



CITY OF KIRKLAND
Department of Finance & Administration
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MEMORANDUM

To: Kurt Triplett, City Manager

From: Tracey Dunlap, Deputy City Manager
Michael Olson, Deputy Director, Finance and Administration

Date: February 13, 2015

Subject: UTILITY TAX APPEAL HOUSEKEEPING CHANGE TO KIRKLAND MUNICIPAL CODE

Recommendation:

City Council approves the ordinance amending the appeal process for utility tax audit assessments in the Kirkland Municipal Code (KMC) chapter 5.08.180.

Background Discussion:

The City completed an audit of the telecommunications utility tax for the new neighborhoods in December 2014 which resulted in the recovery of \$518,089 in utility tax payments. \$225,000 of the recovered taxes will be used to fund the New Cingular utility tax claim settlement and the remainder will be placed in the major systems replacement reserve.

The utility tax audit revealed that the appeal process for utility tax assessments is different from most appeal processes outlined in the KMC.

The majority of the appeals in the KMC are presented before the Hearing Examiner while appeals related to utility tax audit assessments must be presented directly to the City Council. Additionally, utility tax appeals have a much shorter filing timeline with taxpayers being required to file to the City Clerk within five days of being given notice of the amount due.

To be consistent with appeal processes related to Finance Director decisions, and to create efficiencies, staff is recommending that the appeal process in KMC 5.08.180 be replaced with the appeal process for business license decisions in KMC 7.02.250. This will bring utility tax assessment appeals before the Hearing Examiner and allow the taxpayer 14 days to file the appeal with the City Clerk.

ORDINANCE O-4478

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE APPEAL PROCESS FOR UTILITY TAX AUDIT ASSESSMENTS AND AMENDING SECTION 5.08.180 OF THE KIRKLAND MUNICIPAL CODE.

1 The City Council of the City of Kirkland do ordain as follows:
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3 Section 1. Kirkland Municipal Code Section 5.08.180 is amended
4 to read as follows:
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6 **5.08.180 Appeals to city council.**

7 ~~All taxpayers aggrieved by the amount of the fee or tax found by~~
8 ~~the director of finance and administration to be required under the~~
9 ~~provisions of this chapter may appeal to the city council from such~~
10 ~~finding by filing a written notice of appeal with the city clerk within five~~
11 ~~days from the time such taxpayer was given notice of such amount. The~~
12 ~~director shall, as soon as practicable, fix a time and place for the hearing~~
13 ~~of such appeal, which time shall be not more than ten days after filing~~
14 ~~of the notice of appeal, and he or she shall cause a notice of the time~~
15 ~~and place thereof to be delivered or mailed to the appellant. At such~~
16 ~~hearing the taxpayer shall be entitled to be heard and to introduce~~
17 ~~evidence in his or her own behalf. The city council shall thereupon~~
18 ~~ascertain the correct amount of the fee or tax by resolution and the city~~
19 ~~clerk shall immediately notify the appellant thereof, which amount,~~
20 ~~together with costs of appeal, if appellant is unsuccessful therein, must~~
21 ~~be paid within three days after such notice is given.~~

22
23 ~~The mayor of the city, or any council member of the city, may, by~~
24 ~~subpoena, require the attendance thereat of any person, and may also~~
25 ~~require him or her to produce any pertinent books and records. Any~~
26 ~~person served with subpoena shall appear at the time and place therein~~
27 ~~stated and produce the books and records required, if any, and shall~~
28 ~~testify truthfully under oath administered by the mayor or any member~~
29 ~~of the city council in charge of the hearing on appeal as to any matter~~
30 ~~required of him or her pertinent to the appeal, and it is unlawful for him~~
31 ~~or her to fail or refuse to do so.~~

32
33 ~~(a) Any person aggrieved by a determination of the director of~~
34 ~~finance and administration ("director") may appeal such determination~~
35 ~~to the hearing examiner pursuant to this section.~~

36
37 ~~(b) Form of Appeal. An appeal must be in writing and must contain~~
38 ~~the following:~~

39
40 ~~(1) The name and address of the appellant;~~

41 ~~(2) A statement identifying the determination of the director from~~
42 ~~which the appeal is taken;~~

43 (3) A statement setting forth the grounds upon which the appeal is
44 taken and identifying specific errors the director is alleged to have made
45 in making the determination; and

46
47 (4) A statement identifying the requested relief from the
48 determination being appealed.

49
50 (c) Time and Place to Appeal. An appeal shall be filed with the
51 director with a copy to the city clerk's office no later than fourteen
52 calendar days following the date on which the city mailed the notice of
53 the determination. Failure to follow the appeal procedures in this section
54 shall preclude the taxpayer's right to appeal.

55
56 (d) Appeal Hearing. The director shall transmit the appeal to the
57 hearing examiner. The hearing examiner shall schedule a hearing date
58 and notify the appellant and the director of such hearing date. The
59 hearing examiner shall conduct an appeal hearing in accordance with
60 this chapter and procedures developed by the hearing examiner, at
61 which time the appellant and the director shall have the opportunity to
62 be heard and to introduce evidence relevant to the subject of the
63 appeal.

64
65 (e) Burden of Proof. The appellant shall have the burden of proving
66 by a preponderance of the evidence that the determination of the
67 director is erroneous.

68
69 (f) Hearing Record. The hearing examiner shall make an electronic
70 sound recording of each appeal hearing unless the hearing is conducted
71 solely in writing.

72
73 (g) Decision of the Hearing Examiner. Following the hearing, the
74 hearing examiner shall enter a decision on the appeal, supported by
75 written findings and conclusions in support thereof. A copy of the
76 findings, conclusions and decision shall be mailed to the appellant and
77 to the director.

78
79 (h) Appeal Not a Stay. Filing an appeal will not stay the effect of
80 the director's determination. Interest and/or penalties shall continue to
81 accrue on all unpaid amounts, notwithstanding the fact that an appeal
82 has been filed.

83
84 (i) A writ of review regarding the decision of the hearing examiner
85 may be sought from King County superior court by the appellant or by
86 the city. A proper request for a writ of review must be filed with the
87 superior court within twenty calendar days following the date that the
88 decision of the hearing examiner was mailed to the parties. Review by
89 the superior court shall be on, and shall be limited to, the record on
90 appeal created before the hearing examiner. Filing with the court does
91 not automatically stay the effect of the city's decision.

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93 Section 2. This ordinance shall be in force and effect five days
94 from and after its passage by the Kirkland City Council and publication,
95 as required by law.

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Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2015.

Signed in authentication thereof this _____ day of _____, 2015.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney