

ORDINANCE NO. 2120

AN INITIATIVE ORDINANCE OF THE CITY OF
REDLANDS ADDING CHAPTER 3.64 TO THE
REDLANDS MUNICIPAL CODE LEVYING A
UTILITY USERS TAX

WHEREAS, the City Council of the City of Redlands ("this City Council") has adopted Resolution No. 4679 which submitted to the qualified voters of the City of Redlands a proposal to levy a utility users tax of up to two and one half percent (2½%) within the City for the purpose of raising revenue to defray the costs of providing City services and to supplement the City's general fund; and

WHEREAS, at a special municipal election held on November 6, 1990 the proposal to levy a utility users tax was approved by an affirmative vote of a majority of the votes cast upon the proposal; and

WHEREAS, it is the desire of this City Council to levy a utility users tax in accordance with the approval of the voters of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE PEOPLE OF THE CITY OF REDLANDS AS FOLLOWS:

Section 1. Chapter 3.64 shall be added to the Redlands Municipal Code to read as follows:

"Chapter 3.64
UTILITY USERS TAX

Sections:

- 3.64.010 Definitions.
- 3.64.020 Telephone users tax.
- 3.64.030 CATV users tax.
- 3.64.040 Electricity users tax.
- 3.64.050 Natural gas users tax.
- 3.64.060 Constitutional exemption.
- 3.64.070 Delinquent Taxes.
- 3.64.080 Duty to collect - Procedures.
- 3.64.090 Powers and duties of the Director with respect to the Utilities Users Tax.
- 3.64.100 Assessment - Administrative remedy.
- 3.64.110 Records.
- 3.64.120 Refunds.
- 3.64.130 Exemption for household service users - Low income and senior citizens.
- 3.64.140 Use of tax revenues.
- 3.64.150 Violation - Penalty.

3.64.010 DEFINITIONS.

The following words and phrases whenever used in this Chapter shall have the following meanings:

- A. "Director" means the Director of Finance, or his or her designee.
- B. "Month" means a calendar month.
- C. "Non-utility supplier" shall mean a service supplier, other than an electrical corporation franchise to serve the City, which generates electrical energy in capacities of at least 50 kilowatts for its own use or for sale to others.
- D. "Person" means 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.
- E. "Service supplier" means a person required to collect or self-impose and remit a tax as imposed by this Chapter.
- F. "Service user" means a person required to pay a tax imposed under the provisions of this Chapter.

3.64.020 TELEPHONE USERS TAX.

- A. A tax is imposed upon every person in the City using intrastate telephone communication services in the City. The tax imposed by this section shall be at the rate of two and one-half percent (2-1/2%) of the charges made for such services and shall be paid by the person paying for the services.
- B. As used in this section, "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones except where such coin-operated telephone service is furnished for a guaranteed amount, in which case 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 regulation during any period in which the same or similar services or equipment are also available for

sale or lease from person 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. 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 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 intrastate telephone communication services, or the person receiving payment for such services. The amount of tax collected in one month shall be remitted by the service supplier to the Director on or before the last day of the following month; or at the option of the person required to collect and remit the tax, and estimated amount of tax collected, measured by the tax bill in the previous month, shall be remitted to the Director 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 under Section 4251 of Title 26 of the United States Code, the amounts paid for such services are exempt from or not subject to the tax.

3.64.030 CATV USERS TAX.

- A. A tax is imposed upon every person in the City using cable television services (CATV services) in the City. The tax imposed by this section shall be at the rate of two and one-half percent (2-1/2%) of the charges made for such services and shall be paid by the person paying for such services.
- B. The tax imposed in this section shall be collected from the service user by the person providing the CATV services. The amount of tax collected in one month shall be remitted by the service provider to the Director on or before the twentieth day of the following month.

3.64.040 ELECTRICITY USERS TAX.

- A. A tax is imposed upon every person in the City using electrical energy in the City. The tax imposed by this section shall be at the rate of two and one-half percent (2-1/2%) of the charge made for such energy and shall be paid by the person paying for such energy. The tax applicable to electrical energy provided by a non-utility supplier shall be determined by applying the tax rate to the equivalent charges the service user would have incurred if the energy used had been provided by the electrical corporation franchise by the City. Rate schedules for this purpose shall be available from the City. Non-utility suppliers shall install and maintain an appropriate utility-type metering system which will enable compliance with this section. "Charges" as used in this section shall include charges made for (1) metered energy and (2) services, including customer charges, service charges, demand charges, standby charges and annual and monthly charges, fuel and cost adjustments.
- B. As used in this section, the phrase "using electrical energy" shall not include the storage of electrical 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 phrase shall include the receiving of such energy for the purpose of using it in the charging of batteries; nor shall the terms 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 for resale; or the use of such energy in a production or distribution of water by a public utility or a governmental agency.
- C. The tax imposed in this section shall be collected from the service user by any energy service supplier. The tax shall be self-imposed by non-utility suppliers as to their own use. The amount of tax collected or self-imposed in one (1) month shall be remitted by U.S. mail, to the Director, postmarked 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 by U.S. mail, to the Director, 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 service supplier's customers.

- D. Notwithstanding the provisions of Section 3.64.090, if the amount paid by a service user is less than the full amount of the energy charge in 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.

3.64.050 NATURAL GAS USERS TAX.

- A. A tax is imposed upon every person in the City using natural gas which is delivered through mains or pipes. The tax imposed by this section shall be at the rate of two and one-half percent (2-1/2%) of the charges made for such gas and shall be paid by the person paying such gas.
- B. There shall be excluded from the base on which the tax imposed in this section is computed: (1) charges made for natural gas which is to be resold and delivered through mains or pipes; (2) charges made for natural 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 business of 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. The tax imposed in this section shall be collected from the service user by the person selling the natural 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 Chapter, make a return to the Director 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 the payments to the Director in accordance with schedules established or approved by the Director. The amount

collected by the service supplier in one month shall be remitted to the Director on or before the twentieth day of the following month.

3.64.060 CONSTITUTIONAL EXEMPTION.

Nothing in this Chapter shall be construed as imposing a tax upon any person if imposition of such tax upon that person would be in violation of the Constitution of the United States or the Constitution of the state. At the request of a service supplier, the Director shall prepare a list of the persons exempt from the provisions of this Chapter by virtue of this section and furnish a copy to the service supplier.

3.64.070 DELINQUENT TAXES.

- A. Taxes collected from a service user which are not remitted to the Director on or before the due dates provided in this Chapter are delinquent. Should the due date occur on a weekend or legal holiday, the return may be postmarked on the first regular working day following a Saturday, Sunday or legal holiday.
- B. Penalties for delinquency in remittance of any tax collected or any deficiency determination shall attach and be paid by the person required to collect and remit at the rate of fifteen percent per annum of the total tax collected or imposed in this Chapter and not remitted to the City.
- C. Every penalty imposed under the provisions of this section shall become a part of the tax required to be remitted.

3.64.080 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 practice. Where the amount paid by a service user to a service supplier is less than the full amount of the energy charge in 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 of his

refusal to pay the tax imposed on said energy charges, 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 the provisions of this Chapter.

- B. The duty to collect the tax from a service user shall commence with the beginning of the first full regular billing period applicable to that person which starts on or after the operative date of this Chapter.

3.64.090 POWERS AND DUTIES OF THE DIRECTOR WITH RESPECT TO THE UTILITY USERS TAX.

The Director shall have the power and duty and is directed to enforce each and all of the provisions of this Chapter.

3.64.100 ASSESSMENT - ADMINISTRATIVE REMEDY.

- A. The Director may make an assessment for taxes not remitted by a person required to remit. Whenever the Director 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 Director 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.
- B. The service supplier shall provide the City with amounts refused and/or unpaid along with the names and addresses of the service users neglecting to pay the tax imposed under the 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 due.
- C. The Director shall notify the service user that he assumed responsibility to collect the taxes due for the stated periods and demand payment for such taxes. A notice shall be served on a 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 Director 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 percent (25%) 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 to be required to be paid.

3.64.110 RECORDS.

It shall be the duty of every service supplier to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax he has had a duty to collect and remit to the Director. The Director shall have the right to inspect such records at all reasonable times.

3.64.120 REFUNDS.

- A. Whenever the amount of any tax has been overpaid or paid more than once or has erroneously or illegally collected or received by the Director 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 it 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 or 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 imposed by this Chapter and actually due from the 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 to the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to serve its users of charges for past utility service, the taxes paid pursuant to this Chapter on the amount of such refunded charges shall also be refunded to service users, and the service suppliers shall be entitled to claim a credit for refunded taxes against the amount of tax which is due upon the next monthly returns. In the event this Chapter 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 service supplier's customary practice.

3.64.130 EXEMPTION FOR HOUSEHOLD SERVICE USERS -- LOW INCOME AND SENIOR CITIZENS.

- A. The tax imposed by this Chapter shall not apply to any individual who uses telephone, electric, natural gas or cable television services in or upon any premises occupied by such individual if the following conditions are satisfied:
1. If the individual or his/her spouse is 65 years of age or older; or
 2. If the individual lives alone, the individual's annual gross income is less than nine thousand dollars, as shown on the individual's federal or state personal income tax for the preceding reporting period; or
 3. If the individual is married or lives as part of a family unit, the annual gross income of the individual's household is less than twelve thousand dollars for all household occupants as shown on the federal or state personal income tax for the preceding reporting period. Income of the household means all income of the individual's household from all members living in such household who are related to the individual as a spouse or as defined in Sections 17056 and 17057 of the Revenue and Taxation Code of California; and
 4. The individual is the person in whose name the bills for utilities services were rendered; and

5. The individual makes an application and files a verified claim in writing with the Director at City Hall for such refund upon a claim form provided by the Director; and
 6. The claim is approved the Director as being in conformance with this section.
- B. As used in subsection A, "Gross income" means the sum of adjusted gross income as used for purposes of the California Personal Income Tax Law, together with the net income from all sources of all kinds, including but not limited to alimony, support money, cash public assistance and relief, pensions, annuities, social security, interest on securities (including tax free interest on governmental securities), realized capital gains, worker's compensation (not including medical benefits), unemployment insurance income, insurance benefits of all kinds (other than medical), and gifts, except that income shall not include Medicare benefits, MediCal benefits, gifts between members of the household, the receipt of surplus food or other relief in kind supplied by a governmental agency.
- C. Any person claiming exemption pursuant to this section may file a claim for such exemption at any time in order to qualify for an exemption for the subsequent twelve-month period, or until a current exemption is scheduled to expire. An application for exemption or renewal shall be made upon forms supplied by the Director and shall declare facts under penalty of perjury which qualify the applicant for the exemption.
- D. The Director shall review all applications for exemption or renewal, certify as exempt those applicants who qualify, and notify all service suppliers affected that such exemptions have been approved, stating the name of the exempt applicant, the account number shown on the utility bill, the address to which exempt service is being supplied, and any other information necessary for the service provider to remove the exempt service user from its tax billing procedure.
- Upon receipt of notice from the Director, the service provider shall not be required to collect any further tax imposed by this Chapter from such exempt service user until further notice from the Director.
- E. Each exemption shall expire twelve months after the date it was issued. The Director shall notify each service supplier to resume collection of utility taxes

on the accounts of those service users who have not applied for renewal of their exempt status or whose applications for renewal have been denied. Upon receipt of the written notification, these service providers shall resume such collection on those accounts affected commencing with the first billing period beginning after the exemption expires.

Notwithstanding any of the provisions of this section, any service supplier who determines during any calendar year by any means readily available to it that a nonexempt service user is receiving services through a meter or connection exempt by virtue of an exemption issued to a previous user of the same meter or connection, the service supplier shall forthwith resume the collection of taxes imposed by this Chapter upon the nonexempt service user.

- F. Any individual who has been exempted from the tax shall notify the Director within ten days of any change of address or any other change in fact or circumstance which might disqualify that individual from receiving the exemption. If it is determined by the Director that the individual is no longer qualified, the Director shall give notice to the service supplier who shall resume collection of the tax imposed by this Chapter commencing with the next billing period. If the user is entitled to exemption at a new address, the Director shall notify affected service suppliers of that fact.
- G. It shall be a misdemeanor for any person to knowingly receive the benefits of the exemptions provided by this section when the basis for the exemption either does not exist or ceases to exist.

The Director may from time to time, demand evidence of continued eligibility of a service user for exemption under the provisions of this section. Such evidence may include copies of business records, letters or statements from the Social Security Administration, copies of income tax returns, and other evidence concerning the service user or members of his household which may tend to prove or disprove eligibility. Failure to provide sufficient evidence to establish eligibility when requested by the Director shall be grounds for denial or discontinuance of the service users' exemption, but evidence voluntarily provided to the Director may only be used as grounds for termination of the exemption and not as evidence of violation of the provisions of this section.

If the Director determines that an application for exemption is faulty or untruthful, the application shall be denied in writing and the applicant may file an amended application or appeal the decision of the Director to the City Manager, whose decision shall be final.

3.64.140 USE OF TAX REVENUES.

- A. The tax revenues collected under this Chapter shall be used for the purpose of defraying the costs of City Services by supplementing the City's general fund.

3.64.150 VIOLATION -- PENALTY.

Any person violating any provision of this Chapter is guilty of an infraction, which upon conviction thereof is punishable in accordance with the provisions of Section 1.20.020 of this Code.

Mayor

ATTEST:

City Clerk