Agenda Bill

City Council Regular Business Meeting - 02 Nov 2020

Department	Staff Contact
Finance	Eric Christensen, Finance Director

Agenda Bill Title

Adopt Ordinance No. 744, Providing for Water and Sewer Utility Taxes

Summary

In response to the General Fund Revenue Options presentation on September 10, 2020, the Council directed staff to include the new Water and Sewer Utility Tax in the 2021-2022 Preliminary Budget and to return with an ordinance to impose the 8 percent tax on the utility districts. This tax will provide a new and stable revenue source for the General Fund to assist with funding important ongoing programs and services. The revenues will be deposited into the General Fund and are unrestricted. Staff will explore adding the Water and Sewer Utility Tax to the Utility Relief Program for low-income households with the utilities and will followup accordingly.

In response to feedback from water and sewer utilities, changes were made to the proposed utility code amendment. One request was to allow payments to be made by the utility bi-monthly rather than monthly. This applies to only the water and sewer utilities and not the other utilities operating in Burien. The other request was to increase the grace period for payment from 15 to 30 calendar days. It was a minor adjustment to strike 15 and insert 30. This will apply to all utilities ensuring that we are treating them fairly and equitably. In addition, the ordinance has been revised to simplify the definitions and address the concerns of the Council.

Options

1. Adopt Ordinance No. 744.
2. Do not adopt Ordinance No. 744.

Administrative Recommendation

Administration recommends adoption of Ordinance No. 744.

Suggested Motion

I move to adopt Ordinance No. 744, Providing for Water and Sewer Utility Taxes.

Fiscal Impact

For the General Fund, the estimated annual impact is $1.3 million in new revenues.

Attachments

2020 10 28 Ordinance No. 744 Utility Tax Amendment

CITY OF BURIEN, WASHINGTON

ORDINANCE NO. 744

AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, AMENDING CHAPTER 3.12 OF THE BURIEN MUNICIPAL CODE TO AUTHORIZE AND LEVY UTILITY TAXES TO FUND ALL ASPECTS OF MUNICIPAL GOVERNMENT BY ESTABLISHING REGULATIONS REGARDING THE SAME, PROVIDING FOR A REFERENDUM, AUTHORIZING CITY OFFICIALS TO TAKE NECESSARY ACTIONS, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council finds it necessary to establish new and stable sources of revenue to fund municipal services, address Burien's fiscal sustainability problems, and to respond to the COVID-19 pandemic and public health emergency;

WHEREAS, the City Council of the City of Burien desires to protect Burien's future financial soundness, minimize financial risk, and promote sound financial management;

WHEREAS, the City of Burien's General Fund expenditures are growing at a faster rate than revenues resulting in a structural imbalance, and though this imbalance is exacerbated by COVID-19, the imbalance existed before COVID-19;

WHEREAS, the financial projection from 2021 to 2030 reflects that without any revenue increases, expenditure reductions, or a combination of expenditure reductions and revenue increases, Burien must rely on its fund balance in certain years to offset the operating deficits;

WHEREAS, RCW Chapters 35.21 and 35.22 authorize the City of Burien to collect excise taxes from persons conducting business within Burien;

WHEREAS, the Washington Supreme Court held in *Lakehaven Water & Sewer Dist. v. City of Fed. Way*, 195 Wn.2d 742, 466 P.3d 213 (2020), that RCW 35A.82.020 gives cities the authority to impose excise taxes on utility districts, and the governmental immunity doctrine does not shield utility districts from excise taxes because the utilities perform a proprietary function by providing utility services to ratepayers;

WHEREAS, BMC 3.12.040 imposes an excise tax on the total gross incomes of the following: any person selling, furnishing, or transmitting electric energy; any person selling, furnishing, or transmitting gas, whether natural or manufactured; any person engaged in or carrying on any telephone business; any person selling, furnishing or transmitting cable television service; any person engaged in or carrying on the business of collecting solid waste;

WHEREAS, BMC 3.12.040 does not impose an excise tax on the gross incomes from water services or sewer services provided by public and private utilities;

WHEREAS, the City of Burien needs for the business activities of public and private water services and sewer services in Burien to be subject to an excise tax according to BMC 3.12.040;

WHEREAS, the City Council finds it necessary to expand the types of excise taxes levied by Burien to pay for municipal expenses, programs, and services;

WHEREAS, the City Council must balance Burien's need for new revenue sources to pay for municipal services with the burden of an excise tax on public and private water and sewer utilities;

WHEREAS, the City Council has determined that it is in the public's best interest that Burien impose an excise tax on public and private utilities operating, doing business, or providing water and sewer services in the City of Burien;

WHEREAS, the City of Burien does not control, determine, or set the rates for any of the utilities operating, doing business, or providing utility service in the City of Burien; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Findings. The City Council adopts the recitals stated above, incorporated by reference, as findings supporting the adoption of this Ordinance.

Section 2. Purpose and Need. The City Council finds that the public's best interest requires the adoption of this Ordinance levying utility taxes to fund and sustain important programs and services. Additionally, the Council finds that it is necessary to adopt this Ordinance to respond to the COVID-19 pandemic and public health emergency.

Section 3. Section 3.12.010, entitled **Use and accountability of tax proceeds.**, of the Burien Municipal Code is retitled **Purpose.**, is amended as follows with the remaining portions of this section remaining the same:

> ~~[All revenues collected pursuant to this chapter shall be deposited into the general fund, and shall be used for the funding of city services or capital facilities as the council shall direct through its annual budget process.]~~ The provisions of this chapter shall be deemed to be an appropriate exercise of the power of the City of Burien to license for revenue and to levy a tax on utilities according to the laws of the state of Washington.

Section 4. Section 3.12.020, entitled **Levied.**, of the Burien Municipal Code is retitled **Use and accountability of tax proceeds.**, is amended as follows with the remaining portions of this section remaining the same:

[~~The tax provided for in this chapter shall be known as the "utility tax," and is levied upon the privilege of conducting an electric energy, natural or manufactured gas, telephone, or cable television business within the city of Burien effective February 3, 2002, and upon the privilege of conducting a solid waste collection business within the city of Burien effective December 1, 2002.~~] Revenues collected under this chapter shall be deposited into the general fund and shall be used to fund municipal programs, services, or capital projects as the council shall direct through its annual budget process, except for revenues, assessments, and other charges generated and collected under this chapter from every Taxpayer engaged in the business of collecting solid waste, which shall be placed into the street fund, and shall be used by Burien for transportation purposes.

Section 5. Section 3.12.030, entitled **Definitions.**, of the Burien Municipal Code., is amended as follows with the remaining portions of this section remaining the same:

(1) Use of Words and Phrases. As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(2) "Cable [~~t~~]Television [~~s~~]Services" means the transmission of video programming and associated nonvideo signals to subscribers together with subscriber interaction, if any, which is provided in connection with video programming.

(3) "City [~~m~~] Manager" means the city manager of the city of Burien, Washington, or his or her designee.

(4) "Gross income" means the value proceeding or accruing from the performance of the particular business involved, including gross proceeds of sales, compensation for the rendition of services, and receipts (including all sums earned or charged, whether received or not) by reason of investment in the business engaged in (excluding rentals, receipts or proceeds from the use or sale of real property or any interest therein, and proceeds from the sale of notes, bonds, mortgages or other evidences of indebtedness, or stocks and the like), all without any deduction on account of the cost of property sold, the cost of materials used, labor costs, taxes, interest, [~~or~~] discount paid, delivery costs or any expenses whatsoever, and without any deduction on account of losses.

[~~(5) "Person" means any person, firm, corporation, association, or entity of any type engaged in a business subject to taxation under this chapter.~~]

(5) "Sewer services" means every Taxpayer engaging in or carrying on the business of distributing, furnishing, or selling sanitary sewer or sewerage services for commercial, domestic, or industrial use or purpose.

(6) "Solid waste" means garbage, trash, rubbish, or other materials discarded as worthless or not economically viable for further use. The term does not include hazardous or toxic waste and does not include yard waste or material collected primarily for recycling or salvage.

(7) "Taxpayer" means any person of either gender, firm, co-partnership, corporation, public utility district, municipal corporation, public or private utility, and other association, or entity of any type engaged in a business subject to taxation under this chapter.

([~~6~~] 8) "Telephone business" means the business of providing access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, or providing telephonic, video, data, pager, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. The term includes cooperative or farmer line telephone companies or associations operating an exchange. "Telephone business" does not include the providing of competitive telephone service or cable television service or other providing of broadcast services by radio or television stations.

"Cellular telephone service" means any two-way voice and data telephone or similar communications system based in whole or in substantial part on wireless radio communications, including cellular mobile service, and which is not subject to regulation by the Washington State Utilities and Transportation Commission. Cellular mobile service includes other wireless radio communications services including specialized mobile radio, personal communications services, and any other evolving wireless radio communications technology that accomplishes a purpose substantially similar to cellular mobile service. Cellular telephone service is included within the definition of "telephone business" for [~~the purposes of~~] this chapter.

"Competitive telephone service" means the providing by any [~~person~~] Taxpayer of telecommunications equipment or apparatus, directory advertising and lease of telephone street directories, or service related to that equipment or apparatus such as

repair or maintenance service, if the equipment or apparatus is of a type which may be provided by [~~person~~] Taxpayers not subject to regulation as telephone companies under RCW Title 80, and for which a separate charge is made. Transmission of communication through cellular telephones is classified as "telephone business" rather than "competitive telephone service."

"Pager service" means service provided [~~by means of~~] utilizing an electronic device [~~which has the ability to~~] that can send or receive voice or digital messages transmitted through the local telephone network, via satellite or any other form of voice or data transmission. "Pager service" is included within the definition of "telephone business" [~~for the purposes of~~] in this chapter.

[~~(7) "Solid waste" means garbage, trash, rubbish, or other materials discarded as worthless or not economically viable for further use. The term does not include hazardous or toxic waste, and does not include yard waste or material collected primarily for recycling or salvage.~~]

(9) "Water Distribution Services" means every Taxpayer engaged in the business of distributing, furnishing, or selling water services for a commercial, domestic, or industrial use or purpose.

Section 6. Section 3.12.040, entitled **Occupations subject to tax – Amount.**, of the Burien Municipal Code., is amended as follows with the remaining portions of this section remaining the same:

There is levied upon, and shall be collected from a Taxpayer because of certain business activities engaged in or carried on in the city of Burien, taxes in the amount to be determined by the application of rates given against gross income as follows:

(1) Upon a [~~person~~] Taxpayer engaged in or carrying on the business of selling, furnishing, or transmitting electric energy, a tax equal to six percent (6%) of the total gross income from such business in the city during the period for which the tax is due;

(2) Upon a [~~person~~] Taxpayer engaged in or carrying on the business of selling, furnishing, or transmitting gas, whether natural or manufactured, a tax equal to six percent (6%) of the total gross income from such business in the city during the period for which the tax is due;

(3) Upon a [~~person~~] Taxpayer engaged in or carrying on any telephone business, a tax equal to six percent (6%) of the total gross income, including income from intrastate long-distance toll service, from such business in the city during the period for which the tax is due;

(4) Upon a [~~person~~] Taxpayer engaged in or carrying on the business of selling, furnishing or transmitting cable television service, a tax equal to six percent (6%) of the total gross income from such business in the city during the period for which the tax is due;

(5) Upon a [~~person~~] Taxpayer in or carrying on the business of collecting solid waste, a tax equal to six percent (6%) of the total gross income from such business in the city during the period for which the tax is due, less income derived from collection and sales of materials not defined herein as solid waste[~~.~~];

(6) Upon every Taxpayer engaged in or carrying on the business of furnishing sewer services for commercial, domestic, or industrial use or purpose, a tax equal to eight percent (8%) of the total gross income from such business in Burien during the period for which the tax is due; and

(7) Upon every Taxpayer engaged in or carrying on the business of furnishing or selling water distribution services for commercial, domestic, or industrial use or purpose, a tax equal to eight percent (8%) of the total gross income from such business in Burien during the period for which the tax is due.

Section 7. Section 3.12.065, entitled **Billing Format.**, of the Burien Municipal Code., is created to read as follows:

For transparency and clarity for ratepayers, all bills, invoices, or documents however named, created by a Taxpayer, shall be itemized so that the utility tax provided for in this Chapter is separate from any amount, charge, expense, fee, or sum, including but not limited to so-called administrative or processing fees.

Section 8. Section 3.12.070, entitled **Monthly installments.**, of the Burien Municipal Code., is retitled **Installments.**, and is amended as follows with the remaining portions of this section remaining the same:

The tax imposed by BMC 3.12.040 shall be due and payable in monthly installments, and remittance therefor shall be made on or before the last day of the month following the

end of the monthly period in which the tax is accrued, unless the estimated gross income subject to the tax is less than $2,500 per three-month quarter, in which case the [~~t~~]Taxpayer may elect to pay quarterly for the preceding three-month period, on or before the thirty-first day of January, the thirtieth day of April, the thirty-first day of July, and the thirty-first day of October, at the office of the city clerk, Burien City Hall, or his or her designee. Furthermore, if the estimated gross income subject to the tax is less than $1,500 annually, the taxpayer may elect to pay annually for the preceding 12-month period, on or before the thirty-first day of January. On or before said due date, the [~~taxpayer~~] Taxpayer shall file with the city manager a written return upon such form and setting forth such information as the city manager shall reasonably require relating to the accurate computation and collection of this tax, together with the payment of the amount.

Everything in this section applies to water and sewer Taxpayers, except that the payments may be made every two months rather than monthly.

Section 9. Section 3.12.100, entitled **Penalty for delinquent payment.**, of the Burien Municipal Code., is amended as follows with the remaining portions of this section remaining the same:

If a [~~person~~] Taxpayer subject to this tax fails to pay any tax required by this chapter within [~~15~~] 30 calendar days after the due date thereof, there shall be added to such tax a penalty of 10 percent of the amount of such tax, and any tax due under this chapter that is unpaid and all penalties thereon shall constitute a debt to the city and may be collected by a collection agency or court proceedings, which remedy shall be in addition to all other remedies. If the City of Burien prevails on any claim that a Taxpayer is in noncompliance with the terms of this chapter, Burien shall be entitled to an award of its attorneys' fees, court costs, and expenses, and other professional expenses associated with prosecuting the action.

Section 10. Section 3.12.160, entitled Referendum procedure., of the Burien Municipal Code., is amended as follows with the remaining portions of this section remaining the same:

The provisions of the ordinance codified in this chapter are subject to the referendum procedure as follows:

(1) A referendum petition seeking to repeal the ordinance shall be filed with the [~~c~~]City [~~c~~]Clerk, who shall be designated the person to receive petitions of all types, within

seven days of the passage by the city council of the ordinance or publication thereof, whichever is later.

(2) Within 10 days, the [~~c~~]City [~~c~~]Clerk shall confer with the petitioner concerning the form and style of the petition, issue an identification number for the petition, and cause to be written an accurate, concise, and positive ballot title for the measure.

(3) The ballot title shall be posed as a question, so that an affirmative answer to the question and an affirmative vote on the measure results in the tax or tax rate increase being imposed, and a negative answer to the question and a negative vote on the measure results in the tax or tax rate increase not being imposed. The petitioner shall be notified of the identification number and ballot title within this 10-day period.

(4) After notification of the identification number and ballot title, the petitioner shall have 30 days in which to secure on petition forms the signatures of not less than 15 percent of the registered voters of [~~the city~~] Burien, as of the last municipal general election, and to file the signed petitions with the [~~c~~]City [~~c~~]Clerk.

(5) Each petition form shall contain the ballot title and the full text of the measure to be referred. The [~~c~~]City [~~c~~]Clerk shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the [~~c~~]City [~~c~~]Clerk shall [~~cause~~] certify the referendum measure to [~~be submitted to the city voters at~~] the next election ballot within the city or at a special election as provided pursuant to RCW 35.17.260(2).

Section 11. Implementation and Authority. The City Manager, City Clerk, and City Attorney are directed and authorized to take such actions as necessary to implement this Ordinance and the process identified in Section 4 consistent with state and local laws. The City Clerk is authorized to adopt administrative policies/rules to implement this Ordinance.

Section 12. Severability. If any section, subsection, paragraph, sentence, clause, phrase, or portion of this ordinance, or its application to any person or situation, 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 13. Amendments. Underlined language is new or added language, and language in brackets and stricken, is to be removed or deleted. The remaining language should remain the same.

Section 1413. Effective Date.

A. This ordinance shall take effect in five (5) days after passage and legal publication.

B. The utility taxes authorized and levied herein shall take effect on January 1, 2021.

ADOPTED BY THE CITY COUNCIL at its meeting on _____, 2020.

_____
Jimmy Matta, Mayor

ATTEST

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APPROVED AS TO FORM

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Filed with the City Clerk: [Insert anticipated date of passage here]
Passed by the City Council: [Insert anticipated date of passage here]
Ordinance No.: 744
Date of Publication: [Insert date of Friday following the anticipated date of passage here]

CERTIFICATION OF ORDINANCE 744

I, the undersigned, do hereby certify that I am the duly qualified and acting City Clerk of the City of Burien, King County, Washington, (the "City"), and as such official I am the keeper of the records and files of the City and of the City Council of the City (the "Council").

I do further certify that the attached document constitutes a full, true and complete copy of Ordinance 744 (the "Ordinance"), entitled:

ORDINANCE 744

AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, AMENDING CHAPTER 3.12 OF THE BURIEN MUNICIPAL CODE TO AUTHORIZE AND LEVY UTILITY TAXES TO FUND ALL ASPECTS OF MUNICIPAL GOVERNMENT BY ESTABLISHING REGULATIONS REGARDING THE SAME, PROVIDING FOR A REFERENDUM, AUTHORIZING CITY OFFICIALS TO TAKE NECESSARY ACTIONS, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE~~AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON AMENDING CHAPTER 3.12 OF THE BURIEN MUNICIPAL CODE TO AUTHORIZE AND LEVY UTILITY TAXES TO FUND ALL ASPECTS OF MUNICIPAL GOVERNMENT BY ESTABLISHING REGULATIONS REGARDING THE SAME, PROVIDING FOR A REFERENDUM, AUTHORIZING CITY OFFICIALS TO TAKE NECESSARY ACTIONS, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE~~.

The Ordinance was adopted by the City Council of the City of Burien on _____, 2020, by a vote of _____. The title of this Ordinance was published in the City's newspaper of record on _____, 2020, and the effective date of the Ordinance is _____, 2020.

I do further certify that the deliberations of the Council on the adoption of the Ordinance were held openly and that the vote on adoption of the Ordinance was taken openly and in accordance with state law. Such meeting was held at a specified place and time convenient to the public, notice of such meeting was given, and such meeting was called and held in strict compliance with the provisions of the open meetings laws of the State of Washington, as amended, and that the Council has complied with all applicable provisions of open meetings laws and procedural rules in the adoption of the Ordinance.

IN WITNESS WHEREOF, I hereunto affix my official signature this _____ day of _____, 2020.

_____

Megan Gregor
City Clerk
City of Burien