

ORDINANCE NO. 2021-13

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRAWLEY, CALIFORNIA
AMENDING THE BRAWLEY MUNICIPAL CODE TO REPEAL AND REPLACE CHAPTER
24, ARTICLE VII. UTILITY USER TAX.

THE CITY COUNCIL OF THE CITY OF BRAWLEY, CALIFORNIA, DOES HEREBY ORDAIN
AS FOLLOWS:

1. Purpose:

WHEREAS, a Special Municipal Election was held and conducted in the City
of Brawley, California, on Tuesday, November 2, 2021, as required by law;

WHEREAS, the City Council of the City of Brawley, having declared that an
emergency exists placed Measure U on the ballot for the voters' consideration.
The issue presented by Measure U was whether or not the City's existing Utilities
User Tax should be amended to 1) eliminate the sunset clause; and 2) modernize
the ordinance imposing the tax to include modern telecommunications services
that did not exist when the tax was originally adopted. Pursuant to Measure U,
the rate of the tax was to remain the same, four percent (4%);

WHEREAS, the majority of the electors that voted on Measure U voted to
approve the proposed amendments to the tax;

WHEREAS, prior to the election, the City Council held various meetings
whereat the Council considered the language of the new provisions of the Brawley
Municipal Code that would be adopted to amend the tax. Those meetings were
open and public; and

WHEREAS, the City Council finds that the revenue generated by the City's
Utilities User Tax is necessary for the City to be able to provide the services
that the residents of the City of Brawley expect, therefore it is necessary and
proper to extend and modernize the City's Utilities User Tax.

2. Amendment of Municipal Code:

The Brawley Municipal Code is hereby amended as follows:

a. The existing language of Chapter 24, Article VII is hereby
repealed; and

b. The repealed language of Chapter 24, Article VII is hereby
replaced with the following language:

Article VII. - Utility Users Tax.

Sec. 24.80. - Purpose; Use of Proceeds.

The tax imposed by this Article is for the purpose of raising revenues
for the general governmental purposes of the City. All of the proceeds from the
tax imposed by this article shall be placed in the City's general fund.

Sec. 24.81. - Definitions

The following words and phrases whenever used in this article shall be construed as defined in this section.

(a) "Ancillary telecommunication services." Services that are associated with or incidental to the provision, use or enjoyment of Communications services, including, but not limited to, the following services:

(1) "Conference bridging service" which means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the Communications services used to reach the conference bridge.

(2) "Detailed Communications billing service" which means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(3) "Directory assistance" which means an ancillary service of providing telephone number information, and/or address information.

(4) "Vertical service" which means an ancillary service that is offered in connection with one or more Communications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(5) "Voice mail service" which means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(b) "Ancillary video services." Services that are associated with or incidental to the provision or delivery of video services, including, but not limited to, electronic program guide services, search functions, recording services, or other interactive services or communications that are associated with or incidental to the provision, use or enjoyment of video services.

(c) "Billing address." The mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

(d) "City" shall mean the City of Brawley.

(e) "Electrical corporation" means as defined in Section 218 of the California Public Utilities Code and shall be construed to include any municipality engaged in the selling or supplying of electricity to a service user via either its own franchised infrastructure or through a private aggregator or any third-party which is not exempt under California law.

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

(g) "Mobile telecommunications service." The meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124(8)) and the regulations established therewith.

(h) "Month." A calendar month.

(i) "Non-utility supplier" means:

(1) A service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include, but is not limited to, any publicly-owned electric utility, investor-owner utility, co-generator, municipal utility district, federal power marketing authority, electric rural cooperative, or other supplier or seller of electricity;

(2) An electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City;

(3) A gas service supplier, aggregator, marketer, or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas to users within the City; and

(4) A water service supplier, distributor, wholesaler, marketer, or broker, which sells or supplies water to users within the City (other than a supplier of water distribution services to all or a significant portion of the City).

(j) "Paging service." A "Communications service" that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

(k) "Person" means without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and non-profit), municipal district or municipal corporation (other than the City) cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

(l) "Place of primary use." The street address representative of where the customer's use of the utility service primarily occurs, which must be the residential street address or the primary business street address of the customer.

(m) "Post-paid telecommunication service." The telecommunication service obtained by making a payment on a telecommunication-by-telecommunication basis either through the use of a credit card or any legal form of payment mechanism such as a bank card, travel card, credit card, or debit card, cryptocurrency, electronic fund transfers, mobile payment services, or by other charge paid for to a service number which is not associated with the origination or termination of the telecommunication service.

(n) "Prepaid telecommunication service." The right to access telecommunication services, which must be paid for in advance and which enables the origination of Communications using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(o) "Communications service." A communications service that entitles the customer to exclusive or priority use of a Communications channel, whether or

not a single channel or a group of channels, between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, online fax, virtual phone systems, hosted email, email marketing, online backup and bundled suites of these service stations which are internet protocol-based (IP, wireless IP, Voice over Internet Protocol (VoIP), multimedia, or any other subsequent form of subsequent internet protocol-based service not protected by the Permanent Internet Tax Freedom Act (PITFA) at 11 U.S.C. Section 1105(5) as defined by Pub. L. 114-125, title IX, § 922, Feb. 24, 2016, 130 Stat. 281 or any predecessors thereof) and any other associated services that are provided in connection with the use of such channel or channels. A Communications channel is a physical or virtual path of Communications over which signals are transmitted between or among customer channel termination points (i.e., the location where the customer either inputs or receives the Communications).

"Communications service" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used. The term "telecommunications services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that are functionally integrated with "telecommunication services" and any other technologies which may subsequently develop not prohibited from taxation by either the laws of the state of California or the United State.

"Communications services" include, but are not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; intrastate, interstate, and international telecommunication services; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to pre-recorded or live service).

(p) "Telephone corporation," "electrical corporation," "gas corporation," "water corporation" and "cable television corporation" shall have the same meanings as defined in Sections 234, 226, 222, 242 and 215.5, 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.

(q) "Tax administrator" shall mean the finance director of the City of Brawley.

(r) "Service supplier" shall mean any entity or person, including the City, that provides telephone communication, electric, water, video, or gas service to a user of such services within the City, and includes any entity or person required to collect, or self-collect, and remit a tax as imposed by this chapter, including its billing agent.

(s) "Service user" shall mean a person required to pay a tax imposed under the provisions of this chapter.

(t) "Video programming" means those programming services commonly provided to subscribers by a "video service supplier" including but not limited to basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.

(u) "Video services" means "video programming" and any and all services related to the providing, recording, delivering, use or enjoyment of "video programming" (including origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video) using one or more channels by a "video service supplier," regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes ancillary video services, data services, "telecommunication services," or interactive communication services that are functionally integrated with "video services."

(v) "Video service supplier" means any person, company, or service which provides or sells one or more channels of video programming, or provides or sells the capability to receive one or more channels of video programming, including any communications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the City, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or communications. A "video service supplier" includes, but is not limited to, multichannel video programming distributors [as defined in 47 U.S.C.A. section 522(13)]; open video systems (OVS) suppliers; and suppliers of cable television; master antenna television; satellite master antenna television; multichannel multipoint distribution services (MMDS); video services using internet protocol (e.g., IP-TV and IP-Video, which provide, among other things, broadcasting and video on demand), direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video services (including two-way communications), whatever their technology.

Sec. 24.82. - Exemptions.

(a) Nothing in this Article 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 utility service otherwise subject to payment of a tax imposed by this Article 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 Article by virtue of this section and furnish a copy thereof to each service supplier.

Sec. 24.83. - Communications Users' Tax.

(a) There is hereby imposed a tax upon every person in the City using communications services, video programming, video services, VoIP, or any other service subject to this Article. The tax imposed by this section shall be at the rate of four percent (4%) of the charges made for such services and shall be collected from the service user by the communication services supplier or its billing agent. There is a rebuttable presumption that communication services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this Article. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this section, the term "charges" shall include the value of any other services, incentives, credits, property of every kind or nature, or other consideration, whether or not received by the service supplier, provided to the service user in exchange for the communication services.

(b) "Mobile Telecommunications Service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124). The tax administrator may issue and disseminate to communication service suppliers, which are subject to the tax collection requirements of this Article, sourcing rules for the taxation of other communication services, including but not limited to post-paid communication services, prepaid communication services, and private communication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation (e.g., Streamlined Sales and Use Tax Agreement).

(c) The tax administrator may issue and disseminate to communication service suppliers, which are subject to the tax collection requirements of this Article, an administrative ruling identifying those communication services, or charges therefor, that are subject to or not subject to the tax of subsection (a) of this section.

(d) As used in this section, the term "telecommunication services" shall include, but is not limited to, charges for connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory, administrative and other cost recovery charges; local number portability charges; and text and instant messaging.

(e) Charges for communication services (video) shall include, but are not limited to, charges for the following:

- (1) Regulatory fees and surcharges, franchise fees, and access fees (PEG);
- (2) Initial installation of equipment necessary for provision and receipt of video services;
- (3) Late fees, collection fees, bad debt recoveries, and return check fees;
- (4) Activation fees, reactivation fees, and reconnection fees;

(5) Video programming and video services (which are hereby deemed separate from telecommunication services);

(6) Ancillary video services (e.g., electronic program guide services, recording functions, search functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of either video programming or video services);

(7) Equipment leases (e.g., remote, recording or search devices, converters, remote devices for security or any other communications services); and

(8) Service calls, service protection plans, name changes, changes of services, and special services.

(f) To prevent actual multi-jurisdictional taxation of communication services subject to tax under this section, any service user, upon proof to the tax administrator that the service user has previously paid the same tax in another state or city on such communication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city; provided, however, the amount of credit shall not exceed the tax owed to the City under this section.

(g) The tax on communication services imposed by this section shall be collected from the service user by the service supplier. In the case of video services or video programming service, the service user shall be deemed to be the purchaser of the bulk video service (e.g., an apartment owner), unless such service is resold to individual users in which case shall be the service user and shall be the ultimate purchaser of the video service. 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 last day of the following month.

(h) Proceeds of the tax imposed by this section shall be deposited in the general fund of the City and be available for any legal purpose.

Sec. 24.84. - Electricity Users' Tax.

(a) There is imposed a tax upon every person using electricity in the City. 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, which are provided by a service supplier or non-utility service supplier to a service user.

(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 electric service, which does not include gas corporations; or

(2) Currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. 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 or services related to the provision of such electricity. The term "charges" shall include, but is not limited to, the following charges:

(A) Energy charges;

(B) Distribution or transmission charges;

(C) Metering charges;

(D) Stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar minimum charges for services;

(E) Customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange 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

(F) Charges, fees, or surcharges for electricity 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.

(c) The tax administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric 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 state or federal regulatory agencies as a condition of providing such electric service. The tax administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are:

(1) Necessary for or common to the receipt, use or enjoyment of electric service; or

(2) Currently are or historically have been included in a single or bundled rate for electric 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.

(d) As used in this section, the term "using electricity" shall not include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the city for resale.

(e) Collection of Tax by Service Supplier. The tax on electric services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one month shall be remitted to the tax administrator and must be received by the tax administrator on or before the last day of the following month.

Sec. 24.85. - Gas Users' Tax

(a) There is hereby imposed a tax upon every person in the City, other than a gas corporation, being serviced with or using gas within in the City which is delivered through a pipeline distribution or any third-party aggregator's system within the City. The tax imposed by this section shall be at a rate of four percent of the charges made for such gas services supplied, including all services related to the storage, transportation and delivery of such gas, and shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

(b) As used in this section, the term "charges" shall apply to all services, components and items for gas service that are:

(1) necessary or common to the receipt, use and enjoyment of gas service; or

(2) currently, or 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:

(A) 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 such gas), which is delivered through a gas pipeline distribution system;

(B) Gas transportation charges (including both intrastate and interstate charges for the use a franchised infrastructure for services supplied to service user within the City);

(C) Storage charges; provided, however, that the service provider shall not be required to apply the tax to any charges for gas storage services when the service provider cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service provider and to remit the tax to the appropriate jurisdiction;

(D) Capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary or common to the receipt, use and enjoyment of gas service; and

(E) Charges, fees or surcharges, climate or other credits, 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.

(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 or services

related to the delivery of such gas. 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 reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.

(d) The tax administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas 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 state or federal regulatory agencies as a condition of providing such gas service. The tax administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are:

(1) necessary or common to the receipt, use, and enjoyment of gas service; or

(2) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Unbundled charges for such components and items shall be subject to the tax of subsection (a) above provided they are not prohibited by the laws of either the state of California or the United States.

(e) 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 a pipeline distribution system; and

(2) Charges made for gas sold for use in the generation of electricity or for the production or distribution of water by a public utility or governmental agency.

(f) Collection of Tax by Service Supplier. The tax on gas services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one month shall be remitted to the tax administrator and must be received by the tax administrator on or before the last day of the following month.

Sec. 24.86. - Water Users' Tax.

(a) There is hereby imposed a tax upon every person in the City using water in the City which is delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of four percent (4%) of the charges made for such water and shall be collected from the service user by the 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 or common to the receipt, use and enjoyment of water service; or

(2) currently, 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 and 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. 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 reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.

(d) 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 whether by the owner of the pipeline distribution system or any third-party service supplier to service users within the City.

(e) Collection of Tax by Service Supplier. The tax on water services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one month shall be remitted to the tax administrator and must be received by the tax administrator on or before the last day of the following month.

Sec. 24.87. - Sewer Users' Tax.

(a) There is hereby imposed a tax upon every person in the City using the sewer service provided by the City. The tax imposed by this section shall be at the rate of four percent (4%) of the charges made for such service and shall be billed to and paid by the person paying for such service.

(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 sewer service; or

(2) Currently are or historically have been included in a single or bundled rate for sewer service to retail customers.

The term "charges" shall include, but is not limited to, the following charges:

(1) Customer charges, late charges, service establishment or reestablishment charges, annual and monthly charges, and other charges, fees and surcharges which are necessary for or common to the receipt, use or enjoyment of sewer service; and

(2) Charges, fees, or surcharges for sewer services or programs which are mandated by the city, 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) Collection of Tax by Service Supplier. The tax on sewer services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one month shall be remitted to the tax administrator and must be received by the tax administrator on or before the last day of the following month.

Sec. 24.88. - Trash Collection Tax

(a) There is imposed a tax upon every person using refuse collection and disposal services provided by a refuse collector in the City. There is also imposed a tax upon every person in the City that delivers refuse directly to a transfer station or disposes of trash or refuse at any City-owned landfill. The tax imposed by this section shall be at the rate of four percent (4%) of the City's fee for the collection and disposal of refuse imposed by this code and shall be in addition to and not a replacement of said fee. The tax shall be paid by the person using such refuse and trash collection or disposal service.

(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 refuse collection and disposal services; or

(2) Currently are or historically have been included in a single or bundled rate for refuse collection and disposal services to retail customers.

The term "charges" shall include, but is not limited to, the following charges:

(A) Customer charges, late charges, service establishment or reestablishment charges, annual and monthly charges, and other charges, fees and surcharges which are necessary for or common to the receipt, use or enjoyment of refuse collection and disposal services; and

(B) Charges, fees, or surcharges for refuse collection and disposal services or programs which are mandated by the city, 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) The tax imposed upon every person in the City that delivers refuse directly to a transfer station or City-owned landfill shall be collected from the service user by the operator of the transfer station. The transfer station or City-owned landfill operator shall not collect the tax from any person who shows proof, in a form deemed satisfactory by the tax administrator, that the person's place of primary use is outside the City's jurisdiction.

(e) Collection of Tax by Service Supplier. The tax on trash collection services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one month shall be remitted to the tax administrator and must be received by the tax administrator on or before the last day of the following month.

Sec. 24.89. - Actions to Collect.

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

Sec. 24.90. - Duty to Collect Procedures.

The duty to collect and remit the taxes imposed by this article 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 service 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 of his refusal to pay the tax imposed on said charges, the provisions of Sections 24.89 & 24.90 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 Article. 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.

Sec. 24.91. - Additional Powers 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 Article.

(b) The tax administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this Article for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such rules and regulation 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 Article so that collection of any tax imposed here may be made in conformance with the billing procedures of particular service supplier so long as such agreements result in collection of the tax in conformance with the general purpose and scope of this Article. 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 Article. 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 days prior to any annexation or other change in the City's boundaries. Such notice shall set forth the revised boundaries by street and address, along with a copy of the final annexation order from LAFCO.

Sec. 24.92. - Assessment-Service User Administrative Policy.

(a) 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, such person may be relieved of the obligation to collect taxes due under this article from certain named service users for specified billing periods as set forth below.

(b) The service supplier shall provide the City amounts refused and/or unpaid along with the name and address of the service users neglecting to pay the tax imposed under provisions of this article. 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 taxes due.

(c) The tax administrator shall notify the service user that the tax administrator 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's address change, to the 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 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.

Sec. 24.93. - Records.

(a) It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this Article to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax that such person 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.

(b) The City may issue an administrative subpoena to compel a person to deliver, to the tax administrator, copies of all records deemed necessary by the tax administrator to establish compliance with this chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the tax administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the City on or before the due date, provided that such person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.

(c) The tax administrator is authorized to execute a nondisclosure agreement approved by the city attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code Sections 7284.6 and 7284.7. The tax administrator may request from a person providing transportation or distribution services of gas or electricity to service users within the City, a list of the names, billing and service addresses, quantities of gas or electricity delivered, and other pertinent information, of its transportation customers within the city pursuant to Section 6354(e) of the California Public Utilities Code.

(d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall:

(1) Provide to the tax administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the city; and

(2) Upon request of the tax administrator, deliver, or affect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the tax administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

(e) If any person subject to recordkeeping under this section unreasonably denies the tax administrator, or the tax administrator's designated representative, access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, the tax administrator may impose a penalty of five hundred dollars (\$500.00) on such person for each day following:

(1) The initial date that the person refuses to provide such access; or

(2) The due date for production of records as set forth in the administrative subpoena.

This penalty shall be in addition to any other penalty imposed under this Article.

Sec. 24.94. - 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 Article, 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 article 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 years from the date of overpayment.

(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 service users of charges for past utility services, the taxes paid pursuant to this article on the amount of such refund 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 Article is repealed, the amounts of any refundable taxes will be borne by the City.

(d) 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.

Sec. 24.95. - Termination of Suspending of Utility Users' Tax.

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

Sec. 24.96. - Bundling Taxable Items with Non-Taxable Items.

If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and

not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation of the taxable and non-taxable services.

Sec. 24.97. - Interaction with Prior Taxes and Ordinances.

(a) Satisfaction of Tax Obligation by Service Users. Any person who pays the tax levied pursuant to Article VII, Sec. 24.80 *et seq.* (Ordinances 92-13 and 98-06) with respect to any charge for a utility users' taxes shall be deemed to have satisfied his or her obligation to pay the tax levied pursuant to said sections of this Article prior to its effective date. The intent of this paragraph is to prevent the imposition of multiple taxes upon a single utility service supplier during the transition period from the prior to the effective date of these Sections under this Article (which transition period ends July 31, 2021) and to permit service suppliers, during that transition period, to satisfy their collection obligations by collecting utility users' tax levied hereunder.

(b) Collection of Tax by Service Providers. Service providers shall begin to collect the tax imposed by this Article as soon as feasible after the effective date of the ordinance codified in this chapter, but in no event later than permitted by Section 799 of the California Public Utilities Code.

(c) Judicial Determinations. In the event that a final court order should determine that the election enacting this Article is invalid for whatever reason, or that any tax imposed under this Article is invalid in whole or in part, then the taxes imposed under this Article (unless repealed) shall automatically continue to apply with respect to any service for which the tax levied pursuant to this Article has been determined to be valid. Such automatic continuation shall be effective beginning as of the first date of service (or billing date) for which the tax imposed by this Article is not valid. However, in the event of an invalidation, any tax (other than a tax that is ordered refunded by the court or is otherwise refunded by the City) paid by a person with respect to a service and calculated pursuant to this Article, so long as the tax is paid with respect to a service provided no later than six (6) months subsequent to the date on which the final court order is published.

3. Effective Date:

This ordinance shall be effective thirty (30) days after its adoption and the City Clerk shall cause a certified copy, or summary of this ordinance to be published one time within fifteen (15) days after its adoption in the Imperial Valley Press, a newspaper of general circulation printed in Imperial County and circulated in the City of Brawley.

PASSED, ADOPTED AND APPROVED at a regular meeting of the City Council held on the 18th day of January 2022.

CITY OF BRAWLEY, CALIFORNIA


Sam Couchman, Mayor

ATTEST:



Alma Benavides, City Clerk

**STATE OF CALIFORNIA)
COUNTY OF IMPERIAL)
CITY OF BRAWLEY)**

1st Reading

I, **Alma Benavides**, City Clerk of the City of Brawley, California, **DO HEREBY CERTIFY** that the foregoing Ordinance No. 2021-13 was passed and adopted by the City Council of the City of Brawley, California, at a regular meeting held on the 21st day of December 2021 and that it was so adopted by the following roll call vote: m/s/c Nava/Wharton 4-0 Castro absent

AYES: Couchman, Hamby, Nava, Wharton
NAYES: None
ABSTAIN: None
ABSENT: Castro

DATED: December 21, 2021



Alma Benavides, City Clerk

2nd Reading & Adoption`

I, **Alma Benavides**, City Clerk of the City of Brawley, California, **DO HEREBY CERTIFY** that the foregoing Ordinance No. 2021-13 was passed and adopted by the City Council of the City of Brawley, California, at a regular meeting held on the 18th day of January 2022 and that it was so adopted by the following roll call vote: m/s/c Nava/Wharton 5-0

AYES: Castro, Couchman, Hamby, Nava, Wharton
NAYES: None
ABSTAIN: None
ABSENT: None

DATED: January 18, 2022



Alma Benavides, City Clerk