that no person experiences homelessness; that if one does, it is rare, brief and only a one-time occurrence; and that racial disparities are eliminated. This collaborative effort requires the active engagement of interested and affected stakeholders, including non-profit organizations, affordable housing providers, faith and civic leaders, businesses, labor, and community members; and

WHEREAS, on November 20, 2017, the City Council unanimously adopted Resolution 31782, establishing a process by which The City of Seattle will determine new progressive revenues including an Employee Hours Tax, expressing the City Council’s intent to impose such potential revenues, and expressing the City Council’s intent to make investments with these revenues that would assist people who are homeless or at a high risk of becoming homeless in obtaining and retaining stable housing; and

WHEREAS, Resolution 31782 established a Progressive Revenue Task Force (“Task Force”) and requested that the Task Force evaluate and determine “appropriate tax rates and possible exemption levels that are expected to yield between \$25 million and \$75 million in revenue per year”; and

WHEREAS, the Progressive Revenue Task Force’s March 9, 2018, final report recommended that the City seek to collect \$75 million from a new Employee Hours Tax, a new Payroll Tax, or both to address homelessness and affordable housing; and

WHEREAS, the City will enact an employee hours tax to be followed and replaced by a business payroll tax, but because of uncertainty in the timeline due to administrative processes, if the imposition of the business payroll tax is delayed then the employee hours tax will remain in effect; and

WHEREAS, the City intends to exercise its taxing authority, as granted by the Washington State Constitution and as authorized by the Washington State Legislature; and

WHEREAS, the City intends to spend the proceeds of a new business tax as described in the spending plan in Resolution 31810; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Chapter 5.37 is added to the Seattle Municipal Code as follows:

Chapter 5.37 EMPLOYEE HOURS TAX

5.37.010 Administrative provisions

All of the provisions contained in Chapter 5.55 shall have full force and application with respect to taxes imposed under the provisions of this Chapter 5.37 except as may be expressly stated to the contrary herein.

5.37.020 Definitions

The definitions contained in Chapter 5.30 shall be fully applicable to this Chapter 5.37 except as may be expressly stated to the contrary herein. The following additional definitions shall apply throughout this Chapter 5.37:

“Employee” means any person who performs work, labor, or services for a business, is on the business’s

payroll, and performs any part of their duties within the City of Seattle. For purposes of this Chapter 5.37, the term “employee” also includes all full-time, part-time, and temporary employees or workers on the business’s payroll. A business’s payroll includes the payroll of any related company that acts as a paymaster for the related entities. Members of limited liability companies, professional limited liability companies, and partners shall be considered employees.

“Full-time employee” means an employee who works at least 480 hours in a quarter of a calendar year.

“Part-time employee” means an employee who works fewer than 480 hours in a quarter of a calendar year.

“Payroll” means the remuneration by a business to the employees who perform work, labor, services, or make other similar contributions for the business. Payroll includes, but is not limited to, salaries, wages, tips, or other draws or distributions made to employees, officers, partners, or members of limited liability companies and professional limited liability companies as compensation for their labor and services.

5.37.030 Tax imposed-Measure of the tax

A. An employee hours tax is hereby levied upon and shall be collected from every person for the act or privilege of engaging in business activities within the City. The tax shall be measured by the number of employee hours of work conducted within the City during each quarter of the calendar year.

B. The amount of the tax shall be equal to the employee hours worked within the City during each quarter of the calendar year, multiplied by the rate of \$0.14323 per hour worked. The employee hours worked exclude vacation and sick leave hours. If an employee works both within and outside the City, it will be the responsibility of the business to calculate and report the number of hours worked within the City.

C. Alternative Full Time Equivalent (FTE) calculation method. A business may choose to calculate its quarterly employee hours tax based on the number of its FTE employees as follows:

1. Calculation of FTEs. The number of FTE employees for each quarter of the calendar year is (a) the number of a business’s full-time employees for the quarter, plus (b) the sum of the hours worked by

part-time employees in the quarter divided by 480 hours.

2. Tax. Any fractional FTE remaining after the determination of FTE employees under subsection 5.37.030.C.1 shall be rounded up to the nearest whole number. Once the number of FTE employees is thus determined, that number shall be multiplied by \$68.75 to determine the quarterly employee hours tax.

D. Businesses with more than one place of business must use the same method of calculation for all places of business.

E. The tax applies to employee hours worked or FTEs inside the City regardless of whether the place of business is located within or outside the City.

F. Temporary employment agencies that supply temporary employees to businesses engaging in business activities within the City, and pay the temporary employee's salary or other compensation, shall report and pay the tax on all such temporary employees. Businesses engaging temporary employees who are on the business's payroll shall report and pay the tax on the employee hours of such temporary employees, whether or not they are from an employment agency.

G. The employee hours tax imposed by this Section 5.37.030 shall be in effect from January 1, 2019 through December 31, 2023. All employee hours tax obligations under this Chapter 5.37 for 2019 through 2023 will remain in effect and due and payable as scheduled.

5.37.040 Employee hours tax-When due

Taxpayers that file and pay their business license tax under Chapter 5.45 on a quarterly basis shall file and pay the employee hours tax on a quarterly basis and taxpayers that file and pay their business license tax under Chapter 5.45 on an annual basis shall file and pay the employee hours tax on an annual basis. Taxpayers shall report the employee hours tax on forms as prescribed by the Director. Taxpayers discontinuing their business activities in Seattle shall report and pay the employee hours tax at the same time as their final business license tax return under Chapter 5.45 is due.

5.37.050 Exemptions from the employee hours tax

A. The following are exempt from the employee hour tax:

1. Any business having taxable gross income under Chapter 5.45 of \$20,000,000 or less in the most recent complete calendar year.
2. Businesses that are preempted from taxation by cities pursuant to federal or state statutes or regulations, including, but not limited to, the following:
 - a. Insurance businesses and their agents as defined by RCW 48.01.050 and 48.17.010, respectively, and whose total revenue is exempt from the business license tax per Chapter 5.45.
 - b. Businesses that only sell, manufacture, or distribute motor vehicle fuel as defined in RCW 82.38.020 and exempted under RCW 82.38.080.
 - c. Businesses that only distribute or sell liquor as defined in RCW 66.04.010 and exempted in RCW 66.08.120.
 - d. Federal and state government agencies and subdivisions.
3. Non-profit organizations that hold a current tax exempt status as provided under Section 501(c)(3) of the Internal Revenue Code, as hereafter amended, or that are specifically exempted from the requirement to apply for tax exempt status under Section 501(c)(3).
4. Hospitals as defined in RCW 70.41.020.
5. Businesses engaged primarily in the provision of comprehensive healthcare services, including primary and specialty care, that provide at least 25% of their services to patients covered by Medicaid or Medicare and to patients who have no third-party payor.

5.37.060 Tax in addition to other license fees or taxes

The tax imposed herein shall be in addition to any license fee or tax imposed or levied under any other law, statute, or ordinance whether imposed or levied by the City, the State, or other governmental entity or political subdivision.

5.37.070 Tax part of operating overhead

It is not the intention of this Chapter 5.37 that the taxes herein levied upon persons engaging in business be construed as taxes upon the purchasers or customers, but that taxes 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 operating overhead or cost of doing business of such persons.

5.37.080 Rules and regulations

The Director shall adopt, publish, and enforce rules and regulations not inconsistent with this Chapter 5.37 for the purpose of carrying out the provisions of this Chapter 5.37, including but not limited to rules to determine employee hours worked within the City.

Section 2. A new Chapter 5.38 is added to the Seattle Municipal Code and shall be reserved for future use.

Section 3. Section 5.30.010 of the Seattle Municipal Code, last amended by Ordinance 125324, is amended as follows:

5.30.010 Definition provisions

The definitions contained in this Chapter 5.30 shall apply to the following chapters of the Seattle Municipal Code: Chapters 5.32 (Amusement Devices), 5.35 (Commercial Parking Tax), 5.37 (Employee Hours Tax), 5.40 (Admission Tax), 5.45 (Business License Tax), 5.46 (Square Footage Tax), 5.48 (Business Tax-Utilities), 5.50 (Firearms and Ammunition Tax), 5.52 (Gambling Tax), 5.53 (Sweetened Beverage Tax), and 5.55 (General Administrative Provisions) unless expressly provided for otherwise therein, and shall also apply to other chapters and sections of the Seattle Municipal Code in the manner and to the extent expressly indicated in each chapter or section. Words in the singular number shall include the plural and the plural shall include the singular. Words in one gender shall include the other genders.

Section 4. Subsections 5.30.060.B and 5.30.060.C of the Seattle Municipal Code, which section was last amended by Ordinance 125324, is amended as follows:

5.30.060 Definitions, T-Z

* * *

B. “Taxable gross income of the business and the value of products,” as used in Section 5.55.030 to determine the business license tax certificate fee, and “taxable gross income” (~~means~~) mean the taxpayer’s total amount of gross proceeds of sale, gross income of the business, and the value of products, less any deductions available to the taxpayer under Chapter 5.45.

C. “Taxpayer” means any “person,” as herein defined, required by Chapter 5.55 to have a business license tax certificate, or liable for any license, tax, or fee, or for the collection of any tax or fee, under Chapters 5.32 (Revenue Code), 5.35 (Commercial Parking Tax), 5.37 (Employee Hours Tax), 5.40 (Admission Tax), 5.45 (Business License Tax), 5.46 (Square Footage Tax), 5.48 (Business Tax-Utilities), 5.50 (Firearms and Ammunition Tax), 5.52 (Gambling Tax), and 5.53 (Sweetened Beverage Tax), or who engages in any business or who performs any act for which a tax or fee is imposed under those chapters.

Section 5. Section 5.55.010 of the Seattle Municipal Code, which was last amended by Ordinance 125324, is amended as follows:

5.55.010 Application of chapter stated

Unless expressly stated to the contrary in each chapter, the provisions of this Chapter 5.55 shall apply with respect to the licenses and taxes imposed under this Chapter 5.55 and Chapters 5.32 (Amusement Devices), 5.35 (Commercial Parking Tax), 5.37 (Employee Hours Tax), (~~Taxes~~), 5.40 (Admission Tax), 5.45 (Business License Tax), 5.46 (Square Footage Tax), 5.48 (Business Tax-Utilities), 5.50 (Firearms and Ammunition Tax), 5.52 (Gambling Tax), 5.53 (Sweetened Beverage Tax), and under other titles, chapters, and sections in such manner and to such extent as indicated in each such title, chapter, or section.

Section 6. Subsection 5.55.040.A of the Seattle Municipal Code, which section was last amended by Ordinance 125324, is amended as follows:

5.55.040 When due and payable-Reporting periods-Monthly, quarterly, and annual returns-Threshold

provisions-Computing time periods-Failure to file returns

A. Other than any annual license fee or registration fee assessed under this Chapter 5.55, the taxes imposed by Chapters 5.32 (Amusement Devices), 5.35 (Commercial Parking Tax), 5.37 (Employee Hours Tax), 5.40 (Admission Tax), 5.45 (Business License Tax), 5.46 (Square Footage Tax), 5.48 (Business Tax-Utilities), 5.50 (Firearms and Ammunition Tax), 5.52 (Gambling Tax), and 5.53 (Sweetened Beverage Tax) shall be due and payable in quarterly installments. The Director may use discretion to assign businesses to a monthly or annual reporting period depending on the tax amount owing or type of tax. Taxes imposed by subsections 5.52.030.A.2 and 5.52.030.B.2 for punchboards and pulltabs shall be due and payable in monthly installments. Tax returns and payments are due on or before the last day of the next month following the end of the assigned reporting period covered by the return.

Section 7. Subsection 5.55.060.A of the Seattle Municipal Code, which section was last amended by Ordinance 125324, is amended as follows:

5.55.060 Records to be preserved-Examination-Inspection-Search warrants-Estoppel to question assessment

A. Every person liable for any fee or tax imposed by this Chapter 5.55 and Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, and 5.53 shall keep and preserve, for a period of five 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, ticket stubs, vendor lists, gambling games, and payout information, inventories, stocks of merchandise, and other data, including federal income tax and state tax returns, and reports needed to determine the accuracy of any taxes due, shall be open for inspection or examination at any time by the Director or a duly authorized agent. Every person's business premises shall be open for inspection or examination by the Director or a duly authorized agent. For the purposes of this Section 5.55.060, for the tax imposed by Chapter 5.53, "business premises" means wherever the person's business

records and tax documents are maintained and does not mean every site owned or operated by the person.

Section 8. Subsection 5.55.150.E of the Seattle Municipal Code, which section was last amended by Ordinance 125324, is amended as follows:

5.55.150 Appeal to the Hearing Examiner

* * *

E. The Hearing Examiner shall ascertain the correct amount of the tax, fee, interest, or penalty due either by affirming, reversing, or modifying an action of the Director. Reversal or modification is proper if the Director's assessment or refund denial violates the terms of this Chapter 5.55, or Chapters 5.30, 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, or 5.53.

Section 9. Section 5.55.165 of the Seattle Municipal Code, last amended by Ordinance 125324, is amended as follows:

5.55.165 Director of Finance and Administrative Services to make rules

The Director of Finance and Administrative Services shall have the power and it shall be the Director's duty, from time to time, to adopt, publish, and enforce rules and regulations not inconsistent with this Chapter 5.55, with Chapters 5.30, 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, or 5.53, or with law for the purpose of carrying out the provisions of such chapters, and it shall be unlawful to violate or fail to comply with any such rule or regulation.

Section 10. Subsections 5.55.220.A and 5.55.220.B of the Seattle Municipal Code, which section was last amended by Ordinance 125324, are amended as follows:

5.55.220 Unlawful actions-Violation-Penalties

A. It shall be unlawful for any person subject to the provisions of this Chapter 5.55 or Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, and 5.53:

1. To violate or fail to comply with any of the provisions of this Chapter 5.55, or Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, and 5.53, or any lawful rule or regulation adopted by the

Director;

2. To make or manufacture any license required by this Chapter 5.55 except upon authority of the Director;
3. To make any false statement on any license, application, or tax return;
4. To aid or abet any person in any attempt to evade payment of a license fee or tax;
5. To refuse admission to the Director to inspect the premises and/or records as required by this Chapter 5.55, or to otherwise interfere with the Director in the performance of duties imposed by Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, and 5.53;
6. To fail to appear or testify in response to a subpoena issued pursuant to Section 3.02.120 in any proceeding to determine compliance with this Chapter 5.55 and Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, and 5.53;
7. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this Chapter 5.55;
8. To continue to engage in any business activity, profession, trade, or occupation after the revocation of or during a period of suspension of a business license tax certificate issued under Section 5.55.030; or
9. In any manner, to hinder or delay the City or any of its officers in carrying out the provisions of this Chapter 5.55 or Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, and 5.53.

B. Each violation of or failure to comply with the provisions of this Chapter 5.55, or Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, or 5.53 shall constitute a separate offense. Except as provided in subsection 5.55.220.C, any person who commits an act defined in subsection 5.55.220.A is guilty of a gross misdemeanor, punishable in accordance with Section 12A.02.070. The provisions of Chapters 12A.02 and 12A.04 apply to the offenses defined in subsection 5.55.220.A, except that liability is absolute and none of the mental states described in Section 12A.04.030 need be proved.

Section 11. Subsection 5.55.230.A of the Seattle Municipal Code, which section was last amended by Ordinance 125324, is amended as follows:

5.55.230 Denial, revocation of, or refusal to renew business license tax certificate

A. The Director, or the Director's designee, has the power and authority to deny, revoke, or refuse to renew any business license tax certificate or amusement device license issued under the provisions of this Chapter 5.55. The Director, or the Director's designee, shall notify such applicant or licensee in writing by mail in accordance with Section 5.55.180 of the denial of, revocation of, or refusal to renew the license and on what grounds such a decision was based. The Director may deny, revoke, or refuse to renew any business license tax certificate or other license issued under this Chapter 5.55 on one or more of the following grounds:

1. The license was procured by fraud or false representation of fact.
2. The licensee has failed to comply with any provisions of this Chapter 5.55.
3. The licensee has failed to comply with any provisions of Chapters 5.32, 5.35, 5.37, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, or 5.53.
4. The licensee is in default in any payment of any license fee or tax under Title 5 or Title 6.

Section 12. Severability. If any part, provision, or section of this ordinance is held to be void or unconstitutional, all other parts, provisions, and sections of this ordinance not expressly so held to be void or unconstitutional shall continue in full force and effect.

Section 13. It is expected that the City Council will conduct a thorough review of the employee hours tax beginning in 2023 to determine whether or not it should be continued and, if it is to be continued, what the rate of tax should be beginning in 2024. In evaluating the tax, the Council should take into account the estimated impact of the tax on employment and wages within the city, the number of new affordable housing units constructed using revenues from the tax, the number of persons experiencing homelessness in the city, and the impact of the services provided by the tax on persons experiencing homelessness.

Section 14. Sections 1 through 12 of this ordinance shall take effect on January 1, 2019.

Section 15. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2018, and signed by me in open session in authentication of its passage this _____ day of _____, 2018.

President _____ of the City Council

Approved by me this _____ day of _____, 2018.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2018.

Monica Martinez Simmons, City Clerk

(Seal)