

ORDINANCE NO.510
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLUE LAKE
ADOPTING THE UTILITY USERS TAX

The City Council of the City of Blue Lake, Humboldt County, California, does hereby ordain as follows:

Section I. Findings. The City Council of the City of Blue Lake hereby makes the following findings:

1. Pursuant to Resolution No. 1033, adopted on May 13, 2014, the City Council placed a Measure on the consolidated General Election ballot, held November 4, 2014, asking the City of Blue Lake residents whether the City should impose a four percent (4%) Utility Users Tax on the use of gas and electric utility services in the City, and automatically terminating five years later.
2. As duly certified by the City Clerk, said Ballot Measure was approved by 56.23% of the voters, 230 in favor and 179 against.

Section II. Utility Users Tax.

1. **Definitions.** The following words and phrases whenever used in this Ordinance shall be construed as defined in this section.

(a) "Electrical corporation," and "Gas Corporation" shall have the same meanings as defined in Sections 218 and 222, respectively, of the California Public Utilities Code, except "Electrical Corporation," and "Gas Corporation" shall also be construed to include any municipality, public agency or Person engaged in the selling or supplying of electrical power or Gas to a Service User.

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

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

(d) "Non-utility Service Supplier" shall mean:

(1) A Service Supplier, other than an Electric Corporation serving within the City, which generates electrical energy in capacities of at least 50 kilowatts for its own use or for sale to others; and a supplier of electric distribution services to all or a significant portion of the City, including but not limited to any publicly-owned electric utility, investor owned utility, cogenerator, distributed generation provider, exempt wholesale generator, municipal utility district, federal power marketing agency, or other supplier or seller of electricity;

(2) An electric service provider (ESP), electricity broker, marketer, aggregator, pool operator; or

(3) A Gas supplier other than a Gas Corporation that sells or supplies Gas or supplemental services to users within the City, including but not limited to an

aggregator, marketer, broker, other than a supplier of Gas distribution services to all or a significant portion of the City.

(e) "Person" shall mean any domestic or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, California business or common law trust, society, individuals, local, state or federal government agency.

(f) "Service Supplier" shall mean any Person that provides electric, or gas to a user of such services within the City. The term shall include any Person required to collect or self-impose and remit a tax as imposed by this Ordinance, including its billing agent.

(g) "Service User" shall mean any Person who uses utility services within the City's boundaries for which a tax is imposed by this Ordinance. For metered utilities, each metered service shall be treated as a single Service User for that particular utility. For non-metered service, each address of service usage shall be treated as a single Service User for that particular utility.

(h) "Tax Administrator" shall mean the City Manager.

2. 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 ordinance 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 for a specified period of time.

(c) Service Users who receive California Alternate Rates for Energy (CARE) from a Gas and/or Electric Corporation are exempt from paying electricity and Gas utility users taxes as imposed by this Ordinance. As used herein, CARE is defined as a program through which reduced energy rates are charged by a Gas and/or Electric Corporation to eligible low income customers on their Gas and electricity charges.

(d) The use of utility services by the City, other local government agencies, state agencies, federal agencies, public schools and state universities is exempt from the levy of taxes imposed by this Article.

(e) It is the responsibility of any Person who claims a tax exemption under the provisions of this Ordinance to notify the Tax Administrator and provide sufficient proof of such exempt status.

3. Electricity Users Tax.

(a) There is hereby imposed a tax on the use of electrical energy supplied by a Service Supplier or a Non-utility Service Supplier which is used within the City's boundaries, unless the service user is exempt from paying the tax under Section 2 of this Ordinance. The tax imposed by this section shall be at the rate of four percent (4%) of the charges made for such electricity, and for any supplemental services or other associated activities directly related to

and/or necessary for the provision of electricity to the service user. The tax shall be paid by the Person responsible for paying for such service, and shall be collected from the service user by the Service Supplier or Non-utility Service Supplier, or its billing agent. An Electric Corporation using electrical energy within the City's boundaries is exempt from paying the taxes imposed by this section.

(b) The tax applicable to electrical energy provided by a Non-utility Service Supplier shall be determined by applying the tax rate to the equivalent charge the service user would have incurred if the energy used had been provided by the electrical corporation franchised by the City. Rate schedules for this purpose shall be available from the City. Non-utility Service Suppliers shall install, maintain and use an appropriate utility-type metering system which will enable compliance with this section.

(c) As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity services. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the Service Supplier can identify, by verifiable data, non-taxable charges based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles. The Service Supplier has the burden of proving the proper apportionment of taxable and non-taxable charges.

(d) As used in this section, "charges" shall apply to all services, components, and items that are (i) necessary for or common to the receipt, use, or enjoyment of electrical service; or (ii) historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term "charges" shall include but is not limited to the following charges:

- (1) Energy charges;
- (2) Distribution or transmission charges;
- (3) Metering charges;
- (4) Stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar minimum charges for services;
- (5) Customer charges, late charges, service establishment or reestablishment charges, demand charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees or surcharges which are necessary for or common to the receipt, use, or enjoyment of electric service; and
- (6) All other charges, fees, surcharges which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees or surcharges appear on a bundled or line item basis on the customer billing.

(e) As used in this section, the term "use of electrical energy" shall not be construed to mean the use of such energy by a storage battery; provided, however, that the term shall include the receipt of such energy for the charging of storage batteries. Nor shall the words "use of electrical energy" be construed to mean the receipt of such energy by an electrical corporation or a governmental agency at a point within the City for resale.

(f) The tax imposed in this section shall be collected from the Person responsible for paying for the electrical energy service by the Person selling such electrical energy. The amount of tax collected in one Month shall be remitted to the Tax Administrator on or before the last day of the following month.

4. Gas Users Tax.

(a) There is hereby imposed a tax upon the use of Gas supplied by a Service Supplier or Non-utility Service Supplier which is transported through mains or pipes or by mobile transport, and which is used within the City's boundaries, unless the service user is exempt from paying the tax under Section 2 of this Ordinance. The tax imposed by this section shall be at the rate of four percent (4%) of the charges made for the Gas and shall be paid by the Person responsible for paying for such service. A Gas Corporation using Gas within the City's boundaries is exempt from paying the tax imposed by this section.

(b) The tax applicable to Gas or Gas transportation provided by Non-utility Service Suppliers shall be determined by applying the tax rate to the equivalent charges the service user would have incurred if the Gas or Gas transportation had been provided by the Gas Corporation franchised by the City. Rate schedules for this purpose shall be available from the City. Non-utility Service Suppliers shall install, maintain and use an appropriate utility-type metering system which will enable compliance with this section.

(c) As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the Gas service. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the Service Supplier can identify, by verifiable data, non-taxable charges based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles. The Service Supplier has the burden of proving the proper apportionment of taxable and non-taxable charges.

(d) As used in this section, "charges" shall apply to all services, components, and items that are (i) necessary for or common to the receipt, use, or enjoyment of Gas service; or (ii) historically have been included in a single or bundled rate for Gas service by a local distribution company to a class of retail customers. The term "charges" shall include but is not limited to, the following charges:

(1) The commodity charges for purchased Gas, or the cost of Gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of gas), which is delivered through mains or pipes;

(2) Gas transportation charges and storage charges (including interstate charges to the extent not included in commodity charges);

(3) Capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, annual and monthly charges, and other charges, fees or surcharges which are necessary for or common to the receipt, use, or enjoyment of Gas service; and

(4) Charges, fees or surcharges for Gas services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission whether or not such charges, fees or surcharges appear on a bundled or line item basis on the customer billing.

(e) As used in this section, "charges" shall not include: (1) charges made for Gas which is to be resold and delivered through mains and pipes; (2) charges made for Gas used in the propulsion of a motor vehicle, as authorized in the Vehicle Code of the State of California; or (3) charges made for Gas used in the generation of electrical energy by a public utility or a governmental agency.

(f) The tax imposed in this section shall be collected from the Person responsible for paying for the Gas service by the Person selling the Gas. The amount collected in one Month shall be remitted to the Tax Administrator on or before the last day of the following Month.

5. Maximum Amount of Tax.

(a) The taxes levied in this Ordinance shall be limited for each service user to a combined total utility users tax of \$2,000.00 per fiscal year.

(b) Persons who use a particular utility service at a single location, but have more than one meter for such service, may combine service usage from all meters at that location to compute the maximum tax. Such Persons shall apply to the Tax Administrator for treatment in accordance with this section.

(c) It shall be the responsibility of the Person responsible for paying the tax imposed by this Ordinance to present to the Tax Administrator sufficient evidence to prove that combined taxes levied under this Ordinance reach or exceed \$1,500.00 per fiscal year for a particular service user. Sufficient evidence includes billing receipts or other proof as determined appropriate by the Tax Administrator.

(d) Once the Tax Administrator has determined that the total utility users tax for a particular service user has reached or exceeded the limitation described in this section, the City will inform the Service Suppliers and thereafter bill the Person responsible for paying the tax imposed by this Ordinance directly on a quarterly basis for the \$1,500.00 per fiscal year combined tax.

(e) It is the responsibility of the Person responsible for paying the tax imposed by this Ordinance to notify the Tax Administrator if service usage for a particular service user drops below such levels that the tax limitation imposed in this section is no longer appropriate.

6. Remittance of Tax.

Taxes collected from a Person responsible for paying the tax imposed by this Ordinance 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.

7. Effects of Commingling Nontaxable Items With Taxable Items.

If any one or more nontaxable items are bundled or billed together with one or more taxable items (as provided for by the Ordinance) under a single charge on a customer's bill, the entire single charge shall be deemed taxable unless, upon the written request of the customer, the Service Supplier can reasonably identify the nontaxable component of the single charge based

upon one or more of the following methodologies, as elected by the tax administrator:

(a) The average industry charges for the individual nontaxable items included in the entire single charge;

(b) The amount of the entire single charge less the average industry charges for the individual taxable items in the entire single charge; or

(c) The Service Supplier's books and records that are kept in the regular course of business, which must be consistent with generally accepted accounting principles.

8. Substantial Nexus/Minimum Contacts.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Article, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment.

9. Actions to Collect.

Any tax and/or penalty required to be paid by a service user under the provisions of this Ordinance shall be deemed a debt owed by the Person responsible for paying the tax imposed by this Ordinance to the City. Any such tax collected from a Person responsible for paying the tax imposed by this Ordinance which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the Service Supplier. 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 for the recovery of such amount.

10. Duty to Collect - Procedures.

The duty to collect and remit the taxes imposed by this Ordinance 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. Except in those cases where a Person responsible for paying for services pays the full amount of said charges but does not pay any portion of a tax imposed by this Ordinance, if the amount paid is less than the full amount of the charge and the 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 the tax from a Person responsible for paying the tax imposed by this Ordinance shall commence with the beginning of the first full regular billing period applicable to that Person who starts on or after the operative date 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 period.

11. 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 interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. This administrative ruling shall be consistent with and shall not impose a new tax, or increase an existing tax without voter approval if such administrative ruling is (1) consistent with existing Blue Lake tax codes, if any; and, (2) merely reflects a change in, clarification to, or new rendition of (i) the definition, interpretation, or application of substantial nexus by a court of competent jurisdiction or by preemptive state or federal law, for purposes of taxation; or, (ii) the sourcing of taxable transactions based upon industry custom and practice, which furthers administrative efficiency and minimizes multi-jurisdictional taxation. A copy of such rules and regulations shall be on file in the Tax Administrator's office. The Tax Administrator may, from time to time, issue and disseminate to Service Suppliers, which are subject to the tax collection requirements of this Ordinance, such administrative ruling identifying those services, or charges therefor, that are subject to the tax of this Ordinance.

(c) Upon showing of good cause, the Tax Administrator may make administrative agreements to vary the strict requirements of this Ordinance so that collection 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 Ordinance or to avoid a hardship where administrative costs of collection and remittance greatly outweigh the tax benefit. 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.

(e) The Tax Administrator shall provide notice to all Service Suppliers at least ninety (90) days prior to any annexation or other change in the City's boundaries. Said notice shall set forth the revised boundaries by street and address, along with a copy of the final annexation order from the Local Area Formation Commission (LAFCO).

(f) The Tax Administrator may, from time to time, conduct an audit to ensure proper compliance with the requirements of this Ordinance. The Tax Administrator may also survey Service Suppliers to identify the various unbundled billing components of service that they may commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such service. The Tax Administrator, thereafter, may issue and disseminate to such Service Suppliers an administrative ruling identifying those components and items which are: (1) necessary for or common to the receipt, use or enjoyment of service; or (2) currently are or historically have been included in a single or bundled rate for service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of this Article.

12. Collection of Tax by Tax Administrator.

(a) Whenever the Tax Administrator determines that a Person responsible for paying the taxes imposed by this Ordinance has deliberately withheld the amount of the tax owed from the amounts remitted to a Service Supplier for a period of four (4) or more billing periods, or that a Person responsible for paying the taxes imposed by this Ordinance has refused to pay the amount of tax to such Person, the Tax Administrator may relieve such Service Supplier of the obligation to collect such taxes due under this Ordinance from certain named Persons for specific billing periods.

(b) The Service Supplier shall provide the City with a report of the amounts refused along with the names and addresses of the service users refusing to pay the tax.

(c) The Tax Administrator shall notify the Person responsible for paying the taxes imposed by this Ordinance that the Tax Administrator 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 Person responsible for paying the taxes imposed by this Ordinance by handing it to him or her personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to such Person at the address to which billing was made by the Service Supplier; or, should such Person's address change, to the last known address.

(d) If a Person responsible for paying the taxes imposed by this Ordinance fails to remit the tax to the Tax Administrator within fifteen (15) days from the date of the service of the notice upon such Person in accordance with subsection (c) herein, 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, per month or fraction thereof, shall be imposed, but not less than Five Dollars (\$5.00). The penalty shall become part of the tax herein required to be paid.

13. Records.

It shall be the duty of every Person 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 such Person 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.

14. Refunds.

(a) A Service Supplier who has collected any amount of tax illegally, erroneously, or more than once may refund such amount to the Person responsible for paying such tax 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 Ordinance, it may be refunded to a Service Supplier or Person responsible for paying such tax by the City, provided a claim in writing, therefore, 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 Person responsible for paying the taxes

imposed by this Ordinance, that such Person has been unable to obtain a refund or adjustment from the Service Supplier who collected the tax. Nothing herein shall permit the filing of a refund claim on behalf of a group of a class or group of taxpayers. The filing of a written claim is a prerequisite to any suit thereon. Any action brought against the City pursuant to this section shall be subject to the provisions of the Government Code sections 945.6 and 946.

(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 Persons responsible for paying taxes imposed by this Ordinance of charges for past utility services, the taxes paid pursuant to this Ordinance on the amount of such refunded charges may also be refunded to such Persons by the Service Suppliers, and the Service Supplier can claim credit for such refunded taxes against the amount which is due upon any monthly returns. In the event this Ordinance is repealed, the amounts of any refundable taxes will be borne by the City.

15. Termination of Tax.

(a) The levy of taxes as provided in this Ordinance shall expire five years after implementation on February 28, 2020. The use of utility services thereafter shall no longer be subject to utility users taxes.

(b) The termination of the levy of taxes as specified shall not terminate the obligation to pay taxes levied on services used prior to such date. Taxes levied prior to such date shall remain a debt payable to the City. All provisions in this Ordinance, except those relating to the levy of taxes, shall continue with full force and effect after such date.

16. 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 section, subsection, subdivision, paragraph, sentence, clause of phrases be declared unconstitutional.

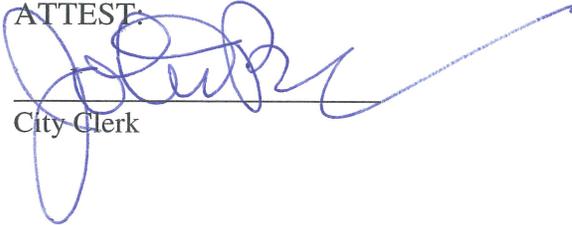
17. Limitation on Actions. Any action to challenge the validity or legality of any provision of this Ordinance on any grounds whatsoever including, without limitation, the proceedings by which it was adopted, any substantive provision or any other defect shall be brought by court action commenced within ninety (90) days of the date of adoption of this Ordinance.

18. Operative Date. All taxes levied by this ordinance are to be used for the usual and current general fund expenses of the City. This Ordinance will go into effect upon its approval by a majority vote of the electorate at the November 4, 2014, consolidated general election, upon certification by the City Clerk and declaration by the City Council, and the taxes so approved shall be levied beginning March 1, 2015.

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of Ordinance No. 510 approved by 56.23 % of the City of Blue Lake voters, 230 in favor and 179 opposed, at the consolidated general election held November 4, 2014.

ATTEST:



City Clerk