

ORDINANCE NO. 92-5

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKEWOOD
ADOPTING A UTILITY USERS TAX.

THE CITY COUNCIL OF THE CITY OF LAKEWOOD DOES ORDAIN AS FOLLOWS:

SECTION 1: Article II of the Lakewood Municipal Code pertaining to Administration is hereby amended by adding Chapter 9 thereto to read as follows:

"CHAPTER 9

UTILITY USERS TAX ORDINANCE

2901. NAME: This Chapter shall be known as the Model Utility Users Tax Ordinance and may be referred to as the Utility Users Tax.

2902. 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 Lakewood.

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," "water corporation," and "cable television corporation" shall have the same meanings as defined in Sections 234, 218, 222, 241, and 215.5, 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 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 of Lakewood.

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 ordinance."

H. "Month" shall mean a calendar month.

I. "Non-Utility Supplier" shall mean a service supplier, other than an electrical corporation serving within the City, which generates electrical energy in capacities of at least fifty (50) kilowatts for its own use or for sale to others.

J. "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.

2903. 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 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.

2904. TELEPHONE USERS TAX.

A. There is hereby imposed a tax on the amounts paid for any intrastate telephone services by every person in the city using such services. The tax imposed by this section shall be at the rate of three percent (3%) 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 supplied 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 (1) 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.

2905. ELECTRICITY USERS TAX.

A. There is hereby imposed a tax upon every person in the city using electrical energy in the city. The tax imposed by this section shall be at the rate of three percent (3%) of the charges made for such energy by an electrical corporation franchised to serve the city and shall be 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 charges 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. Non-utility suppliers shall install and maintain an appropriate utility-type metering system which will enable compliance with this section. "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, etc.

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

C. The tax imposed in this section shall be collected from the service user by any energy service supplier. The tax shall be self-imposed by non-utility suppliers as to their own use. The amount of tax collected or self-imposed in one (1) month shall be remitted by U.S. mail, to the Tax Administrator, postmarked on or before the last day of each month. Remittance of tax may be predicted on a formula based upon the payment pattern of the supplier's customers.

D. Notwithstanding the provisions of Section 2911A, if the amount paid by a service user is less than the full amount of the energy 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 energy charge first until such charge has been fully satisfied. Any remaining balance shall be applied to taxes due.

2906. 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 three percent (3%) 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 part of this section, the tax applied to fuel used by a cogenerator of fuel cell shall only 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; and (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 as 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 20th of each calendar month, commencing on the 20th day of the calendar month after the effective date of 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 ordinance, shall be collected and remitted to the Tax Administrator in the manner set forth in Section 2907.

2907. 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 ordinance, 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.

2908. 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 three percent (3%) 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 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 (1) month shall be remitted to the Tax Administrator on or before the last day of the following month.

2909. REMITTANCE OF TAX.

A. 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.

2910. ACTIONS TO COLLECT.

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owned 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 ordinance shall be liable to an action brought in the name of the city for the recovery of such amount.

2911. DUTY TO COLLECT - PROCEDURES.

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

A. Notwithstanding the provisions of Section 2907, 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 refusal to pay the tax imposed on said energy charges, Section 2913 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.

2912. 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.

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 ordinance. 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 such exempt person. The Tax Administrator shall notify the service supplier 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.

2913. 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 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 ordinance. Whenever the service user has failed to pay the amount of tax for a period of two 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 plus interest thereon at ten percent (10%) per annum from the due date determined under 2913A. The notice shall be served on the service user by handing it to him 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 percent (25%) of the amount of the tax set forth in the notice shall be imposed, but not less than \$5.00. The penalty shall become part of the tax herein required to be paid.

2914. 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 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.

2915. REFUNDS.

A. 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 ordinance, it may be refunded as provided in this section.

B. Notwithstanding the provisions of subsection A. of this section, a service supplier may claim a refund; or take as credit against taxes remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established that the service user from whom the tax has been collected did not owe the tax; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax erroneously or illegally collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the person required to collect and remit. A service supplier that has collected any amount of tax in excess of the amount of tax imposed by this ordinance and actually due from a service user, may refund such amount to the service user and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns, provided such credit is claimed in a return dated no later than three (3) years from the date of overpayment.

C. Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this ordinance 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 this ordinance is repealed, the amounts of any refundable taxes will be borne by the city.

D. A service supplier may refund the taxes collected to the service user in accordance with this section or by the service supplier's customary practice.

2916. TERMINATION OR SUSPENSION OF UTILITY USERS TAX.

The service supplier shall, upon notification, terminate or suspend any utility users tax commencing with the first full billing period which occurs after the effective date of such action by the City Council."

SECTION 2. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance or any part thereof. The City Council hereby declares that it would have been passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrases be declared unconstitutional.

SECTION 3. Purpose and Intent. The provisions of this ordinance shall be construed as necessary to effectively carry out its purposes which are hereby found and declared to be relating to taxes for the usual and current expenses of the city.

SECTION 4. Operative Date. The City Clerk shall certify to the adoption of this ordinance. The City Council hereby finds and determines there are no newspapers of general circulation both published and circulated within the city, and in compliance with Section 36933 of the Government Code, directs the City Clerk to cause said ordinance within fifteen (15) days after its passage to be posted in at least three public places within the city. Inasmuch as this ordinance relates to taxes for the usual and current expenses of the city, the same shall be effective immediately on its adoption pursuant to Government Code Section 36937. Notwithstanding the effective date of said ordinance, the tax imposed under this ordinance shall apply to bills rendered on or after the 23rd day of June, 1992, or as soon thereafter as the respective utilities are physically and mechanically able to get "on line" for the imposition of charges (not more than sixty (60) days).