

CHAPTER 7 UTILITY USERS TAX

3-7-1: DEFINITIONS:

Unless the contrary is stated or clearly appears from the context, the following definitions govern the construction of the words and phrases used in this chapter. Words and phrases not defined by this chapter have the meanings stated elsewhere in this Code, or in accordance with applicable law.

- A. “Ancillary telecommunication services” means services associated with or incidental to providing, use or enjoyment of telecommunication services, including, without limitation, the following:
 - 1. “Conference bridging service” means an ancillary service that links two or more participants of an audio or video conference call and may include providing a telephone number. Conference bridging service does not include the telecommunication services used to reach the conference bridge.
 - 2. “Detailed telecommunication 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 or address information.
 - 4. “Vertical service” means an ancillary service 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 customers 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. “Billing Address” means the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.
- C. COGENERATOR: Any corporation, including an electrical corporation, or commercial or industrial utility user employing cogeneration technology for

producing power from other than a conventional power source for the generation of electricity.

- D. **COMMERCIAL OR INDUSTRIAL UTILITY USER:** Any commercial or industrial utility user conducting business as described in title 4, chapter 2 of this code, sections 4-2-4, 4-2-9, 4-2-11, 4-2-13, 4-2-14, 4-2-15, 4-2-16, 4-2-17, 4-2-25, 4-2-28, 4-2-29, 4-2-31, 4-2-32, 4-2-36, 4-2-37, 4-2-38, 4-2-41, 4-2-43, and subsections 4-2-20C, 4-2-20F and 4-2-23C and means "electrical corporation", "gas corporation", and "water corporation".
- E. "Communication Services" means "telecommunication services" and "ancillary telecommunication services."
- F. **ELECTRICAL CORPORATION, GAS CORPORATION, AND WATER CORPORATION:** The same meaning as defined in sections 218, 222, and 241, respectively, of the state Public Utilities Code as said sections existed on January 1, 1975, except "electrical corporation" is construed to include any municipality, franchised agency, or cogenerator.
- G. "Mobile Telecommunications Service" has the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. § 124) and the regulations promulgated thereto or any successor statutes or regulations.
- H. **MONTH:** A calendar month.
- I. "Person" means, without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and non-profit), municipal district or municipal corporation (other than the City) cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.
- J. "Place of Primary Use" means the street address representative of where the service user's use of a communication service primarily occurs, which must be the business street address of the service user.
- K. "Post-paid telecommunication service" means a 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.
- L. "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.

- M. "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 communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points (i.e., the location where the customer either inputs or receives the communications).

- N. "Service Address" means either:
 - 1. The location of the service user's communication 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.

- O. **SERVICE SUPPLIER:** Any entity which receives taxes paid and remits same as imposed by this chapter.

- P. **SERVICE USER:** A commercial or industrial utility user required to pay a tax imposed by this chapter.

- Q. **TAX ADMINISTRATOR:** The finance director of the city of El Segundo.

- R. "Telecommunication services" means:
 - 1. The transmission, conveyance, or routing of voice, data, audio, or any other information or signals to a point, or between or among points, whatever the technology used, and includes broadband services (e.g., T-1, digital subscriber line (eDSL), fiber optic, coaxial cable, and wireless broadband, including Wi-Fi, WiMAX, and Wireless MESH) to the extent

2. Telecommunication services include, without limitation the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services: broadband service (to the extent federal and/or state law permits taxation of such service); mobile telecommunication service; prepaid telecommunication service (to the extent that it is practicable for the service supplier to collect the correct tax imposed under this Article from the service supplier); post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); and 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).

3. Telecommunication services also include, without limitation, charges for connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including without limitation 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. Telecommunication services do not include digital downloads that are not ancillary telecommunication services, such as video programming, music, ringtones, games, and similar digital products.”

3-7-2: EXEMPTIONS:

Nothing in this chapter shall be construed as imposing a tax upon any person when imposition of such tax upon that commercial or industrial utility user would be in violation of the constitution of the United States or that of the state or upon the city or any of its departments, agencies, boards or commissions or upon the El Segundo unified school district, Centinela Valley union high school district and the Wiseburn school district, or upon any other person when imposition of such tax upon that person would be in violation of the constitution of the United States or the

constitution of the state. The tax administrator shall prepare a list of the commercial or industrial utility users exempt from the provisions of this chapter by virtue of this section and furnish a copy thereof to each service supplier. (Ord. 1252, 4-9-1996)

3-7-3: ELECTRICITY USERS TAX:

A. Tax Imposed: There is hereby imposed a tax upon every commercial or industrial utility user in the city using electrical energy in the city. The tax imposed by this section shall be at the rate of three percent (3%) of the charges made for such energy and shall be paid by the commercial or industrial utility user paying for such energy. "Charges", as used in this section, shall include charges made for: 1) metered energy; and 2) minimum charges for service, including customer charges, services charges, demand charges, standby charges and annual and monthly charges, fuel cost adjustments, etc.

B. Definition: 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 for use in an 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 utility supplier in the conduct of its business as an electric public utility; nor shall the term include the mere receiving of such energy by an electric public utility; nor shall the term include the mere receiving of such energy by an electric public utility or government 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.

C. Collection: The tax imposed by this section shall be collected from the service user by the person providing such energy. The amount of the tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month. Remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customer. (Ord. 1252, 4-9-1996)

3-7-4: TAX ON COGENERATED ELECTRICITY:

A. Tax Imposed: There is hereby imposed a tax upon every commercial or industrial utility user in the city using cogenerated electrical energy in the city. The tax imposed by this section shall be at the rate of three percent (3%) of the value of the cogenerated energy. The value shall be equal to the price an electrical corporation, serving the city, would pay to purchase electrical energy from a cogenerator. The cogenerator shall install and maintain an appropriate utility-type metering system which will enable compliance with this Section.

B. Collection: The tax shall be collected and paid by the cogenerator if the cogenerator consumes the energy. If the cogenerator sells the energy, the tax shall be paid by the commercial or industrial utility user to whom the energy is sold and collected by the cogenerator.

C. Time For Remitting: The amount of the tax collected in one month shall be remitted to the Tax Administrator on or before the last day of the following month. (Ord. 1252, 4-9-1996)

3-7-5: GAS USERS TAX:

A. Tax Imposed: There is hereby imposed a tax upon every commercial or industrial utility user in the City other than a gas corporation, using in the City, gas which is delivered through mains or pipes. The tax imposed by this Section shall be at the rate of three percent (3%) of the charges made for such gas and shall be paid by the commercial or industrial utility user paying for such gas. "Charges", as used in this Section, shall include: 1) gas which is delivered through mains of pipes; and 2) minimum charges for services, including customer charges, service charges, and annual and monthly charges.

B. Exclusions: There shall be excluded from the base on which the tax imposed in this Section is computed: 1) charges made for gas which is to be resold and delivered through mains or pipes; 2) charges made for gas sold for use in production or distribution of water by a public utility or governmental agency; 3) charges made by a gas public utility for gas used and consumed in the conduct of the business of gas public utilities; 4) charges made for gas used in the propulsion of a motor vehicle, as that phrase is defined in the State Vehicle Code, utilizing natural gas; and 5) charges related to late payments and returned checks.

C. Collection; Time For Filing Return: The tax imposed by this Section shall be collected from the service user by the person selling the gas. The person selling the gas shall, on or before the twentieth of each calendar month, commencing on the twentieth day of the calendar month after the effective date hereof, make a return to the Tax Administrator stating the amount of taxes billed during the preceding calendar month. At the time such returns are filed, the person selling the gas shall remit tax payments to the Tax Administrator in accordance with schedules established or approved by the Tax Administrator. (Ord. 1252, 4-9-1996)

3-7-6: WATER USERS TAX:

A. Tax Imposed: There is hereby imposed a tax upon every commercial or industrial utility user in the City using water which is delivered through mains or pipes. The tax imposed by this Section shall be at the rate of three percent (3%) of the charges made for such water and shall be paid by the commercial or industrial utility user paying for such water.

B. Exclusions: 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 mains or pipes; 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.

C. Collection: The tax imposed by this Section shall be collected from the service user by the person selling the water. The amount collected in one month shall be remitted to the Tax Administrator on or before the last day of the following month. (Ord. 1252, 4-9-1996)

3-7-7: Communication services user tax:

- A. A tax is imposed upon every service user in the City using communication services. The maximum tax imposed by this Section is two percent (2%) of the charges made for such services and must be collected from the service user by the communication services supplier or its billing agent. There is a rebuttable presumption that communication services 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 taxable under this Chapter. If the billing address of the service user is different from the service address, the service address of the service user must be used for purposes of imposing the tax. As used in this Section, the term "charges" 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 is sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. § 124), regulations promulgated thereto, and any successor statute or regulation. 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, without limitation, post-paid communication services, prepaid communication services, and private communication services, provided that such rules are based upon industry custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation.

- C. 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 previously paid the same tax in another state or city on such communication services, is 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 cannot exceed the tax owed to the City under this Section.

- D. Except as otherwise provided by applicable federal or state law, if any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges.

- E. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Section, "substantial nexus" and "minimum contacts" are construed

broadly in favor of the imposition, collection or remittance of the 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, is 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 is deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include, without limitation, 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. Upon request, the City must make available an accurate description of its jurisdictional boundaries based on street addresses or ZIP Plus Four, in an electronic format. If a service supplier relies upon such information provided by City, it is not responsible for any errors in taxation that may result.

- F. Satisfaction of Tax Obligation by Service Users. Any person who pays the tax levied pursuant to this Section with respect to any charge for a communication service is deemed to have satisfied that person’s obligation to pay the tax levied pursuant to former Section 3-7-7 as codified immediately before adoption of this regulation with respect to that charge. Likewise, before October 1, 2010, any person who pays the tax levied pursuant to former Section 3-7-7 as codified immediately before adoption of this regulation is deemed to have satisfied the person’s obligation to pay the tax levied pursuant to this Section 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 the previous telephone tax to the new tax (which transition period ends October 1, 2010) and to permit communication service providers during that transition period to satisfy their collection obligations by collecting either tax.
- G. Collection of Tax by Service Supplier. Service Suppliers must begin to collect the tax imposed by this Section as soon as feasible after the effective date of the Section, but in no event later than permitted by Public Utilities Code § 799.”

3-7-8: REPORTING AND REMITTING:

Each service supplier shall, on or before the last day of each month, make a return to the Tax Administrator on forms provided by him, stating the amount of taxes billed by the service

supplier during the preceding month, except as provided in subsection [3-7-5C](#) of this Chapter. At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Administrator. The Tax Administrator is authorized to require such further information as he deems necessary to determine if the tax imposed hereby is being levied and collected in accordance with this Chapter. (Ord. 1252, 4-9-1996)

3-7-9: INTEREST AND PENALTY:

A. Delinquency: Taxes collected from a service user which are not remitted to the Tax Administrator on or before the due dates provided in this Chapter are delinquent. Should the due date occur on a weekend or legal holiday, the return may be postmarked the first regular working day following a Saturday, Sunday, or legal holiday.

B. Penalty Rate: Penalties for delinquency in remittance of any tax collected or any deficiency determination pursuant to this Chapter shall attach to, and be paid by, the person required to collect and remit at the rate of fifteen percent (15%) of the total tax collected or imposed by this Chapter.

C. Additional Penalty For Fraud: The Tax Administrator is hereby empowered to impose additional penalties upon persons required to collect and remit taxes under the provisions of this Chapter for fraud or negligence in reporting or remitting at the rate of fifteen percent (15%) of the amount of the tax collected or as recomputed by the Tax Administrator.

D. Penalty Part Of Tax: Every penalty imposed under the provisions of this Section shall become a part of the tax required to be remitted. (Ord. 1252, 4-9-1996)

3-7-10: ACTIONS TO COLLECT:

Any such tax received from a service user which has wilfully been withheld from the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit. Any person holding such money contrary to the provisions of this Chapter shall be liable to an action brought in the name of the City for the recovery of such amount. (Ord. 1252, 4-9-1996)

3-7-11: DUTY TO COLLECT; PROCEDURES:

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

A. Notwithstanding the provisions of subsection [3-7-5C](#) of this Chapter, the tax shall be collected insofar as practicable at the same time as and along with the charges made in accordance with the regular billing practices of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the energy charge and tax which has accrued for the billing period, such amount and any subsequent payments by a service user shall be applied to the utility charge first until such charge has been fully satisfied. Any remaining balance shall be applied to taxes due. In those cases where a service user has notified the service supplier of

his refusal to pay the tax imposed on said energy charges, subsection [3-7-13C](#) of this Chapter will apply.

B. The duty to collect tax from a service user shall commence with the beginning of the first full regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this 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. (Ord. 1252, 4-9-1996)

3-7-12: 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 shall have the power to adopt rules and regulations not inconsistent with provisions of this Chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such rules and regulations shall be on file in the Tax Administrator's office.

C. The Tax Administrator may make administrative agreements to vary the strict requirements of this Chapter so that collection of any tax imposed here may be made in conformance with the billing procedures of particular service supplier so long as said agreements result in collection of the tax in conformance with the general purpose and scope of this Chapter. A copy of each such agreement shall be on file in the Tax Administrator's office.

D. The Tax Administrator shall determine the eligibility of any commercial or industrial utility user who asserts a right to exemption from the tax imposed by this Chapter. The Tax Administrator shall provide the service supplier with the name of any commercial or industrial utility user who the Tax Administrator determines is exempt from the tax imposed hereby, together with the address and account number to which service is supplied to any such exempt commercial or industrial utility user. The Tax Administrator shall notify the service supplier of the termination of any commercial or industrial utility user's right to exemption hereunder, or the change of any address to which service is supplied to any exempt commercial or industrial utility user. (Ord. 1252, 4-9-1996)

3-7-13: ASSESSMENT; ADMINISTRATIVE REMEDY:

A. The Tax Administrator may make an assessment for taxes not remitted by a person required to remit.

B. Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by him from the amounts remitted to a person required to collect the tax, or that a service user has refused to pay the amount of tax to such person, or whenever the Tax Administrator deems it in the best interest of the city, he may relieve such person of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods.

C. The service supplier shall provide the city with amounts refused and/or unpaid along with the names and addresses of the service users neglecting to pay the tax imposed under provisions of this chapter. Whenever the service user has failed to pay the amount of tax for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due.

D. The tax administrator shall notify the service user that he has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the service user by handing it to him personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have changed his address, to his last known address. If a service user fails to remit the tax to the tax administrator within fifteen (15) days from the date of the service of the notice upon him, which shall be the date of mailing if service is not accomplished in person, a penalty of twenty five percent (25%) of the amount of the tax set forth in the notice shall be imposed, but not less than five dollars (\$5.00). The penalty shall become part of the tax herein required to be paid. (Ord. 1252, 4-9-1996)

3-7-14: RECORDS:

It shall be the duty of every person required to collect and remit to the city any tax imposed by this chapter to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of a remittance to the tax administrator, which records the tax administrator shall have the right to inspect at all reasonable times. (Ord. 1252, 4-9-1996)

3-7-14-1: VIOLATION OF RECORDS REQUIREMENT; PENALTY:

If any person subject to record keeping under this chapter unreasonably denies the tax administrator, or the tax administrator's designated representative, access to such records, the person unreasonably denying access shall be subject to a penalty of five hundred dollars (\$500.00) for each violation. The person shall be guilty of a separate offense for each and every day during any portion of which denial of access is committed, continued or permitted by such person. This penalty shall be in addition to any other penalty imposed under this code. (Ord. 1325, 9-19-2000)

3-7-15: REFUNDS:

A. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the tax administrator under this chapter, it may be refunded as provided in subsections B and C of this section, provided: 1) the tax was paid under protest; and 2) a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator within one year of the date of payment. The claim shall be on forms furnished by the tax administrator.

B. Notwithstanding the provisions of subsection A of this section, a service supplier may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than

once, or erroneously or illegally collected or received when it is established that the service user from whom the tax has been collected did not owe the tax; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the person required to collect and remit. A service supplier that has collected any amount of tax in excess of the amount of tax imposed by this chapter and actually due from a service user, may refund such amount to the service user and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns, provided such credit is claimed in a return dated no later than one year from the date of overpayment.

C. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

D. Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California public utilities commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this chapter on the amount of such refunded charges shall also be refunded to service users, and the service supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly returns. In the event this chapter is repealed, the amounts of any refundable taxes will be borne by the city.

E. A service supplier may refund the taxes collected to the service user in accordance with this section or by the service supplier's customary practice. (Ord. 1252, 4-9-1996)

F. Nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers. (Ord. 1325, 9-19-2000)

3-7-16: REDUCTION OF TAX BASED ON SALES TAX RECEIPTS:

Whenever in this title a utility users tax is imposed on any person subject to the utility users tax, the amount of the utility users tax shall be reduced proportionately whenever the preceding fiscal year exceeds the limit determined by the formula in subsection A of this section.

A. The sales tax limit which will trigger a reduction in the utility users tax shall be equal to eighty percent (80%) of the sales tax revenue received in the 1979-1980 fiscal year multiplied by the appropriations limit established annually since 1980-1981 under the provisions of article XIII B of the California constitution.

B. In any year in which sales tax revenue exceeds the limit established in subsection A of this section, the utility users tax imposed the following July 1 shall be reduced by the percentage that revenue exceeds the limit. (Ord. 1252, 4-9-1996)

3-7-17: UTILITY USERS ACCOUNT:

The tax administrator shall establish a utility users tax account within the general fund and shall place therein any and all taxes collected under this chapter which are in excess of the amounts

needed to balance the adopted general fund budget during any one fiscal year. (Ord. 1252, 4-9-1996)

3-7-18: ANNUAL REVIEW:

A. Each year in conjunction with the annual budget deliberations and prior to September 30, the city council shall reconsider the provisions and rate of the utility users tax as well as any taxes that may have been placed in the utility users tax account as provided in section [3-7-17](#) of this chapter during the preceding and current fiscal years. Notwithstanding the provisions of section [3-7-16](#) of this chapter, the council may reduce or suspend all or a part of the tax rate for the current fiscal year; or may provide no tax on one or more utilities for the current fiscal year.

B. The city will give the service supplier at least one month's notification prior to any requested change in the utility users tax percentage. (Ord. 1252, 4-9-1996)

3-7-19: APPEALS:

A. If the service user or service supplier is aggrieved by any decision or administrative ruling of the tax administrator, or with the failure to grant a refund or exemption as provided for under this chapter, he may appeal to the city manager, or his or her duly authorized designee, by filing a notice of appeal with the city clerk within fourteen (14) days of the decision or administrative ruling which aggrieved the service user or service supplier. The city clerk shall thereupon fix a time and place for a hearing of such appeal. The city clerk shall give notice to such person of the time and place of hearing as herein provided.

B. The decision of the city manager, or his or her duly authorized designee, shall be final unless appealed to the city council, in the manner provided for in this section, no later than ten (10) calendar days after the date of the decision.

1. The notice of appeal shall contain the name and address of the person appealing the action, the decision appealed from and the grounds for the appeal. A defect in the form of the notice does not affect the validity or right to an appeal. The notice of appeal shall be accompanied by the fee fixed by resolution of the city council.

2. A city council member may appeal a decision of the city manager. The appeal shall be processed in the same manner as an appeal by any other person but need not be accompanied by the fee prescribed for an appeal. The city council member appealing the decision is not disqualified by that action from participating in the appeal hearing and the deliberations nor from voting as a member of the city council.

3. The city clerk shall set the matter for hearing before the city council and shall give notice of the hearing on the appeal.

4. The city council shall hear the appeal as a new matter. The original applicant has the burden of proof. The city council may reverse or affirm the city manager's decision in whole or in part, or may modify the decision that is being appealed, irrespective of the precise grounds or scope of

the appeal. In addition to considering the testimony and evidence presented at the hearing on the appeal, the city council shall consider all pertinent information from the file as a result of the previous actions from which the appeal is taken.

C. 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. (Ord. 1325, 9-19-2000)