

Chapter 20A
UTILITY USE TAXES

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SEC. 20A.1 DEFINITIONS

The following words and phrases whenever used in this chapter shall be construed as defined in this section:

- (a) "City" means the City of Piedmont.
- (b) "Month" means a calendar month.
- (c) "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 or individual.
- (d) "Service Supplier" means a person required to collect and remit a tax imposed by this chapter.
- (e) "Service User" means a person required to pay a tax imposed by this chapter.
- (f) "Tax Administrator" means the finance officer of the City of Piedmont
- (g) "Telephone Corporation", "Electrical Corporation", "Gas Corporation", "Water Corporation", and "Cable Television Corporation" shall have the same meanings as defined in Sections

234, 218, 222, 241 and 215-5, respectively, of the Public Utilities Code of the State of California as said sections existed on January 1, 1975. "Electrical corporation" shall be construed to include any municipality or franchised agency engaged in the selling or supplying of electrical power to a service user. (Ord. No. 363 N.S., ' 1)

SEC. 20A.2 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. (Ord. No. 363 N.S., ' 2)

SEC. 20A.3 TELEPHONE USERS TAX

(a) There is imposed a tax on the amounts paid for intrastate telephone services by every person in the City using such services. The tax imposed by this section shall be at the rate of seven and one-half percent 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 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 telephonic quality communications 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 having a situs in the City, irrespective of whether a particular telephone call 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 intrastate telephone communication services. The amount of the tax collected in one month shall be remitted to the tax collector on or before the last day of the following month.

(d) Notwithstanding the provisions of subsection (a) of this section, 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, as such section existed on the effective date hereof. (Ord. No. 363 N.S., ' 3)

SEC. 20A.4 ELECTRICITY USERS 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 seven and one-half 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 service, including customer charges, service charges, demand charges, standby charges, and annual and monthly charges.

(b) As used in this section, the term "using electrical energy" shall not be construed to mean the storage of such energy by a person in a battery owned or possessed by him for use in an automobile or other machinery or device apart from the premises upon which the energy was received; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; 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 for resale; or the use of such energy in the production or distribution of water by a public utility or a governmental agency.

(c) The tax imposed by 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 collector on or before the last day of the following month. Remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers. (Ord. No. 363 N.S., '4)

SEC. 20A.5 GAS USERS TAX

(a) There is imposed a tax upon every person in the City, other than a gas corporation or electrical corporation, using in the City gas which is delivered through mains or pipes. The tax imposed by this section shall be at the rate of seven and one-half percent of the charges made for such gas and shall be paid by the person paying for such gas.

(b) There shall be excluded from the base on which the tax imposed in this section is computed:

1. Charges made for gas which is to be resold and delivered through mains or pipes;
2. Charges made for gas solely for use in the generation of electrical energy for the production or distribution of water by a public utility or a governmental agency; and
3. Charges made by a gas public utility for gas used and consumed in the conduct of the business of gas public utilities.

(c) The tax imposed by this section shall be collected from the service user by the person selling the gas. The amount collected in one month shall be remitted to the tax collector on or before the last

day of the following month. (Ord. No. 363 N.S., ' 5)

SEC. 20A.6 WATER USERS TAX

(a) There is 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 one dollar per month.

(b) The tax imposed in this section shall be collected from the property owner by Alameda County long with property taxes. The amount shall be due semi-annually and shall be remitted to Alameda County on or before either December 10th or April 10th, whichever is applicable. (Ord. No. 363 N.S., ' 6; Ord. No. 368 N.S., ' 1; Ord. No. 459 N.S., ' 2, eff. 8/1/84)

SEC. 20A.7 REPEALED BY ORD. NO. 368 N.S.

SEC. 20A.8 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 chapter are delinquent.

(b) In the event payment of any of the taxes provided under this chapter are delinquent, then a penalty charge of six percent will be added to the amount of the tax due, and in addition thereto, if said delinquency continues for over fifteen days from the date due, interest will be payable on the amount due, not including the penalty charge, at the rate of seven percent per year, accruing from the date on which the tax payment was originally due. (Ord. No. 363 N.S., ' 8)

SEC. 20A.9 ACTIONS TO COLLECT

Any tax 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 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 chapter shall be liable to an action brought in the name of the City for recovery of such amount. (Ord. No. 363 N.S., ' 9)

SEC. 20A.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 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 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 except in those cases where a service user pays the full amount of the charges but

notifies the service supplier of his refusal to pay the tax imposed on such charges.

(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 period. (Ord. No. 363 N.S., ' 10)

SEC. 20A.11 ADDITIONAL POWERS 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 the 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 tax 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. (Ord. No. 363 N.S., ' 11)

SEC. 20A.12 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 the 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 along with the names, addresses and reasons of the service users refusing to pay the tax imposed under provisions of this chapter.

(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 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 percent of the amount of the tax set forth in the notice shall be imposed, but not less than five dollars. The penalty shall become part of the tax herein required to be paid. (Ord. No. 363 N.S., ' 12)

SEC. 20A.13 RECORDS

It shall be the duty of every person required to collect and remit to the City any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and remittance to the tax administrator, which records the tax administrator shall have the right to inspect at all reasonable times. (Ord. No. 363 N.S., ' 13)

SEC. 20A.14 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 a credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received, when it is established 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, providing 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. (Ord. No. 363 N.S., ' 14)