

**CITY OF BLACK DIAMOND**  
**WASHINGTON**  
**ORDINANCE NO. 12-989**

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**AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO UTILITY TAXES; INCREASING THE UTILITY TAX RATE FOR STORMWATER FROM SIX PERCENT TO TWELVE PERCENT FOR YEAR 2013 AND FROM TWELVE PERCENT TO 18 PERCENT FOR YEAR 2014 AND THEREAFTER; PROVIDING FOR A REFERENDUM PETITION; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SUSPENSION OF THE EFFECT OF THE ORDINANCE**

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WHEREAS, the City of Black Diamond is classified as a non-charter code city under title 35A RCW; and

WHEREAS, RCW 35A.11.020 provides that code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state; and

WHEREAS, RCW 35A.21.160 provides that a code city shall have all of the powers which any city of any class may have; and

WHEREAS, RCW 35.22.280(32) authorizes any city of the first class “[t]o grant licenses for any lawful purpose, to fix by ordinance the amount to be paid therefore, and to provide for revoking the same . . . .”; and

WHEREAS, the Washington Supreme Court in *Fleetwood v. Read*, 21 Wash. 547, 552-553 (1899) and subsequent decisions has interpreted this language as authorizing licenses for revenue purposes as well as regulation; and

WHEREAS, pursuant to the above authority, code cities are authorized to impose taxes upon gross revenues earned by utility and service providers within their jurisdictional boundaries, and

WHEREAS, the City of Black Diamond has previously enacted ordinances, codified at BDMC Ch. 5.08, creating and imposing a six percent (6%) utility excise tax upon gross revenues derived from storm-water utilities; and

WHEREAS, the City desires to increase the utility tax rates upon storm-water utilities;  
and

WHEREAS, the adoption of an ordinance pertaining to tax rates and the assessment and collection of taxes relates solely to governmental procedures and contains no substantive standards respecting use or modification of the environment and is therefore exempt from the requirements of the State Environmental Policy Act pursuant to WAC 197-11-800(19) and (14);  
and

WHEREAS, the City Council having determined that it is in the best interest of the public to increase the tax rates as set forth herein;

NOW, THEREFORE, the City Council of the City of Black Diamond, Washington, do ordain as follows:

Section 1. Amendments to BDMC 5.08.030 (Taxes levied). Section 5.08.030 of the Black Diamond Municipal Code is hereby amended (*amendments shown in legislative revision marks*) to read as follows:

5.08.030 - Taxes levied.

Upon every person, firm or corporation engaged in carrying on the following types of business for hire or for sale of a commodity or a service within or partly within the corporate limits of the city shall be levied the following tax:

A. Upon any telephone business there shall be levied a tax equal to six percent of the total gross income, including income from intrastate toll, derived from the operation of such businesses within the corporate limits of the city.

B. Upon the sale, delivery or distribution of electricity and electrical energy and for the privilege of carrying on the business, there shall be levied a tax equal to six percent of the total gross operating revenue derived from sales of such electricity to ultimate users within the corporate limits of the city; provided, however, that there shall not be any tax levied for the installation charges of electrical units.

C. Upon the sale of natural, manufactured or mixed gas for residential, commercial or industrial consumption and for the privilege of carrying on the business, there shall be levied a tax equal to six percent of gross operating revenues from such sales of natural, manufactured or mixed gas within the corporate limits of the city.

D. Upon any sewerage system business, there shall be levied a tax equal to six percent of the total gross income derived from the operation of such business within or partly within the corporate limits of the city.

E. Upon any water distribution system, there shall be levied a tax equal to six percent of the total gross income derived from the operation of such business within or partly within the corporate limits of the city.

F. Upon every person or entity engaging in the business of providing solid waste collection service, there shall be levied a tax equal to six percent of the total gross income derived from the operation of such business within or partly within the corporate limits of the city.

G. Upon any cable service there shall be levied a tax equal to one percent of the total gross income derived from operation of such service within the corporate limits of the city. Such tax shall be in addition to any cable franchise fee paid the city by such person, firm, or corporation.

H. Upon any stormwater utility there shall be levied a tax equal to ~~six~~(twelve) percent of the total gross income derived from the operation of such utility within or partly within the corporate limits of the city. This (stormwater utility)tax shall be levied on services provided (on and) after January 1, 2009(13). (Effective January 1, 2014, the stormwater utility tax rate shall increase from twelve percent to eighteen percent.)

Section 2. Referendum Authorized. Pursuant to RCW 35.21.706, a referendum petition to repeal this ordinance may be filed with the City Clerk within seven days of passage of this ordinance. Within ten days of such filing, the City Clerk shall confer with the petitioner concerning form and style of the petition, issue the petition an identification number, and secure an accurate, concise, and positive ballot title from the designated local official. The petitioner shall have thirty (30) days in which to secure the signatures of not less than fifteen (15) percent of the registered voters of the city, as of the last municipal general election, upon petition forms that contain the ballot title and the full text of the measure to be referred. The City Clerk shall verify the sufficiency of the signatures on the petition and, if sufficient valid signatures are properly submitted, shall certify the referendum measure to the next election ballot within the city or at a special election ballot as provided pursuant to RCW 35.17.260(2). Except as otherwise provided herein, all provisions set forth at RCW 35.17.250 through RCW 35.17.360 that are applicable to the character and form for an initiative petition, to the examination and certification thereof, and to the submission to the vote of the people of the ordinance proposed thereby, shall apply to the referendum petition authorized herein and to this ordinance.


Section 3. 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 pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five days after publication; provided that, in the

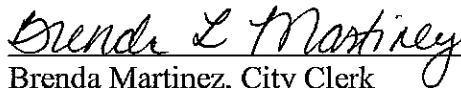
event that a referendum measure is certified as provided in Section 2 of this ordinance, the effect of this ordinance shall be deemed to have been suspended from the effective date and until ratification.

**ADOPTED** BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 20TH DAY OF DECEMBER, 2012.

CITY OF BLACK DIAMOND

  
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Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:

  
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Brenda Martinez, City Clerk

Approved as to form:

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Chris D. Bacha,  
Kenyon Disend PLLC  
City Attorney

Filed with the City Clerk: *12/21/2012*  
Passed by the City Council: *12/20/2012*  
Ordinance No. *12-989*  
Date of Publication: *12/28/2012*  
Effective Date: *1/2/2013*