

1 **3-11.01 Short Title**

2 This chapter shall be known as the "Communication Users' Tax Law" of the City.

3 **3-11.02 Definitions.**

4 The following words and phrases whenever used in this chapter shall be construed as
5 defined in this section.

6 (a). "Ancillary telecommunication services" means services that are associated with or
7 incidental to the provision, use or enjoyment of telecommunications services, including but not
8 limited to the following services:

9 (1) "Conference bridging service" means an ancillary service that links two or more
10 participants of an audio or video conference call and may include the provision of a
11 telephone number. Conference bridging service does not include the
12 telecommunications services used to reach the conference bridge.

13 (2) "Detailed telecommunications billing service" means an ancillary service of
14 separately stating information pertaining to individual calls on a customer's billing
15 statement.

16 (3) "Directory assistance" means an ancillary service of providing telephone number
17 information, and/or address information.

18 (4) "Vertical service" means an ancillary service that is offered in connection with one
19 or more telecommunications services, which offers advanced calling features that allow
20 customers to identify callers and to manage multiple calls and call connections,
21 including conference bridging services.

22 (5) "Voice mail service" means an ancillary service that enables the customer to store,
23 send or receive recorded messages. Voice mail service does not include any vertical
24 services that the customer may be required to have in order to utilize the voice mail
25 service

26 (b). "Billing Address" shall mean the mailing address of the service user where the
27 service supplier submits invoices or bills for payment by the customer.

28 (c). "City" shall mean the City of Huntington Park.

(d). "Communication Services" means "telecommunication services" and "ancillary
telecommunication services."

(e). "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.

(f). "Month" shall mean a calendar month.

(g). "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.

1 (h). "Place of Primary Use" means the street address representative of where the
2 customer's use of the telecommunications service primarily occurs, which must be the
residential street address or the primary business street address of the customer.

3 (i). "Post-paid telecommunication service" means the telecommunication service
4 obtained by making a payment on a communication-by-communication basis either through the
5 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.

6 (j). "Prepaid telecommunication service" means the right to access telecommunication
7 services, which must be paid for in advance and which enables the origination of
8 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.

9 (k). "Private telecommunication service" means a telecommunication service that
10 entitles the customer to exclusive or priority use of a communications channel or group of
11 channels between or among termination points, regardless of the manner in which such channel
12 or channels are connected, and includes switching capacity, extension lines, stations, and any
13 other associated services that are provided in connection with the use of such channel or
14 channels. A communications channel is a physical or virtual path of communications over
15 which signals are transmitted between or among customer channel termination points (*i.e.*, the
16 location where the customer either inputs or receives the communications).

17 (l). "Service Address" means either:

18 (1) The location of the telecommunication equipment from which the
19 communication originates or terminates, regardless of where the communication is billed or
20 paid; or,

21 (2) If the location in subsection (1) of this definition is unknown (*e.g.*, mobile
22 telecommunications service or VoIP service), the service address means the location of the
23 service user's place of primary use.

24 (3) For prepaid telecommunication service, "service address" means the
25 location associated with the service number.

26 (m). "Service Supplier" shall mean any entity or person, including the City, that
27 provides communication service to a user of such service within the City.

28 (n). "Service User" shall mean a person required to pay a tax imposed under the
provisions of this Chapter.

(o). "State" shall mean the State of California.

(p). "Tax Administrator" means the finance director of the city or his or her designee.

(q). "Telecommunications 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 "telecommunications services" includes such
transmission, conveyance, or routing in which computer processing applications are used to act
on the form, code or protocol of the content for purposes of transmission, conveyance or
routing without regard to whether such services are referred to as voice over internet protocol
(VoIP) services or are classified by the Federal Communications Commission as enhanced or
value added, and includes video and/or data services that is functionally integrated with

1 "telecommunication services". "Telecommunications services" include, but are not limited to
2 the following services, regardless of the manner or basis on which such services are calculated
3 or billed: ancillary telecommunication services; mobile telecommunications service; prepaid
4 telecommunication service (to the extent that it is practicable for the service supplier to collect
5 the correct tax imposed under this Chapter from the service supplier); post-paid
6 telecommunication service; private telecommunication service; paging service; 800 service (or
7 any other toll-free numbers designated by the Federal Communications Commission); 900
8 service (or any other similar numbers designated by the Federal Communications Commission
9 for services whereby subscribers who call in to pre-recorded or live service).
10 "Telecommunication services" shall not include digital downloads that are not "ancillary
11 telecommunication services", such as books, music, ringtones, games, and similar digital
12 products.

13 (r). "Water corporation", shall have the same meanings as defined in Sections 241 of
14 the California Public Utilities Code, and shall also be construed to include any municipality,
15 public agency, broker/marketer or person engaged in the selling or supplying of water to a
16 service user.

17 **3-11.03 Constitutional, statutory, and other exemptions.**

18 (a) Nothing in this Chapter shall be construed as imposing a tax upon:

19 (1) Any person or service when the imposition of such tax upon such person or
20 service would be in violation of a federal or state statute, the Constitution of the United
21 States or the Constitution of the State;

22 (2) Any agencies of the governments of the United States, the State of California,
23 the County of Los Angeles, the City, or any public school district;

24 (3) Any water corporation; or,

25 (4) Any person who is all of the following, as established by presentation to the Tax
26 Administrator of a current Federal income tax return: i) head of a household; ii) at least
27 sixty-two (62) years of age; and, iii) a recipient of supplemental social security benefits.

28 (b) Any service user that is exempt from the tax imposed by this Chapter pursuant to
subsection (a) of this section shall file an application with the Tax Administrator for an
exemption; provided, however, this requirement shall not apply to a service user that is a state
or federal agency or subdivision with a commonly recognized name. Said application shall be
made upon a form approved by the Tax Administrator and shall state those facts, declared
under penalty of perjury, which qualify the applicant for an exemption, and shall include the
names of all utility service suppliers serving that service user. If deemed exempt by the Tax
Administrator, such service user shall give the Tax Administrator timely written notice of any
change in utility service suppliers so that the Tax Administrator can properly notify the new
utility service supplier of the service user's tax exempt status. A service user that fails to
comply with this section shall not be entitled to a refund of communications users' taxes
collected and remitted to the Tax Administrator from such service user as a result of such
noncompliance.

The decision of the Tax Administrator may be appealed pursuant to Section 3-11.16 of this
Chapter. Filing an application with the Tax Administrator and appeal to the City Manager
pursuant to Section 3-11.16 of this Chapter is a prerequisite to a suit thereon.

1 **3-11.04 Communication Users' Tax.**

2 (a). There is hereby imposed a tax upon every person in the City using
3 communication services. The maximum tax imposed by this section shall be at the rate of six
4 and one-half percent (6.5%) of the charges made for such services and shall be collected from
5 the service user by the communication services supplier or its billing agent. There is a
6 rebuttable presumption that communication services, which are billed to a billing or service
7 address in the City, are used, in whole or in part, within the City's boundaries, and such
8 services are subject to taxation under this Chapter. If the billing address of the service user is
9 different from the service address, the service address of the service user shall be used for
10 purposes of imposing the tax. As used in this Section, the term "charges" shall include the
11 value of any other services, credits, property of every kind or nature, or other consideration
12 provided by the service user in exchange for the communication services.

13 (b). "Mobile Telecommunications Service" shall be sourced in accordance with the
14 sourcing rules set forth in the Mobile Telecommunications Sourcing Act (*4 U.S.C. Section*
15 *124*). The Tax Administrator may issue and disseminate to communication service suppliers,
16 which are subject to the tax collection requirements of this Chapter, sourcing rules for the
17 taxation of other communication services, including but not limited to post-paid
18 communication services, prepaid communication services, and private communication services,
19 provided that such rules are based upon custom and common practice that further
20 administrative efficiency and minimize multi-jurisdictional taxation.

21 (c). The Tax Administrator may issue and disseminate to communication service
22 suppliers, which are subject to the tax collection requirements of this Chapter, an
23 administrative ruling identifying those communication services, or charges therefor, that are
24 subject to or not subject to the tax of subsection (a) above.

25 (d). As used in this section, the term "telecommunication services" shall include, but
26 are not limited to charges for: connection, reconnection, termination, movement, or change of
27 telecommunication services; late payment fees; detailed billing; central office and custom
28 calling features(including but not limited to call waiting, call forwarding, caller identification
and three-way calling); voice mail and other messaging services; directory assistance; access
and line charges; universal service charges; regulatory, administrative and other cost recovery
charges; local number portability charges; and text and instant messaging.
"Telecommunication services" shall not include digital downloads that are not "ancillary
telecommunication services", such as books, music, ringtones, games, and similar digital
products.

(e). 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 local jurisdiction 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 local jurisdiction; provided, however,
the amount of credit shall not exceed the tax owed to the City under this section.

(f). 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.

27 **3-11.05 Bundling Taxable Items with Non-Taxable Items.**

28 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

1 service supplier identifies, by reasonable and verifiable standards, the portions of the combined
2 charge that are nontaxable and taxable through the service supplier's books and records kept in
3 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.

4 **3-11.06 Substantial Nexus / Minimum Contacts.**

5 For purposes of imposing a tax or establishing a duty to collect and remit a tax under
6 this Chapter, "substantial nexus" and "minimum contacts" shall be construed broadly in favor
7 of the imposition, collection and/or remittance of the communications users tax to the fullest
8 extent permitted by state and federal law, and as it may change from time to time by judicial
9 interpretation or by statutory enactment. Any communication service (including VoIP) used by
10 a person with a service address in the City, which service is capable of terminating a call to
11 another person on the general telephone network, shall be subject to a rebuttable presumption
12 that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or
13 establishing a duty to collect and remit a tax, under this Chapter. A service supplier shall be
14 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.

15 The City shall make available, upon request, an accurate description of its jurisdictional
16 boundaries based on street addresses and/or ZIP Plus Four, 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.

17 **3-11.07 Maximum tax.**

18 (a) The combined total maximum of communication users' taxes, together with
19 telephone, electric, gas and water users' taxes pursuant to Chapter 9 of Title 3, paid by any
20 single service user for one location shall not exceed the sum of seventy thousand dollars
(\$70,000.00) during any twelve-month period that begins on July 1st of any year and ends of
21 June 30th of the following year. This maximum tax amount shall be increased annually by an
amount equal to the percentage increase in the Consumer Price Index, for all Urban Consumers
in the Los Angeles-Anaheim-Riverside area, non-housing, as published by the Department of
Labor each April.

22 (b) A service user may deposit the maximum tax specified in subsection (a) with the
23 Tax Administrator during the month of July of each year as payment in full and in advance of
24 taxes due under this code for the twelve-month period commencing on the first day of said
month and ending on June 30th thereafter. Any service user making said payment in July of any
25 given year shall not thereafter be billed for any utility tax for said twelve-month period.

26 (c) Any service user paying more than the maximum tax provided for in subsection (a)
27 during any twelve-month period commencing July 1st and ending June 30th, may apply to the
Tax Administrator for a refund or credit, provided that such application is made no later than
28 365 days after the end of the year in which the service user exceeded the maximum tax.

1 (d) The phrase "one location" as used in subsection (b) shall mean one or more
2 contiguous sites for which the service user receives one or more utility billings.

3 **3-11.08 Duty to Collect--Procedures.**

4 (a) **Collection by Service Suppliers.** The duty of service suppliers to collect and remit the
5 taxes imposed by the provisions of this Chapter shall be performed as follows:

6 (1) The tax shall be collected by service suppliers insofar as practicable at the same
7 time as, and along with, the collection of the charges made in accordance with the
8 regular billing practice of the service supplier. Where the amount paid by a service user
9 to a service supplier is less than the full amount of the charge and tax which was
10 accrued for the billing period, a proportionate share of both the charge and the tax shall
11 be deemed to have been paid. In those cases where a service user has notified the
12 service supplier of refusal to pay the tax imposed on said charges, Section 3-11.12 shall
13 apply.

14 (2) The duty of a service supplier to collect the tax from a service user shall commence
15 with the beginning of the first regular billing period applicable to the service user
16 where all charges normally included in such regular billing are subject to the
17 provisions of this Chapter. Where a person receives more than one billing, one or
18 more being for different periods than another, the duty to collect shall arise
19 separately for each billing period.

20 (b) **Filing Return and Payment.** Each person required by this Chapter to remit a tax shall
21 file a return to the Tax Administrator, on forms approved by the Tax Administrator, on or
22 before the due date. The full amount of the tax collected shall be included with the return and
23 filed with the Tax Administrator. The Tax Administrator is authorized to require such
24 additional information as he or she deems necessary to determine if the tax is being levied,
25 collected, and remitted in accordance with this Chapter. Returns are due immediately upon
26 cessation of business for any reason. Pursuant to *Revenue and Tax Code Section 7284.6*, the
27 Tax Administrator, and its agents, shall maintain such filing returns as confidential information
28 that is exempt from the disclosure provisions of the Public Records Act.

1 **3-11.09 Collection Penalties – Service Suppliers and Self-collectors.**

2 (a) Taxes collected from a service user are delinquent if not received by the Tax Administrator
3 on or before the due date. Should the due date occur on a weekend or legal holiday, the return
4 must be received by the Tax Administrator on the first regular working day following the
5 weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar
6 methods of electronically exchanging monies between financial accounts, made by a service
7 supplier in satisfaction of its obligations under this subsection shall be considered timely if the
8 transfer is initiated on or before the due date, and the transfer settles into the City's account on
9 the following business day.

10 (b) If the person required to collect and/or remit the communication users' tax fails to collect
11 the tax (by failing to properly assess the tax on one or more services or charges on the
12 customer's billing) or fails to remit the tax collected on or before the due date, the Tax
13 Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen
14 (15%) percent of the total tax that is delinquent or deficient in the remittance, and shall pay
15 interest at the rate of and 75/100ths (0.75%) percent per month, or any fraction thereof, on the
16 amount of the tax, exclusive of penalties, from the date on which the remittance first became
17 delinquent, until paid.

18 (c) The Tax Administrator shall have the power to impose additional penalties upon persons
19 required to collect and remit taxes pursuant to the provisions of this Chapter for fraud or gross

1 negligence in reporting or remitting at the rate of fifteen (15%) percent of the amount of the tax
2 collected and/or required to be remitted, or as recomputed by the Tax Administrator.

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

5 (e) Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify
6 the due dates of this Chapter to be consistent with any uniform standards or procedures that are
7 mutually agreed upon by other public agencies imposing a utility users tax, or otherwise legally
8 established, to create a central payment location or mechanism.

9 **3-11.10 Actions to Collect.**

10 Any tax required to be paid by a service user under the provisions of this Chapter shall be
11 deemed a debt owed by the service user to the City. Any such tax collected from a service user
12 which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City
13 by the person required to collect and remit and shall no longer be a debt of the service user.
14 Any person owing money to the City under the provisions of this Chapter shall be liable to an
15 action brought in the name of the City for the recovery of such amount, including penalties and
16 interest as provided for in this Chapter, along with any collection costs incurred by the City as a
17 result of the person's noncompliance with this Chapter, including, but not limited to,
18 reasonable attorneys fees. Any tax required to be collected by a service supplier or owed by a
19 service user is an unsecured priority excise tax obligation under *11 U.S.C.A. Section*
20 *507(a)(8)(C)*.

21 **3-11.11 Deficiency Determination and Assessment – Tax Application Errors.**

22 (a) The Tax Administrator shall make a deficiency determination if he or she determines that
23 any service user or service supplier required to pay, collect, and/or remit taxes pursuant to the
24 provisions of this Chapter has failed to pay, collect, and/or remit the proper amount of tax by
25 improperly or failing to apply the tax to one or more taxable services or charges. Nothing
26 herein shall require that the Tax Administrator institute proceedings under this Section 3-11.11
27 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely
28 outweighs the tax benefit.

(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 of zero and 75/100ths (0.75%) percent per month, or any fraction
thereof, 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.

(c) If the person or entity allegedly owing the tax 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. If such person or entity requests a hearing, the
Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled 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 or entity 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

1 hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter,
2 by confirming, modifying or rejecting the original deficiency determination, and shall mail a
3 copy of such final assessment to the person or entity owing the tax. The decision of the Tax
4 Administrator may be appealed pursuant to Section 3-11.16 of this Chapter. Filing an
5 application with the Tax Administrator and appeal to the City Manager pursuant to Section 3-
6 11.16 of this Chapter is a prerequisite to a suit thereon.

7 (e) Payment of the final assessment shall become delinquent if not received by the Tax
8 Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of
9 final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total
10 amount of the assessment, along with interest at the rate of zero and 75/100ths (0.75%) percent
11 per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the
12 date of delinquency, until paid. The applicable statute of limitations regarding a claim by the
13 City seeking payment of a tax assessed under this Chapter shall commence from the date of
14 delinquency as provided in this subsection (e).

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

18 **3-11.12 Administrative Remedy - Non-Paying Service Users.**

19 (a) Whenever the Tax Administrator determines that a service user has deliberately withheld
20 the amount of the tax owed by the service user from the amounts remitted to a person required
21 to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City,
22 he or she may relieve such person of the obligation to collect the taxes due under this Chapter
23 from certain named service users for specific billing periods. To the extent the service user has
24 failed to pay the amount of tax owed for a period of two (2) or more billing periods, the service
25 supplier shall be relieved of the obligation to collect taxes due. The service supplier shall
26 provide the City with the names and addresses of such service users and the amounts of taxes
27 owed under the provisions of this Chapter. Nothing herein shall require that the Tax
28 Administrator institute proceedings under this Section 3-11.12 if, in the opinion of the Tax
Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of
fifteen percent (15%) of the total tax that is owed, and shall pay interest at the rate of zero and
75/100ths (0.75%) percent per month, or any fraction thereof, 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.

3-11.13 Additional Powers and Duties of the 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.

1 (b) The Tax Administrator may adopt administrative rules and regulations consistent with
2 provisions of this Chapter for the purpose of interpreting, clarifying, carrying out and enforcing
3 the payment, collection and remittance of the taxes herein imposed. The administrative ruling
4 shall not impose a new tax, revise an existing tax methodology as stated in this Section, or
5 increase an existing tax, except as allowed by *California Government Code Section*
6 *53750(h)(2)*. A copy of such administrative rules and regulations shall be on file in the Tax
7 Administrator's office.

8 (c) Upon a proper showing of good cause, the Tax Administrator may make administrative
9 agreements, with appropriate conditions, to vary from the strict requirements of this Chapter
10 and thereby: (1) conform to the billing procedures of a particular service supplier so long as
11 said agreements result in the collection of the tax in conformance with the general purpose and
12 scope of this Chapter; or, (2) to avoid a hardship where the administrative costs of collection
13 and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file
14 in the Tax Administrator's office, and are voidable by the Tax Administrator or the City at any
15 time.

16 (d) The Tax Administrator may conduct an audit, to ensure proper compliance with the
17 requirements of this Chapter, of any person required to collect and/or remit a tax pursuant to
18 this Chapter. The Tax Administrator shall notify said person of the initiation of an audit in
19 writing. In the absence of fraud or other intentional misconduct, the audit period of review
20 shall not exceed a period of three (3) years next preceding the date of receipt of the written
21 notice by said person from the Tax Administrator. Upon completion of the audit, the Tax
22 Administrator may make a deficiency determination pursuant to Section 3-11.11 of this
23 Chapter for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by
24 information provided by such person to the Tax Administrator. If said person is unable or
25 unwilling to provide sufficient records to enable the Tax Administrator to verify compliance
26 with this Chapter, the Tax Administrator is authorized to make a reasonable estimate of the
27 deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of
28 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
zero and 75/100ths (0.75%) percent 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) 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.

3-11.14 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
shall have the right to inspect at a reasonable time.

1 (b) The City may issue an administrative subpoena to compel a person to deliver, to the Tax
2 Administrator, copies of all records deemed necessary by the Tax Administrator to establish
3 compliance with this Chapter, including the delivery of records in a common electronic format
4 on readily available media if such records are kept electronically by the person in the usual and
5 ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax
6 Administrator on or before the due date provided in the administrative subpoena, such person
7 may provide access to such records outside the City on or before the due date, provided that
8 such person shall reimburse the City for all reasonable travel expenses incurred by the City to
9 inspect those records, including travel, lodging, meals, and other similar expenses, but
10 excluding the normal salary or hourly wages of those persons designated by the City to conduct
11 the inspection.

12 (c) The Tax Administrator is authorized to execute a non-disclosure agreement approved by the
13 City Attorney to protect the confidentiality of customer information pursuant to *California*
14 *Revenue and Tax Code Sections 7284.6 and 7284.7.*

15 (d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit
16 the tax, the service supplier shall: i) provide to the Tax Administrator the name, address and
17 telephone number of each billing agent and billing aggregator currently authorized by the
18 service supplier to bill, collect, and/or remit the tax to the City; and, ii) upon request of the Tax
19 Administrator, deliver, or effect the delivery of, any information or records in the possession of
20 such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is
21 necessary to verify the proper application, calculation, collection and/or remittance of such tax
22 to the City.

23 (e) If any person subject to record-keeping under this section unreasonably denies the Tax
24 Administrator access to such records, or fails to produce the information requested in an
25 administrative subpoena within the time specified, then the Tax Administrator may impose a
26 penalty of \$500 on such person for each day following: i) the initial date that the person refuses
27 to provide such access; or, ii) the due date for production of records as set forth in the
28 administrative subpoena. This penalty shall be in addition to any other penalty imposed under
29 this Chapter.

3-11.15 Refunds.

30 Whenever the amount of any tax has been overpaid or paid more than once or has been
31 erroneously or illegally collected or received by the Tax Administrator under this Chapter, it
32 may be refunded as provided in this section:

33 (a). The Tax Administrator may refund any tax that has been overpaid or paid more than once
34 or has been erroneously or illegally collected or received by the Tax Administrator under this
35 Chapter, provided that no refund shall be paid under the provisions of this section unless the
36 claimant or his or her guardian, conservator, executor, or administrator has submitted a written
37 claim to the Tax Administrator within one year of the overpayment or erroneous or illegal
38 collection of said tax. Such claim must clearly establish claimant's right to the refund by written
39 records showing entitlement thereto. It is the intent of the City Council that the one year written
40 claim requirement of this subsection be given retroactive effect; provided, however, that any
41 claims which arose prior to the commencement of the one year claims period of this subsection,
42 and which are not otherwise barred by a then applicable statute of limitations or claims
43 procedure, must be filed with the Tax Collector as provided in this subsection within ninety
44 days following the effective date of this ordinance.

45 (b). The submission of a written claim, which is acted upon by the City Council, shall be a
46 prerequisite to a suit thereon. (See *Section 935 of the California Government Code.*) The City
47 Council shall act upon the refund claim within the time period set forth in *Government Code*
48 *Section 912.4.* If the Tax Administrator/City Council fails or refuses to act on a refund claim

1 within the time prescribed by *Government Section 912.4*, the claim shall be deemed to have
2 been rejected by the City Council on the last day of the period within which the City Council
3 was required to act upon the claim as provided in *Government Code Section 912.4*. The Tax
4 Administrator shall give notice of the action in a form which substantially complies with that
5 set forth in *Government Code Section 913*. Nothing herein shall permit the filing of a claim on
6 behalf of a class or group of taxpayers.

7 (c). Notwithstanding the notice provisions of subsection (a) of this Section, the Tax
8 Administrator may, at his or her discretion, give written permission to a service supplier, who
9 has collected and remitted any amount of tax in excess of the amount of tax imposed by this
10 Chapter, to claim credit for such overpayment against the amount of tax which is due the City
11 upon a subsequent monthly return(s) to the Tax Administrator, provided that: i) such credit is
12 claimed in a return dated no later than one year from the date of overpayment or erroneous
13 collection of said tax; ii) the Tax Administrator is satisfied that the underlying basis and
14 amount of such credit has been reasonably established; and, iii) in the case of an overpayment
15 by a service user to the service supplier that has been remitted to the City, the Tax
16 Administrator has received proof, to his or her satisfaction, that the overpayment has been
17 refunded by the service supplier to the service user in an amount equal to the requested credit.

18 (d). Notwithstanding subsections (a) though (c) above, a service supplier shall be entitled to
19 take any overpayment as a credit against an underpayment whenever such overpayment has
20 been received by the City within the three (3) years next preceding a deficiency determination
21 or assessment by the Tax Administrator in connection with an audit instituted by the Tax
22 Administrator pursuant to *Section 3-11.13(d)*. A service supplier shall not be entitled to said
23 credit unless it clearly establishes the right to the credit by written records showing entitlement
24 thereto. Under no circumstances shall an overpayment taken as a credit against an
25 underpayment pursuant to this subsection qualify a service supplier for a refund to which it
26 would not otherwise be entitled under the one-year written claim requirement of this section.

27 **3-11.16 Appeals.**

28 (a) The provisions of this section apply to any decision (other than a decision relating to a
refund pursuant to *Section 3-11.15* of this Chapter), 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 3-11.15* of this Chapter), 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. [See *Government Code Section 935(b)*]. 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 3-11.15* of this Chapter), 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 scheduled for hearing before an independent hearing officer selected by
the City Manager, 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, 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.

1 (d) Based upon the submission of such evidence and the review of the City's files, the hearing
2 officer shall issue a written notice and order upholding, modifying or reversing the
3 determination from which the appeal is taken. The notice shall be given within fourteen (14)
4 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*.

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

7 **3-11.17 No Injunction/Writ of Mandate.**

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

11 **3-11.18 Notice of changes to ordinance.**

12 If a tax under this Chapter is added repealed, increased, reduced, or the tax base is changed, the
13 Tax Administrator shall follow the notice requirements of *Public Utilities Code Section 799*.
14 Prior to the effective date of the ordinance change, the service supplier shall provide the Tax
15 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 communication users'
taxes according to the latest payment records of the Tax Administrator.

16 **3-11.19 Future Amendment to Cited Statute.**

17 Unless specifically provided otherwise, any reference to a state or federal statute in this Chapter
18 shall mean such statute as it may be amended from time to time.

19 **3-11.20 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure.**

20 The City shall annually verify that the taxes owed under this Chapter have been properly
21 applied, exempted, collected, and remitted in accordance with this Chapter, and properly
22 expended according to applicable municipal law. The annual verification shall be performed
23 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.

24 **3-11.21 Interaction with Prior Tax**

25 (a). Satisfaction of Tax Obligation by Users. Any person who pays the tax levied pursuant to
26 Section 3-11.04 of this Code with respect to any charge for a communication service shall be
27 deemed to have satisfied his or her obligation to pay the tax levied pursuant to Section 3-9.04
28 of this Code with respect to that charge. Likewise, prior to August 1, 2008, any person who
pays the tax levied pursuant to Section 3-9.04 of this Code with respect to any charge for a
service shall be deemed to have satisfied his or her obligation to pay the tax levied pursuant to
Section 3-9.04 of this Code 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

1 from the prior telephone users' tax to the new communication users' tax (which transition
2 period ends August 1, 2008) and to permit communications service providers, during that
transition period to satisfy their collection obligations by collecting either tax.

3 (b). Collection of Tax by Providers. Providers shall begin to collect the tax imposed by this
4 Chapter as soon as feasible after the effective date of the Chapter, but in no event later than
permitted by Section 799 of the California Public Utilities Code.

5 **3-11.22 Use of Proceeds**

6 Proceeds of any tax paid pursuant to this Chapter shall be deposited in the general fund of the
7 City and available for any lawful purpose. For the purposes of Articles XIII A and XIII C of the
California Constitution, and other applicable laws, the taxes levied pursuant to this Chapter are
8 general taxes, not special taxes requiring the approval of a two-thirds vote of the electorate.

9 **3-11.23 Remedies Cumulative**

10 All remedies and penalties prescribed by this Chapter or which are available under any other
11 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
12 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.

13 **3-11.24 No Increase in Tax Percentage or Change in Methodology Without Voter 14 Approval**

15 (a). Regarding Section 3-11.04, the City may not increase the tax percentage or change a
16 methodology for calculating the tax so as to result in an increase in a tax imposed on a person,
without voter approval.

17 (b). Notwithstanding (a), pursuant to Government Code Section 53750, the City may make the
following changes without voter approval:

- 18 1) reduce the percentage rate, and at any time thereafter increase such percentage rate, so
19 long as the subsequent increase does not exceed the rate previously approved by the
voters in the enactment of this ordinance;
- 20 2) change the methodology so as to reduce the amount of the tax being levied, and at any
21 time thereafter change the methodology, so long as the subsequent change in
methodology does not result in an increase in the amount being levied under the
22 methodology previously approved by the voters in the enactment of this ordinance;
- 23 3) change a methodology or definition so as to avoid or eliminate a discriminatory tax on
24 taxpayers that are similarly situated, so long as the change does not result in an increase
in the amount levied on such class of similarly situated taxpayers under the methodology
or definition previously approved by the voters in the enactment of this ordinance;
- 25 4) establish a class of persons that is exempt or excepted from one or more taxes
26 hereunder, and at any time thereafter, discontinue such exemption or exception;
- 27 5) decide that all or a part of a tax imposed under this Chapter should not be enforced for
28 administrative reasons, and at any time thereafter, decide to enforce the full amount of
such tax as previously approved by the voters in the enactment of this ordinance; or,

1 6) establish, and at any time thereafter change, the value and/or apportionment (including
2 a "safe harbor" percentage) of taxable and nontaxable services that are bundled or
3 packaged under a combined charge, in response to changes in the marketing of combined
services and the components thereof, or in reevaluating the values thereof [See Section 3-
11.05].

4 **SECTION 2.** Effective Date. This chapter shall become effective immediately upon
5 the date that this Ordinance is confirmed and approved by the voters of Huntington Park at the
Municipal Special Election of February 5, 2008.

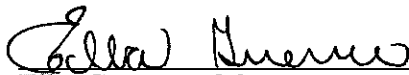
6 **SECTION 3.** Amendment or Repeal. Chapter 11 of Title 3 of the Huntington Park
7 Municipal Code may be repealed or amended by the City Council without a vote of the people.
8 However, as required by Article XIIC of the California Constitution, voter approval is required
for any amendment provision that would increase the rate of any tax levied pursuant to this
Ordinance.

9 **SECTION 4.** Severability. If any section, subsection, sentence, clause, phrase, or
10 portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of
competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in
11 full force and effect. The people hereby declares that they would have adopted each section,
subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that
12 any one or more sections, subsections, sentences, clauses, phrases, or portions of this
Ordinance be declared invalid or unenforceable.

13 **SECTION 5.** Ratification of Prior Tax. The voters of the City of Huntington Park
14 hereby ratify and approve the past collection of the Telephone Users' Tax under Section 3-9.04
of the Huntington Park Municipal Code as it existed prior to the effective date of this
Ordinance.

15 **SECTION 6.** Execution. The Mayor is hereby authorized to attest to the adoption of
16 this Ordinance by the voters of the City by signing where indicated below.

17 I hereby certify that the foregoing Ordinance was PASSED, APPROVED and
18 ADOPTED by the people of the City of Huntington Park voting on the 5th day of February,
2008.

20 
21 Elba Guerrero, Mayor

22 ATTEST:

23
24 
25 Rosanna Ramirez, City Clerk