

## ORDINANCE No. 1220

### AN ORDINANCE AMENDING ORDINANCE NO. 1204 WHICH ESTABLISHED A PRIVILEGE TAX ON ELECTRIC OR NATURAL GAS SERVICES

The people of the City of Prineville ordain that Ordinance No. 1204 is amended to read as follows:

1. The following definitions apply unless inconsistent with the context:

“Utility” means any person that provides electric or natural gas service to customers or themselves, within the boundaries of the City of Prineville by means of facilities permanently located within, under, or above any city rights of way, whether or not the person owns such facilities.

“City” means the City of Prineville.

“Person” means any individual, corporation, general or limited partnership, limited liability company, or any other legal entity.

2. City levies a privilege tax in the amount of five percent (5%) of the gross revenues for every Utility with operations within the boundaries of the City or within, under, or above the rights of way in the City, for a period of 30 days or more, without an authorized franchise from the City. The calculation of the privilege tax shall be subject to all applicable limitations imposed by federal or state law.

3. A privilege tax is for each 30 days or longer in duration that the Utility operates without a franchise, and is due no later than 30 days after the end of each calendar quarter in which the Utility operates without a franchise. Any past due payments under this Ordinance are subject to the interest rate as set by City resolution.

4. The Utility paying the privilege tax shall furnish to the City with each payment of such tax a statement showing the amount of gross revenue for the period covering the payment.

5. So long as a Utility is subject to the privilege tax, it shall keep books of financial accounts of the amount of electricity or natural gas provided to customers within the boundaries of the City and the amount of payments received by the Utility for providing such electricity or natural gas. The Utility shall produce the books of financial accounts for inspection by representatives of the City at any time during normal business hours.

6. The City shall have the right to have an audit made of Utilities’ books, and records used to determine the amount of electric or natural gas services to customers within the boundaries of the City and the amounts the Utility received for providing such electric or natural gas services. If the tax for the period of the audit is found to be incorrect to an extent of more than five percent (5%) over the tax paid by the Utility to City, the Utility shall pay for the audit; otherwise, the City shall pay for the audit. The Utility shall promptly pay to City any deficiency or City shall

immediately issue a credit to the Utility for any overpayment, as the case may be, which is established by the audit. Any credit issued to the Utility shall be applied toward the next tax payment payable by the Utility to City. If there are no further tax payments owed by the Utility to City, City shall promptly pay the Utility the amount of the overpayment.

7. Any Person who:

- a) owns improvements on real property located within the City, which improvements are exempt from real property taxes because they are included in the Prineville/Crook County Enterprise Zone; and
- b) except for testing of auxiliary or back up power source, produces more than two mega watts annually of electric power on or off site, which electric power is used at the improvements described in a) above; and
- c) is not subject to a franchise fee payable to the City for the transmission of such electricity;

shall pay to City a privilege tax at the rate of five percent (5%), computed on the basis of tariffed rates applicable to nonrenewable power, for the amount of power produced by such Person. Such tax shall be paid quarterly, not later than thirty (30) days after the end of calendar quarter in which the Person operates without a franchise.

8. If a Person and City enter into a long-term rural enterprise zone agreement described in ORS 285C.403(3)(c) that references this Ordinance, and the agreement includes a commitment by the Person to use 100% renewable energy at the facility site, the agreement may require the Person to pay an amount equal to the amount of tax with respect to electric service at the facility site that could be levied by Paragraph 2 of this Ordinance, except that such amount shall be computed on the basis of tariffed rates applicable to nonrenewable power and reduced by any franchise fee payable to City by a franchisee Utility with respect to electric service at the facility site. Payment of this amount shall be made by February 28 and shall cover the prior calendar year. Notwithstanding any provision of this Ordinance or the agreement, the maximum amount to be received by City with respect to the facility site for any calendar year

- a) in franchise fee payable by an electric Utility;
- b) in payments from a Person pursuant to an agreement to pay an amount equal to potential tax pursuant to Paragraphs 8 and 2;
- c) in payments from a Person pursuant to Paragraph 7;
- d) for any other franchise fee, privilege tax or similar charge imposed by City with respect to electricity used at the facility site; or
- e) for any combination, or the aggregate, of any amounts pursuant to Subparagraphs (a), (b), (c) or (d) of this Paragraph 8

shall be the greater of (i) the franchise fee payable pursuant to Subparagraph (a) of this Paragraph 8 or (ii) \$850,000. City intends hereby that this Paragraph 8 will not change any amounts due or recoverable pursuant to any franchise agreement with a Utility. Any amount paid by the Person pursuant to Subparagraph (b) of this Paragraph 8, or if applicable the maximum payment specified herein, shall fully satisfy the liability for any tax that otherwise would be owed by a non-franchisee Utility pursuant to Paragraph 2 of this Ordinance with respect to the facility site. Nothing in this Paragraph 8 describes a minimum amount such a Person would pay for items listed in Subparagraphs (a) through (e) of this Paragraph 8; if the total amount of payments owed pursuant to Subparagraphs (a) through (e) is less than the maximum payment amount, the Person shall be responsible for only that lower amount. If the total amount received by the City with respect to the facility site in a calendar year exceeds the maximum amount allowed by this Paragraph 8 (e.g., the Person errs in calculating the amount to be paid by February 28 for the prior calendar year), such excess shall be refunded to the Person. A Person who is subject to this Paragraph 8 shall provide to the City, with any payment required by this Paragraph 8, documentation showing the amount paid to a Utility with respect to the facility site and the amount of electricity consumed at the facility site for the same time period covered by the payment (i.e., the prior calendar year).

9. If any section, sentence, paragraph, term, or provision of this Ordinance is determined to be unconstitutional, illegal or invalid by any court of common jurisdiction, such portion of this Ordinance shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect.

10. The amendments adopted in Paragraph 8 of this Ordinance apply to all taxes levied or potentially levied on or after the effective date of the long-term rural enterprise zone agreement referred to therein.

PASSED by the City Council this \_\_\_\_\_ day of February, 2016.

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Betty J. Roppe, Mayor

Attest: \_\_\_\_\_  
Lisa Morgan, City Recorder