

Chapter 9 UTILITY USERS TAX LAW

3-9.01 Short title of chapter.

This chapter shall be known as the “utility users tax law” of the City.

(§ 1, Ord. 509-NS, eff. November 18, 1992)

3-9.02 Definitions.

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

- (a) “Person” shall mean any domestic or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, Massachusetts business or common law trust, society or individuals.
- (b) “City” shall mean the City of Huntington Park.
- (c) “Fuel” shall mean natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.
- (d) “Telephone corporation”, “electrical corporation”, “gas corporation”, and “water corporation”, shall have the same meanings as defined in Sections 234, 218, 222 and 241, respectively, of the California Public Utilities Code except, “electrical corporation”, “gas corporation” and “water corporation” shall also be construed to include any municipality, public agency, broker/marketer or person engaged in the selling or supplying of electrical power or gas or water to a service user.
- (e) “Tax Administrator” shall mean the Finance Director of the City.
- (f) “Service supplier” shall mean any entity required to collect or self-impose and remit a tax as imposed by this chapter.
- (g) “Service user” shall mean a person required to pay a tax imposed by this chapter.
- (h) “Cogenerator” shall mean any corporation or person employing cogeneration technology for producing power from other than a conventional power source for the generation of electricity for self use or sale to others.
- (i) “Month” shall mean a calendar month.
- (j) “Non-utility supplier” shall mean: (1) a service supplier, other than an electrical corporation serving with the City, which generates electrical energy in capacities of at

least fifty (50) kilowatts for its own use or for sale to others; or (2) a gas supplier other than a gas corporation, that sells or supplies gas to users within the City.

(§ 1, Ord. 509-NS, eff. November 18, 1992)

3-9.03 Exemptions.

(a) Nothing in this chapter shall be construed as imposing a tax upon any person when imposition of such tax upon that person would be in violation of the Constitution of the United States or that of the State of California.

(b) The City Council may, by order or resolution, establish one or more classes of persons or one or more classes of utility service otherwise subject to payment of a tax imposed by this chapter and provide that such classes of persons or service shall be exempt, in whole or in part from such tax.

(c) The Tax Administrator shall prepare a list of the persons exempt from the provisions of this chapter by virtue of this section and furnish a copy thereof to each service supplier.

(§ 1, Ord. 509-NS, eff. November 18, 1992)

3-9.04 Telephone users tax.

(a) There is hereby imposed a tax on the amounts paid for any such intrastate telephone services by every person of the City using such services. The tax imposed by this section shall be at the rate of seven (7%) percent of the charges made for such services and shall be paid by the person paying for such services.

(b) As used in this section, the term “charges” shall not include charges for services paid for by inserting coins in coin-operated telephones except that where such coin-operated service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due; nor shall the term “charges” include charges for any type of service or equipment furnished by a service supplier subject to Public Utility regulations during any period in which the same or similar services or equipment are also available for sale or lease from persons other than a service supplier subject to public utility regulation; nor shall the words “telephone communication services” include land mobile service or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations, as said section existed on January 1, 1970. The term “telephone communication services” refers to that service which provides access to a telephone system and the privilege of telephone quality communication with substantially

all persons having telephone stations which are part of such telephone system. The telephone users tax is intended to, and does, apply to all charges billed to a telephone account having a situs in the City, irrespective of whether a particular communication service originates and/or terminates within the City.

(c) The tax imposed by this section shall be collected from the service user by the person providing the intrastate telephone communication services, or the person receiving payment for such services. The amount of the tax collected in one month shall be remitted to the Tax Administrator on or before the last day of the following month; or at the option of the person required to collect and remit the tax, an estimated amount of tax collected, measured by the tax bill in the previous month, shall be remitted to the Tax Administrator on or before the last day of each month.

(d) Notwithstanding the provisions of subsection (a), the tax imposed under this section shall not be imposed upon any person for using intrastate telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under Division 2, Part 20 of the California Revenue and Taxation Code, or the tax imposed under Section 4251 of the Internal Revenue Code.

(§ 1, Ord. 509-NS, eff. November 18, 1992; Election of October 7, 1997)

3-9.05 Electricity users tax.

(a) There is hereby imposed a tax upon every person other than an electric or gas corporation using electrical energy in the City. The tax imposed by this section shall be at the rate of seven (7%) percent of the charges made for such energy by an electrical corporation providing services in the City and shall be billed to and paid by the person using the energy. The tax applicable to electrical energy provided by a non-utility supplier shall be determined by applying the tax rate to the equivalent charge the service user would have incurred if the energy used had been provided by the electrical corporation franchised by the City. Rate schedules for this purpose shall be available from the City. "Charges", as used in this section, shall include charges made for: (1) metered energy and (2) minimum charges for service, including customer charges, service charges, demand charges, standby charges and all other annual and monthly charges, fuel or other cost adjustments, authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission.

(b) As used in this section, the term "using electrical energy" shall not be construed to mean the storage of such energy by a person in a battery owned or possessed by him or her for use in an automobile or other machinery device apart from the premises upon which the energy was received, provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; nor shall the term include electricity used and consumed by an electric utility supplier in the

conduct of its business; nor shall the term include the mere receiving of such energy by an electric corporation or governmental agency at a point within the City for resale; nor shall the term include the use of such energy in the production or distribution of water by a water utility or a governmental agency.

(c) The tax imposed in this section shall be collected from the service user by the service user by the electrical energy billing agent, based on charges made for such energy. "Charges," as used in this section, shall include all charges made for: (1) metered energy and (2) minimum charges for service, including customer charges, service charges, demand charges, standby charges and all other annual and monthly charges, fuel or other cost adjustments. When a service user receives a bill from both the energy service provider and the electric utility franchised to serve the City, the energy service provider and the electric utility franchised to serve the City shall calculate and remit only the non-generation portions of the customer bill. It will be the responsibility of the ESP to calculate, collect, and remit the appropriate utility user tax on their respective applicable charges. It shall not be the responsibility of either the energy service provider nor the electric utility franchised to serve the City to calculate or remit the tax on charges not originating from that individual service pro-

vider, regardless of the service user's billing agent. The local jurisdiction may require the service user to identify its non-utility supplier and provide, subject to audit, filed tax returns or other satisfactory evidence documenting the energy use and cost.

(d) The amount of tax collected in one month shall be remitted by U.S. mail, to the Tax Administrator, postmarked on or before the last day of the following month.

(§ 1, Ord. 509-NS, eff. November 18, 1992, as amended by §§ 1, 2, Ord. 595-NS, eff. December 31, 1997)

[3-9.05.1 Tax on cogenerated electricity.](#)

(a) The tax imposed on every person using cogenerated electrical energy in the City shall be at the rate specified in Section 3-9.05. The tax applicable to cogenerated electrical energy used on site shall be determined by applying the tax rate to the equivalent charges the cogenerator would have incurred if the energy used had been provided by the electrical corporation franchised by the City.

(b) The cogenerator shall install and maintain an appropriate metering system which will enable compliance with this section.

(c) The tax shall be collected and paid by the cogenerator under Section 3-9.07 if the cogenerator consumes the energy. If the cogenerator sells the energy for consumption in

the City, the tax will be imposed by applying the tax rate to the equivalent charges for such service the service user would have incurred if the energy used had been provided by the electrical corporation franchised by the City, and shall be collected from the service user by the energy service supplier.

(d) The amount of the tax collected in one month shall be remitted to the Tax Administrator on or before the last day of the following month.

(§ 3, Ord. 595-NS, eff. December 31, 1997)

3-9.06 Fuel users tax.

(a) There is hereby imposed a tax upon every person in the City other than a gas corporation or electrical corporation, using, in the City, natural gas and other hydrocarbon fuels which is transported through the gas pipeline distribution system or by mobile transport. The tax imposed by this section shall be at the rate of seven (7%) percent of the amount that will be paid by the person using the fuel. The tax applicable to fuel provided by non-utility suppliers shall be determined by applying the tax rate to the actual charges the service user incurred. "Charges" as used in this section shall include: (1) that billed for fuel which is delivered through a gas pipeline distribution system or mobile transport; (2) fuel transportation charges; and (3) demand charges, service charges, customer charges, minimum charges, annual and monthly charges, and any other charge authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission. Notwithstanding any other part of this section, the tax applied to fuel used by a cogenerator or fuel cell shall not apply to that amount of fuel attributable to the generation of electricity used on site.

(b) The tax otherwise imposed by this section is not applicable to: (1) charges made for fuel which is to be resold and delivered through mains and pipes; (2) charges made for natural gas used and consumed by a public utility or governmental agency in the conduct of its business; (3) charges made by a natural gas public utility for gas used and consumed in the course of its public utility business; (4) charges made for natural gas used in the propulsion of a motor vehicle, as authorized in the Vehicle Code of the State of California, utilizing natural gas and other natural gas clean-air technologies; (5) nor shall the term include the use of such energy in the production or distribution of water by a water utility or a governmental agency.

(c) The tax imposed in this section shall be collected from the person using the fuel by the person selling or transporting the fuel. A person selling or providing transportation services of natural gas to a user for delivery through mains or pipes shall collect the tax from user based upon the cost of transporting the fuel. The person selling or transporting the fuel shall, on or before the twentieth (20th) of each calendar month, commencing on the twentieth (20th) day of the calendar month after the effective date of the ordinance codified in this chapter, make a return to the Tax Administrator stating the amount of

taxes billed during the preceding calendar month. At the time such returns are filed, the person selling or transporting the gas shall remit tax payments to the Tax Administrator in accordance with schedules established or approved by the Tax Administrator. The tax imposed in this section on use supplied by self-production or a non-utility supplier not subject to the jurisdiction of this chapter, shall be collected and remitted to the Tax Administrator in the manner set forth in Section 3-9.07.

(§ 1, Ord. 509-NS, eff. November 18, 1992; Election of October 7, 1997)

3-9.07 Service users receiving direct purchase of fuel or electricity.

(a) Notwithstanding any other provision of this chapter, a service user receiving fuel or electricity directly from a non-utility supplier not under the jurisdiction of this chapter, or otherwise not having the full tax due on the use of fuel or electricity in the City directly billed and collected by the service supplier, shall report said fact to the Tax Administrator within thirty (30) days of said use and shall directly remit to the City the amount of tax due.

(b) The Tax Administrator may require said service user to provide, subject to audit, filed tax returns or other satisfactory evidence documenting the quantity of gas or electricity used and the (actual) price thereof.

(§ 1, Ord. 509-NS, eff. November 18, 1992)

3-9.08 Water users tax.

(a) There is hereby imposed a tax upon every person in the City using water which is delivered through mains or pipes. The tax imposed by this section shall be at the rate of seven (7%) percent of the charges made for such water and shall be paid by the person paying for such water.

(b) There shall be excluded from the base on which the tax imposed in this section is computed charges made for water which is to be resold and delivered through mains or pipes; and charges made by a municipal water department, public utility department or a City or municipal water district for water used and consumed by such department, utility or district;

(c) The tax imposed in this section shall be collected from the service user by the person supplying the water. The amount collected in one month shall be remitted to the Tax Administrator on or before the last day of the following month.

(§ 1, Ord. 509-NS, eff. November 18, 1992; Election of October 7, 1997)

3-9.09 Remittance of tax.

Taxes collected from a service user which are not remitted to the Tax Administrator on or before the due dates provided in this chapter are delinquent. Should the due date occur on a weekend or legal holiday, the return may be postmarked on the first regular working day following a Saturday/Sunday, or legal holiday.

(§ 1, Ord. 509-NS, eff. November 18, 1992)

3-9.10 Actions to collect.

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has willfully been withheld from the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount.

(§ 1, Ord. 509-NS, eff. November 18, 1992)

3-9.11 Duty to collect: Procedures.

The duty to collect and remit the taxes imposed by this chapter shall be performed as follows:

(a) Notwithstanding the provision of Section 3-9.07, the tax shall be collected insofar as practicable at the same time as and along with the charges made in accordance with the regular billing practices of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the service charge and tax which has accrued for the billing period, such amount and any subsequent payments by a service user shall be applied to the utility charge first until such charge has been fully satisfied. Any remaining balance shall be applied to taxes due. In those cases where a service user has notified the service supplier of his or her refusal to pay the tax imposed on said energy charges, Section 3-9.12(d) will apply.

(b) The duty to collect tax from a service user shall commence with the beginning of the first full regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this chapter. Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing.

(§ 1, Ord. 509-NS, eff. November 18, 1992)

[3-9.12 Additional power and duties of tax administrator.](#)

(a) The Tax Administrator shall have the power and duty, and is hereby directed to enforce each and all of the provisions of this chapter.

(b) The Tax Administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed.

A copy of such rules and regulations shall be on file in the Tax Administrator's office (and service supplier).

(c) The Tax Administrator may make administrative agreements to vary the strict requirements of this

chapter so that collection of any tax imposed here may be made in conformance with the billing procedures of particular service supplier so long as said agreements result in collection of the tax in conformance with the general purpose and scope of this chapter. A copy of each such agreement shall be on file in the Tax Administrator's office.

(d) The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from the tax imposed by this chapter. The Tax Administrator shall provide the service supplier with the name of any person who the Tax Administrator determines is exempt from the tax imposed hereby, together with the address and account number to which service is supplied to any exempt person. The Tax Administrator shall notify the service suppliers of termination of any person's right to exemption hereunder, or the change of any address to which service is supplied to any exempt person.

(e) The Tax Administrator shall provide notice to all service suppliers, at least ninety (90) days prior to any annexation or other change in the City's boundaries. Said notice shall set forth the revised boundaries by street and address along with a copy of the final annexation order from LAFCO.

(§ 1, Ord. 509-NS, eff. November 18, 1992)

[3-9.13 Assessment: Service user administrative remedy.](#)

(a) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by him or her from the amounts remitted to a person required to collect the tax, or that a service user has refused to pay the amount of tax,

such person may be relieved of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods as set forth below.

(b) The service supplier shall provide the City with amounts refused and/or unpaid along with the names and addresses of the service users neglecting to pay the tax imposed under provisions of this chapter. Whenever the service user has failed to pay the amount of tax for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due.

(c) The Tax Administrator shall notify the service user that the Tax Administrator assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the service user by handing it to him or her personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user's address change, to the last known address. If a service user fails to remit the tax to the Tax Administrator within fifteen (15) days from the date of the service of the notice upon him, which shall be the date of mailing if service is not accomplished in person, a penalty of twenty-five (25%) percent of the amount of the tax set forth in the notice shall be imposed, but not less than Five and no/100ths (\$5.00) Dollars. The penalty shall become part of the tax herein required to be paid.

(§ 1, Ord. 509-NS, eff. November 18, 1992)

3-9.14 Records.

It shall be the duty of every person required to collect and remit to the City any tax imposed by this chapter to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at all reasonable times.

(§ 1, Ord. 509-NS, eff. November 18, 1992)

3-9.15 Refunds.

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this chapter, it may be refunded as provided in this section:

(a) The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax

Administrator under this chapter, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of the tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto.

(b) The submission of a written claim, which is acted upon by the City Council, shall be a prerequisite to a suit thereon. The Tax Administrator, or the City Council where the claim is in excess of Five Thousand and no/100ths (\$5000.00), shall act upon the refund claim within the time period set forth in Government Code Section 912.4. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the time prescribed by Government Section 912.4, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in Government Code Section 912.4. The Tax Administrator shall give notice of the action in a form, which substantially complies with that set forth in Government Code Section 913. Nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers.

(c) Notwithstanding the notice provisions of subsection (b) of this section, a service supplier that has collected any amount of tax in excess of the amount of tax imposed by this chapter and actually due from a service user (whether due to overpayment or erroneous or illegal collection of the tax), may refund such amount to the service user, or credit to charges subsequently payable by the service user to the service supplier, and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the Tax Administrator, provided such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous or illegal collection of the tax. The Tax Administrator shall determine the validity of the service user's claim of credit, and the underlying basis for such claim.

(e) Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this chapter on the amount of such refunded charges shall also be refunded to service users, and the service supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly returns. In the event the ordinance codified in this section is repealed, the amounts of any refundable taxes will be borne by the City.

(§ 1, Ord. 509-NS, eff. November 18, 1992, as amended by §1, Ord. 769-NS, eff. February 17, 2006)

[3-9.16 Severability.](#)

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter, or any part thereof, is for any reason held to be invalid, unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof. The Mayor and Council declare that they would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid, unlawful or unconstitutional.

(§ 2, Ord. 769-NS, eff. February 17, 2006)