

ORDINANCE NO. 09-1423

AN ORDINANCE OF THE PEOPLE OF THE CITY OF
CARSON, CALIFORNIA, ESTABLISHING AND
IMPOSING A TWO PERCENT (2%) TAX ON ELECTRIC
AND GAS UTILITY USERS

WHEREAS, on December 2, 2008, the Carson City Council ordered an election to consider whether a temporary Utility Users Tax (UUT) should be enacted to help pay for general fund expenditures; and

WHEREAS, on March 3, 2009, the voters of the City of Carson approved Measure C, which adopted the proposed temporary UUT on certain residential and nonresidential users of utilities within the City; and

WHEREAS, on March 17, 2009, the City Council declared the results of the election held on March 3, 2009, in which Measure C was approved by the voters of the City of Carson.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF CARSON DO HEREBY ORDAIN AS FOLLOWS:

Section 1. A new Chapter 11 is added to Article VI of the Carson Municipal Code to read, in its entirety, as follows:

"ARTICLE VI
CHAPTER 11

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I hereby certify that this document is a true and correct copy of the ordinance as filed in the office

of the City Clerk, Carson, California.

By Miki Plant

April 22, 2009



§ 61101. Findings.

The City Council of the city of Carson finds and declares:

- a. The city is facing a current budget crisis and must reduce law enforcement services, maintenance of the streets, sidewalks, alleys, trees and other property open to the public, as well as other community services vital to the preservation of the public peace, health, and safety.
- b. The cost of supplies, materials and other services required to provide necessary city services increases each year, yet at the time of the adoption of this ordinance the State of California is proposing to reduce the level of funding allocated to local government.
- c. It is the intention and understanding of the people that this measure shall be deemed a "general tax" and that it is not a "special tax" within the meaning of Section 4 of Article XIII A of the California Constitution by virtue of the fact that the proceeds of this tax are to be deposited in the general fund of the city and are to be available to be used for any general governmental purpose that the City Council shall determine.
- d. As soon as practical after the adoption of this ordinance, the City Council shall appoint a citizens oversight committee which shall receive reports from the Tax Administrator at least annually on the implementation of this chapter, the funds collected, and how funds collected are spent. The citizens oversight committee, which may make recommendations to the City Council on any matter relating to this chapter, shall hold all meetings in compliance with the Ralph M. Brown Act. (Cal. Gov. Code § 54950, et seq.)

§ 61102. Purpose.

The purpose of this section is to establish the methods for calculating a utility users' tax on users of electric and gas utility services in the city and to establish standards for administration of the taxes.

§ 61103. Definitions.

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

- a. Person shall mean any domestic or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, business or common law trust, society, or individuals.
- b. City shall mean the city of Carson.
- c. Gas shall mean natural or manufactured gas or any alternate hydrocarbon fuel that may be substituted therefor.
- d. Electrical corporation and gas corporation shall have the same meanings as defined in the California Public Utilities Code except, "electrical corporation" and "gas corporation" shall also be construed to include any municipality, public agency or person engaged in the selling or supplying of electrical power or gas to a service user.
- e. Tax Administrator shall mean the person designated by the City Manager to implement this chapter.

- f. Service supplier shall mean any entity required to collect or self-impose and remit a tax as imposed by this section.
- g. Service user shall mean a person required to pay a tax imposed by this section.
- h. Month shall mean a calendar month.
- i. Non-utility supplier shall mean: (a) 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; or (b) a gas supplier other than a gas corporation, that sells or supplies gas to users within the city.
- j. "Lower-income households" means persons and families whose incomes do not exceed the qualifying limits for lower-income families as determined and published by the California Department of Housing and Community Development. (See California Health and Safety Code § 50079.5.)

§ 61104. Exemptions; Limitations.

- a. Nothing in this section 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 minute 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 section and provide that such classes of persons or service shall be exempt, in whole or in part from such tax.
- c. Notwithstanding any other provision of this chapter, residential customers shall be exempt from the payment of any utility users' tax if the household qualifies as any of the following: (a) households where the household resident whose name appears on the utility bill is age 62 years and older or (b) lower-income households as defined hereinabove.
- d. The Tax Administrator shall prepare a list of the persons exempt from the provisions of this section by virtue of this subsection and furnish a copy thereof to each service supplier. The Tax Administrator shall make the final determination as to the eligibility for any exemption.
- e. Notwithstanding any other provision of this chapter, no service user shall be required to pay more than \$1 million in electricity users tax, or gas users tax, or both combined, for service provided in any calendar year. Any claim for refund must be made in writing in accordance with § 61114.

§ 61105. 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 subsection shall be at the rate of not more than two (2%) percent of the charges made for such energy by an electrical corporation providing service 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 serving the residents of the city. Rate schedules for this purpose shall be available from the city. Non-utility suppliers shall install, maintain and use an appropriate utility-type metering system which will enable compliance with this subsection. "Charges," as used in this subsection, 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 costs adjustments, authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission.

- b. As used in this subsection, 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 of Carson 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 subsection shall be collected from the service user by the service supplier or non-utility supplier. The tax imposed in this subsection on use supplied by self-generation or from a non-utility supplier not subject to the jurisdiction of this section, shall be collected and remitted to the Tax Administrator in the manner set forth in this chapter or by order of the Tax Administrator. The amount of tax collected by a service supplier or a non-utility supplier in one (1) month shall be remitted by U.S. mail to the Tax Administrator, postmarked on or before the last day of the following month.

§ 61106. Gas 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, gas which is transported through mains or pipes or by mobile transport. The tax imposed by this subsection shall be at the rate of not more than two (2%) percent of the charges made for the gas and shall be billed to and paid by the person using the gas. The tax applicable to gas or gas transportation provided by non-utility suppliers shall be determined by applying the tax rate to the equivalent charges the service user would have incurred if the gas or gas transportation has been provided by the gas corporation franchised by the city. "Charges" as used in this subsection shall include: (1) that billed for gas, which is delivered through mains or pipes; (2) gas 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.
- b. The tax otherwise imposed by this subsection is not applicable to: (1) charges made for gas which is to be resold and delivered through mains and pipes; (2) charges made for gas used and consumed by a public utility or governmental agency in the conduct of its business or, (3) charges made by a gas public utility or gas used and consumed in the course of its public utility business; and (4) charges made for gas used in the propulsion of a motor vehicle, as authorized in the Vehicle Code of the State of California.

- c. The tax imposed in this subsection shall be collected from the service user by the person selling or transporting the gas. A person selling only transportation services to a user for delivery of gas through mains or pipes shall collect the tax from the service user based on the transportation charges. The person selling or transporting the gas shall, on or before the 20th of each month after the effective date of this section 61106, 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 on 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 this chapter or by order of the Tax Administrator.

§ 61107. Service Users Receiving Direct Purchase of Electricity or Gas.

- a. Notwithstanding any other provision of this section, a service user receiving gas or electricity directly from a non-utility supplier not under the jurisdiction of this section, or otherwise not having the full tax due on the use of electricity or gas 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 electricity or gas used and the price thereof.

§ 61108. 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 a legal holiday.

§ 61109. Actions to Collect.

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

§ 61110. Duty to Collect - Procedures.

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

- a. Notwithstanding any other provision, 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.

- 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.

§ 61111. 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 section.
- b. The Tax Administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this section 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 section 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 section. 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 section. 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.
- 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.

§ 61112. Assessment - Service User Administrative Remedy.

- a. Whenever the Tax Administrator determines that a service user has deliberately withheld from the service supplier the amount of the tax owed by him or her, or that a service user has refused to pay the amount of tax, the service supplier may be relieved of the obligation to collect taxes due under this Section from certain named service users for specified billing periods as set forth below. 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 mailed by the person required to collect the tax.
- 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 Section. 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 may 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 mailed 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 or her, 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. The penalty shall become part of the tax herein required to be paid.

§ 61113. 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.

§ 61114. Refunds.

- a. *Written Claim Required:* Whenever the amount of any tax, interest, or penalty 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 Subsection. However, any claim must be in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, and filed with the Tax Administrator within 15 days of the day the claimed amount was paid. The claim shall be made on a form furnished by the Tax Administrator.
- b. *Refund Or Credit:* Notwithstanding the provisions of subsection (a) above, 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 Section may refund such amount to the service user and may, with the prior written approval of the Tax Administrator, claim credit for such overpayment against the amount of tax that is due to the city, provided that a claim for such credit is presented within the time and in the manner prescribed by this Code.
- c. *Taxes Refunded:* Notwithstanding other provisions of this Subsection, 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 Section 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 Section is repealed, the amounts of any refundable taxes will be borne by the City.

§ 61115. Severability.

If any subsection, subdivision, paragraph, sentence, clause or phrase of this Section 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 Section or any part thereof. The City Council hereby declares that it would have passed each subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more subsection, subdivision, paragraph, sentence, clause, or phrase be declared unconstitutional.

§ 61116. Amendment.

The tax rate set forth in this chapter may only be amended by a vote of the people of the city of Carson; provided, however, that the City Council may otherwise amend this chapter to achieve the purpose or intent of this chapter.

§ 61117. Operative Date.

Under the provisions of Government Code section 36937, this section shall become effective immediately upon passage of the enacting ordinance. The tax imposed under this section shall apply to bills rendered on or after ninety (90) days 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 60 days).

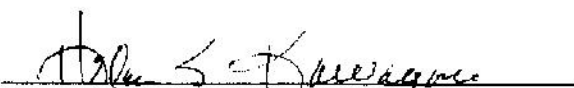
§ 61118. Sunset Date.

The utility users' tax described in this chapter shall no longer be effective on July 1, 2016, and at such time this chapter shall be repealed without further action, except that the provisions of this chapter shall remain in effect as to any tax due and owing, but unpaid, as of July 1, 2016.

§ 61119. Oversight Committee.

As soon as practical after the adoption of this ordinance, the City Council shall appoint a citizens oversight committee which shall receive reports from the Tax Administrator at least annually on the implementation of this chapter, the funds collected, and how funds collected are spent. The citizens oversight committee, which may make recommendations to the City Council on any matter relating to this chapter, shall hold all meetings in compliance with the Ralph M. Brown Act. (Cal. Gov. Code § 54950, et seq.)"

I, Helen S. Kawagoe, City Clerk of the City of Carson, California, do hereby certify that Ordinance No. 09-1423 was Passed, Approved, and Adopted by the People of the City of Carson, California, voting on the 3rd day of March, 2009.



City Clerk, City of Carson, California