

MILLCREEK, UTAH
ORDINANCE NO. 22-41

**AN ORDINANCE ESTABLISHING A MUNICIPAL ENERGY SALES AND USE TAX,
SETTING THE RATE FOR SUCH TAX, AND ESTABLISHING THE EFFECTIVE DATE FOR
SUCH TAX**

WHEREAS, the Millcreek Council (“*Council*”) met in a regular session on September 26, 2022, to consider, among other things, establishing a municipal energy sales and use tax, setting the rate for such tax, and establishing the effective date for such tax; and

WHEREAS, pursuant to Utah Code Ann. § 10-1-301, *et seq.*, Millcreek may levy a municipal energy sales and use tax; and

WHEREAS, the Council has determined to enact a municipal energy sales and use tax.

NOW, THEREFORE, BE IT ORDAINED by the Council that the following be enacted as Chapter 3.06 of the Millcreek Code of Ordinances:

3.06.010 Purpose

It is the intent of Millcreek to adopt the municipal energy sales and use tax, pursuant to, and in conformance with, Utah Code Ann. §10-1-301 et seq, “The Municipal Energy Sales and Use Tax Act.”

3.06.020: Definitions

All words and phrases in this chapter shall have the same meaning given them in the municipal energy sales and use tax act, Utah Code Ann. § 10-1-301 et seq., with the following additions:

CONSUMER: A person who acquires taxable energy for any use that is subject to the municipal energy sales and use tax.

MUNICIPALITY: Millcreek, Utah.

SALE: Any transfer of title, exchange or barter, conditional or otherwise, in any manner, of taxable energy for a consideration. It includes:

1. Installment and credit sales;
2. Any closed transaction constituting a sale;
3. Any transaction under which right to acquire, use or consume taxable energy is granted under a lease or contract and the transfer would be taxable if an outright sale were made.

STORAGE: Any keeping or retention of taxable energy in this municipality for any purpose, except sales in the regular course of business.

USE:

1. The exercise of any right or power over taxable energy incident to the ownership or the leasing of the taxable energy.
2. "Use" does not include the sale, display, demonstration, or trial of the taxable energy in the regular course of business and held for resale.

3.06.030: Municipal Energy Sales And Use Tax Levied

There is hereby levied, subject to the provisions of this chapter, a tax on every sale or use of taxable energy made within the city equaling six percent of the delivered value of the taxable energy to the consumer effective on and after January 1, 2023. This tax shall be known as the municipal energy sales and use tax.

1. The municipal energy sales and use tax shall be calculated on the delivered value of the taxable energy to the consumer.
2. The municipal energy sales and use tax shall be in addition to any sales or use tax imposed by the municipality under Utah Code title 59, chapter 12, the sales and use tax act.

3.06.040: Exemptions

1. The following are exempt from the municipal energy sales and use tax, pursuant to Utah Code Ann. §10-1-305(2)(b):
 1. The sales and use of aviation fuel, motor fuel and special fuels subject to taxation under Utah Code title 59, chapter 13, motor and special fuel tax act;
 2. The sales and use of taxable energy that the municipality is prohibited from taxing under federal law or the constitution of the United States or the Utah constitution;
 3. The sales and use of taxable energy purchased or stored in the state for resale;
 4. The sales or use of taxable energy to a person if the primary use of the taxable energy is for use in compounding or producing taxable energy or a fuel subject to taxation under Utah Code title 59, chapter 13 of the motor and special fuel tax act;
 5. Taxable energy brought into the state by a nonresident for the nonresident's own personal use or enjoyment while within the state, except taxable energy purchased for use in the state by a nonresident living or working in the state at the time of purchase;
 6. The sale or use of taxable energy for any purpose other than as a fuel or energy;
 7. The sale of taxable energy for use outside the boundaries of the municipality ;and
 8. (i) subject to Subsection (ii) below, a sale or use of electricity within the city is exempt from the tax authorized by this chapter if the sale or use is made under a tariff adopted by the Public Service Commission of Utah only for purchase of electricity produced from a new source of alternative energy, as defined in Utah Code Ann. § 59-12-102, as designated in the tariff by the Public Service Commission of Utah.

(ii) The exemption under subsection (ii) applies to the portion of the tariff rate a customer pays under the tariff described in subsection (ii) that exceeds the tariff rate under the tariff described in subsection (i) that the customer would have paid absent the tariff.

2. The sale, storage, use or other consumption of taxable energy is exempt from the municipal energy sales and use tax levied by this chapter, provided:
 1. The delivered value of the taxable energy has been subject to a municipal energy sales or use tax levied by another municipality within this state under an ordinance enacted in accordance with Utah Code title 10, chapter 1, part 3, municipal energy sales and use tax act; and
 2. The municipality shall be paid the difference between the tax paid to the other municipality and the tax that would otherwise be due under this chapter if the tax due under this chapter exceeds the tax paid to the other municipality.

3.06.050: No Effect Upon Existing Franchises; Credit For Franchise Fees

This chapter shall not alter any existing franchise agreements unless otherwise terminated or altered by agreement or applicable law.

3.06.060: Tax Collection Contract With State

1. On or before the effective date hereof, the municipality shall contract with the state tax commission to perform all functions related to the administration and collection of the municipal energy sales and use tax. The mayor and city recorder are hereby authorized to enter into such agreement or amended agreement as needed with the state tax commission that may be necessary to the continued administration and operation of the municipal energy sales and use tax ordinance.
2. An energy supplier shall pay the municipal energy sales and use tax revenues collected from its consumers directly to the municipality monthly, if:
 1. The municipality is the energy supplier; or
 2. The energy supplier estimates that the municipal energy sales and use tax collected annually from its Utah consumers equals one million dollars (\$1,000,000.00) or more; and
 3. The energy supplier collects the municipal energy sales and use tax.
3. An energy supplier paying the municipal energy sales and use tax directly to the municipality may retain the percent of the tax authorized under Utah Code Ann. § 59-12-108(2) for energy supplier's cost of collecting and remitting the tax.

3.06.070: State Statutes Incorporated

1. Except as herein provided, and except insofar as they are inconsistent with the provisions of Utah Code title 10, chapter 1, part 3, municipal energy sales and use tax act, as well as this chapter, all of the provisions of Utah Code title 59, chapter 12, part 1, tax collection, as amended, and in force and effect on the effective date hereof, insofar as they relate to sales and use taxes, excepting Utah Code Ann. § 59-12-101 thereof, and excepting for the amount of the sales and use taxes levied therein, are hereby adopted and made a part of this chapter as if fully set forth herein.

2. Wherever, and to the extent that in Utah Code title 59, chapter 12, part 1, tax collection, the state of Utah is named or referred to as the taxing agency, the name of the municipality shall be substituted, insofar as is necessary for the purposes of that part, as well as Utah Code title 10, chapter 1, part 3, in municipal energy sales and use tax act. Nothing in this subsection shall be deemed to require substitution of the name of the municipality for the word "state" when that word is used as part of the title of the state tax commission, or of the constitution of Utah, nor shall the name of the municipality be substituted for that of the state in any section when the result of such a substitution would require action to be taken by or against the municipality or any agency thereof, rather than by or against the state tax commission in performing the functions incident to the administration or operation of this article.
3. Any amendments made to Utah Code title 59, chapter 12, part 1, tax collection, that relate to levying or collecting a municipal energy sales and use tax, is hereby adopted by reference.

3.06.080: No Additional License Or Reporting Required

No additional license to collect or report the municipal energy sales and use tax ordinance is required, provided the energy supplier collecting the tax has a license issued under Utah Code Ann. § 59-12-106.

This Ordinance assigned Ordinance No. 22-41, shall take effect as soon as it shall be published or posted as required by law, deposited, and recorded in the office of the City Recorder.

PASSED AND APPROVED this 26th day of September 2022.

MILLCREEK

By: _____
 Jeff Silvestrini, Mayor

ATTEST:

 Elyse Sullivan, City Recorder

Roll Call Vote:		
Silvestrini	Yes	No
Catten	Yes	No
DeSirant	Yes	No
Jackson	Yes	No
Uipi	Yes	No

CERTIFICATE OF POSTING

I, the duly appointed recorder for Millcreek, hereby certify that:

ORDINANCE 22-41: AN ORDINANCE ESTABLISHING A MUNICIPAL ENERGY SALES AND USE TAX, SETTING THE RATE FOR SUCH TAX, AND ESTABLISHING THE EFFECTIVE DATE FOR SUCH TAX was passed and adopted this 26th day of September, 2022 and certifies that copies of the foregoing Ordinance 22-41 were posted in the following locations within the municipality this ____ day of September, 2022.

1. Millcreek City Hall, 3330 S. 1300 E., Millcreek, UT 84106
2. Millcreek Community Center, 2266 E. Evergreen Ave., Millcreek, UT 84109
3. Holladay Lions Recreation Center, 1661 E. Murray Holladay Rd., Millcreek, UT 84117

Elyse Sullivan, City Recorder