

UTILITY TAX & SURCHARGE

Electric & Water Utility tax – inside City	10%	Municipal Public Services Tax - Section 166.231, Florida Statutes – cannot exceed 10% - totaled \$2,599,414 in FY 2016
Electric surcharge – outside City	10%	Surcharge on Customers Outside City Limits – Fla. Admin. Code r. 25-9.0525 – must apply to the same base, at the same rate, in the same manner, and to the same types of customers as the tax
Water & Wastewater surcharge – outside City	25%	Section 180.191, Florida Statutes – “...the municipality may add a surcharge not to exceed 25 percent...to consumers outside the boundaries.”

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EXCERPT FROM CITY CHARTER

ARTICLE II. - POWERS

Sec. 14. – Powers of the city.

- (10) *Utility tax.* The city commission of the City of Fort Pierce, within the limitations of this act, shall have the power by ordinance in its discretion to levy an excise tax upon the gross sale, or purchases or consumption within the city, of electric lights, electric power, water, telephone service, metered or bottled gas (natural liquefied petroleum gas or manufactured), or any services rendered by any person, firm or corporation operating public utilities, including the City of Fort Pierce, to fix the rate of taxation on the sales or purchases or consumption of said commodities or said services within the power of selection of the sales or purchases or consumption of said commodities or services to be so taxed, and with the power to fix the rate of tax to be paid upon the sales or purchases or consumption of the said commodities or services so taxed.

State Law reference— Municipal public service tax, F.S. §§ 166.231, 166.232.

Annotation— The city was required to follow former language in the charter requiring the proceeds of the tax to be used for operating expenses and not for debt service requirements. *State v. City of Fort Pierce*, 88 So.2d 135(1956).

ARTICLE X. - UTILITIES

Sec. 143. - Service of utilities to consumers outside of city.

The city commission shall have power to supply water, electricity, gas and sewer service for domestic and other purposes to individuals or corporations outside of the city and to charge and collect reasonable rates, prices and compensation therefor, including the costs or any part thereof for extension of said services, as determined by the city and upon such terms as may be imposed by the city, and the city commission may charge a different rate but not a lesser rate for such consumers than is charged for a like class of customers within the corporate limits of the city.

(Laws of Fla., Ch. 65-1557, § 2; Laws of Fla., Ch. 67-1391, § 21)

Amendment note— Ch. 65-1557, [§ 2](#), amended [§ 143](#) by permitting a different rate for consumers outside the city. Previously, said section required that a higher rate be charged. Ch. 67-1391, [§ 21](#), amended [§ 143](#) by adding sewer service, and by inserting the phrase "including the costs or any part thereof for extension of said services, as determined by the city and upon such terms as may be imposed by the city."

State Law reference— Rates charged consumers outside city limits, F.S. § 180.191.

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Sec. 147. - Public franchises.

The city commission shall have power to grant to persons or corporations the franchise for construction and operating any and all public utilities provided for by this charter or by the general laws of the State of Florida, but no franchise shall be granted for a longer period than thirty (30) years, and in granting such franchise the city commission shall reserve the right to prescribe reasonable charges for such service and to make reasonable regulations for the control and management of such utilities. Provided, however, that nothing in this section contained, with reference to the regulation or [of] rates or service, shall apply to any public utility, the rates or services of which are by law placed under the jurisdiction of the Florida Public Service Commission.

State Law reference— Franchises, F.S. § 180.14.

EXCERPT FROM CITY CODE OF ORDINANCES

Chapter 19 – TAXATION, ARTICLE II. - PUBLIC SERVICE TAX

Sec. 19-16. - Definitions.

(a) As used in this article:

- (1) *Purchaser* shall include, but shall not be limited to, any individual person, persons, firms, corporations, partnerships and joint ventures.
- (2) *Sale*, where the context hereof so requires, shall be synonymous with the term "purchase" and vice versa.

(b) The following definitions shall apply for the purposes of taxable telecommunications service:

- (1) *Taxable telecommunications service* shall mean purchases within the city of telecommunications services which originate and terminate in this state or, if the location of the telecommunications service provided cannot be determined, the total amount billed for such telecommunications service to a telephone or telephone number, a telecommunications number or device, or a customer's billing address located within the municipality; excluding public telephone charges collected on site, charges for any foreign exchange service or any private line service except when such services are used or sold as a substitute for any telephone company switch service or dedicated facility by which a telephone company provides a communication path, access charges, and any customer access line charges paid to a local telephone company. However, telecommunications services as defined in Florida Statutes section 203.012(5) shall be taxed only on the monthly recurring customer service charges, excluding variable usage charges.
- (2) *Purchase* shall mean every act or transaction whereby possession of, utilization of, or control over taxable telecommunications services become

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vested in the purchaser within the city for which payment is made, pursuant to a duty and obligation therefor; but such term shall not apply to purchase of local telephone service or other telecommunications service for hire or otherwise for resale.

- (3) *Purchase within city*: A purchase is within the city if a communication originates or terminates within the city and it is billed to a purchaser, telephone or telephone number, or telecommunications number or device within the city.
- (4) *Purchaser* shall mean all persons legally liable for the payment of taxable telecommunications services rendered to him, by a seller, excluding a purchaser of local telephone service or other telecommunications service for use in the conduct of a telecommunications service for hire or otherwise for resale.
- (5) *Seller* shall mean all persons rendering taxable telecommunications services to any purchaser thereof.

(Code 1960, § 26-4(a, b); Ord. No. I-384, § 1, 6-18-90; Ord. No. I-448, § 2, 1-7-91)

Sec. 19-17. - Application of article.

(a) The tax levied in this article on sales of telecommunications services shall apply to each and every purchase in the city of taxable telecommunications services, as defined in [section 19-16\(b\)\(1\)](#), and shall be taxed only on a monthly recurring customer service charge, excluding variable use charges.

(b) The tax hereby levied shall not apply to:

- (1) Purchases of bottled water; or
- (2) Telephone charges collected onsite, charges for foreign exchange (fx) service or private line service, except when such services are used or sold as a substitute for any telephone company switched service or dedicated facility by which a telephone company provides a communication path, access charges, customer access line charges paid to a local telephone company, cellular mobile telephone, beeper/pager or specialized mobile radio variable usage charges, purchases of telecommunications service for hire or otherwise for resale.

(c) The tax hereby levied shall apply to purchases of electrical service and water service from the city within the corporate limits of the city.

(d) The tax hereby levied shall apply to all purchases of electricity, water service and taxable telecommunications services, whether delivered through the medium of a meter or measuring device or otherwise.

(e) The tax hereby levied shall be in addition to any and all other taxes levied by the city and shall be a continuing tax so long as this article, or any amendment hereof, shall remain in effect.

(Code 1960, § 26-11; Ord. No. I-384, § 2, 6-18-90)

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Sec. 19-18. - Exemptions.

The United States of America, the state and the political subdivisions, agencies, boards, commissions and authorities thereof, and recognized churches purchasing exclusively for church purposes are hereby exempted from the payment of the tax levied by this article.

Sec. 19-19. - Levied.

(a) There is hereby levied on every purchase within the city of electricity and water service a tax as authorized by law in an amount equal to ten (10) per cent of the payment received by the seller of such electricity and water service from the purchaser thereof for the purchase of such service, which tax, in every case shall be paid by the purchaser, for the use of the city, to the seller of such service at the time of paying the charge therefor but not less often than once monthly, subject to all other requirements by law.

(b) There is hereby levied on every purchase within the city of taxable telecommunications services, as defined by Florida Statutes section 203.012(5) and herein, a tax as authorized by law in an amount equal to seven (7) per cent of the payment received by the seller of such taxable telecommunications services from the purchaser thereof for the purchase of such service, which tax, in every case shall be paid by the purchaser, for the use of the city, to the seller of such service at the time of paying the charge therefor but not less often than once monthly, subject to all other requirements of law.

(Code 1960, § 26-5; Ord. No. I-384, § 3, 6-18-90)

Sec. 19-20. - Collection; failure to collect; proceedings to collect.

(a) Every seller of electricity, water service and taxable telecommunications services shall collect from the purchaser, for the use of the city, the tax levied in this article at the time of collecting the purchase price charged for each transaction and shall report and pay over on or before the twentieth day of each calendar month to the finance director all such taxes levied and collected during the preceding month. It shall be unlawful for any seller to collect the price of any sale of electricity, water service and taxable telecommunications services without, at the same time, collecting the tax hereby levied in respect to such sale. Any seller failing to collect such tax at the time of collecting the price of any sale shall be liable to the city for the amount of such tax in like manner as if the same had been actually paid to the seller, and the city commission shall cause to be brought all suits and actions and take all proceedings in the name of the city as may be necessary for the recovery of such tax; provided, however, that the seller shall not be liable for the payment of such tax upon uncollected charges.

(b) For the purpose of compensating the seller of taxable telecommunications services, the seller shall be allowed one per cent of the amount of the tax collected due to the city in the form of a deduction from the amount collected for a remittance. The deduction is allowed as compensation for keeping of records and collection of tax and remitting the same.

(Code 1960, § 26-6; Ord. No. I-384, § 4, 6-18-90)

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Charter reference— Director of finance to collect all taxes, [§ 91\(h\)](#).

Sec. 19-21. - Authority of seller to discontinue service.

If any purchaser shall fail, neglect or refuse to pay to the seller the seller's charge and the tax levied in this article and as hereby required on account of the sale for which such charge is made, or either, the seller shall have and is hereby vested with the right, power and authority to immediately discontinue further service to such purchaser until the tax and the seller's bill shall have been paid in full.

(Code 1960, § 26-7)

Sec. 19-22. - Records kept by seller; inspection.

Every seller of electricity, water and taxable telecommunications services shall keep complete records showing all sales in the city of such service, which records shall show the price charged upon each sale, the date thereof and the date of payment thereof. Such records shall be kept open for inspection by the duly authorized agents of the city during business hours on all business days, and such agents may make such transcripts thereof during such time as they may desire. The city may audit the records of sellers of taxable telecommunications services upon (60) days' notice; however, any information received by the city in connection with such audit is confidential and is not subject to the provisions of Florida Statutes section 119.07(1). No company records shall be duplicated or removed from the premises.

(Code 1960, § 26-8; Ord. No. I-384, § 5, 6-18-90)

Sec. 19-23. - Computation of tax when seller collects at monthly periods.

In all cases where the seller of electricity, water service and taxable telecommunications services collects the price thereof at monthly periods, the tax levied in this article may be computed on the aggregate amount of sales during such period, provided that the amount of tax to be collected shall be the nearest whole cent to the amount computed.

(Code 1960, § 26-9; Ord. No. I-384, § 6, 6-18-90)

Sec. 19-24. - Payment of taxes when seller bills in advance.

In any case where the seller of taxable telecommunications services bills its customers in advance and makes payment in advance to the city of the amount of tax to be collected by such bills, and any of such bills are not collected, the amount of the tax applicable to such uncollected bills may be deducted from any one succeeding payment to the city, provided any such deduction is made within six (6) months after such bills are rendered.

(Code 1960, § 26-10; Ord. No. I-384, § 7, 6-18-90)

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Sec. 19-25. - Authority of city to discontinue service.

In rendering bills for electric services and water services the finance director shall add thereto the tax levied in this article, and upon failure of any purchaser to pay the same within thirty (30) days after the rendering of the bill therefor such service shall be discontinued.

(Code 1960, § 26-13)

EXCERPT FROM FLORIDA STATUTES

F.S. 166.231 Municipalities; public service tax.—

(1)(a) A municipality may levy a tax on the purchase of electricity, metered natural gas, liquefied petroleum gas either metered or bottled, manufactured gas either metered or bottled, and water service. Except for those municipalities in which paragraph (c) applies, the tax shall be levied only upon purchases within the municipality and shall not exceed 10 percent of the payments received by the seller of the taxable item from the purchaser for the purchase of such service. Municipalities imposing a tax on the purchase of cable television service as of May 4, 1977, may continue to levy such tax to the extent necessary to meet all obligations to or for the benefit of holders of bonds or certificates which were issued prior to May 4, 1977. Purchase of electricity means the purchase of electric power by a person who will consume it within the municipality.

(b) The tax imposed by paragraph (a) shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. The term “fuel adjustment charge” means all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.

(c) The tax in paragraph (a) on water service may be applied outside municipal boundaries to property included in a development of regional impact approved pursuant to s. [380.06](#), if agreed to in writing by the developer of such property and the municipality prior to March 31, 2000. If a tax levied pursuant to the subsection is challenged, recovery, if any, shall be limited to moneys paid into an escrow account of the clerk of the court subsequent to such challenge.

(2) Services competitive with those enumerated in subsection (1), as defined by ordinance, shall be taxed on a comparable base at the same rates. However, fuel oil shall be taxed at a rate not to exceed 4 cents per gallon. However, for municipalities levying less than the maximum rate allowable in subsection (1), the maximum tax on fuel oil shall bear the same proportion to 4 cents which the tax rate levied under subsection (1) bears to the maximum rate allowable in subsection (1).

(3) A municipality may exempt from the tax imposed by this section any amount up to, and including, the first 500 kilowatt hours of electricity purchased per month for residential use. Such exemption shall apply to each separate residential unit, regardless of whether such unit is on a separate meter or a central meter, and shall be passed on to each individual tenant.

(4)(a) The purchase of natural gas, manufactured gas, or fuel oil by a public or private utility, either for resale or for use as fuel in the generation of electricity, or the purchase of fuel oil or kerosene for use as an aircraft engine fuel or propellant or for use in internal combustion engines is exempt from taxation hereunder.

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(b) A municipality may exempt from the tax imposed by this section the purchase of metered or bottled gas (natural liquefied petroleum gas or manufactured) or fuel oil for agricultural purposes. As used in this paragraph, “agricultural purposes” means bona fide farming, pasture, grove, or forestry operations, including horticulture, floriculture, viticulture, dairy, livestock, poultry, bee, and aquaculture.

(5) Purchases by the United States Government, this state, and all counties, school districts, and municipalities of the state, and by public bodies exempted by law or court order, are exempt from the tax authorized by this section. A municipality may exempt from the tax imposed by this section the purchase of taxable items by any other public body as defined in s. [1.01](#), or by a nonprofit corporation or cooperative association organized under chapter 617 which provides water utility services to no more than 13,500 equivalent residential units, ownership of which will revert to a political subdivision upon retirement of all outstanding indebtedness, and shall exempt purchases by any recognized church in this state for use exclusively for church purposes.

(6) A municipality may exempt from the tax imposed by this section any amount up to, and including, the total amount of electricity, metered natural gas, liquefied petroleum gas either metered or bottled, or manufactured gas either metered or bottled purchased per month, or reduce the rate of taxation on the purchase of such electricity or gas when purchased by an industrial consumer which uses the electricity or gas directly in industrial manufacturing, processing, compounding, or a production process, at a fixed location in the municipality, of items of tangible personal property for sale. The municipality shall establish the requirements for qualification for this exemption in the manner prescribed by ordinance. Possession by a seller of a written certification by the purchaser, certifying the purchaser’s entitlement to an exemption permitted by this subsection, relieves the seller from the responsibility of collecting the tax on the nontaxable amounts, and the municipality shall look solely to the purchaser for recovery of such tax if it determines that the purchaser was not entitled to the exemption. Any municipality granting an exemption pursuant to this subsection shall grant the exemption to all companies classified in the same five-digit NAICS Industry Number. As used in this subsection, “NAICS” means those classifications contained in the North American Industry Classification System, as published in 2007 by the Office of Management and Budget, Executive Office of the President.

(7) The tax authorized hereunder shall be collected by the seller of the taxable item from the purchaser at the time of the payment for such service. The seller shall remit the taxes collected to the municipality in the manner prescribed by ordinance. Except as otherwise provided in ss. [166.233](#) and [166.234](#), the seller shall be liable for taxes that are due and not remitted to the municipality. This shall not bar the seller from recovering such taxes from purchasers; however, the universities in the State University System shall not be deemed a seller of any item otherwise taxable hereunder when such item is provided to university residences incidental to the provision of educational services.

(8)(a) Beginning July 1, 1995, a municipality may by ordinance exempt not less than 50 percent of the tax imposed under this section on purchasers of electrical energy who are determined to be eligible for the exemption provided by s. [212.08](#)(15) by the Department of Revenue. The exemption shall be administered as provided in that section. A copy of any

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ordinance adopted pursuant to this subsection shall be provided to the Department of Revenue not less than 14 days prior to its effective date.

(b) If an area that is nominated as an enterprise zone pursuant to s. [290.0055](#) has not yet been designated pursuant to s. [290.0065](#), a municipality may enact an ordinance for such exemption; however, the ordinance shall not be effective until such area is designated pursuant to s. [290.0065](#).

(c) This subsection expires on the date specified in s. [290.016](#) for the expiration of the Florida Enterprise Zone Act, except that any qualified business that has satisfied the requirements of this subsection before that date shall be allowed the full benefit of the exemption allowed under this subsection as if this subsection had not expired on that date.

(9) A purchaser who claims an exemption under subsection (4) or subsection (5) shall certify to the seller that he or she qualifies for the exemption, which certification may encompass all purchases after a specified date or other multiple purchases. A seller accepting the certification required by this subsection is relieved of the obligation to collect and remit tax; however, a governmental body that is exempt from the tax authorized by this section shall not be required to furnish such certification, and a seller is not required to collect tax from such an exempt governmental body.

(10) Governmental bodies which sell or resell taxable service to nonexempt end users must collect and remit the tax levied under this section.

History.—s. 1, ch. 73-129; ss. 1, 2, ch. 74-109; s. 1, ch. 77-174; s. 1, ch. 77-251; s. 4, ch. 78-299; s. 1, ch. 78-400; s. 1, ch. 82-230; s. 1, ch. 82-399; s. 24, ch. 84-356; s. 1, ch. 85-174; s. 1, ch. 86-155; s. 1, ch. 88-35; s. 1, ch. 88-140; s. 36, ch. 90-360; s. 1, ch. 93-224; s. 44, ch. 94-136; s. 1, ch. 95-403; s. 12, ch. 96-320; s. 47, ch. 96-406; s. 2, ch. 97-233; s. 2, ch. 97-283; s. 10, ch. 98-277; s. 64, ch. 99-2; s. 18, ch. 2000-158; ss. 36, 38, 58, ch. 2000-260; s. 5, ch. 2000-355; s. 28, ch. 2001-60; s. 38, ch. 2001-140; s. 2, ch. 2003-17; s. 13, ch. 2005-287; s. 2, ch. 2009-51.

F.S. 180.191 Limitation on rates charged consumer outside city limits.—

(1) Any municipality within the state operating a water or sewer utility outside of the boundaries of such municipality shall charge consumers outside the boundaries rates, fees, and charges determined in one of the following manners:

(a) It may charge the same rates, fees, and charges as consumers inside the municipal boundaries. However, in addition thereto, the municipality may add a surcharge of not more than 25 percent of such rates, fees, and charges to consumers outside the boundaries. Fixing of such rates, fees, and charges in this manner shall not require a public hearing except as may be provided for service to consumers inside the municipality.

(b) It may charge rates, fees, and charges that are just and equitable and which are based on the same factors used in fixing the rates, fees, and charges for consumers inside the municipal boundaries. In addition thereto, the municipality may add a surcharge not to exceed 25 percent of such rates, fees, and charges for said services to consumers outside the boundaries. However, the total of all such rates, fees, and charges for the services to consumers outside the boundaries shall not be more than 50 percent in excess of the total amount the municipality charges consumers served within the municipality for corresponding service. No such rates, fees, and charges shall be fixed until after a public hearing at which all of the users of the water or sewer systems; owners, tenants, or occupants of property served or to be served thereby;

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and all others interested shall have an opportunity to be heard concerning the proposed rates, fees, and charges. Any change or revision of such rates, fees, or charges may be made in the same manner as such rates, fees, or charges were originally established, but if such change or revision is to be made substantially pro rata as to all classes of service, both inside and outside the municipality, no hearing or notice shall be required.

(2) Whenever any municipality has engaged, or there are reasonable grounds to believe that any municipality is about to engage, in any act or practice prohibited by subsection (1), a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person or persons aggrieved.

(3) This section shall apply to municipally owned water and sewer utilities within the confines of a single county and may apply, pursuant to interlocal agreement, to municipally owned water and sewer utilities beyond the confines of a single county.

(4) In any action commenced pursuant to this section, the court in its discretion may allow the prevailing party treble damages and, in addition, a reasonable attorney's fee as part of the cost.

History.—ss. 1, 2, 3, 4, 5, ch. 70-997; s. 1, ch. 88-301; s. 1, ch. 92-181; s. 1, ch. 98-15.