

ORDINANCE NO. 492 N.S.
AN ORDINANCE PROVIDING FOR A TELEPHONE, GAS, WATER,
ELECTRICITY AND TELEVISION CABLE USERS TAX

THE COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HERE ORDAIN AS FOLLOWS:

1. The El Paso de Robles Municipal Code is amended by adding thereto the following Chapter:

CHAPTER I

TELEPHONE, GAS, WATER, ELECTRICITY AND CABLE TELEVISION USERS TAX.

SEC 1 Definitions: Except where the context otherwise requires, the definitions contained in this Section shall govern the construction of this Chapter:

- (a) "Person" shall mean all domestic and foreign corporations, associations, syndicates, joint stock companies, partnerships of every kind, joint ventures, clubs, Massachusetts business or common law trusts, societies, and individuals.
- (b) "Month" shall mean a calendar month.
- (c) "Service user" shall mean a person required to pay a tax imposed under the provisions of this Chapter.
- (d) "Service supplier" shall mean a utility company required to collect and remit a tax imposed under the provisions of this Chapter.
- (e) "City" shall mean the City of El Paso de Robles.
- (f) "Tax Administrator" shall mean the Finance Director of City.
- (g) "Cable television corporation", "electrical corporation", "gas corporation", "telephone corporation", and "water corporation" shall have the same meanings as defined in Sections 215.5, 218, 222, 234 and 241, respectively, of the Public Utilities Code of the State of California, as said sections read on January 1, 1970, and each service supplier herein enumerated shall be construed to include any municipality or governmental agency engaged in the selling or supplying of utility service to service users. The Municipal Wastewater Utility shall have the same meaning as defined in Chapter 14.08 of the Municipal Code of the City of El Paso de Robles.

SEC 2 City and Constitutional Exemptions: Nothing in this Chapter shall be construed as imposing a tax upon the City or any person when the position of such tax upon that person would be in violation of the Constitutions of the United States or 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:

- (a) There shall be excluded from the tax base on which the tax imposed in this ordinance is computed: (1) charges made for services rendered and products sold to other utility companies operating within the City Limits; and, (2) charges related to late payments and returned checks.
- (b) The tax administrator shall prepare a list of municipal utility companies and furnish a copy thereof to each service supplier.

SEC 3 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 Section shall be at the rate established by the City Council of the City of El Paso de Robles by resolution, from time to time.
- (b) As used in this Section, the term "charges" shall not include charges for services paid for and 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

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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 October 1, 1967.

(c) The tax imposed in this Section shall be collected from the service user by the person providing the intrastate telephone communication services. The amount of tax collected in one month shall be remitted to the City Treasurer on or before the last day of the following month.

(d) Notwithstanding the provisions of this subsection (a), the tax imposed under this Section shall not be imposed upon any person for using intrastate communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under Section 4251 of Title 26 of the United States Code, as said section existed on November 1, 1967.

SEC 4 Electricity Tax:

(a) There is hereby imposed a tax upon every person in the City, other than an electrical corporation or a gas corporation, using electrical energy in the City. The tax imposed by this Section shall be at the rate established by the City Council of the City of El Paso de Robles by resolution, from time to time. Any rate established by the City Council pursuant to this subsection shall be in effect for charges incurred for billing periods which begin on or after the 30th day following passage of the resolution establishing the rate.

(b) As used in this Section, the words "using electrical energy" shall not be construed to mean the use of such energy from a storage battery, provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of storage batteries.

(c) As used in this Section, the words "using electrical energy" shall not be construed to mean the receiving of such energy by an electrical corporation or a governmental agency at a point within the City for resale.

(d) The tax imposed in this Section shall be collected from the service user by the person selling such electrical energy. The amount of tax collected in one month shall be remitted to the City Clerk on or before the last day of the following month.

SEC 5 Gas Users Tax:

(a) There is hereby imposed a tax upon every person in the City, other than a gas corporation or an electrical corporation, using gas in the City which is delivered through mains or pipes. The tax imposed by this Section shall be at the rate established by the City Council of the City of El Paso Robles by resolution, from time to time. Any rate established by the City Council pursuant to this subsection shall be in effect for charges incurred for billing periods which begin on or after the 30th day following passage of the resolution establishing the rate.

(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 sold for use in the generation of electrical energy or for the production or distribution of water by a public utility or governmental agency; (3) charges made by a gas public utility for gas used and consumed in the conduct of the business of gas public utilities; (4) 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 20th of each calendar month, commencing on the 20th 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.

(d) "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; and (3) charges based on usage over the minimum.

SEC 6 Water Users Tax:

(a) There is hereby imposed a tax upon every person in the City, other than a

water corporation, using water in the City which is delivered through mains or pipes. The tax imposed by this Section shall be at the rate established by the City Council of the City of El Paso de Robles by resolution, from time to time.

(b) The tax imposed in this Section shall be collected from the service user by the person selling the water. The amount collected in one month shall be remitted to the City Treasurer on or before the last day of the following month.

SEC 7 Cable Television Users Tax:

(a) There is hereby imposed a tax upon every person in the City using cable television service in the City. The tax imposed by this Section shall be at the rate established by the City Council of the City of El Paso de Robles by resolution, from time to time.

(b) The tax imposed in this Section shall be collected from the service user by the person providing such cable television service. The amount of the tax collected in one month shall be remitted to the City Treasurer on or before the last day of the following month.

Section 8 Wastewater Enterprise Users Tax:

(a) There is hereby imposed a tax upon every person in the City, other than a Wastewater Treatment Corporation, using the services of the Municipal Wastewater Enterprise, by dispensing liquid waste through mains and laterals. The tax imposed by this Section shall be at the rate established by the City Council of El Paso de Robles by Resolution, from time to time.

(b) The tax imposed in this Section shall be collected from the service user by the person providing such selling of the wastewater collection service. The amount collected in one month shall be remitted to the City Clerk on or before the last day of the following month.

SEC 9 Actions to Collect: Any tax and/or penalty required to be paid by a service user under the provisions of this Chapter shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the City Treasurer shall be deemed a debt owed to the City by the person required to collect and remit. Any person owing money to the City under the provisions of this Chapter shall be liable to an action brought in the name of the City for the recovery of such amount.

SEC 10 Duty to Collect - Procedures: The duty to collect and remit the taxes imposed by this Chapter shall be performed as follows:

(a) The tax shall be collected insofar as practicable at the same time and along with the charges made in accordance with regular billing practice of the service supplier. If the amount paid by a service user is less than the full amount of the charge and tax which has accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid.

(b) The duty to collect tax from a service user shall commence with the beginning of the first regular billing period applicable to that service user where all charges normally included in such regular billing are subject to the provisions of this Ordinance.

SEC 11 Powers and Duties of Tax Administrator: The Tax Administrator shall have the power and duty, and is hereby directed to enforce each and all of the provisions of this Chapter. The Tax Administrator shall have power to adopt rules and regulations not inconsistent with the provisions for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed; and a copy of such rules and regulations shall be on file and available for public examination in the Tax Administrator's office.

SEC 12 Administrative Agreements: The Tax Administrator may make administrative agreements to vary the strict requirements of this Chapter so that the collection and remittance of any tax imposed herein 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 and available for public examination in the Tax Administrator's office.

SEC 13 Interest and Penalty:

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

(b) In addition to remitting the amount of the tax, any service supplier who fails to remit any tax imposed by this Chapter within the time required, and upon ten days written notice to the service supplier of its failure to remit, shall pay a penalty of 5 percent of the amount of the tax.

(c) If the City Treasurer determines that the nonpayment by any service supplier of any remittance due under this Chapter is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated above.

(d) Every penalty imposed under the provisions of this Section shall become a part of the tax required to be remitted.

SEC 14 Failure of Service User to Pay:

Whenever the Tax Administrator deems it in the best interest of the City, he shall relieve service supplier of the obligation to collect taxes due under this Chapter 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 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 accomplished in person, a penalty of twenty-five (25%) percent of the amount of the tax set forth in the notice shall be imposed, but not less than Five and no/100ths (\$5.00) Dollars. The penalty shall become part of the tax herein required to be paid.

(b) In addition to the penalties imposed, any service user who fails to pay any tax imposed by this Chapter shall pay interest at the prime lending rate on the amount of the tax, exclusive of penalties, from the date on which the payment first became delinquent until paid.

SEC 15 Assessments:

(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 is due and payable, shall be submitted to the Council for confirmation or modification. The Tax Administrator shall mail a copy of such notice to the service supplier and to the service user at least ten (10) days prior to the date of the hearing and shall publish such notice at least (10) days prior to the date of the hearing in the official newspaper of the City. Any interested person 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.

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

SEC 16 Records: It shall be the duty of every service supplier 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 service supplier may have been required to collect and remit to the City, which records the Tax Administrator shall have the right to inspect at all reasonable times.

SEC 17 Refunds:

(a) A service supplier who has collected any amount of tax illegally, erroneously, or more than once 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, providing such credit is claimed in a return dated no later than three (3) years from the date of overpayment.

(b) 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 City under this chapter, it may be refunded to a service supplier or service user by the City provided a claim in writing therefor, stating under penalty of

perjury the specified grounds upon which the claim is founded, is filed with the Tax Administrator within three (3) years of the date of payment. The claim shall be on forms furnished by the Tax Administrator. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records, and, in the case of a service user, that the service user has been unable to obtain a refund or adjustment from the service supplier who collected the tax.

(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 service charges may also be refunded to service users by the service supplier and the service supplier can claim credit for such refunded taxes against the amount which is due upon any monthly returns.

(d) Proof Required. No refund shall be paid under the provisions of this Section unless the claimant established his right thereto by written records showing entitlement thereto.

SEC 18 Penalties for Violations - Unlawful Acts: Any person violating any of the provisions of this Chapter or any person wilfully refusing to pay any tax required hereunder shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the County Jail for a period of not more than six (6) months, or by both such fine and imprisonment.

SEC 19 California Public Utilities Commission Jurisdiction: Nothing contained in this Ordinance is intended to conflict with the applicable rules, regulations or orders of the California Public Utilities Commission or with the applicable tariffs of any public utility subject to that Commission's jurisdiction. In the event of any conflict, the provision of said rules, regulations and tariffs shall control.

2. This ordinance shall take effect and be in full force from and after ninety (90) days from its final passage, and the taxes imposed by this ordinance shall be applied to bills issued for billing periods beginning on or after the date this ordinance takes effect.

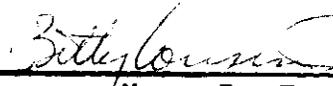
3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council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

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES this 4th day of September, 1984, by the following roll call vote:

AYES: COUNCILMEN Cousins, Ovitt, Russell, Thorndyke and Stemper

NOES: COUNCILMEN None

ABSENT: COUNCILMEN None



Mayor Pro Tem
Betty Cousins

ATTEST:



Deputy City Clerk
Dawn Hudson

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