1191-ORD
01/19/12

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6040

AN ORDINANCE relating to the utility occupation tax of the City of Bellevue; amending Sections 4.10.025, 4.10.055, and 4.10.060.B of the Bellevue City Code; providing for referendum as set forth in Chapter 1.12 of the Bellevue City Code; providing for severability; and establishing an effective date.

WHEREAS, the Washington State Supreme Court held in *Lane v. City of Seattle*, 164 Wn.2d 875, 194 P.3d 977 (2008), that fireflow capacity charges are a governmental function and that such costs must be paid from the City's General Government Fund; and

WHEREAS, the City of Bellevue, in response to this ruling, transferred the costs associated with fireflow capacity from water utility rates to the City's General Government Fund; and

WHEREAS, because of the financial impact to the City's General Government Fund for costs associated with fireflow capacity and the risk to basic City service levels, the City Council adopted Ordinance No. 5919-A on December 7, 2009, increasing the rate of utility occupation tax levied on the Bellevue Utilities Department water distribution business to recoup the impact to the General Government Fund of paying for fireflow capacity and the Utility has passed along this increased cost of business to customers within the City of Bellevue; and

WHEREAS, the Bellevue Utilities Department provides water service and fireflow capacity service to customers located outside of the City of Bellevue, in the cities of Clyde Hill, Hunts Point, Issaquah, Kirkland and Medina and in unincorporated King County, and which customers have not been charged for fireflow capacity charges since the costs were transferred to Bellevue's General Government Fund; and

WHEREAS, Bellevue City Code Section 4.10.025 and the water utility occupation tax currently apply only to the gross income of the water utility from customers residing within the City of Bellevue; and

WHEREAS, the Washington Supreme Court has ruled in *Burba v. Vancouver*, 113 Wn.2d 800, 783 P.2d 1056 (1989) (*en banc),* that a utility tax may be imposed by a municipality on a utility based upon all of its gross income, including income from serving customers outside the boundaries of the municipality; and

WHEREAS, applying the utility occupation tax on all gross income of the water utility will allow the City and the Utility to account for the actual costs of providing fireflow capacity to all customers of the utility, and will correct an inequity

in charges to customers that has existed since 2009 thereby serving the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 4.10.025 of the Bellevue City Code is hereby amended to read as follows:

**4.10.025 Tax Imposed.**

A. There is levied and shall be collected from every person a tax for the act or privilege of engaging in utility occupation activities. Except as provided in subsection B, such tax shall be measured by the application of rates against gross proceeds of sales from customers within the city.

B. The utility occupation activities tax levied upon the water distribution business of the City of Bellevue shall be measured by the application of rates against gross proceeds of sales from all customers of the utility, regardless of the location of such customers within or outside of the city.

Section 2. Section 4.10.055 of the Bellevue City Code is hereby amended to read as follows:

**4.10.055 Utility tax relief.**

There is granted to persons who meet the qualifications and requirements of BCC 4.10.060 and 4.10.065 relief from the utility occupation tax of the city as follows:

A. For all billings paid directly or indirectly by the person during a calendar year for service charges to any organization which paid the utility occupation tax of the city in 1995, the city shall pay to such person a "reimbursement" in an amount equal to the utility tax which applied to such billings or, in lieu thereof, at the election of the person, a minimum amount determined in accordance with BCC 4.10.055(C).

B. For all billings paid directly or indirectly by the person during a calendar year for service charges to any organization which paid the utility occupation tax of the city in 1996 or subsequent years, the city is authorized to pay to such person a "reimbursement" in a maximum amount determined in accordance with BCC 4.10.055(D); provided, that the total amount of all reimbursements paid pursuant to this subsection shall not exceed the total dollar amount established through the budget process.

C. The amount of minimum relief under BCC 4.10.055(A) for calendar year 1995 is $64.00, prorated for each month of residency in the city.

D. The amount of maximum relief under BCC 4.10.055(B) for a calendar year is $70.00 and shall be adjusted for calendar year 1997 and each subsequent year in accordance with BCC 4.10.070, prorated for each month of residency in the city; provided however, that for 2012 and subsequent years, such amount shall be prorated for each month that the person qualifying for the relief was a customer of the utility.

Section 3. Section 4.10.060.B of the Bellevue City Code is hereby amended to read as follows:

B. To qualify for the relief set forth in BCC 4.10.055(B), a person must be requesting reimbursement for the effect of city utility occupation taxes imposed in 1996 or subsequent tax years and must:

1. Have an income during the calendar year, or part thereof, for which a "reimbursement" is requested from all sources whatsoever, not exceeding 50 percent of the median income level for such calendar year for the Seattle-Bellevue-Everett Primary Metropolitan Statistical Area (PMSA) per household as published by the Secretary of Housing and Urban Development or show satisfactory evidence of the prior year's qualifying income and certify that income in the reimbursement year has not changed. If the annual update of the PMSA is not available, the median income level shall be determined by adjusting the prior year median income level in accordance with BCC 4.10.070. As used in this subsection, "income" means:

a. "Disposable income," as that term is defined in RCW 84.36.383, as it may be amended or replaced from time to time, plus

b. The aggregate value of all gifts received during the calendar year for which a "reimbursement" is requested, excluding the first $5,008.69 thereof.
The aggregate value of gifts excludable from income as provided in this section shall be adjusted for the calendar year 1997 and each subsequent calendar year in accordance with BCC 4.10.070; and

2. Satisfy one of the following, depending on the calendar year at issue:

a. For the calendar years 1997 through 2011, have been a resident of the dwelling unit within the city at all times during any period for which a reimbursement is requested, and have contributed to the payment of city utility charges from his or her income or resources; or

b. For the calendar year 2012 or any subsequent year have been a resident of the dwelling unit receiving service from the utility at all times during any period for which a reimbursement is requested, and have contributed to the payment of city utility charges from his or her income or resources.

1191-ORD
01/19/12

ORIGINAL

Section 4. Referendum Procedure. The provisions of this ordinance are subject to the referendum procedures as set forth in Chapter 1.12 of the Bellevue City Code.

Section 5. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 6. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force on March 1, 2012, or thirty (30) days after passage by the City Council, whichever is later.

Passed by the City Council this 23rd day of January, 2012, and signed in authentication of its passage this 23rd day of January, 2012.

(SEAL)

Conrad Lee, Mayor

Approved as to form:

Lori M. Riordan, City Attorney

Mary Kate Berens, Deputy City Attorney

Attest:

Myrna L. Basich, City Clerk

Published January 26, 2012