

AM NO. 10-216

MEMO TO: City Council

FROM: John Marchione, Mayor

DATE: October 19, 2010

SUBJECT: **ORDINANCE: UTILITY BUSINESS AND OCCUPATION TAX ON THE CITY OF REDMOND WATER UTILITY**

I. RECOMMENDED ACTION:

Approve the attached ordinance imposing a utility business and occupation tax on the City of Redmond Water Utility.

II. DEPARTMENT CONTACT PERSONS:

Bill Campbell, Director of Public Works	425-556-2733
Ron Grant, Assistant Public Works Director/City Engineer	425-556-2733
Scott Thomasson, Water/Wastewater Engineering Manager	425-556-2829

III. DESCRIPTION:

In March 2010, staff updated City Council on the effects and possible solutions to the Washington State Supreme Court Decision in the Lane vs. Seattle case. The solution presented and supported by consensus provided for the City's Water Utility to bill the General Fund for fire protection services starting in 2011, and at the same time apply a Utility Tax to the water revenues of the utility to be collected from properties within the city service area. This will generate the required funds to pay for this new charge.

The Ordinance (Attachment A), modifies sections 5.44.040, 5.44.050, 5.44.100, and 5.44.110, of the Occupation Tax Chapter in the Redmond Municipal Code. Several sections have been modified to include the term "sales income" and "water sales" in a new occupation added to section RMC 5.44.050. The existing occupations in this section include telephone, power, and natural gas.

The revenues that are subject to the City Utility Tax are defined as water sales that are reportable as Water Distribution Revenues to the State of Washington for state tax purposes. It should be noted that water sold for irrigation purposes is not subject to the

state tax and therefore, the revenues from irrigation sales would not be taxed by the City tax.

The utility tax is not an increase in water rates to the City's customers, but rather a change in the way revenues supporting costs for fire protection will be collected and expensed.

The attached ordinance is subject to state laws that allow for citizen-initiated referendum.

IV. IMPACT:

Fiscal

The charge to the General Fund from the Utility has been set at \$936,697 for both 2011 and 2012. (It is important to note that this number differs from the proposed 2011-2012 budget, as the budget was built on an estimated amount of tax). The tax rate for the utility tax is recommended to be set at 9.229 percent, which is estimated to generate the required revenue to pay the charge. The charge from the utility is proposed to be divided into equal monthly charges. The tax revenues to the General Fund will vary each month as the revenues change with the higher months being in the summer.

The tax revenues in any given year may be more than or less than the charge for fire protection services, as the tax revenues will vary depending on how much water is sold. The primary variables for how much water is sold are how hot or cool the summer is and how much rain there is throughout the year. It is anticipated that the charge to the General Fund for fire protection and the tax rate on water sales will be recalculated every two years with the preparation of the budget and review of the rates.

V. ALTERNATIVE:

The City Council could choose not to adopt the proposed utility tax. This would decrease General Fund revenues by approximately \$1.8 million over the 2011-2012 biennium.

VI. TIME CONSTRAINTS:

The utility tax should be adopted no later than October to allow for it to become effective prior to the beginning of 2011. Adopting the proposed ordinance earlier will give some time to address revenue issues should a referendum petition be filed.

VII. LIST OF ATTACHMENTS:

- A. Proposed ordinance

_____/s/_____
William J. Campbell, Director of Public Works
10/6/2010
Date

Approved for Council Agenda _____/s/_____
John Marchione, Mayor
10/8/2010
Date

ATTACHMENT A

**CITY OF REDMOND
ORDINANCE NO. _____**

AN ORDINANCE OF THE CITY OF REDMOND,
WASHINGTON, IMPOSING A UTILITY BUSINESS AND
OCCUPATION TAX ON THE CITY OF REDMOND WATER
UTILITY; AND PROVIDING FOR REFERENDUM AND
ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of Redmond's water utility provides water for fire hydrant service, which is used by the City of Redmond's fire department to provide local fire protection service; and

WHEREAS, the City's water utility enterprise fund will begin charging the City of Redmond's General Fund for the costs of providing fire hydrant service; and

WHEREAS, imposing a tax on the City's Water Utility Enterprise Fund of 9.229 percent of the retail sales income from the sale of water will raise the amount of revenue needed to pay for the projected costs of providing fire hydrant service to the City; and

WHEREAS, this system of taxing utilities carrying on the business of selling or furnishing water to raise revenue needed in the City's general fund to pay for the costs of providing fire hydrant service has been upheld as constitutional in *Lane v. City of Seattle*, 164 Wn.2d 875, 194 P.3d 977 (2008).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDMOND,
WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Amendment of Sections. RMC 5.44.040,
5.44.050, 5.44.100, and 5.44.110, are hereby amended to read as follows:

5.44.040 Monthly periods.

Except as provided in Section 5.44.050(d), ~~[ON]~~ and after January 1, 1982, there is levied upon and shall be collected from, and paid by as hereinafter provided, every person on account of transacting, carrying on, or engaging in such business activities within the city limits as are described in Section 5.44.050, an occupation tax (sometimes herein referred to as "tax") against the gross monthly income of the business.

5.44.050 Occupations subject - Rate

There are levied and shall be collected annual license fees and occupation taxes against the persons designated on account of the business activities, and in the amounts to be determined by the application of the respective rates against gross income or sales income as follows:

(a) Telephone Business. Upon every person engaged in or carrying on any telephone business within the city, a fee or tax equal to six percent of the total gross income, including revenues from

intrastate long distance toll service, from such business in the city during the current calendar year for which a license is required.

(b) Electric Light and Power. Upon every person engaged in or carrying on the business of furnishing electric light and power within the city, a fee or tax equal to six percent of the total gross income from such business in the city during the current calendar year for which a license is required.

(c) Natural or Manufactured Gas. Upon every person engaged in or carrying on the business of transmitting, distributing, selling and furnishing natural and/or manufactured gas, a tax equal to six percent of the total gross income from such business derived from the sale of gas within the city during the calendar year for which a license is required.

(d) Water. Upon the City of Redmond public water utility, which engages in and carries on the business of furnishing water, a tax equal to 9.229 percent of the total income derived from the sale of water to properties located within the Redmond Service Area as provided in RMC 13.16 during the calendar year in which service is furnished. The taxable income derived from the sale of water to properties located within the Redmond Service Area includes revenues

generated from all fixed monthly charges and volume charges imposed for water service and reportable to the Washington State Department of Revenue as Water Distribution Revenues under RCW 82.16.020. The taxable income does not include revenue derived from the sale of water for irrigation purposes, connection fees, accrued interest, or other sources not directly attributable to the quantity of water sold during the monthly period described in Section 5.44.040.

5.44.100 Exceptions and deductions.

(A) There shall be accepted and deducted from the total gross income or sales income upon which the license fee or tax is computed the following:

(1) That portion of the gross income derived from charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services.

(2) Charges by a taxpayer engaging in a telephone business or to a telecommunications company, as defined in RCW 80.04.010, for telephone service that the purchaser buys for the purpose of resale.

(3) Adjustments made to a billing or to a customer account or to a telecommunications company

accrual account in order to reverse a billing or charge that had been made as a result of third-party fraud or other crime and was not properly a debt of a customer.

(4) There shall be excepted and deducted from the total gross income or sales income upon which the tax is computed all cash discounts allowed and actually granted to customers of the taxpayer during the tax year.

(5) So much thereof as is derived from the transactions in interstate or foreign commerce, or from business done for the government of the United States, its officers or agents in their official capacity, and any amount paid by the taxpayer to the United States, the state of Washington, as excise taxes levied or imposed on the sale or distribution of property or service.

(B) There shall be accepted and deducted from the total gross income or sales income upon which the tax is computed all bad debts for services incurred, rendered or charged for during the tax year. Debts shall be deemed bad and uncollectible when they have been written off the books of the taxpayer. In the event debts are subsequently collected, the income shall be reported in the return for the quarter in

which the debts are collected and at the rate prevailing in the tax year when collected.

(C) Nothing in this chapter shall be construed as requiring a license, or the payment of a license fee or tax, or the doing of any act, which would constitute an unlawful burden or interference in violation of the Constitution or laws of the United States or which would not be consistent with the Constitution or laws of the State of Washington.

5.44.110 Books and records required - Returns confidential.

It shall be the duty of each taxpayer taxed upon his/her or its gross income or sales income to keep and enter in a proper book or set of books or records an account which shall accurately reflect the amount of his/her or its gross income or sales income, which account shall always be open at the principal place of business to the inspection of the City Clerk, or the Clerk's duly authorized agent, and from which the officer or agent may verify the return made by the taxpayer. Such records shall be preserved for a period of five years.

The City Clerk, or the Clerk's duly authorized agent, shall not publicly reveal any facts or information contained in any return filed by any

taxpayer or disclosed in any investigation or examination of the taxpayer's books and records, provided, the City Clerk, or the Clerk's duly authorized agent, can disclose such information pursuant to those exceptions authorized under state law, RCW 82.32.330 and 42.17.310(1)(C).

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. This ordinance is subject to referendum as set forth in RCW 35.21.706. Any duly qualified person may file a referendum petition with the City Clerk within seven (7) days after the passage of this ordinance. In the event that such a petition is filed, the City Clerk shall, within ten (10) days confer with the petitioner regarding the form and style of the petition, secure an accurate, concise, and positive ballot title from the City Attorney, and assign an identification number to the petition. Thereafter, the petitioner shall have thirty (30) days within which to gather signatures from not less than 15 percent of the City's registered voters as of the last municipal general election upon petition forms which contain the ballot title and the full text

of the measure to be referred. In the event that no referendum petition is filed, this ordinance shall take effect on and after the 1st day January, 2011, and after publication of an approved summary thereof consisting of the title.

ADOPTED by the Redmond City Council this ____ day of _____, 2010.

APPROVED:

MAYOR JOHN MARCHIONE

ATTEST/AUTHENTICATED:

CITY CLERK MICHELLE M. MCGEHEE, CMC

(SEAL)

APPROVED AS TO FORM:

CITY ATTORNEY JAMES E. HANEY

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.