

ORDINANCE NO. 2003- 01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, IMPLEMENTING THE UTILITY TAX AUTHORIZED BY FLORIDA STATUTE SECTION 166.231, ET. SEQ., UPON THE PURCHASE OF ELECTRICITY, WATER SERVICE, METERED OR BOTTLED GAS, FUEL OIL AND TELECOMMUNICATIONS SERVICE WITHIN THE CITY LIMITS; PROVIDING FOR ASSESSMENT OF INTEREST AND PENALTIES; PROVIDING NOTICE TO THE DEPARTMENT OF REVENUE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 8.4 of the City Charter of the City of Miami Gardens, until otherwise modified by the City Council, all municipal taxes and fees imposed within the City boundaries by Miami-Dade County (the "County") as the municipal government for unincorporated Miami-Dade County, which taxes and fees were in effect on the date of adoption of the City Charter, shall continue at the same rate and on the same conditions as if those taxes and fees had been adopted and assess by the City; and

WHEREAS, the City Council finds that the above-cited Charter provision is effective by operation of law to continue the levy and imposition of the utility tax (the "Utility Tax") provided by Section 29-36, et seq., of the Miami-Dade County Code (the "County Code") as authorized by Section 166.231, et seq., Fla. Stat., upon the purchase in the City of electricity, water, metered gas, bottled gas, coal, and fuel oil (the "Utility Service"), without the necessity for adoption of an ordinance by the City; and

WHEREAS, the City Council has been advised that certain providers of Utility Services may have concerns regarding the application of City Charter Section 8.4 pertaining to the imposition of the Utility Tax and may assert that the adoption of an enabling ordinance is necessary for the levy and imposition by the City of such Utility Tax; and

WHEREAS, although the City Council believes that no further action is necessary, it wishes to expedite the payment of Utility Taxes to the City and avoid a lengthy technical debate with any Utility Service providers; and

WHEREAS, the City Council finds that the enactment of this ordinance will protect the public health, safety and welfare of the residents and inhabitants of the City and secure revenues, which are due and owing to the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. Utility Tax Ordinance Adopted. An ordinance to be known as the “Utility Tax Ordinance” is hereby adopted as an ordinance of the City for Miami Gardens, Florida, to read as follows:

ARTICLE 1. UTILITY TAX

Section 2. Definitions

For the purposes hereof, the following words and phases shall have the meanings respectively ascribed to them by this section:

Bottled Gas: All types and kind of natural, liquefied petroleum and manufactured gas for lighting, heating, cooking, power or any other purpose delivered to any purchaser thereof within the unincorporated area of the City.

City: City of Miami Gardens, Florida.

Coal: All coal for lighting, heating, cooking, power, energy or any other purpose competing with any other utility or energy source taxed under this ordinance delivered to any purchaser thereof within the incorporated area of the City.

Electricity: All electric current or energy for lighting, heating, cooking power or any other purpose delivered to any purchaser thereof within the incorporated area of the City.

Finance Director: The City Manager or his designee.

Fuel Oil: All bunker C oil, number 1 and 2 fuel oil, and kerosene or any combination thereof capable of being used for lighting, heating, cooking power or any other purpose and delivered to any purchaser thereof within the incorporated area of the City.

Metered Oil: All types and kinds of natural and manufactured gas for lighting, heating, cooking, power or any other purpose delivered to any purchaser thereof within the incorporated area of the City.

Purchase: Every act or transaction whereby possession of, utilization of, control over or title to Water, Electricity, Metered Gas, Bottled Gas, Coal, or Fuel Oil, and the duty and obligation to pay therefore become vested in the Purchaser within the incorporated area of the City, but such term shall not pertain to nor include any such Purchase act or transaction when undertaken or performed by an agency or instrumentality of the United States Government, the State, the county or a municipality as Purchaser.

Purchaser: Every person legally liable for the payment of Water, Electricity, Metered Gas, Bottled Gas, Coal or Fuel Oil delivery, unless such person making the Purchase is

an agency or instrumentality, or a house of public worship, which qualifies for exemption from the State Sales tax under Section 212.08(7), Fla. Stat.

Seller: Every person delivering Water, Electricity, Metered Gas, Bottled Gas, Coal or Fuel Oil to any Purchaser thereof.

Water service: The water supply furnished to all consumers in the incorporated area of the City for retail use and not for resale, except water delivered to the purchaser in a bottle or other container.

Section 3. Rate and Amount of Excise Tax on Purchase of Public Utility Services. Collection to Tax.

Effective from and after May 13, 2003, there is hereby levied and imposed by the City upon every purchase in the incorporated area of the City of Water, Electricity, Metered Gas, Bottled Gas, Coal, or Fuel Oil, included in or reflected by an bill rendered by the Seller to the Purchaser an excise tax which shall be determined as follows:

- (a) When the Seller, in accordance with rules and regulations, renders a bill to the Purchaser to cover purchases made during the period of time to which the bill is applicable, the amount of excise tax shall be ten (10 %) percent of the total amount shown on any such bill due and payable on account of such purchases of fuel oil), exclusive of governmental charges, services fees, taxes and fuel adjustments are shown separately on such bill.
- (b) In the use and application set out in this section, purchases of Water, Electricity, Metered Gas, Bottled Gas, Coal, Fuel Oil, shall be considered and treated as constituting and being distinct and unrelated classes of purchases, and in the event that more than one (1) such class shall be shown upon the same bill, the amount of excise tax payable pursuant hereto shall be determined and computed for each such class separately.
- (c) The Seller is required and it shall be Seller's duty to render to each Purchaser bills covering all such purchases made, and the amount of such excise tax shall be entered and shown by the Seller as a separate item on each such bill and shall become due and payable to the City whenever such bill comes due and payable under the rules and regulations of the Seller. Each such bill shall include purchases applicable to but one (1) family or business uses separate metered services at one (1) location in the incorporated areas of the City.
- (d) The Purchaser is required and it shall be Purchaser's duty to pay such excise tax to the Seller, as agent for the City, at the time for the payment of each bill, and in the event that the Purchaser shall fail, neglect or refuse to pay such excise tax to the Seller when such bill becomes due and payable, the Seller is hereby empowered to discontinue forthwith to make any further sales or to render any further services to the Purchaser until the total amount, including

such excise tax, shown upon such bill has been paid in full. The Seller is hereby authorized and required and it shall be Sellers' duty to collect such excise tax from such Purchaser at the time of the payment of each such bill and to remit the same to the Finance Department of City in accordance with the provisions hereinafter stated, provided that the Seller shall have the right and privilege of assuming and paying such excise tax itself in lieu of collecting the same from the Purchaser; and that whenever the Seller shall fail or neglect to collect such excise tax from the Purchaser within one (1) year from the date of the bill on which such tax was or should have been imposed, the Seller shall be deemed to have assumed such excise tax himself and shall thereupon become liable for the payment of the amount thereof to the City to the same extent as if such excise tax had been collected from the purchaser, with recourse to the Purchaser thereof.

- (e) This section shall be applicable to all bills for Water, Electricity, Metered Gas, Bottled Gas, or Fuel Oil; except that any bills for the purchase of sixteen (16) ounces or less of Bottled Gas in a container, or less than one (1) gallon of Fuel Oil shall be exempt from taxation under this ordinance, and further in reference to those purchases enumerated in Section 166.231, Fla. Stat., this ordinance shall only apply to the extent permitted therein; the sale of Fuel Oil and Coal to a public or private utility; either for resale or for use as fuel in the generation of Electricity; or the sale of fuel for other engines, the use of which does not compete with those utilities or energy sources specified in Section 166.231, Fla. Stat. is exempt from taxation hereunder.

Section 4. Remittance of Tax of City By Seller.

- (a) Every Seller is hereby required to execute and file not later than the twentieth day of each month at the office of the Finance Department of the City a certified statement on a form prescribed by such Department setting forth the amount of such excise tax to which the City became entitled under the provisions hereof on account of bills paid by City during the preceding fiscal month, and, contemporaneously with the filing of such statements, shall pay the amount of such excise tax to the Finance Department.
- (b) The Finance Director shall assess interest and penalties in accordance with this paragraph for failure of a Seller to pay any tax when due or to file any required return or statement, except that no penalty shall be assessed in the absence of willful negligence, or fraud. Interest shall be assessed at a rate of one percent (1%) per month of the delinquent tax from the date the tax was due until paid. Penalties shall be assessed at the rate of five percent (5%) per month of the delinquent tax not to exceed a total penalty of 25%, except that in no event will the penalty for failure to file a return be less than fifteen dollars (\$15). In the case of a fraudulent return such fraudulent return or statement or willfully attempting to evade payment of the tax, shall be liable for a specific penalty of 100% of the tax. Interest and penalties shall be

computed on the net tax due after application of any overpayments and are subject to compromise by the City Manager pursuant to Section 166.234(14), Fla. Stat.

- (c) All collected tax, interest and penalties shall be deposited to the credit of the general fund of the City to be expended for City purposes in accordance with law.

Section 5. Records to be Kept.

Every Seller is hereby required to establish and maintain appropriate City accounts and records showing the amount of such excise tax payable to the City under the provisions hereof, and such accounts and records shall be open to inspection by the Finance Director or his duly authorized agent at all reasonable time. The Finance Director is hereby authorized and empowered to promulgate from time to time such rules and regulations with respect to the establishment and maintenance of such accounts and records as he or she may deem necessary to carry into effect the purpose and intent of the provisions hereof. Such rules and regulations shall not conflict with Section 166.234(1), Fla. Stat.

Section 6. Reports of Deliveries For Resale.

Every manufacturer, distributor, wholesaler or Seller who shall deliver Water, Electricity, Metered Gas, Coal, Fuel Oil or Water Service to any Seller or other person having a place of business in the incorporated area of the City, or licensed to do business in the incorporated area of the City, or licensed to do business herein, to be sold or resold to ultimate Purchasers, shall report to the Finance Department semi-annually, as of June 30th and December 31st, the names and addresses of such Sellers or other persons, and the quantities received by each of them during the preceding six (6) months, such reports to be filed not later than one month after the close of each semi-annual period.

Section 7. Recognition of Expense In Regulation of Rates; Taxable Telecommunication Services Collection Allowances; Travel Cost for Audit.

- (a) All reasonable expense incurred by a Seller in making the collections and remittances and in fulfilling the duties prescribed herein is hereby declared to be and to constitute an operating expense and shall be accorded full recognition as such in the establishment of rates and charges for rendering Water, Electricity, Metered Gas, Bottled Gas, Coal, or Fuel Oil service in the City.
- (b) The City may assess audit expenses, including travel, only as authorized by Section 166.234, Fla. Stat.

Section 8. Violations.

It shall be unlawful and a violation hereof for any Purchaser to evade the payment of the excise tax provided for herein or any part thereof, or to fail or neglect to pay such excise tax within thirty (30) days after the same has become due and payable; or for any Seller to fail or refuse to pay to the City all amounts of excise tax payable to the City by the Seller, or to fail or refuse to file the monthly return or statement or to set forth any erroneous or false information therein with intent to defraud the City, or to refuse to permit the Finance Director or his or her duly authorized agent to examine the accounts and the records to be kept as required hereby.

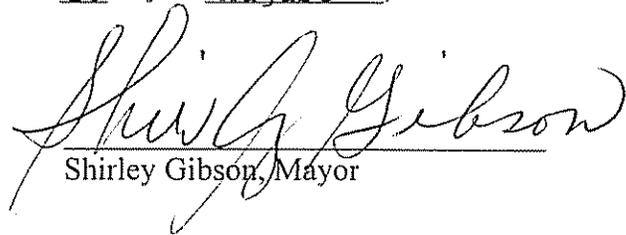
Section 9. Notice to the Department of Revenue. The City shall notify the Department of Revenue of the effective date of this Ordinance pursuant to Section 166.233, Florida Statutes.

Section 10. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

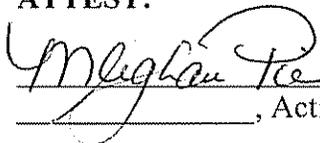
Section 11. Effective Date. This ordinance shall apply to Utility Services purchased on or after May 13, 2003, and shall be effective on January 1, 2004.

PASSED AND ADOPTED on first reading the 7 day of August, 2003

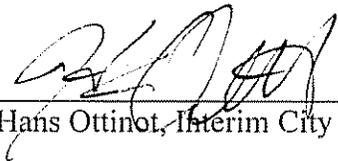
PASSED AND ADOPTED on second reading this 20 day of August, 2003.


Shirley Gibson, Mayor

ATTEST:


_____, Acting City Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



Hans Ottinot, Interim City Attorney

Motion on second reading by: Vice Mayor Campbell

Second on second reading by: Councilmember Bratton

VOTE:

Mayor Shirley Gibson	<u> x </u> (Yes)	<u> </u> (No)
Vice Mayor Aaron Campbell	<u> x </u> (Yes)	<u> </u> (No)
Councilman Melvin Bratton	<u> x </u> (Yes)	<u> </u> (No)
Councilman Oscar Braynon II	<u> x </u> (Yes)	<u> </u> (No)
Councilwoman Audrey King	<u> x </u> (Yes)	<u> </u> (No)
Councilwoman Sharon Pritchett	<u> x </u> (Yes)	<u> </u> (No)
Councilwoman Barbara Watson	<u> x </u> (Yes)	<u> </u> (No)