

**CITY OF BELLFLOWER  
ORDINANCE NO. 1175**

**AN ORDINANCE OF THE CITY OF BELLFLOWER,  
CALIFORNIA, AMENDING CHAPTER 3.20 OF THE  
BELLFLOWER MUNICIPAL CODE TO CONTINUE AND  
MODERNIZE THE APPLICATION OF THE UTILITY USERS'  
TAX**

**WHEREAS**, for many years, the City of Bellflower has collected a Utility Users' Tax on telephone communication services, levied under the City's taxing powers, and the current rate of the tax is 5%; and

**WHEREAS**, telephony and related communications services have changed dramatically since that tax was first enacted; communications technology, telephone calling and marketing plans and state and federal legislation continue to evolve at a rapid pace; and

**WHEREAS**, due to the passage of time since the adoption by the voters of the current Utility Users' Tax, other clarifications and modernizations are needed to the City's Code relating to the Utility Users' Tax; and

**WHEREAS**, in particular, communications are no longer accomplished entirely through the switched network, wireless service has become prevalent, communications through other means are increasing in popularity, the overall cost of communications is declining, common charges are no longer based upon distance and the federal government has been extremely active in adopting laws affecting the telecommunications industry; and

**WHEREAS**, modernization and clarification of the tax to maintain the existing rate, but include current technologies and reflect the realities of the current communications industry, require voter approval under the California Constitution; and

**WHEREAS**, without a modernized ordinance, the revenue generated by the telecommunications tax is at risk due to market erosion, changing technology, legal challenges, preemptive federal laws, and other factors; and

**WHEREAS**, the City needs the revenue generated by the tax to continue to provide vital City services, such as public safety services, graffiti removal; gang and drug prevention and enforcement programs; after-school activities; senior and disabled residents' services and library services; and

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

**WHEREAS**, the Utility Users' Tax was introduced in 1993 at a time when crime rates were among the highest in Bellflower's history; and since then the City has annually allocated a substantial portion of these revenues to public safety, resulting in more Sheriff's and a 50% decrease in the overall crime rate; and

**WHEREAS**, the slowdown in the local economy has resulted in less sales tax revenue and property tax revenue for the City to devote to essential City services. Passing this measure ensures a local source of revenue that by law must be used to fund local services and cannot be taken by Sacramento politicians; and

**WHEREAS**, the City desires to treat users of communications services in a uniform and equitable manner, regardless of the means of transmission or technology used, so that users of communications services transmitted by traditional technologies (such as land lines) do not bear a greater tax burden than users of communications services transmitted via newly developed technologies.

**THE PEOPLE OF THE CITY OF BELLFLOWER DO HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** Section 3.20.030 of the Bellflower Municipal Code is amended to read as follows:

**3.20.030 Definitions.**

For the purposes of this chapter, unless otherwise apparent from the context, the following words and phrases shall be defined as follows:

**Ancillary Telecommunication Services**

“Ancillary telecommunication services” shall mean services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to, the following services:

1. “Conference bridging service” 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 telecommunications services used to reach the conference bridge.
2. “Detailed telecommunications billing service” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.
3. “Directory assistance” means an ancillary service of providing telephone number information and/or address information.
4. “Vertical service” means an ancillary service that is offered in connection with one or more telecommunications 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” 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.

**Billing Address**

"Billing address" shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

**Chapter**

"Chapter" shall mean Chapter 3.20 of this Code and its sections.

**City**

"City" shall mean the City of Bellflower.

**Electricity Users' Tax**

"Electricity users' tax" shall mean an electricity users' tax imposed pursuant to the provisions of this chapter.

**Gas**

"Gas" shall mean natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefore.

**Gas Users' Tax**

"Gas users' tax" shall mean a gas users' tax imposed pursuant to the provisions of this chapter.

**Cogeneration**

"Cogeneration" shall mean the sequential use of energy for the production of electrical and useful thermal energy. The sequence can be thermal use followed by power production or the reverse, subject to the following standards:

1. At least five percent (5%) of the facility's total annual energy output shall be in the form of useful thermal energy; and
2. Where useful thermal energy follows power production, the useful annual power output plus one-half the useful annual thermal energy output equals not less than forty-two and one-half percent (42.5%) of any natural gas and oil energy input.

**Cogenerator**

"Cogenerator" shall mean a person who supplies the production of electrical and useful thermal cogeneration energy.

### **Mobile Telecommunications Service**

“Mobile Telecommunications Service” has the meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations thereunder.

### **Month**

“Month” shall mean a calendar month.

### **Paging Service**

“Paging service” shall mean a “telecommunications service” that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

### **Person**

“Person” shall mean, 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, or any lawful successor or assign, but shall not include the Bellflower Unified School District.

### **Place of Primary Use**

“Place of primary use” shall mean the street address representative of where the customer’s use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

### **Post-paid Telecommunication Service**

“Post-paid telecommunication service” shall mean the telecommunication service obtained by making a payment on a telecommunication-by-telecommunication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.

### **Prepaid Telecommunication Service**

“Prepaid telecommunication service” shall mean the right to access telecommunication services, which must be paid for in advance and which enables the origination of telecommunications 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.

### **Private Telecommunication Service**

“Private telecommunication service” shall mean a telecommunication service that entitles the customer to exclusive or priority use of a telecommunications channel or 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, stations, and any other associated services that are provided in connection with the use of such channel or channels. A telecommunications channel is a physical or virtual path of telecommunications over which signals are transmitted between or among customer channel termination points (i.e., the location where the customer either inputs or receives the telecommunications).

### **Service Address**

“Service address” shall mean the residential street address or the business street address of the service user. For a telecommunication service user, “service address” means either:

1. The location of the service user’s telecommunication equipment from which the telecommunication originates or terminates, regardless of where the telecommunication is billed or paid; or
2. If the location in subsection (1) of this definition is unknown (e.g., mobile telecommunications service or VoIP service), the service address means the location of the service user’s place of primary use.

For prepaid telecommunication service, “service address” means the location associated with the service number.

### **Service Supplier**

“Service supplier” shall mean a person who provides electrical energy, telephone services or gas to a service user, who is required to collect from the service user and remit to the City a utility users’ tax pursuant to the provisions of this chapter.

### **Service User**

“Service user” shall mean a person who received, or is entitled to receive, telephone services, electrical energy, or gas from a service supplier, including a user of cogenerated energy, and who is required to pay a utility users’ tax levied by this chapter; “service user” shall not mean or include the City, the Bellflower Unified School District, nor a service supplier.

### **Streamlined Sales and Use Tax Agreement**

“Streamlined Sales and Use Tax Agreement” shall mean the multi-state agreement commonly known and referred to as the Streamlined Sales and Use Tax Agreement, and as it is amended from time to time.

### **Tax Administrator**

"Tax Administrator" shall mean the City Manager of the City or his/her designee.

### **Tax or Utility Users' Tax**

"Tax" or "utility users' tax" shall mean one (1) or more of the utility user taxes levied pursuant to the provisions of this chapter.

### **Telecommunication Services**

"Telecommunication services" shall mean 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 is functionally integrated with "telecommunication services." "Telecommunications services" include, but are not limited to, the following services, regardless of the manner or basis on which such services are calculated or billed: intrastate, interstate, and international telecommunication services; ancillary 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 call in to pre-recorded or live service).

### **VoIP (Voice over Internet Protocol)**

"VoIP (Voice over Internet Protocol)" shall mean the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

### **800 Service**

"800 Service" shall mean a "telecommunication service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

### **900 Service**

"900 Service" shall mean an inbound toll "telecommunication service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telecommunication services" to the subscriber, or

service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.

**SECTION 2.** Section 3.20.040 of the Bellflower Municipal Code is amended to read as follows:

**3.20.040 Exemptions.**

Nothing in this chapter shall be construed as imposing a tax upon any person when the imposition of such tax upon such person would be in violation of the Constitution of the United States, the Constitution of the State, or any valid applicable statute or regulation of either the United States or the State. Any service user that is exempt from the tax imposed by this chapter pursuant to this section shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a state or federal agency or subdivision with a commonly recognized name for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all telecommunication service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in telecommunication service suppliers so that the Tax Administrator can properly notify the new telecommunication service supplier of the service user's tax exempt status. A service user that fails to comply with this section shall not be entitled to a refund of telecommunication users' taxes collected and remitted to the Tax Administrator from such service user as a result of such noncompliance.

**SECTION 3.** Section 3.20.050 of the Bellflower Municipal Code is amended to read as follows:

**3.20.050 Telecommunication Users' Tax.**

**A. Telecommunication Users' Tax.** There is hereby imposed a tax upon every person in the City using telecommunication services. The tax imposed by this section shall be at the rate of five percent (5%) of the charges made for such services. Such tax shall be collected from the service user by the telecommunication service supplier or its billing agent. There is a rebuttable presumption that telecommunication 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 section. 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, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunication services.

- B. Sourcing Rules.** 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 telecommunication service suppliers, which are subject to the tax collection requirements of this chapter, sourcing rules for the taxation of other telecommunication services, including, but not limited to, post-paid telecommunication services, prepaid telecommunication services, and private telecommunication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation (e.g., Streamline Sales and Use Tax Agreement).
- C. Authority for Administrative Rulings.** The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this section, an administrative ruling identifying those telecommunication services, or charges therefore, that are subject to or not subject to the tax of subsection (a) above.
- D. Specific Inclusions in Telecommunication Services.** As used in this section, the term "telecommunication services" shall include, but are 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. Certain Exclusions from Telecommunications Services.** As used in this section, the term "telecommunication services" shall not include digital downloads that are not "ancillary telecommunication services," such as music, ringtones, games, and similar digital products.
- F. Multi-Jurisdictional Taxation.** To prevent actual multi-jurisdictional taxation of telecommunication 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 local jurisdiction on such telecommunication 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 local jurisdiction; provided, however, the amount of credit shall not exceed the tax owed to the City under this section.
- G. Collection of Tax by Service Supplier.** The tax on telecommunication services imposed by this section shall be collected from the service user by the service supplier. 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 twentieth (20th) day of the following month.
- H. Exemption of LifeLine Customers.** Certified LifeLine customers, pursuant to rules established by the California Public Utilities Commission, shall be exempt from the telecommunication users' tax of this chapter.



**SECTION 4.** Section 3.20.080 of the Bellflower Municipal Code is amended to read as follows:

**3.20.080 Bundling Taxable Items with Non-Taxable Items.**

If any non-taxable 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.

**SECTION 5.** Section 3.20.085 is added to the Bellflower Municipal Code to read as follows:

**3.20.085 Substantial Nexus/Minimum Contacts.**

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this chapter, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the Telecommunication Users' Tax to the fullest extent permitted by state and federal law and as it may change from time to time by judicial interpretation or by statutory enactment. Any telecommunication service (including VoIP) used by a person with a service address in the City, which service is capable of terminating a call to another person on the general telephone network, shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this chapter. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the City, directly or through an agent, affiliate, or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents or other representatives; solicits business in the City on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the City or distributed from a location within the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of utility services that are subject to a tax under this chapter.

**SECTION 6.** Section 3.20.160 of the Bellflower Municipal Code is amended to read as follows:

**3.20.160 Interaction with Prior Tax.**

- A. **Collection of Tax by Service Providers.** Service providers shall begin to collect the tax imposed by the amendments to this Chapter 3.20 by approval of the Ordinance on the March 3, 2009, ballot (the "2009 UUT Ordinance"), as soon as feasible after the effective date of the 2009 UUT Ordinance, but in no event later than permitted by Section 799 of the California Public Utilities Code.
- B. **Satisfaction of Tax Obligation by Service Users.** Prior to September 1, 2009, any person who pays the tax levied pursuant to this Chapter, as it existed prior to the effective date of the 2009 UUT Ordinance, with respect to any charge for a service shall be deemed to have satisfied his or her obligation to pay the tax levied pursuant to this Chapter as amended by the 2009 UUT Ordinance, with respect to that charge. The intent of this paragraph is to prevent the imposition of multiple taxes upon a single utility charge during the transition period from prior to the effective date of the 2009 UUT Ordinance to the effective date of the 2009 UUT Ordinance (which transition period ends September 1, 2009) and to permit service providers or other persons with an obligation to remit the tax hereunder, during that transition period, to satisfy their collection obligations by collecting either tax.
- C. In the event that a final court order should determine the election enacting the 2009 UUT Ordinance is invalid for whatever reason, or any tax imposed under the 2009 UUT Ordinance is invalid in whole or in part, then the taxes imposed under this Chapter 3.20, as it existed prior to the 2009 UUT Ordinance, shall automatically continue to apply with respect to any service for which the tax levied pursuant to the 2009 UUT Ordinance has been determined to be invalid. Such automatic continuation shall be effective beginning as of the first date of service (or billing date) for which the tax imposed by the 2009 UUT Ordinance 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 Chapter as amended by the 2009 UUT Ordinance shall be deemed to satisfy the tax imposed under this Chapter 3.20, as it existed prior to the 2009 UUT Ordinance, on that service, so long as the tax is paid with respect to a service provided no later than six months subsequent to the date on which the final court order is published.

**SECTION 7.** Section 3.20.180 is added to the Bellflower Municipal Code to read as follows:

**3.20.180 Notice of Changes to Ordinance.**

If a tax under this chapter is added, repealed, increased, reduced, or the tax base is changed, then the Tax Administrator shall follow the notice requirements of California Public Utilities Code Section 799.

**SECTION 8.** Section 3.20.190 is added to the Bellflower Municipal Code to read as follows:

**3.20.190 Future Amendment to Cited Statute.**

Unless specifically provided otherwise, any reference to a state or federal statute in this chapter shall mean such statute as it may be amended from time to time; provided, that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease (as a result of excluding all or a part of a communication service, or charge therefore, from taxation). Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent the City's authorization to collect or impose any tax imposed under this chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter.

**SECTION 9.** Section 3.20.200 is added to the Bellflower Municipal Code to read as follows:

**3.20.200 Independent Audit of Tax Collection, Remittance and Expenditure.**

The City shall annually verify the taxes owed under this chapter have been properly applied, collected, and remitted in accordance with this chapter, and properly expended according to applicable municipal law. The form of annual verification shall be reasonably determined by the Tax Administrator.

**SECTION 10.** Section 3.20.210 is added to the Bellflower Municipal Code to read as follows:

**3.20.210 Remedies Cumulative.**

All remedies and penalties prescribed by this chapter or which are available under any other provision of law or equity, including, but not limited to, the California False Claims Act (Government Code Sections 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Sections 17070 et seq.), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

**SECTION 11.** Section 3.20.220 is added to the Bellflower Municipal Code to read as follows:

**3.20.220 Amendment or Repeal.**

Subject to the provisions provided herein, this chapter, and any provision thereof, may be repealed or amended by the City Council without a vote of the people. As required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this chapter. The People of the City affirm the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration of the rate of the tax to a rate that is no higher than that set by this chapter, if the City Council has acted to reduce the rate of the tax;
- B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, as so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter.
- C. The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this chapter); and
- D. The collection of the tax imposed by this chapter, even if the City had, for some period of time, failed to collect the tax.

**SECTION 12. Effective Date.** Upon a majority of the voters voting in favor of this Ordinance, it shall be considered as adopted upon the date that the vote is declared by the City Council and shall go into effect ten (10) days after that date.

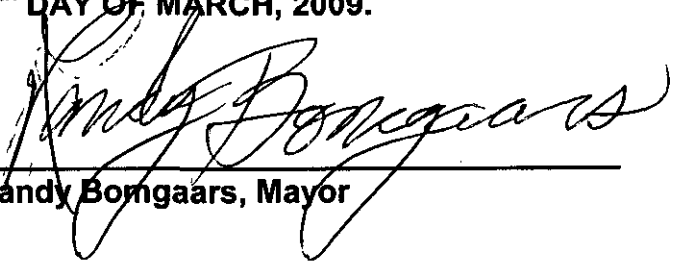
**SECTION 13. Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The people hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

**SECTION 14. Ratification of Prior Tax.** The People of the City of Bellflower hereby ratify and approve the past collection of the Telephone Users Tax under Chapter 3.20 of the Bellflower Municipal Code as it existed prior to the effective date of this Ordinance.

**SECTION 15. Execution.** The Mayor is hereby authorized to attest to the adoption of this Ordinance by the voters of the City by signing where indicated below.

I HEREBY CERTIFY THAT ORDINANCE NO. 1175 WAS PASSED, APPROVED AND ADOPTED BY THE PEOPLE OF THE CITY OF BELLFLOWER, CALIFORNIA VOTING ON THE 3<sup>RD</sup> DAY OF MARCH, 2009.

PASSED, APPROVED AND ADOPTED THIS 17<sup>th</sup> DAY OF MARCH, 2009.

  
\_\_\_\_\_  
Randy Bongaars, Mayor

Attest:

  
\_\_\_\_\_  
Debra D. Bauchop, City Clerk