

Utility Users Tax Ordinance

City of Porterville, CA

RESOLUTION NO. 8333

WHEREAS, Chapter 22, Article V of the City Code of the City of Porterville states that the telephone users tax, electricity users tax, gas users tax, water users tax and cable television tax shall be at the rate as fixed by resolution of the City Council.

NOW, THEREFORE, BE IT RESOLVED that the rates and effective dates of these utility taxes, shall be as follows: TAX RATE EFFECTIVE DATE

Telephone Users Tax 6% August 15, 1976
Electricity Users Tax 6% August 15, 1976
Gas Users Tax 6% August 15, 1976
Water Users Tax 6% August 15, 1976
Cable Television Users Tax 6% August 15, 1976

I, C. G. Huffaker, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of a resolution duly and regularly passed and adopted by the Council of the City of Porterville at an adjourned meeting of the Porterville City Council regularly called and held on the 17th day of June, 1976.

Article V. UTILITY USERS TAX.

Sec. 22-42 Definitions

Except where the context otherwise requires, the definitions given in this section govern the construction of this article.

(a) Person. "Person" shall mean any domestic or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, Massachusetts business or commonlaw trust, society, individual, or municipal corporation.

(b) City. "City" shall mean the City of Porterville.

(c) Telephone corporation, electrical corporation, gas corporation, water corporation, and cable television corporation. "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 Public Utilities Code of the State of California, as said sections existed on January 1, 1969. "Electrical corporation," and "water corporation," shall be construed to include any municipality or franchised agency engaged in the selling or supplying of electrical power or water to a service user.

(d) Tax administrator. "Tax administrator" shall mean the director of finance of the City of Porterville.

(e) Service supplier. "Service supplier" shall mean a person required to collect and remit a tax imposed by this article.

(f) Service user. "Service user" shall mean a person required to pay a tax imposed by this article.

(g) Month. "Month" shall mean calendar month. (Ord. No. 980, § 1, 7-1-70)

Sec. 22-43. Telephone users tax.

(a) There is hereby imposed a tax upon every person in the city, other than a telephone corporation, using intrastate telephone communication services in the city. The tax imposed by this article shall be at the rate as fixed by resolution of the city council 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 telephone 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 "telephone communication services" include land mobile services or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations, as such section existed on January 1, 1969.

(c) Notwithstanding the provisions of subsection (a), the tax 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 by Section 4251 of Title 26 of the United States Code, as such section existed on January 1, 1969, without regard to subsection (b) thereof.

(d) The maximum annual telephone users tax for the twelve (12) month period beginning July 1, and ending June 30 of the next succeeding year for manufacturers shall be as follows: Number of employees Amount

Number of employees	Amount
0 to 600 employees	\$500.00
601 to 1,000 employees	\$1,000.00
over 1,000 employees	\$1,500.00 (Ord. No 980, § 2, 7-1-70; Ord. No. 1046, § A, 9-18-73)

Sec. 22-44. Electricity users tax.

(a) There is hereby imposed a tax upon every person in the City using electrical energy. The tax imposed by this section shall be at the rate as fixed by resolution of the city council, and shall be paid by the person paying for such energy. "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 annual and monthly charges.

(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 or 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. The term shall not include electricity used in water pumping by water corporations; nor shall the term include the mere receiving of such energy by an electrical corporation at a point within the city for resale.

(c) The maximum annual electricity users tax for the twelve (12) month period beginning July 1, and ending June 30 of the next succeeding year for manufacturers shall be as follows: Number of employees Amount

Number of employees	Amount
0 to 600 employees	\$500.00
601 to 1,000 employees	\$1,000.00

over 1,000 employees \$1,500.00 (Ord. No. 980, § 3, 7-1-70; Ord. No. 1046, § A, 9-18-73)

Sec. 22-45. Gas Users Tax.

(a) There is hereby imposed a tax upon every person in the city using gas which is delivered through mains or pipes. The tax imposed by this section shall be at the rate as fixed by resolution of the city council and shall be paid by the person paying for such gas.

(b) There shall be excluded from the base on which the tax imposed in this section is computed (1) charges made for gas which is to be resold and delivered through mains or pipes; (2) charges made for gas to be used in the generation of electrical energy by an electrical corporation; (3) charges made for gas used in water pumping by water corporations; and (4) charges made by a gas public utility for gas used and consumed in the conduct of the business of gas public utilities.

(c) The maximum annual gas users tax for the twelve (12) month period beginning July 1, and ending June 30 of the next succeeding year for manufacturers shall be as follows:
Number of employees Amount

Number of employees	Amount
0 to 600 employees	\$500.00
601 to 1,000 employees	\$1,000.00
over 1,000 employees	\$1,500.00 (Ord. No. 980, § 4, 7-1-70; Ord. No. 1046, § A, 9-18-73)

Sec.22-46. 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 as fixed by resolution of the city council, 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 county or municipal water district for water used and consumed by such department, utility or district in the conduct of the business of such department, utility or district.

(c) The maximum annual water users tax for the twelve (12) month period beginning July 1, and ending June 30, of the next succeeding year for manufacturers shall be as follows: Number of employees Amount

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0 to 600 employees	\$500.00
601 to 1,000 employees	\$1,000.00
over 1,000 employees	\$1,500.00 (Ord. No. 980, § 5, 7-1-70; Ord. No. 1046, § A, 9-18-73)

Sec. 22-47. Cable television tax.

There is hereby imposed a tax upon every person in the city using cable television service. The tax imposed by this section shall be at the rate as fixed by resolution of the city council and shall be paid by the person paying for such service. (Ord. No. 980, § 6, 7-1-70; Ord. No. 1046, § A, 9-18-73)

Sec. 22-48. Exemptions from article.

Nothing in this article shall be construed as imposing a tax upon any person if imposition of such tax upon that person would be in violation of the Constitution of the United States or the Constitution of the State of California. (Ord. No. 980, § 7, 7-1-70)

Sec. 22-49. Collection of tax.

(a) Every person receiving payment of charges from a service user shall collect the amount of tax imposed by this article from the service user.

(b) The tax shall be collected at the same time as and along with the collection of charges made in accordance with the regular billing practice of the service supplier.

(c) The duty to collect tax from a service user shall commence with the beginning of the first regular billing period applicable to that person which starts on or after the effective date of this article. Where a person receives more than one (1) billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period. (Ord. No. 980, § 8, 7-1-70)

Sec. 22-50. Reporting and remitting.

Each service supplier shall, on or before the 20th of each month, make a return to the tax

administrator, on forms provided by him, stating the amount of taxes billed by the service supplier during the preceding month. At the time the return is filed, the full amount of the tax collected shall be remitted to the tax administrator. The tax administrator is authorized to require such further information as he deems necessary to properly determine if the tax here imposed is being levied and collected in accordance with this article. Returns and remittances are due immediately upon cessation of business for any reason. (Ord. No. 980, § 9, 7-1-70)

Sec. 22-51. Penalty.

(a) Taxes collected from a service user which are not remitted to the tax administrator on or before the due dates provided in this article are delinquent.

(b) Penalties for delinquency in remittance of any tax collected or any deficiency determination, shall attach and be paid by the person required to collect and remit at the rate of ten (10) percent of the total tax collected or imposed herein.

(c) The tax administrator shall have power to impose additional penalties upon persons required to collect and remit taxes under the provisions of this article for fraud or negligence in reporting or remitting at the rate of ten (10) percent of the amount of the tax collected or as recomputed by the tax administrator.

(d) Every penalty imposed under the provisions of this section shall become a part of the tax required to be remitted. (Ord. No. 980, § 10, 7-1-70)

Sec. 22-52. Actions to collect.

Any tax required to be paid by a service user under the provisions of this article shall be deemed a debt owed by the service user to the city. Any such tax collected from a service user which has not been remitted to 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 article shall be liable to an action brought in the name of the city for the recovery of such amount. (Ord. No. 980, § 11, 7-1-70)

Sec. 22-53. Failure to pay tax; administrative remedy.

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 service supplier, or that a service user has failed to pay the amount of the tax for a period of two (2) or more billing periods, or whenever the tax administrator deems it is the obligation to collect taxes due under this article from certain named service users for specified billing periods. The tax administrator shall notify the service user that he has 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 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 service supplier; or should the service user have changed his address, to his 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 dollars (\$5.00). The penalty shall become part of the tax herein required to be paid. (Ord. No. 980, § 12, 7-1-70)

Sec. 22-54. Assessment; administrative remedy.

(a) The tax administrator may make an assessment for taxes not paid or remitted by a person required to pay or remit. A notice of the assessment which shall refer briefly to the amount of the taxes and penalties imposed and the time and place when such assessment shall be submitted to the city council for confirmation or modification. The tax administrator shall mail a copy of such notice to the person selling the service and to the service user at least ten (10) days prior to the date of the hearing and shall post such notice for at least five (5) continuous days prior to the date of the hearing on the chamber door of the city council. Any interested party having any objections may appear and be heard at the hearing provided his objection is filed in writing

with the tax administrator
prior to the time set for the hearing.

At the time fixed for considering said assessment, the city council shall hear the same together with any objection filed as aforesaid and thereupon may confirm or modify said assessment by motion.

(Ord. No. 980, § 13, 7-1-70)

Sec. 22-55. Records.

It shall be the duty of every person required to collect and remit to the city any tax imposed by this article 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 collection of and remittance to the tax administrator, which records the tax administrator shall have the right to inspect any reasonable time. (Ord. No. 980, § 14, 7-1-70)

Sec. 22-56. 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 article it may be refunded as provided in this section.

(b) A person required to collect and remit taxes imposed under this article may claim at refund or take a credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the tax administrator 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 so 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.

(c) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

(d) 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 Code 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 Code is repealed, the amounts of any refundable taxes will be borne by the city. (Ord. No. 980, § 15, 7-1-70; Ord. No. 1343, 12-3-85)

Sec. 22-57. Date taxes imposed.

The taxes imposed by this article shall become imposed as of July 1, 1970, or at the beginning of the first regular billing period thereafter which would not include service prior to July 1, 1970. (Ord. No. 980, § 17, 7-1-70)