ORIGINAL

CITY OF REDMOND
ORDINANCE NO. 2545

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

<u>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.</u>

5.44.100 Exceptions and deductions.

<u>**(A)**</u> There shall be excepted and deducted from the total gross income <u>**or sales income**</u> 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 excepted 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 19^{th} day of October, 2010.

APPROVED:

JOHN MARCHIONE, MAYOR

ATTEST:

MICHELLE M. MCGEHEE, CMC, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

JAMES E. HANEY, CITY ATTORNEY

FILED WITH THE CITY CLERK:	October 13, 2010
PASSED BY THE CITY COUNCIL:	October 19, 2010
SIGNED BY THE MAYOR:	October 19, 2010
PUBLISHED:	October 25, 2010
EFFECTIVE DATE:	October 30, 2010
ORDINANCE NO. 2545	

ADOPTED 7-0: Allen, Carson, Cole, Margeson, Myers, Stilin and Vache