

Utility Users Tax Ordinance

City of Hermosa Beach, CA

Please be advised that the City of Hermosa Beach, effective November 1, 1998, no longer imposed its UUT on interstate or international telecommunications because these services were not placed on the ballot for voter approval by November 6, 1998. The City's UUT, however, continues to apply to intrastate telecommunications.

ORDINANCE NO. 98-1181

AN ORDINANCE OF THE CITY OF HERMOSA BEACH, CALIFORNIA REGARDING COLLECTION OF THE UTILITY USERS TAX BY ELECTRICITY PROVIDERS AND AMENDING CHAPTER 3.36 OF THE HERMOSA BEACH MUNICIPAL CODE THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings

A. The City of Hermosa Beach imposes a tax upon every person in the City using electricity in the City.

B. As a result of the restructuring of the electric power industry in California, an electrical energy supplier may be a different entity than the person, business or entity providing billing services for such electrical use.

C. The person, business or entity providing billing services is the logical entity to collect electrical utility user taxes.

D. This ordinance does not impose, increase or extend the electrical utility user tax, and thus is not subject to voter approval.

SECTIONS 2. Subsection A of Section 3.36.050 of Chapter 3.36 of Title 3 of the Hermosa Beach Municipal code is amended to read as follows:

A. There is 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 six percent of the charges made for such energy and shall be paid by the person paying for such energy. "Charges" as used in this section, shall include charges made for: (1) energy; (2) distribution and transmission; (3) metering; (4) stand-by reserves, firming, ramping, voltage support, regulation, emergency, or other similar services; (5) minimum charges for such services, including customer charges, service charges, demand charges, fuel or other cost adjustments, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public goods surcharge, franchise fee, franchise surcharge; and (6) all other annual and monthly charges or surcharges for electricity services or programs, which are authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges appear on a bundled or line item basis on the customer billing. "Charges" shall also include the value of any other services, credits, property, or other consideration provided by the service user in exchange for the energy or services related to the provisions of such energy.

SECTION 3. Subsection C of Section 3.36.050 of Chapter 3.36 of title 3 of the Hermosa Beach Municipal Code is amended to read as follows:

C. The tax imposed in this section shall be collected from the service user by the billing agent, or person, business or entity that provides billing collection services for electrical power generation and distribution within the City. The amount of 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, business or entity required to collect and remit the tax, an estimated amount of tax, measured by the tax billed in the previous month, shall be remitted to the tax administrator on or before the last day of each month. Remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason deemed or held to be invalid or unconstitutional by the decision of any court of

competent jurisdiction, such decision shall not affect the validity of the remaining portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or other portions might subsequently be declared invalid or unconstitutional.

SECTION 5. This ordinance shall become effective and be in full force and effect from and after thirty (30) days of its final passage and adoption.

SECTION 6. Prior to the expiration of fifteen (15) days after the date of its adoption, the City Clerk shall cause this ordinance to be published in the Easy Reader, a weekly newspaper of general circulation published and circulated, in the City of Hermosa Beach in the manner provided by law.

SECTION 7. The City Clerk shall certify to the passage and adoption of this ordinance, shall enter the same in the book of original ordinances of said city, and shall make minutes of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted.

PASSED, APPROVED, AND ADOPTED THIS 28th day of July, 1998, by the following vote:

AYES: Bowler, Oakes, Reviczky

NOES: Mayor Pro Tempore Benz

ABSTAIN: None

ABSENT: Mayor Edgerton

PRESIDENT of the City Council and MAYOR of the City of Hermosa Beach, California

CITY OF HERMOSA BEACH

Chapter 3.36 UTILITIES TAX

Sections:

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This chapter shall be known as the utility tax law of the city. (Prior code § 30-43)

3.36.020 Definitions.

Except where the context otherwise requires, the definitions hereafter set forth shall govern the construction of this chapter:

"City" means the city of Hermosa Beach.

"Month" means a calendar month.

"Person" means 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, individual or municipal corporation.

"Service supplier" means a person required to collect and remit a tax imposed by this chapter.

"Service user" (as the beneficiary of service at the service location) means a person required to pay a tax imposed by this chapter.

"Tax administrator" means the finance director of the city.

"Telephone communication services" means services which provide access to a telephone system and the privilege of telephone communication with substantially all persons having telephone stations which are part of such telephone system. The term "telephone communication services" includes digital and cellular telephone service, when the owner or lessee of the telephone has a billing address in the city, but does not include other forms of land mobile service or maritime

mobile services as defined in Section 2.1 of Title 47 of the code of Federal Regulations.

"Telephone corporation, electrical corporation, gas corporation, water corporation and cable television corporation" have the same meaning, except as hereinafter provided, 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, 1975. "Water corporation" shall be construed to include any organization or municipality, including but not limited to, a mutual water company, engaged in the selling or supplying of water to a service user. (Ord. 95-1133 § 1, 1995; prior code § 30-44)

3.36.030 Constitutional exemption.

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. 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. (Prior code § 30-45)

3.36.040 Telephone tax.

A. There is imposed a tax upon every person in the city, other than a telephone corporation, using intrastate, interstate or international telephone communication services in the city. The tax imposed by this section shall be at the rate of six percent of all charges made for such service and shall be paid by the person paying for such services.

B. As used in this section, the term "charge" 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 to a person 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 regulation

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 services 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. Notwithstanding the provisions of subsection A of this section, the tax imposed under this section shall not be imposed upon any person for using 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 Title 26; Section 4251 of the United States Code.

D. The tax imposed by this section shall be collected from the service user by the person providing or receiving payment for the telecommunication 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 the amount of tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month; or 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. (Ord. 95-1137 § 3, 1995; Ord. 95-1133 §§ 2-4, 1995; prior code § 30-46)

3.36.050 Electricity tax.

A. There is 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 six percent of the charges made for such energy 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 such services, including customer charges, service charges, demand charges, standby charges, and annual and monthly charges, fuel, cost adjustments, etc.

B. As used in this section, the term "using electrical energy" shall not be construed to include 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; 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; or the use of such energy in the production or distribution of water by a public utility or governmental agency.

C. The tax imposed in this section shall be collected from the service user by the person supplying such energy. The amount of 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, measured by the tax billed in the previous month, shall be remitted to the tax administrator on or before the last day of each month. Remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers.
(Ord. 95-1137 § 4, 1995; prior code § 30-47)

3.36.060 Gas tax.

A. There is imposed a tax upon every person in the city using gas energy. The tax imposed by this section shall be at the rate of six percent of the charges made for such gas energy and shall be paid by the persons paying for such gas. "Charges," as used in this section, shall include: (1) gas which is delivered through mains or pipes, (2) minimum charges for such services, including customer charges, service charges and annual and monthly charges.

B. There shall be excluded from the base on which the tax imposed by this section is computed:

(1) charges made for gas which is to be resold and delivered through mains and pipes; (2) charges made for gas used in the generation of electrical energy by an electrical corporation; or (3) charges made for gas used in the production or distribution of water by a public utility or governmental agency; (4) charges made by a gas corporation for gas used and consumed in the conduct of its business; and (5) charges made for gas used in the propulsion of a motor vehicle, as that phrase is defined in the Vehicle Code of the state of California, utilizing natural gas; and (6) charges related to late payments and returned checks.

C. The tax imposed in this section shall be collected from the service user by the person selling the gas. The person selling the gas shall, on or before the twentieth of each calendar month, commencing on the twentieth day of the calendar month after the effective date of this part, 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 the gas shall remit tax payments to the tax administrator in accordance with schedules established or approved by the tax administrator.

(Ord. 95-1137 § 5, 1995; prior code § 30-48)

3.36.070 Water tax.

A. There is imposed a tax upon every person using, in the city, water which is delivered through mains or pipes. The tax imposed by this section shall be at the rate of six percent of the charges made for such water and shall be paid by the person paying for such water. "Charges," as used in this section, shall include charges made for (1) metered water, (2) minimum charges for services, including customer charges, ready to serve charges, standby charges, and annual and monthly charges.

B. There shall be excluded from the base on which the tax imposed by this section is computed, charge 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 department, public utility

or a county 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. (Ord. 95-1137 § 6, 1995; prior code § 30-49)

3.36.080 Cable television tax.

A. There is imposed a tax upon every person in the city using cable television service. The tax imposed by this section shall be the rate of six percent of the charges made for such service and shall be paid by the person paying for such service.

B. The tax imposed in this section shall be collected from the service user by the person furnishing the cable television service. The amount collected in one month shall be remitted to the tax administrator on or before the last day of the following month. (Ord. 95-1137 § 7, 1995; prior code § 30-50)

3.36.090 Senior citizen exemption.

A. The tax imposed by this chapter shall not apply to any residence in which the service user is:

1. Sixty-two (62) years of age or older; or
2. "Disabled" within the meaning of Section 416(i)(1)(A) of Title 42 of the United States code; who uses telephone, electric, gas cable television or water services, in or upon any premises occupied by such individual, provided the combined gross income of all members of the household in which such individual resided was less than nine thousand dollars (\$9,000.00) for the calendar year prior to the fiscal year (July 1st through June 30th) for which the exemption provided in this chapter is applied for.

In order for a disabled person or a person sixty-two (62) years old or older to receive the exemption granted by this section, they must actually reside at the location receiving the service. Landlords

shall not be allowed to use the exemptions granted by this section under any circumstances. In addition, the exemptions shall not apply to any nonresidential service locations.

The exemptions granted by this section shall not eliminate the duty of the service supplier from collecting taxes from such exempt individuals or the duty of such exempt individuals for paying such taxes to the service supplier unless an exemption is applied for by the service user and granted in accordance with the provisions of subsection B of this section.

B. Any service user exempt from the taxes imposed by this chapter because of the provisions of subsection A of this section, may file an application with the finance director of an exemption. Such application shall be made upon forms supplied by the city and shall recite facts under oath which qualify the applicant for an exemption. The city shall review all such applications and certify as exempt those applications determined to qualify therefor and shall notify all service suppliers affected that such exemption has been approved, stating the name of the applicant, the address to which such exempt service is being supplied; the account number, if any, and such other information as may be necessary for the service supplier to remove the exempt user from its tax billing procedure. Upon receipt of such notice, the service supplier shall not be required to continue to bill any further tax imposed by this chapter from such exempt service user until further notice by the city is given. The service supplier shall eliminate such exempt service user from its tax billing procedure no later than sixty (60) days after receipt of such notice from the city. All exemptions shall continue and be renewed automatically by the city so long as the prerequisite facts supporting the initial qualification for exemption shall continue; provided, however, that the exemption shall automatically terminate with any change in the service address or residence of the exempt individual; further provided such individual may, nevertheless, apply for a new exemption with each change of address or residence. Any individual exempt from the tax shall notify the city within ten days of any change in fact or circumstance which might disqualify said individual from receiving such exemption. It shall be a misdemeanor for any person to knowingly receive the

benefits of the exemptions provided by this section when the basis for such exemption either does not exist or ceases to exist.

Any service supplier is authorized to bill the tax imposed by this chapter to any new user or to any account whose name has been changed (other than by correcting a spelling error or other similar clerical error) until the supplier receives notification of exemption as provided in subsection B of this section. Thereupon, the supplier shall cease billing the exempt user for the tax within sixty (60) days as provided in subsection B of this section. (Prior code § 30-51)

3.36.100 Duty of collection of tax--Procedures.

A. 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 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 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 where a service user has notified the service supplier of his refusal to pay the tax imposed on said energy charges Section 3.36.150 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. (Prior code § 30-53)

3.36.110 Actions to collect.

Any such tax received from a service user which has wilfully 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 holding such money contrary to the provisions of this chapter shall be liable to an

action brought in the name of the city for the recovery of such amount. (Prior code § 30-54)

3.36.120 Interest and penalty.

A. Taxes collected by a service supplier which are not remitted to the tax administrator on or before the due dates provided in this chapter are delinquent.

B. Interest and penalty provisions may be drawn on a service supplier consistent with provision in Section 3.32.080(A). Interest and penalties due are an obligation of the service supplier. (Prior code § 30-55)

3.36.130 Enforcement of tax lien.

A. Utility tax liens may be enforced by:

1. A sale of the real property affected and execution and delivery of the deed to the real property to the city; or

2. An action to foreclose the liens in any court of competent jurisdiction.

B. Notice of the proposed sale of real property to satisfy the tax lien shall be sent to the parties of interest not less than sixty (60) days before the proposed sale. For the purposes of this chapter, "parties of interest" and their order of priority are:

a. First, lienholders of record prior to the recordation of the tax lien under this section, in heir order of priority; and

b. Then, any person with title of record to all or any portion of the property prior to the recordation of the tax lien under this section.

2. The tax administrator shall send the notice of the proposed sale by registered mail to the last known mailing address, if known, of the parties of interest. The tax administrator shall make a reasonable effort to obtain the name and last known mailing address of the parties of interest.

3. The notice shall include the following:

a. The date, time and place of the proposed sale; and

b. The amount required to redeem the property; and

c. The fact that the property may be redeemed up to the close of business on the last business day prior to the date of sale; and

d. A statement substantially the same as follows: Any excess funds remaining from the sale of the property after satisfaction of the tax lien shall be retained by the tax administrator for one year. At the expiration of one year, any fund not claimed by a party of interest shall be distributed to various public funds. Claims for excess funds by parties of interest must be filed with the tax administrator, under the criteria established by California Revenue and Taxation Code section 4675.

4. The city shall charge a fee to the parties of interest for this notice, not to exceed the estimated reasonable costs of providing such notice.

C. The sale shall be conducted by the city tax administrator.

D. Property sold for delinquent taxes, penalties for delinquency, and costs of collection is subject to redemption within a redemption period of five years.

E. The validity of a sale under this chapter shall not be affected if the tax administrator's reasonable effort fails to disclose the name and last known mailing address of parties of interest or if a party of interest does not receive the mailed notice. (Ord. 94-1105 § 1 (part), 1994: prior code § 30-23.2)

3.36.140 Additional power and duties of tax administrator.

A. The tax administrator shall have the power and duty, and is 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 taxes imposed here may be made in conformance with the billing procedures of a 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 taxes 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 the termination of any person's right to exemption hereunder, or the change of any address to which service is supplied to any exempt person. (Prior code § 30-56)

3.36.150 Assessment--Administrative remedy.

A. The tax administrator may make an assessment for taxes not remitted by a person required to remit.

B. 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 to such person, or whenever the tax administrator deems it in the best interest of the city, he may relieve such person of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods.

C. 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 or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due.

D. 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 person required to collect the tax; 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 accompanied in person, a penalty of twenty-five (25) percent of the amount of the tax set forth in the notice shall be imposed, but in no event less than five dollars (\$5.00). The penalty shall become, for all purposes, a part of the tax required to be paid pursuant to the provisions of this chapter. (Prior code § 30-57)

3.36.160 Records.

It shall be the duty of every service supplier who is required to collect and remit to the city a tax imposed by the article, to keep and preserve, for a period of not less than three years, all records as may be necessary to determine the amount of such taxes due to the city from service users supplied by such service supplier, which records the tax administrator shall have the right to inspect at all reasonable times. (Prior code § 30-58)

3.36.170 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 chapter, 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 collected and 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 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. 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, 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 years from the date of overpayment.

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 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 this chapter is repealed, the amount of any refundable taxes will be borne by the city. (Prior code § 30-59)

3.36.180 Jurisdiction of the Public Utilities Commission of the state.

Nothing contained in this chapter is intended to conflict with the applicable rules, regulations and tariffs of any service supplier subject to the jurisdiction of the Public Utilities Commission of the state. In the event of any conflict, the provisions of such rules, regulations and tariffs shall control. (Prior code § 30-61)

3.36.190 Fund and purpose.

All of the proceeds of the taxes levied under this chapter shall be placed in the general fund of the city and shall be utilized for general governmental purposes. (Ord. 95-1137 § 8, 1995: prior code § 30-62)