

ORDINANCE NO. 1017

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF
COACHELLA, CALIFORNIA APPROVING A UTILITY
USERS TAX**

THE PEOPLE OF THE CITY OF COACHELLA, CALIFORNIA DO HEREBY
ORDAIN AS FOLLOWS:

SECTION 1: Chapter 4.30 is hereby added to the Coachella Municipal Code to read as
follows:

Chapter 4.30. UTILITY USERS TAX

Sections:

- 4.30.010 Purpose.
- 4.30.020 Definitions.
- 4.30.030 Citizens Oversight Committee.
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- 4.30.050 Electricity users tax.
- 4.30.060 Gas users tax.
- 4.30.070 Collection of Tax From Service Users Receiving Direct Purchase of Gas
or Electricity.
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- 4.30.250 Remedies Cumulative.
- 4.30.260 Notice of Changes to Ordinance.
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- 4.30.290 Independent Audit of Tax Collection, Exemption, Remittance and Expenditure.

Section 4.30.010. Purpose. This Chapter is enacted solely to raise revenue for the general governmental purposes of the City. All of the proceeds from the tax imposed by this Chapter shall be placed in the City's general fund and used for the usual current expenses of the City.

Section 4.30.020. Definitions. The following words and phrases, whenever used in this Chapter, shall be construed as defined in this section.

A. "Ancillary Telecommunication Services" means services that are associated with or incidental to the provision, use or enjoyment of Telecommunication 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 Telecommunication 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 Telecommunication 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.

B. "Ancillary Video Services" shall mean 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, interactive services or other communications services that are associated with or incidental to the provision, use or enjoyment of video services.

C. "Billing Address" shall mean the mailing address of the Service User where the Service Supplier submits invoices or bills for payment by the customer.

D. "City" means the City of Coachella.

E. "City Manager" means the City Manager of City, or his or her authorized representative.

F. "Cogenerator" shall mean any corporation or Person employing cogeneration (as defined in Section 216.6 of the California Public Utilities Code) for producing power for the generation of electricity for self use or sale to others from a qualified cogeneration facility (as defined in the federal Public Utility Regulatory Policies Act of 1978 and regulations thereunder).

G. "Communication Services" means Telecommunication Services and Ancillary Telecommunication Services.

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

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

J. "Month" means a calendar month.

K. "Municipal Organization" shall mean an organization or association created by statute or by voluntary action, whose purpose is to facilitate the development and dissemination of uniform rulings or interpretations regarding the application of utility users taxes to Communication Services in the State.

L. "Non-Utility Supplier" shall mean:

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-owned utility, cogenerator, 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; and

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.

M. “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.

N. “Place of Primary Use” means the Service Address representative of where the customer’s use of the communication service primarily occurs, which must be the residential street address or the primary business street address of the customer.

O. “Post-Paid Telecommunication Service” means the telecommunication service obtained by making a payment on a communication-by-communication 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.

P. “Prepaid Telecommunication Service” means 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.

Q. “Private Telecommunication Service” means a telecommunication service that entitles the customer to exclusive or priority use of a communications 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).

R. “Service Address” means the residential street address or the business street address of the Service User. For a telecommunication Service User, “Service Address” means any of the following:

1. The location of the telecommunication equipment from which the communication originates or terminates, regardless of where the communication 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.

3. For Prepaid Telecommunication Service, “Service Address” means the location associated with the service number.

S. “Service Supplier” shall mean any Person, including the City, that provides communication services, electricity, gas, water, sewer or refuse service to a user of such services within the City, and includes an Person required to collect, or self-collect under Section 4.30.070, and remit a tax as imposed by this Chapter, including its billing agent in the case of electric, gas, or water Service Supplier.

T. “Service User” shall mean a Person required to pay a tax imposed under the provisions of this Chapter.

U. “State” shall mean the State of California.

V. “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.

W. “Tax Administrator” means the finance director of the City or his or her designee.

X. “Telecommunication Services” 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 “Telecommunication 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”. “Telecommunication 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; 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); and Value-Added Non-Voice Data Service.

Y. “Value-Added Non-Voice Data Service” means a service that otherwise meets the definition of “Telecommunication Services” in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

Z. “VoIP” (voice over internet protocol) shall mean the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

AA. “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.

BB. “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 Service 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 4.30.030. Citizens Oversight Committee.

A. *Citizens Oversight Committee Established.* There shall be a citizens advisory committee called the “Citizens Oversight Committee” (hereinafter “Committee”), which shall annually review revenues and expenditures from the utility users taxes collected pursuant to this Chapter.

B. *Committee Membership.* The Committee shall have 5 citizen-members appointed by the City Council. Committee members shall serve a term of four years. Terms shall be staggered. Appointees shall be residents of the City; however, no member of the Committee shall be an elected official for any public entity whose jurisdiction encompasses, in whole or in part, the City. The Police Chief, Fire Chief, and one member of City Council shall attend Committee meetings, but shall not be voting members.

C. *Committee Organization Procedures.* The committee shall select one of its members as Chairperson. The Committee shall follow the rules of procedure of the City unless and until, upon the report and recommendation from the Committee, the City Council adopts a specific set of procedural rules for the Committee.

D. *Regular Meeting; Provision of Support Services and Information.* The Committee shall be subject to the provisions of the Brown Act (California Government Code sections 54950 *et seq.*) and shall meet at least once each calendar year. A regular meeting schedule shall be determined in accordance with the Brown Act and thereafter meetings shall be noticed by the City Clerk. The City Manager or his/her designee shall serve as executive staff to the Committee.

E. *Annual Report.* The Committee shall review an annual expense report of the City relative to activities funded with the tax monies. Not later than the last day of the sixth month following the end of the each City fiscal year, the Committee will present its findings and conclusions to the City Council for its review.

Section 4.30.040. Communication services users tax.

A. There is hereby imposed a tax upon every Person in the City using Communication Services. The maximum tax imposed by this section shall be at the rate of five percent (5%) of the charges made for such services and shall be collected from the Service User by the communication Service Supplier or its billing agent. There is a rebuttable presumption

that Communication Services, which Services are capable of terminating a call to another person on the general telephone network, and which are billed to a Billing Address 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 Chapter. 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 Communication Services.

B. "Mobile Telecommunications Service" shall be sourced in accordance with the sourcing rules set forth in the Federal 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 Chapter, sourcing rules for the taxation of other Communication 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. 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 Chapter, an administrative ruling identifying those Communication Services, or charges therefor, that are subject to the tax of subsection (a) above. This administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this Section, or increase an existing tax, except as allowed by California Government Code Section 53750(h)(2).

D. As used in this section, the term "communication services" shall include, but not be limited to charges for: connection, reconnection, termination, movement, or change of communication 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 messaging. As used in this section, the term "telecommunication services" shall not include separately stated charges for: installation or maintenance of wiring or equipment on a customer's premises and wire maintenance fees; sale or rental of tangible personal property; digital products delivered electronically, such as software, downloaded music, ring tones and reading materials; 911 surcharge; and sales for resale.

E. To facilitate the uniform interpretation and application of similar ordinance provisions in other local jurisdictions in the state, the Tax Administrator may, prior to issuing and disseminating a sourcing rule or an administrative tax ruling, submit its proposed sourcing rule or administrative tax ruling to a Municipal Organization for review and comment, according to the rules and procedures of that Municipal Organization, or its successor organization.

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. 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.

Section 4.30.050. Electricity users tax.

A. There is hereby imposed a tax upon every Person using electricity in the City. The tax imposed by this section shall be at the rate of five percent (5%) of the charges made for such electricity, and for any supplemental services or other associated activities directly related and/or necessary for the provision of electricity to the end-user, which are provided by a Service Supplier or Non-Utility Supplier to a Service User. The tax shall be collected from the Service User by the Service Supplier or Non-Utility Supplier, or its billing agent.

B. As used in this section, the term “charges” shall apply to all services, components and items that are: i) necessary or common to the receipt, use and enjoyment of electric service; or, ii) currently, 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. The term “charges” shall include, but is not limited to, the following charges:

1. energy charges;
2. distribution and transmission charges;
3. metering charges;
4. stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar minimum charges for services;
5. customer 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 fee, franchise surcharge, annual and Monthly charges, and other charges, fees and surcharges which are necessary to or common for the receipt, use and enjoyment of electric service; and
6. 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. 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.

D. The Tax Administrator, from time to time, may survey the electricity 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: i) necessary or common to the receipt, use or enjoyment of electric service; or, ii) currently, 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.

E. As used in this section, the term “using electrical energy” shall not be construed to mean the storage of such energy by a Person in a battery owned or possessed by him or her for use in a automobile or other machinery or device apart from the premises upon which the energy was received; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; nor shall the term include electricity used and consumed by an electric public utility; nor shall the term include the mere receiving of such energy by an electric public utility or governmental agency at a point within the City for resale; or the use of such energy in the production or distribution of water by a public utility or a governmental agency.

F. The tax on electricity provided by self-production or by a Non-Utility Supplier or an electric utility not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section 4.30.070. All other taxes on charges for electricity imposed by this section shall be collected from the Service User by the electric Service Supplier or its billing agent. The amount of the tax collected in one Month shall be remitted to the Tax Administrator on or before the twentieth (20th) day of the following Month or, at the option of the Person required to collect or remit the tax, such Person shall remit an estimated amount of the tax measured by the tax billed in the previous Month or upon the payment pattern of the Service User, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following Month, provided that the Service User shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

Section 4.30.060. Gas users tax.

A. There is hereby imposed a tax upon every Person using Gas in the City, which is transported through a pipeline distribution system. The tax imposed by this section shall be at the rate of five percent (5%) of the charges made for such Gas, including all services related to the storage, transportation, and delivery of such Gas.

B. As used in this section, the term “charges” shall apply to all services, components and items for Gas service that are: i) necessary or common to the receipt, use and enjoyment of Gas service; or, ii) 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:

1. 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;

2. Gas transportation charges (including interstate charges to the extent not included in commodity charges);

3. storage charges; provided, however, that the Service Supplier shall not be required to apply the tax to any charges for Gas storage services when the Service Supplier 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 Supplier and to remit the tax to the appropriate jurisdiction;

4. capacity or demand charges, service establishment or reestablishment charges, administrative charges, marketing 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

5. charges, fees, or surcharges 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.

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: i) necessary or common to the receipt, use or enjoyment of Gas service; or, ii) 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. Charges for such components and items shall be subject to the tax of subsection (A) above.

E. The following shall be excluded from the base on which the tax imposed in this section is computed:

1. Charges made for natural gas which is to be resold and delivered through mains and pipes;

2. Charges made for natural gas sold for use in the generation of electrical energy or for the production or distribution of water by a public utility or governmental agency;

3. Charges made by a Gas utility for Gas used and consumed in the conduct of business of Gas public utilities;

4. Charges made for Gas used in the propulsion of motor vehicles, as that phrase is defined in the vehicle code of the state, utilizing natural gas; and,

5. Charges made for Gas used by a Non-Utility Supplier to generate electrical energy for its own use or for sale to others provided the electricity so generated is subject to the tax in accordance with Section 4.30.070.

F. The tax on Gas provided by self-production or by a Non-Utility Supplier not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section 4.30.070. All other taxes on charges for Gas imposed by this section shall be collected from the Service User by the Gas Service Supplier or its billing agent. 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 twentieth (20th) day of the following Month; or, at the option of the Person required to collect or remit the tax, such Person shall remit an estimated amount of tax measured by the tax billed in the previous Month or upon the payment pattern of the Service User, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following Month, provided that the Service User shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

Section 4.30.070. Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity.

A. Any Service User subject to the tax imposed by Section 4.30.050 or Section 4.30.060, which produces Gas or electricity for self-use, or which receives Gas or electricity directly from a Non-Utility Supplier not under the jurisdiction of this ordinance, or which otherwise is not having the full tax due on the use of Gas or electricity in the City that is directly billed and collected by the Service Supplier or its billing agent, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use. In lieu of paying said actual tax, the Service User may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous Month, or upon the pattern payment of similar customers of the Service Supplier using similar amounts of Gas or electricity, provided that the Service User shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

B. The Tax Administrator may require said Service User to identify its Non-Utility Supplier and provide, subject to audit, invoices, books of account, or other satisfactory evidence documenting the quantity of Gas or electricity used and the cost or price thereof. If the Service User is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax, in the opinion of the City, is excessive, the City may determine the tax by applying the tax rate to the equivalent charges the Service User would have incurred if the Gas or electricity

used had been provided by the Service Supplier, which is the primary supplier of Gas or electricity

Section 4.30.080. Water users tax.

A. There is imposed a tax upon every Person using water in the City which is transported and delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of five percent (5%) of the charges made for such water and shall be collected from the Service User by the water Service Supplier, or its billing agent.

B. As used in this section, the term “charges” shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of water service; or, ii) currently are or historically have been included in a single or bundled rate for water service by a local distribution company to a class of retail customers. The term “charges” shall include, but is not limited to, the following charges:

1. water commodity charges (potable and non-potable);
2. distribution or transmission charges;
3. metering charges;
4. customer charges, late charges, service establishment or reestablishment charges, franchise fees, franchise surcharges, annual and Monthly charges, and other charges, fees and surcharges which are necessary for or common to the receipt, use or enjoyment of water service; and,
5. charges, fees, or surcharges for water services or programs, which are mandated by a water district or a state or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

C. As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the Service User in exchange for the water services.

D. The Tax Administrator, from time to time, may survey the water Service Suppliers in the City to identify the various unbundled billing components of water retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by a water district or a state or federal agency as a condition of providing such water service. The Tax Administrator, thereafter, may issue and disseminate to such water Service Suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of water service; or, ii) currently are or historically have been included in a single or bundled rate for water service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (A) above.

E. There shall be excluded from the base on which the tax imposed in this section is computed charges made for water which is to be resold and delivered through a pipeline distribution system; and charges made by a municipal water department, public utility or a county or municipal water district for water used and consumed by such department, utility or district in the conduct of the business of such department, utility or district.

F. The tax on water service imposed by this section shall be collected from the Service User by the water Service Supplier or its billing agent. The amount of tax collected in one (1) Month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following Month.

Section 4.30.090. Sewer user tax.

A. There is hereby imposed a tax upon every Person in the City using sewer services provided by the City. The tax imposed by this section shall be at the rate of five percent (5%) of the charges made for such sewer services at one location and shall be paid by the Person paying for such sewer services.

B. The tax imposed in this section shall be collected from the Service User by the City. If applicable, 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.

C. The phrase "one location" as used in subsection (a) shall mean one or more contiguous sites for which the Service User receives one or more utility billings.

Section 4.30.100. Refuse hauling users tax.

A. There is hereby imposed a tax upon every Person in the City receiving refuse hauling services from the City or any refuse hauler franchised by the City. The tax imposed by this section shall be at the rate of five percent (5%) of the charges made for such service and shall be paid by the Person paying for such refuse hauling service.

B. The tax imposed in this section shall be collected from the Service User by the Person furnishing the refuse hauling 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 twentieth (20th) day of the following Month.

Section 4.30.110. Exemptions. The taxes imposed by this Chapter shall not apply to:

A. Constitutional and Statutory Exemptions.

1. Any Person or Service User if imposition of such tax upon that Person or Service User would be in violation of a federal or state statute or the Constitution of the United States or the Constitution of the State of California, or otherwise exempted by this Chapter; and

2. The City.

B. Special Exemptions.

1. Service Users that meet both of the following criteria, and have demonstrated their compliance with the following criteria to the Tax Administrator's satisfaction, are hereby exempted from the utility users tax imposed by this Chapter: (1) are at least sixty-five (65) years of age or older; and (2) where the combined gross income of all members of the Service User's residence is less than the amount established for Riverside County by the United States Department of Housing and Urban Development for very low income or extremely low-income families for the applicable household size.

2. The income exemption limit provided herein shall be revised annually by the Tax Administrator to conform to the most current very low income and extremely low-income limits for Riverside County for applicable household sizes, as determined by the United States Department of Housing and Urban Development (HUD) with regard to the Public Housing and Section 8 Program.

C. The exemptions granted by this section shall not eliminate the duty of the Service Supplier, Non-Utility Supplier, or Person to collect and remit utility user taxes for exempt persons, or the duty of exempt persons to pay such taxes, unless an exemption is applied for and granted in accordance with Section 4.30.120.

D. This ordinance shall authorize the City to levy and collect a utility users tax up to a maximum of five percent (5%) of the charges made for any Gas, electric, communications, video, sewer, refuse or water services used by any Service User within the City, except where any such Service User or utility service is made expressly exempt from utility users tax by this Chapter. Notwithstanding the above, the City council is hereby expressly authorized, by order or resolution, to establish classes of Persons or classes of utility service otherwise subject to payment of utility users tax imposed by this Chapter, and to suspend the collection of utility users tax, in whole or in part, from such classes of Persons or utility service, and may, from time to time, modify any such order or resolution, provided that no order or resolution of the City council shall result in the collection of utility users tax from any Service User in the City for any class of utility service in excess of five percent (5%) of the charges made for such utility service.

Section 4.30.120. Application for Exemption.

A. Any Service User that is exempt from the tax imposed by this Chapter or from whom the City Council has suspended collection of the tax imposed by this Chapter pursuant to subsection 4.30.120(D) shall file an application with the Tax Administrator for said exemption or suspension; 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. 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 or suspension, and shall include the names of all utility Service Suppliers serving that Service User. If deemed subject to an exemption or suspension by the Tax Administrator, such Service User shall give the Tax Administrator timely written notice of any change in utility Service Suppliers so that the Tax Administrator can properly notify the new utility Service Supplier of the Service User's tax exempt or suspended status. A Service User that fails to comply with this section shall not be entitled to a refund of utility users taxes collected and remitted to the Tax Administrator from such Service User as a result of such non-compliance. Upon request of the Tax Administrator, a Service Supplier or Non-Utility Supplier, or their billing agents, shall provide a list of names and

addresses of those customers which, according to their billing records, are deemed exempt or suspended from the payment of utility users tax.

B. The decision of the Tax Administrator may be appealed pursuant to Section 4.30.230. Filing an application pursuant to Section 4.30.230 and appeal to the City Manager pursuant to Section 4.30.230 is a prerequisite to a suit thereon.

C. Following application and approval of any exemption or suspension from the payment of all or any part of the utility users tax by the City, the tax administrator shall prepare a list of the Persons exempted or suspended from the payment of such tax by virtue of this section and shall furnish a copy thereof to each Service Supplier.

D. Any Service User who has been exempted or suspended from the collection of utility users tax pursuant to this Section shall notify the Tax Administrator within ten (10) calendar days following a change in facts or circumstances which may disqualify said Service User from receiving such exemption or suspension. It shall be a misdemeanor for any Person to knowingly receive the benefits of an exemption or suspension provided by this section when the basis for such exemption or suspension does not exist or ceases to exist.

Section 4.30.130. Substantial Nexus / Minimum Contacts.

A. 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 utility 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 communication 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 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 with the City or distributed from a location with 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.

B. The City shall make available, upon request, an accurate description of its jurisdictional boundaries based on street addresses, in an electronic format. If a Service Supplier relies upon such information provided by City, it shall not be responsible for any errors in taxation that may result.

Section 4.30.140. Duty to collect--Procedures.

The duty to collect and remit the taxes imposed by this Chapter shall be performed as follows:

A. The tax shall be collected insofar as practicable at the time 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 charge and tax which has accrued for the billing period, such amount and any subsequent payments by a Service User may be applied to the utility service charge first until such charge has been fully satisfied. Any remaining balance shall be applied to the taxes due, except in those cases where a Service User pays the full amount of the charges but notifies the Service Supplier of his or her refusal to pay the tax imposed on the charges.

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 Chapter. 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.

C. Bundling Rule. If any nontaxable charges are bundled 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 4.30.150. Filing Return and Payment.

Each Person required by this Chapter to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he/she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this Chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code Section 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information exempt from disclosure provisions of the Public Records Act.

Section 4.30.160. Collection Penalties.

A. Taxes collected from a Service User, or self-collected by a Service User subject to Section 4.30.070, are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on or before the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a Service Supplier in

satisfaction of its obligations under this subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on or before the following business day.

B. If a Service Supplier, or a Service User subject to Section 4.30.070, fails to remit any tax collected, on or before the due date, said Person shall pay a penalty for such delinquencies at the rate as set forth by resolution of the City Council of the total tax that is delinquent in the remittance, and shall pay interest at the rate as set forth by resolution of the City Council, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

C. The Tax Administrator shall have the power to impose additional penalties upon Persons required to collect and/or remit taxes pursuant to the provisions of this Chapter for fraud or gross negligence in reporting or remitting at the rate as set forth by resolution of the City Council of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

D. For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid.

E. Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this Chapter to be consistent with any uniform standards or procedures that are mutually agreed upon by UUT public agencies, or otherwise legally established, to create a UUT central payment location or mechanism.

Section 4.30.170. Deficiency Determination and Assessment – Tax Application Errors.

A. The Tax Administrator shall make a deficiency determination if he or she determines that any Person required to collect or self-collect taxes pursuant to the provisions of this Chapter has failed to collect and remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges.

B. The Tax Administrator shall mail a notice of such deficiency determination to the Person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate as set forth by resolution of the City Council, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) calendar days after the date of service of such notice, the Person may request in writing to the Tax Administrator for a hearing on the matter. If the Person fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the City.

C. If the Person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be held within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such Person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said Person to produce specific records at such hearing, such notice may designate the records requested to be produced.

D. At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to Person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 4.30.230. Filing an application pursuant to Section 4.30.230 and appeal to the City Manager pursuant to Section 4.30.230 is a prerequisite to a suit thereon.

E. Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be at the rate as set forth by resolution of the City Council on the total amount of the assessment, along with interest at the rate as set forth by resolution of the City Council, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Section 4.30.170 shall commence from the date of delinquency as provided in this subsection E.

F. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

Section 4.30.180. Administrative Remedy - Non-Paying Service Users.

A. Whenever the Tax Administrator determines that a Service User has deliberately withheld the amount of the tax owed by the Service User from the amounts remitted to a Person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such Person of the obligation to collect the taxes due under this Chapter from certain named Service Users for specific billing periods. Whenever the Service User has failed to pay the amount of tax owed for a period of two (2) or more billing periods, the Service Supplier shall be relieved of the obligation to collect taxes due. The Service Supplier shall provide the City with the names and addresses of such Service Users and the amounts of taxes owed under the provisions of this Chapter.

B. In addition to the tax owed, the Service User shall pay a delinquency penalty at the rate as set forth by resolution of the City Council of the total tax that is owed, and shall pay interest at the rate as set forth by resolution of the City Council, on the amount of the tax, exclusive of penalties, from the due date, until paid.

C. The Tax Administrator shall notify the non-paying Service User that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the Service User by personal delivery or by deposit of the notice in the United States mail, postage prepaid, 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 have a change of address, to his or her last known address.

D. If the Service User fails to remit the tax to the Tax Administrator within thirty (30) days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of fifteen percent (15%) of the amount of the total tax that is owed.

Section 4.30.190. Actions to collect. Any tax required to be paid by a Service User under the provisions of this Chapter shall be deemed a debt owed by the Service User to the City. Any such tax collected from a Service User which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the Person required to collect and remit and shall no longer be a debt of the Service User. Any Person owing money to the City under the provisions of this Chapter shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this Chapter, along with any collection costs incurred by the City as a result of the Person's noncompliance with this Chapter, including, but not limited to, reasonable attorneys fees and court costs.

Section 4.30.200. 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 Chapter.

B. The Tax Administrator may adopt administrative rules and regulations not inconsistent with provisions of this Chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office.

C. Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this Chapter and thereby: (a) conform to the billing procedures of a particular Service Supplier (or Service User subject to Section 4.30.070) so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this Chapter; or, (b) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and are voidable by the Tax Administrator or the City at any time.

D. The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this Chapter, of any Person required to collect and/or remit a tax pursuant to this Chapter. The Tax Administrator shall notify said Person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said Person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 4.30.170 for all taxes, penalties and interest owed and not paid, as evidenced by information provided by such Person to the Tax Administrator. If said Person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

E. Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Chapter for

a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of three-quarters of one percent ($\frac{3}{4}\%$) per Month, prorated for any portion thereof.

F. The Tax Administrator shall determine the eligibility of any Person who asserts a right to exemption from, or a refund of, the tax imposed by this Chapter.

G. The Tax Administrator or the City Manager, with the written approval of the City Attorney, may compromise a claim pursuant to this Chapter where the portion of the claim proposed to be released is less than the amount set by separate resolution of the City Council relating to the settlement of general liability claims against the City and, with the approval of the City Attorney and the City Council, may compromise such a claim where the portion proposed to be released is equal to or greater than the amount set by separate resolution of the City Council relating to the settlement of general liability claims against the City by the City Manager.

H. Notwithstanding any provision in this Chapter to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a Person required to collect and/or remit for failure to collect the tax imposed by this Chapter if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration industry practice or other precedence.

Section 4.30.210. Records.

A. It shall be the duty of every Person required to collect and/or remit to the City any tax imposed by this Chapter 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 as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator, or the Tax Administrator's designated representative, shall have the right to inspect at a reasonable time.

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 non-disclosure 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, or the Tax Administrator's designated representative, may request from a Person providing transportation services of Gas or electricity to Service Users within the City a list of the names

and addresses, 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: i) 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, ii) upon request of the Tax Administrator, deliver, or effect 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 record-keeping 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, then the Tax Administrator may impose a penalty of five-hundred (\$500) on such Person for each day following: i) the initial date that the Person refuses to provide such access; or ii) 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 Chapter.

Section 4.30.220. Refunds. 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 Chapter, it may be refunded as provided in this section:

A. The Tax Administrator or City Manager may refund any tax that has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor or administrator has submitted a written claim, under penalty of perjury, to the Tax Collector. The period for filing a claim for refund shall be one year from the time the tax was paid or erroneously or illegally collected; provided however, that in no event shall the period to file such claim expire prior to the shortest period allowable for filing a tax refund claim under Title 1, Division 3.6, Part 3, Section 911.2 of the California Government Code. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto, and must clearly set forth the facts and legal theories under which the claimant believes he or she has right to a refund. Nothing herein shall permit the filing of a refund claim on behalf of a class or group of taxpayers. Where the amount of any individual refund claim is in excess of the amount set by separate resolution of the City Council relating to the settlement of general liability claims against the City by the Tax Administrator or City Manager, City Council approval shall be required.

B. The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon. Any action brought against the City pursuant to this section shall be subject to the provisions of Government Code Sections 945.6 and 946.

C. Notwithstanding the notice provisions of subsection (a) of this section, a Service Supplier that has collected any amount of tax in excess of the amount of tax imposed by this Chapter and actually due from a Service User (whether due to overpayment or erroneous or

illegal collection of said tax), may refund such amount to the Service User, or credit to charges subsequently payable by the Service User to the Service Supplier, and claim credit for such overpayment against the amount of tax which is due upon any other Monthly returns to the Tax Administrator, provided such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous or illegal collection of said tax. The Tax Administrator shall determine the validity of the Service User's claim of credit, and the underlying basis for such claim.

D. Notwithstanding the notice provisions of subsection (A) of this section, in the event that a Service Supplier, or a Person required to self-impose a tax imposed by this Chapter, remits a tax to the City in excess of the amount of tax imposed by this Chapter, said Service Supplier, or a Person required to self-impose a tax imposed by this Chapter, may claim credit for such overpayment against the amount of tax which is due upon any other Monthly returns to the Tax Administrator, provided such credit is claimed in a return dated no later than one year from the date of overpayment of said tax, and provided that the Finance Director shall first determine the validity of the Service User's claim of credit, and the underlying basis for such claim.

Section 4.30.230. Appeals.

A. The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 4.30.220), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any Person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 4.30.220), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

B. If any Person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 4.30.220), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the Service User or Service Supplier.

C. The matter shall be set for hearing no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, the City Manager, and any other interested Person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

D. Based upon the submission of such evidence and the review of the City's files, the City Manager shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed

within ninety (90) days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6. If the City Manager fails or refuses to act on a refund claim within the fourteen (14) day period, the claim shall be deemed to have been rejected by the City Manager on the fourteenth (14th) day.

E. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third (3rd) calendar day following the date of mailing, as established by a proof of mailing.

Section 4.30.240. No Injunction/Writ of Mandate. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected and/or remitted.

Section 4.30.250. 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 Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 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 4.30.260. Notice of Changes to Ordinance. If a tax under this Chapter is added, repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of California Public Utilities Code Section 799. Prior to the effective date of the ordinance change, the Service Supplier shall provide the Tax Administrator with a copy of any written procedures describing the information that the Service Supplier needs to implement the ordinance change. If the Service Supplier fails to provide such written instructions, the Tax Administrator, or his or her agent, shall send, by first class mail, a copy of the ordinance change to all collectors and remitters of the City's utility users taxes according to the latest payment records of the Tax Administrator.

Section 4.30.270. Penalties. Any Person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor, or an infraction at the discretion of the City Attorney.

Section 4.30.280. 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.

Section 4.30.290. Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure. The City shall annually verify that the taxes owed under this Chapter have been properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

SECTION 2. After its adoption by the voters, this Ordinance shall be in full force and effect ten (10) days after the vote is declared by the legislative body, pursuant to the provisions of Elections Code section 9217 and as provided by law.

SECTION 3. Chapter 4.30 of the Coachella Municipal Code may be amended by the City without a vote of the people. However, 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 Ordinance. The people of the City of Coachella affirm that the following actions shall not constitute an increase of the rate of a tax:

1. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of or suspend collection of all or a portion of the tax;
2. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, as long as the interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance;
3. 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 Ordinance); and
4. The collection of the tax imposed by this Ordinance, even if the City had, for some prior of time, failed to collect the tax.

SECTION 4. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter or any part thereof is for any reason held to unconstitutional, such decision shall not affect the validity of the remaining portion of this Chapter or any part thereof. The voters of the City of Coachella hereby declare that they would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrases be declared unconstitutional.

SECTION 5. The City Clerk shall certify to the adoption of this ordinance and cause it, or a summary of it, to be published once in a newspaper of general circulation printed and published within the City of Coachella, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with Government Code section 36933.

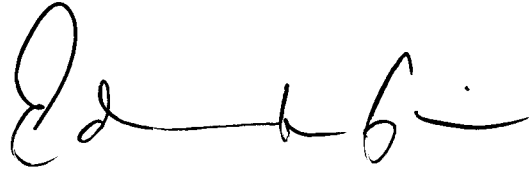
PASSED, APPROVED, AND ADOPTED this 24th day of March, 2010, by the following vote:

AYES: Councilmember Martinez, Councilmember Villarreal and Mayor Garcia.

NOES: None.

ABSENT: Councilmember Ramirez and Mayor Pro Tem Hernandez

ABSTAIN: None.



EDUARDO GARCIA, MAYOR

ATTEST:



ISABEL CASTILLON
CITY CLERK

APPROVED AS TO FORM:



CARLOS CAMPOS
CITY ATTORNEY