

FILED

AUG 04 2021

ORDINANCE NO. 389

By 

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE COVE AMENDING CHAPTER 3.20 OF THE ORANGE COVE MUNICIPAL CODE TO INCREASE THE UTILITY TAX ON ELECTRICITY, GAS AND TELECOMMUNICATIONS FROM SEVEN PERCENT TO TEN PERCENT; AND TO INCLUDE WATER USE AS A UTILITY SUBJECT TO THE UTILITY TAX OF TEN PERCENT AND PROVIDING FOR THE ENACTMENT BY A VOTE OF REGISTERED VOTERS AND EFFECTIVE DATE THEREOF

WHEREAS, since 1991 and similar to scores of cities throughout California, the City of Orange Cove has collected a Utility Users' Tax (UUT) on telephone, gas, and electricity; and

WHEREAS, existing UUT funds provide for essential city services including police, parks and recreation, housing assistance and city administration; and

WHEREAS, existing UUT taxes are not adjusted for inflation, and, the taxes collected do not keep up with the costs of providing services related to the utility

WHEREAS, the City has determined that it is also necessary to include in the utility users tax a tax on charges for water use by consumers of water in the City; and

WHEREAS, without the application of the UUT to the use of water, the city would be forced to cut services across the board including public safety, parks, recreation and other essential services like water and sewer; and

WHEREAS, the tax contains exemptions for certified low-income seniors and the City desires to continue those exemptions; and

WHEREAS, the slowdown in the local economy pursuant to COVID 19 has resulted in less economic activity, less sales tax revenue and property tax revenue for the City to devote to essential City services and passing this measure ensures a local source of revenue that by law must be used to fund local services and cannot be taken by Washington D.C. and Sacramento politicians; and

WHEREAS, Chapter 3.20, Section 3.20.050 of the ORANGE COVE Municipal Code defines "water" subject to the utility users tax, including defining those services exempted by referring to definitions and exemptions in the federal excise tax law administered by the Internal Revenue Service. The common understanding of those definitions was set forth in Revenue Ruling 79-404; and

NOW, THEREFORE, the City Council of the City of ORANGE COVE does hereby ordain as follows:

The City Council of the City of ORANGE COVE does hereby ordain as follows:

Section I: Chapter 3.20 of the ORANGE COVE Municipal Code is hereby amended by addition of 3.20.055 and as amended, shall read as follows:

3.20.055 Water users tax.

A. There is imposed a tax upon every person using water in the city which is transported and delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of ten (10) percent of the charges made for such water and shall be collected from the service user by the water service supplier, or its billing agent.

B. As used in this section, the term “charges” shall apply to all services, components and items that are:

1. Necessary for or common to the receipt, use or enjoyment of water service; or
2. Currently are or historically have been included in a single or bundled rate for water 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:
 - a. Water commodity charges (potable and non-potable),
 - b. Distribution or transmission charges,
 - c. Metering charges,
 - d. Customer charges, late charges, service establishment or reestablishment charges, franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees and surcharges which are necessary for or common to the receipt, use or enjoyment of water service, and
 - e. Charges, fees, or surcharges for water services or programs, which are mandated by a water district or a state or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line-item basis on the customer billing.

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 water services.

D. The tax administrator, from time to time, may survey the water service suppliers in the city to identify the various unbundled billing components of water retail service that they commonly provide to residential and commercial/industrial customers in the city, and the charges therefor, including those items that are mandated by a water district or a state or federal agency as a condition of providing such water service. The tax administrator, thereafter, may issue and disseminate to such water service suppliers an administrative ruling identifying those components and items which are:

1. Necessary for or common to the receipt, use or enjoyment of water service; or
2. Currently are or historically have been included in a single or bundled rate for water 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 subsection A above.

E. 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 a pipeline distribution system.

F. The tax on water service imposed by this section shall be collected from the service user by the water service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the twenty-fifth (25th) day of the following month.

Section II: Chapter 3.20 of the ORANGE COVE Municipal Code is hereby amended by amendment of Section 3.20.050A and as amended, shall read as follows:

3.20.050 - Telephone users tax.

A. There is imposed a tax on the amounts paid for any intrastate telephone communications services by every person in the city other than a telephone corporation using such services. The tax imposed by this section shall be at the rate of ten percent, from the current rate of seven percent, of the charge made for such services and shall be paid by the person paying for such services.

Section III: Chapter 3.20 of the ORANGE COVE Municipal Code is hereby amended by amendment of Section 3.20.060A and as amended, shall read as follows:

3.20.060 - 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 ten percent, from the current rate of seven 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;
2. Minimum charges for service, including customer charges, service charges, demand charges, standby charges and annual and monthly charges, fuel, cost adjustment, etc.

Section IV: Chapter 3.20 of the Orange Cove Municipal Code is hereby amended by amendment of Section 3.20.070A and as amended, shall read as follows:

3.20.070 - 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 ten percent, from the current rate of seven percent, 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. Gas which is delivered through mains or pipes;
2. Minimum charges for such services, including customer charges, service charges, transportation charges, and annual and monthly charges.

Section V: If any section, sub-section, sentence, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. City Council hereby declares that it would have adopted the ordinance and each section, sub-section, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases, or portions to be declared invalid or unconstitutional.

Section VI: **Approval: Effective Date.** The tax imposed by this ordinance is a general tax. This ordinance shall be effective only if approved by fifty percent plus one of the City's voters voting thereon on November 2, 2021, at the general election and shall go into effect ten (10) days after the vote is declared by the City Council.

Section VII: **Publication.** Before the expiration of fifteen (15) days after its effective date, this ordinance shall be published in a newspaper of general circulation published and circulated within the City of Orange Cove.

ORDINANCE No. _____ was PASSED AND ADOPTED by the Voters of the City of Orange Cove, County of Fresno, by a majority vote of the voters at a municipal election held on November 2, 2021.

ATTEST:

APPROVED:

June Bracamontes
City Clerk

Victor Lopez, Mayor
City of Orange Cove

APPROVED AS TO FORM:

Daniel T. McCloskey
City Attorney