

CITY OF HAWAIIAN GARDENS
LOS ANGELES COUNTY, CALIFORNIA

ORDINANCE NO. 425

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS
ESTABLISHING A UTILITY USERS TAX.

THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS DOES
ORDAIN AS FOLLOWS:

Section 1. Recitals. The Hawaiian Gardens city council has extensively studied and debated actions to provide adequate municipal services to the community.

It is the intention of the Hawaiian Gardens City Council to provide adequate funding to assure that general municipal services are provided to the community.

The Hawaiian Gardens City Council intends to enact a six percent (6%) Utility Users Tax for residential service user, for commercial service user and industrial service user for the purpose of funding general municipal services to meet the usual and current expenses of the City, including those relating to Public Safety and Police Services.

Section 2. Chapter 8.04 of the Hawaiian Gardens Municipal Code is hereby added to read as follows:

TITLE 8. UTILITY USERS TAX

Section 8.04.010. Title. The ordinance codified in this chapter shall be known as the "Utility Users Tax Ordinance" of the City and may be cited as the Utility Users Tax Ordinance.

Section 8.04.020. Definitions.

(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 Hawaiian Gardens.

(c) "Telephone corporation," "electrical corporation," "gas corporation," and "water corporation," shall have the same meanings as defined in Sections 234, 218, 222, and 241, 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.

0627
476

(d) "Tax Administrator" shall mean the Finance Director of the City of Hawaiian Gardens or his designee.

(e) "Service supplier" shall mean any entity required to collect or self-impose and remit a tax as imposed by this ordinance.

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

(g) "Month" shall mean a calendar month.

(h) "Non-utility supplier" shall mean a service supplier, other than an electrical corporation, telephone corporation, gas corporation, or water corporation, franchised to serve the City, which generates for its own use, or which sells to others electrical energy, telephone communication services, natural gas services, or water services, that is required to collect or self-impose and remit a tax imposed by this ordinance.

(i) "Residential service user" shall mean any property which is primarily used as living quarters.

(j) "Commercial service user" shall mean any property which is used to conduct business via the sale of goods or services.

(k) "Industrial service user" shall mean any property which is used to assemble, manufacture of goods.

(l) "Gas" shall mean any natural or manufactured gas or alternate hydrocarbon fuel which may be substituted therefore.

Section 8.04.021. Exemptions.

(a) Nothing in this ordinance 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 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 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.

Section 8.04.022. Telephone Users Tax.

(a) There is hereby imposed a tax on the amounts paid for any intrastate, interstate, and international telephone services by every person in the City using such services. The tax imposed by

this section shall be at the rate of six percent (6%) for residential service user, for commercial service users and industrial service users 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 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.

(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.

Section 8.04.023. 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 six percent (6%) for residential service user, for commercial service user and industrial service user of the charges made for such energy by an electrical corporation which serves the City and shall be paid by the person using the energy. The tax is applicable to any non-utility supplier which generates and uses its own electrical energy or which sells

electrical energy to others. "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 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 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 Hawaiian Gardens for resale.

(c) The tax imposed in this section shall be collected from the service user by any energy service supplier or non-utility supplier. The amount of tax collected 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 8.04.028, 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.

Section 8.04.24. 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. The tax imposed by this section shall be at the rate of six percent (6%) for residential service user, for commercial service user and industrial service user of the charges made for such gas and shall be paid by the person paying for such gas. "Charges" as used in this section shall include: 1) metered 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 in 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 sold for use in the generation of electrical energy; 3) charges made by a gas public utility for gas used and consumed in the conduct of the business of a gas public utilities; 4) 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 5) charges related to late payments and returned checks.

(c) Tax imposed in this section 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 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 or transporting the gas shall remit tax payments to the Tax Administrator in accordance with schedules established or approved by the Tax Administrator.

Section 8.04.025. 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 six percent (6%) for residential service user, for commercial service user and industrial service user 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 municipal water district for water used and consumed in its operation to provide water services.

(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.

Section 8.04.026. Interest and 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 ordinance 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.

(b) Delinquent payment of the tax by any person, service supplier, or non-utility supplier shall incur late payment penalties of ten percent (10%) and an additional five percent (5%) for each thirty (30) days, or portion thereof, thereafter until paid. Additionally, interest shall accrue for each delinquent payment at the rate of the greater of ten percent (10%) per annum or the earnings rate of the City's investment portfolio.

(c) Failure or refusal to collect or pay the tax is a misdemeanor offense subject to the maximum penalty and jail term permitted by California Law. Each day the tax remains unpaid shall constitute a separate violation subject to the maximum penalties and jail term limits.

Section 8.04.027. Actions to Collect.

Any tax required to be paid by a service user under the provisions of this Ordinance 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 of the recovery of such amount.

Section 8.04.028. Duty to Collect - Procedures.

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

(a) Notwithstanding the provisions of any other section of this ordinance, 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/non-utility supplier. Where the amount paid by a service user to a service supplier/non-utility 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/non-utility supplier of his refusal to pay the tax imposed on said energy charges Section 8.04.030. (c) 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 ordinance. 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.

Section 8.04.029. 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 ordinance.

(b) The Tax Administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this ordinance

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 ordinance 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 ordinance. 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.

Section 8.04.030. 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 ordinance from certain named service users for specified billing periods.

(c) The service supplier/non-utility 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 to two or more billing periods, the service supplier/non-utility supplier shall be relieved of the obligation to collect taxes due provided the service supplier/non-utility supplier provides the Tax Administrator with the names, address, account number, and unpaid amounts of the service user who has failed to pay the tax.

(d) The Tax Administrator shall notify the service user that he 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 accomplished in person, a penalty of twenty-five (25%) of the amount of the tax set forth in the notice shall be imposed, but not less than \$5.00. This penalty in addition to those penalties and interest specified in Section 8.04.26 shall become part of the tax herein required to be paid.

Section 8.04.031. Records.

It shall be the duty of every person and service supplier required to collect and remit to the City any tax imposed by this ordinance 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.

Section 8.04.032. 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) 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 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.

(e) 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.

Section 8.04.033. 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.

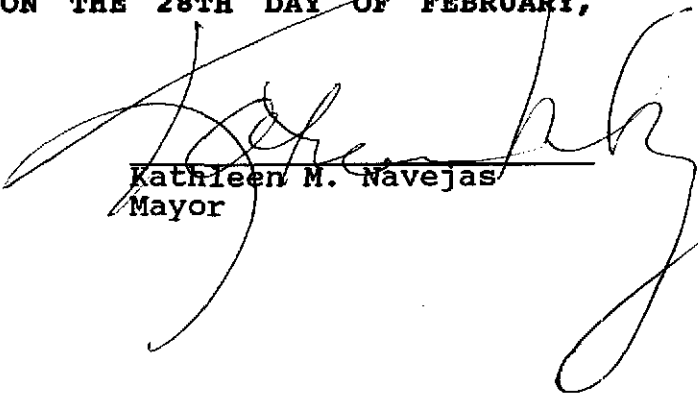
Section 8.04.034. Termination or Suspension of Utility Users Tax.

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

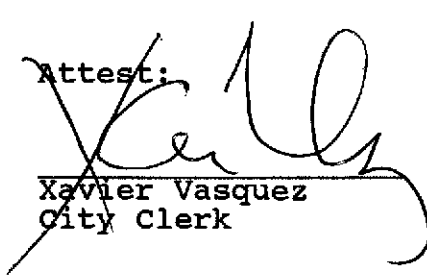
Section 8.04.035. Effective Date.

This ordinance shall become effective immediately upon passage, pursuant to California Government Code Section 36937 (d). Because of timing and preparation considerations required by the affected utility companies, the tax imposed under this ordinance shall apply to services furnished from the beginning of the first regular billing period commencing on or after April 1, 1995 or as soon thereafter as the respective utilities are physically and mechanically able to implement the imposition of charges.

PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE
CITY OF HAWAIIAN GARDENS ON THE 28TH DAY OF FEBRUARY,
1995.

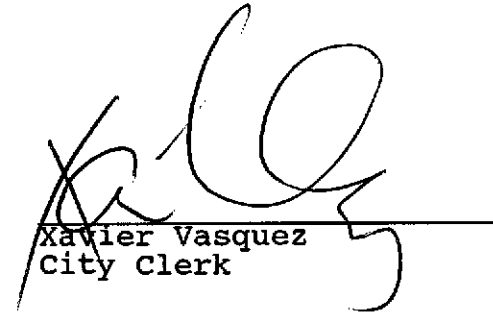

Kathleen M. Navejas
Mayor

Attest:


Xavier Vasquez
City Clerk

I, Xavier Vasquez, City Clerk of the City of Hawaiian Gardens, do hereby certify that Ordinance No. 425 was duly and regularly passed and adopted by the City Council for the City of Hawaiian Gardens on the 28th day of February, 1995, by the following roll call vote, as the same appears on file and of record in the office of the City Clerk.

AYES: PRIDA, CANADA, NAVEJAS
NOES: RUGGERI, CABRERA
ABSENT: NONE
ABSTAIN: NONE


Xavier Vasquez
City Clerk

AGENDA ITEM NO: 2D

TO: Mayor and Council
FROM: Nelson E. Oliva, City Administrator
SUBJECT: ORDINANCE 425 (SECOND READING) ESTABLISHMENT
OF A UTILITY USERS TAX
DATE: February 28, 1995

OVERVIEW:

On the regular meeting of the City Council of February 14, 1995, the council considered public input and voted to introduce Ordinance No. 425 establishing a Utility Users Tax.

Ordinance No. 425 is attached and presented for a second reading.

COUNCIL ACTION:

That the City Council waive further reading and adopt Ordinance No. 425, establishing a Utility Users Tax.

NEO:lj
Attachment

qa:doc:agenda\utax.sr

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES,

I am a citizen of the United States States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the printer of the Long Beach Press-Telegram, a newspaper of general circulation, printed and published 7 times each week in the City of Long Beach, County of Los Angeles, and which newspaper has been adjudged a legal newspaper of general circulation by the Superior Court of the County of Los Angeles, State of California, under the date of March 21, 1934.

Case Number 370512; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

March 16,
all in the year 1995.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Long Beach, California, this 16th day of March, 1995.

Barbara Callison
Signature

Press-Telegram Legal
Advertising Department

604 Pine Ave., Long Beach, Ca., 90844
(310) 499-1236

Received

This space is for the City Clerk's Filing Stamp

MAR 22 1995

City of Hawaiian Gardens
City Clerks Office

PROOF OF PUBLICATION OF

City of Hawaiian Gardens
ORDINANCE NO. 425

CITY OF HAWAIIAN GARDENS
LOS ANGELES COUNTY, CALIFORNIA
ORDINANCE NO. 425

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS ESTABLISHING A UTILITY USERS TAX.

THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS DOES ORDAIN AS FOLLOWS:

Section 1. Recitals. The Hawaiian Gardens City Council has extensively studied and debated actions to provide adequate municipal services to the community.

It is the intention of the Hawaiian Gardens City Council to provide adequate funding to assure that general municipal services are provided to the community.

The Hawaiian Gardens City Council intends to enact a six percent (6%) Utility Users Tax for residential service users, for commercial service user and industrial service user for the purpose of funding general municipal services to meet the usual and current expenses of the City, including those relating to Public Safety and Police Services.

Section 2. Chapter 8.04 of the Hawaiian Gardens Municipal Code is hereby added to read as follows:

TITLE 8. UTILITY TAX

Section 8.04.010. Title. The ordinance codified in this chapter shall be known as the "Utility Users Tax Ordinance" of the City and may be cited as the Utility Users Tax Ordinance.

Section 8.04.020. Definitions.

(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 Hawaiian Gardens.

(c) "Telephone corporation," "electrical corporation," "gas corporation," and "water corporation," shall have the same meanings as defined in Sections 234, 218, 222, and 241, 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.

(d) "Tax Administrator" shall mean the Finance Director of the City of Hawaiian Gardens or his designee.

(e) "Service supplier" shall mean any entity required to collect or self-impose and remit a tax as imposed by this ordinance.

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

(g) "Month" shall mean a calendar month.

(h) "Non-utility supplier" shall mean a service supplier, other than an electrical corporation, telephone corporation, gas corporation, or water corporation, franchised to serve the City, which generates for its own use, or which sells to others electrical energy, telephone communication services, natural gas services, or water services, that is required to collect or self-impose and remit a tax imposed by this ordinance.

(i) "Residential service user" shall mean any property which is primarily used as living quarters.

(j) "Commercial service user" shall mean any property which is used to conduct business via the sale of goods or services.

(k) "Industrial service user" shall mean any property which is used to assemble, manufacture of goods.

(l) "Gas" shall mean any natural or manufactured gas or alternate hydrocarbon fuel which may be substituted therefore.

Section 8.04.021. Exemptions.

(a) Nothing in this ordinance 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 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 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.

Section 8.04.022. Telephone Users Tax.

(a) There is hereby imposed a tax on the amounts paid for any intrastate, interstate, and international telephone services by every person in the City using such services. The tax imposed by this section shall be at the rate of six percent (6%) for residential service user, for commercial service users and industrial service users 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 supplier 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 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.

(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.

Section 8.04.023. 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 six percent (6%) for residential service user, for commercial service user and industrial service user of the charges made for such energy by an electrical corporation which serves the City and shall be paid by the person using the energy. The tax is applicable to any non-utility supplier which generates and uses its own electrical energy or which sells electrical energy to others.

(b) "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.

(c) 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 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 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 Hawaiian Gardens for resale.

(c) The tax imposed in this section shall be collected from the service user by any energy service supplier or non-utility supplier. The amount of tax collected 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 8.04.023, 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.

Section 8.04.24. 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. The tax imposed by this section shall be at the rate of six percent (6%) for residential service user, for commercial service user and industrial service user of the charges made for such gas and shall be paid by the person paying for such gas. "Charges," as used in this section shall include: (1) metered 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 in 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 sold for use in the generation of electrical energy; 3) charges made by a gas public utility for gas used and consumed in the conduct of the business of a gas public utility; 4) 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 5) charges related to late payments and returned checks.

(c) Tax imposed in this section 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 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 or transporting the gas shall remit tax payments to the Tax Administrator in accordance with schedules established or approved by the Tax Administrator.

Section 8.04.025. 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 six percent (6%) for residential service user, for commercial service user and industrial service user 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 municipal water district for water used and consumed in its operation to provide water services.

(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.

Section 8.04.026. Interest and 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 ordinance 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.

(b) Delinquent payment of the tax by any person, service supplier, or non-utility supplier shall incur late payment penalties of ten percent (10%) per annum or the earnings rate of the City's investment portfolio.

(c) Failure or refusal to collect or pay the tax is a misdemeanor offense subject to the maximum penalty and jail term permitted by California Law. Each day the tax remains unpaid shall constitute a separate violation subject to the maximum penalties and jail term limits.

Section 8.04.027. Actions to Collect.

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

Section 8.04.028. Duty to Collect-Procedure.

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

(a) Notwithstanding the provisions of any other section of this ordinance, 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/non-utility supplier. Where the amount paid by a service user to a service supplier/non-utility 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/non-utility supplier of his refusal to pay the tax imposed on said energy charges Section 8.04.030. (c) 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 ordinance. 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.

Section 8.04.029. 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 Ordinance.

(b) The Tax Administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this Ordinance 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 ordinance 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

ordinance. 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.

Section 8.04.030. 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 ordinance from certain named service users for specified billing periods.

(c) The service supplier/non-utility 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 to two or more billing periods, the service supplier/non-utility supplier shall be relieved of the obligation to collect taxes due provided the service supplier/non-utility supplier provides the Tax Administrator with the names, address, account number, and unpaid amounts of the service user who has failed to pay the tax.

(d) The Tax Administrator shall notify the service user that he 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 accomplished in person, a penalty of twenty-five (25%) of the amount of the tax set forth in the notice shall be imposed, but not less than \$5.00. This penalty in addition to those penalties and interest specified in Section 8.04.26 shall become part of the tax herein required to be paid.

Section 8.04.031. Records.

It shall be the duty of every person and service supplier required to collect and remit to the City any tax imposed by this ordinance to keep and preserve, for a period of three (30) 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.

Section 8.04.032. 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) No refund shall be paid under this 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 this 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.

(e) A service supplier may refund the taxes collected to the service user in accordance with this section or by the service suppliers' customary practice.

Section 8.04.033. 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 8.04.034. Termination or Suspension of Utility Users Tax.

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

Section 8.04.035. Effective Date.

This ordinance shall become effective immediately upon passage, pursuant to California Government Code Section 36937 (d). Because of timing and preparation considerations required by the affected utility companies, the tax imposed under this ordinance shall apply to services furnished from the beginning of the first regular billing period commencing on or after April 1, 1995 or as soon thereafter as the respective utilities are physically and mechanically able to implement the imposition of charges.

PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS ON THE 28TH DAY OF FEBRUARY, 1995.

/s/ Kathleen M. Navejas
Mayor

Attest:

/s/ Xavier Vasquez.

City Clerk

I, Xavier Vasquez, City Clerk of the City of Hawaiian Gardens, do hereby certify that Ordinance No. 425 was duly and regularly passed and adopted by the City Council for the City of Hawaiian Gardens on the 28th day of February, 1995, by the following roll call vote, as the same appears on file and of record in the office of the City Clerk.

AYES: PRIDA, CANADA, NAVEJAS

NOES: RUGGERI, CABRERA

ABSENT: NONE

ABSTAIN: NONE

/s/ Xavier Vasquez
City Clerk

Pub. March 16, 1995 (16) PT (1016/84314-Gov't)