

Skyline Tower
Suite 1500
10900 NE 4th Street
Bellevue, WA 98004

Eric C. Frimodt
Attorney at Law
Dir: 425.450.4262
efrimodt@insleebest.com

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SENT VIA EMAIL

Honorable Members of the City Council
City of Burien
400 SW 152nd St., Suite 300
Burien, WA 98166

Re: Comments on Ordinance No. 744 Imposing 8% Utility Tax

Dear Members of the Burien City Council,

I am writing on behalf of Highline Water District (“District”) to provide additional comments on proposed Ordinance No. 744 (“Ordinance”) pursuant to which the City seeks to impose an 8% utility tax on water and sewer utilities serving Burien’s residents and businesses.

On October 13, 2020, the District’s General Manager sent the City Manager an email raising three primary objections to the Ordinance relating to the following: (1) the definition of “gross income” in Section 5(6) of the Ordinance, (2) the requirement for “monthly installment” payments required in Section 7 of the Ordinance and (3) the imposition of a 10% penalty if payments are not made within 15 days as required in Section 10 of the Ordinance. Based on the City Manager’s email sent to the District on October 14, 2020, the City made revisions to the draft Ordinance to address the latter two issues. The current version of the Ordinance now allows water and sewer utilities to make bi-monthly payments and provides for a period of 30 days before a penalty will be imposed for delinquent payments. On behalf of the District, I want to express our appreciation to the City for these revisions as they take into account the realities of how the District collects rates and charges and remits payments. Unfortunately, the City Manager indicated that the City was unwilling to make any revisions to the definition of “gross income” contained in Section 5(6) of the Ordinance. As such, that issue remains unresolved.

The District remains concerned about the City’s imposition of an 8% utility tax which will lead directly to increases in the monthly rates and charges for water and sewer service provided to the residents and businesses located in Burien. While the District recognizes the City has the legal authority to impose a utility tax, the District does not believe it is the right time to be imposing new taxes that will result in utility rate increases on Burien’s residents and businesses. The

Attorneys at Law

Charlotte A. Archer
Richard A. Bersin
Kay L. Brossard
Curtis J. Chambers
Daniel G. Findley
Eric C. Frimodt
J. Todd Henry
Anneliese E. Johnson
Rosemary A. Larson
David J. Lawyer
Mark S. Leen
William A. Linton
Kathryn Felice Peterson
Christopher W. Pirnke
Dawn F. Reitan
Aleksander R. Schilbach
Daniel N. Shin
Gregory L. Ursich
Katherine F. Weber
Brett N. Wiese
Kinnon W. Williams
Juliana U. Wong

COVID-19 pandemic has resulted in significant financial hardship on many of Burien's residents and businesses. As has been noted in comments made by other water-sewer districts serving within Burien, the City's proposed utility tax is regressive nature and will disproportionately impact the lowest income residents of Burien. Given the current economic hardships faced by many of your residents and businesses, it is the wrong time to be imposing a new utility tax that will result in increased costs for basic and essential services like water and sewer. The District respectfully requests that the City re-think its decision to move forward with the imposition of an 8% utility tax on water and sewer districts serving within Burien.

The City Manager recently advised the District that the City was unwilling to make revisions to the definition of "gross income." It should be noted that Section 5(6) of the Ordinance refers to the term "Gross income of Gross Proceeds of Sales." However, this defined term is not used elsewhere in the Ordinance. Therefore, it appears that a drafting error has occurred that needs to be corrected. Another, and more significant issue, involves the City's efforts to impose a utility tax on the District's gross income. The District believes strongly that the utility tax should only be applied to revenues derived from the sale of water, excluding revenues associated with the provision of fire suppression services, which constitute the vast majority of the District's revenues. However, the District also receives revenues from other sources such as late fees and penalties, shut off and reconnection fees, permit and application fees, connection charges, contributed assets, sale of surplus property, and the recovery of costs associated with work or services performed in connection with repairs and developer extension projects. None of these sources of income should be subject to the utility tax. Further, there is a significant legal question outstanding as to the propriety of the City imposing a utility tax on street light revenues and that portion of the District's revenues that are related to the provision of fire suppression services, both of which are governmental functions. The District believes that it is improper for the City to impose a utility tax on District revenues associated with the provision of governmental services.

If the City moves forward with the Ordinance in its current form without resolving these the issues relating to the definition of "gross income," then I anticipate that further discussions and negotiations between the City staff and the District's staff and legal counsel will be necessary, including potential legal action, to obtain some clarity on these issues. The District would like to avoid the need for these types of efforts. For that reason, the District again requests that the City clarify the definition of gross income so that it is limited to revenues derived from the sale of water, excluding revenues associated with the provision of fire suppression services.

The District appreciates the opportunity to provide these additional comments on Ordinance 744.

Very truly yours,

Eric C. Frimodt

ECF:

cc: Matt Everett, Highline Water District
Garmon Newsom II, Burien City Attorney

