

## **Utility Users Tax Ordinance**

### **City of Santa Monica, CA**

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City Council Meeting 7/25/00

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA AMENDING CHAPTER 6.72 OF THE SANTA MONICA MUNICIPAL CODE RELATED TO THE CITY'S UTILITIES TAX

THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 6.72 of the Santa Monica Municipal Code is hereby amended to read as follows:

Chapter 6.72

Utilities Tax

Section 6.72.010. Definitions.

Except where the context otherwise requires, the definitions given in this Section govern the construction of this Chapter.

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

(b) Cable Television Service. "Cable television service" shall mean any and all services related to the providing of television, video or origination programming or services, including any communications that are ancillary, necessary or common to the use or enjoyment of the programming or service, provided to premises located in the City through any cable, or any other similar medium, in part or exclusively, that is used to transmit television or video signals, regardless of the content of the video programming or communications. However, cable television service shall not include services for which a tax is paid under Section 6.72.020 of this Chapter.

(c) Cable Television Supplier. "Cable television supplier" shall mean any person, company, or service which provides one or more channels or signals of video or television programming or services, including any communications that are ancillary, necessary or common to the use or enjoyment of the programming or services, to or from a business, home, condominium, or apartment, where some fee is paid, whether directly or indirectly, whether or not the public rights-of-way are utilized in the delivery of the video or television programming or communications and regardless of the content of such video or television programming or communication. A "cable television supplier" includes, but is not limited to, multichannel video programming distributors, as defined in 47 U.S.C. Section 522(13), open video systems (OVS) suppliers, suppliers of cable television, master antenna television, satellite master antenna television, multichannel multipoint distribution services, direct broadcast satellite, and other suppliers of video programming or communications including two way communications, whatever their technology, to the extent allowed by law.

(d) City. "City" shall mean the City of Santa Monica.

(e) Electrical Corporation. "Electrical corporation" shall have the same meaning as it is defined in Section 218 of the of the California Public Utilities Code. "Electrical corporation" shall be construed to include any municipality or franchised agency engaged in the selling or supplying of electrical power to a service user.

(f) Exempt Wholesale Generator. "Exempt wholesale generator" shall have the same meaning as set forth in the Federal Power Act (15 U.S.C. Section 79z-5a) and regulations thereunder.

(g) Gas. "Gas" shall mean natural or manufactured gas or any alternate hydrocarbon fuel, which may be substituted therefor.

(h) Gas Corporation. "Gas corporation" shall have the same meaning as it is defined in Section 222 of the California Public Utilities Code.

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

(j) Non-Utility Service Supplier. "Non-utility service 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, exempt wholesale generator, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

(2) An electric service provider (ESP), electricity broker, marketer, aggregator, pool operators, 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; or

(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 or supplemental services to gas users within the City.

(k) Person. "Person" shall mean, without limitation, any domestic, nonprofit or foreign corporation, firm, association, syndicate, joint stock company, partnerships of every kind, limited liability company, joint venture, club, estate, trust, Massachusetts business or common-law trust, society, any natural individual, cooperative, receiver, trustee, guardian or other representative appointed by order of any court, municipal district, or a municipal corporation other than the City.

(l) Service Address. "Service Address" shall mean the residential street address or the business street address of the service user's primary place of usage.

(m) Service Supplier. "Service supplier" shall mean any entity or person including the City, that provides telephone communication, electric, gas, cable, water or wastewater service to a user of such services within the City. The term shall include an entity or person required to collect, or self-collect under Section 6.72.045 of this Chapter, and remit a tax imposed by this Chapter,

including its billing agent in the case of electric, gas, cable, water or wastewater service suppliers.

(n) Service User. "Service user" shall mean a person required to pay a tax imposed by this Chapter.

(o) Tax Administrator. "Tax Administrator" shall mean the Director of Finance-City Controller of the City of Santa Monica or his or her authorized designee.

(p) Telephone Communication Services. "Telephone Communication Services" shall mean "communication services" as defined in Sections 4251 and 4252 of the Internal Revenue Code and the regulations thereunder, and shall include any telephonic quality communication that is interconnected to a public switched network, and shall include, without limitation, for the purpose of transmitting messages or information (including, but not limited to, voice, telegraph, teletypewriter, data, facsimile, video or text) by electronic, radio, or similar means through "interconnected service" with the "public switched network," as these terms are commonly used in the Federal Communications Act, 47 U.S.C.A. Section 332(d), and the regulations of the Federal Communications Commission, whether such transmission occurs by wire, cable, fiber-optic, light wave, laser, microwave, radio wave, including, but not limited to, cellular service, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service telecommunications (see 47 U.S.C.A. Section 332(c)(8)(C)(i)) regardless of radio spectrum used, switching facilities, satellite or any other similar facilities.

(q) Telephone Corporation. "Telephone corporation" shall have the same meaning as defined in Section 234 of the California Public Utilities Code.

#### Section 6.72.020. Telephone Tax.

(a) There is hereby imposed a tax upon every person using telephone communication services in the City, other than a telephone corporation, including intrastate, interstate, and international telephone communication services. The tax imposed by this Section shall be at the rate of ten

percent (10%) of all charges made for such telephone communication services and shall be collected from the service user by the telephone communication services supplier or its billing agent. To the extent allowed by law, the tax on telephone communication services shall apply to a service user if the billing or service address of the service user is within the City's boundaries. If the billing address of the service user is different from the service address, the service address of the service user shall be used.

(b) "Telephone communication services" shall not include "private mobile radio service," as defined in Part 20 of Title 47 of the Code of Federal Regulations, or "private mobile service," as defined in 47 U.S.C.A. Section 332(d), which is not interconnected to a public switched network. The tax imposed under this chapter shall not be imposed upon any person for using telephone communication services to the extent that, pursuant to Sections 4252 and 4253 of the Internal Revenue Code, the amounts paid for such communication services are exempt from or are not subject to the tax imposed under Section 4251 of the Internal Revenue Code. In the event that the federal excise tax on "communication services" as provided in Sections 4251, 4252, and 4253 of the Internal Revenue Code is subsequently repealed, any reference in this Chapter or in any administrative ruling to such law, including any related federal regulations, private letter rulings, case law, and other opinions interpreting these Sections, shall refer to that body of law that existed immediately prior to the date of repeal as well as to any judicial or administrative decision interpreting such federal excise tax law which is published or rendered after the date of repeal .

(c) The Tax Administrator may, from time to time, issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those telecommunication services that are subject to taxation under this Chapter. These administrative rulings shall remain in effect unless altered or amended by the Tax Administrator and these administrative rulings shall continue to be consistent with applicable

legal requirements, including any federal excise tax rules, regulations, and laws pertaining to "communications services."

(d) 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 telephone communication services. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles. As used in this Section, the term "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones, except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due.

(e) To prevent actual multi-jurisdictional taxation of telephone 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 telephone 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. For purposes of establishing a sufficient legal basis for the imposition and collection of utility users' tax on charges for telephone communication services pursuant to this Chapter, "minimum contacts" shall be construed broadly in favor of the imposition and collection of the utility users' tax to the fullest extent permitted by California and federal law, and as it may change from time to time.

(f) The tax on telephone communication service 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 is due to the Tax Administrator on or before the twentieth (20th) day of the following month.

Section 6.72.030. Electricity Tax.

(a) There is imposed a tax upon every person using electricity in the City. The tax imposed by this Section shall be at the rate of ten percent (10%) of all charges made for such electricity, and for any supplemental services or other associated activities directly related to or necessary for the provision of electricity to the service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

(b) The Tax Administrator may, from time to time, survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential, commercial and 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 may, thereafter, 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 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. Unbundled charges for such components and item shall be subject to the tax of subsection (a) above.

(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. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of

business, which shall be consistent with generally accepted accounting principles.

(d) As used in this Section, the term "using electricity" shall not include electricity used in water pumping by water corporations, nor shall the term include the mere receiving of such electricity by an electrical corporation at a point within the City for resale.

(e) The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section 6.72.045 of this Chapter. 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 tax collected in one (1) 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 tax measured by the tax billed in the previous month or upon the payment pattern of the service users, which must be remitted to the Tax Administrator on or before the twentieth (20th) day of the following month.

#### Section 6.72.040. Gas Tax.

(a) There is imposed a tax upon every person using gas in the City which is transported and delivered through any mains, pipes or other distribution pipeline system. The tax imposed by this Section shall be at the rate of ten percent (10%) of all charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

(b) The Tax Administrator may, from time to time, survey the gas service suppliers to identify the various billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including unbundled components and those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator may, thereafter, 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 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. Unbundled charges for such components and item shall be subject to the tax of subsection (a) above.

(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 provision of such gas. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.

(d) 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, pipes, or any pipeline distribution system; (2) charges made for gas to be used in the generation of electricity by an electrical corporation; and (3) charges made by a gas public utility for gas used and consumed in the conduct of the business of gas public utilities.

(e) The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section 6.72.045 of this Chapter. 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 (1) month shall be remitted to the Tax Administrator, and is due 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 tax measured by the tax billed in the previous month or upon the payment pattern

of the service user,  
which must be remitted to the Tax Administrator on or before the twentieth  
(20th) day of the  
following month.

Section 6.72.045. Collection of Tax from Service Users Receiving Direct  
Purchase of Gas or  
Electricity.

(a) Any service user subject to the tax imposed by Section 6.72.030 or by  
Section 6.72.040 of this  
Chapter, which produces gas or electricity for self-use, or which receives gas or  
electricity, including  
any related supplemental services, directly from a non-utility service supplier  
not under the  
jurisdiction of this Chapter, or which, for any other reason, is not having the  
full tax collected and  
remitted by its service supplier, a non-utility service supplier, or its billing  
agent on the use of gas or  
electricity, including any related supplemental services, in the City, shall report  
such facts 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 payment pattern 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 service supplier and  
provide, subject to audit, invoices, books of account, or other satisfactory  
evidence documenting  
the quantity of gas or electricity used, including any related supplemental  
services, 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 Tax  
Administrator is excessive, the  
Tax Administrator 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, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the City. Rate schedules for this purpose shall be available from the City.

Section 6.72.050. Cable Television.

(a) There is imposed a tax upon every person using a cable television service in the City from a cable television supplier. The tax imposed by this Section shall be at the rate of ten percent (10%) of all charges made for such cable television service. The tax shall be collected from the service user by the cable television service supplier, or its billing agent.

(b) The Tax Administrator may, from time to time, survey the cable television service suppliers in the City to identify the various components of cable television service that are being offered to customers within the City, and the charges therefor. The Tax Administrator may, thereafter, issue and disseminate to such cable television service suppliers an administrative ruling identifying those components: (i) that are necessary or common to the receipt, use and enjoyment of cable television service; or (ii) which currently are, or historically have been, included in a bundled rate for cable television service by a local distribution company. Charges for such components shall be subject to the tax of subsection (a) above.

(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 cable television services. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.

(d) The tax imposed by this Section shall be collected from the service user by the cable television supplier, its billing agent, or a reseller of such services. In the case of cable

television service, the service user shall be deemed to be the purchaser of the bulk cable television service (e.g., an apartment owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of the cable television service. The amount of tax collected in one

(1) month shall be remitted to the Tax Administrator, and is due to the Tax Administrator on or before the twentieth (20th) day of the following month.

#### Section 6.72.055. Water and Wastewater Usage Tax.

(a) There is hereby imposed a tax upon every person in the City using the City's water and wastewater services. The tax imposed by this Section shall be at the rate of ten percent (10%) of all charges made for such water and wastewater services. The tax shall be collected from the service user by the water and wastewater service supplier, or its billing agent.

(b) As used in this Section, the term "charges" shall include charges made for: (1) metered and unmetered water usage; (2) waste water discharge including sewer service charges; and (3) minimum, fixed and variable charges for service, including all customer charges, service charges, demand charges, standby charges, and annual, monthly and bimonthly charges.

#### Section 6.72.060. Constitutional and Statutory Exemptions.

(a) Nothing in this Chapter shall be construed as imposing a tax upon (1) the City, or (2) any person or service supplier if imposition of such tax would be in violation of a federal or California statute, the Constitution of the United States, or the Constitution of the State of California.

(b) Any service user that is exempt from the tax imposed by this Chapter pursuant to subsection (a) 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, or is a service user of telephone communication services that has received a federal excise tax exemption certificate for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts,

declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all 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 utility users' taxes collected and remitted to the Tax Administrator from such service user as a result of such noncompliance. Upon request of the Tax Administrator, a service supplier or non-utility service supplier, or its billing agent, shall provide a list of the names and addresses of those customers which, according to its billing records, are deemed exempt from the utility users' tax. With respect to a service user of telephone communication services, a service supplier of such telephone communication services doing business in the City shall, upon the request of the Tax Administrator, provide a copy of the federal exemption certificate for each exempt customer within the City that is served by such service supplier.

#### Section 6.72.070. Collection of Tax.

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

- (a) The tax shall be collected insofar as practicable at the same time as, and along with, the collection of charges made in accordance with the regular billing practice 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 was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 6.72.110(b) of this Chapter shall apply.
- (b) The duty to collect tax from a service user shall commence with the beginning of the first regular billing period applicable to that person which starts on or after the July 1, 1969.

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 period.

Section 6.72.080. Reporting and Remitting.

(a) Each person required by this Chapter to remit a tax shall file a return with the Tax Administrator on forms approved by the Tax Administrator on or before the due date. At the time the return is filed, the full amount of the tax owed shall be remitted to the Tax Administrator. The Tax Administrator is authorized to require such further information as he or she deems necessary to properly determine if the tax here imposed is being levied, collected and remitted in accordance with this Chapter. Returns and remittances are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code Section 7284.6, the Tax Administrator, and his or her agents, shall maintain the filed returns as confidential information, and not subject to disclosure under the Public Records Act. Any person required to remit a tax may, upon written application to, and with the written consent of, the Tax Administrator, may make reports and remittances on a quarterly basis.

(b) A tax shall be considered remitted to the Tax Administrator if it is sent, postage paid, by United States Postal Service first class mail and postmarked on or before its due date.

(c) Any person who collects or remits a tax under this Chapter and who is authorized to remit an estimated tax amount, shall remit an adjusted tax 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.

(d) 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 remitting obligations under this Chapter, shall be considered timely remitted if the transfer is initiated on or before the due date, and the transfer settles into the City's

account by no later than  
the following business day

Section 6.72.090. Penalty.

(a) Taxes collected from a service user, or owed by a service user subject to Section 6.72.045 of this Chapter, 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 must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday.

(b) If the person required to collect or remit the utility users' tax fails to collect the tax, such as by failing to properly assess the tax on one or more services or charges on the customer's billing, or fails to remit the tax collected, or, in the case of a service user that fails to properly self-collect and remit the tax under Section 6.72.045 of this Chapter, the Tax Administrator shall attach a penalty at the rate of fifteen percent (15%) of the total tax that is delinquent or deficient in the remittance.

Notwithstanding the foregoing, a person required to collect or remit the utility users' tax shall not be subject to the 15% penalty and interest for an "improper assessment," if such "improper assessment" is voluntarily disclosed to the Tax Administrator, or its agent, and promptly corrected thereafter by such person, whether the disclosure occurs in the course of a Tax Administrator survey under this Chapter or the disclosure is voluntarily initiated by such person. For purposes of this subsection, the term "voluntarily disclosed" shall mean information provided by a service supplier to the City for the purpose of increasing the accuracy of the service supplier's tax collection or remittances before the issue has been raised or an inquiry has been initiated by the City or any other California municipality.

(c) The Tax Administrator shall have power to impose additional penalties upon persons required to collect or remit taxes under the provisions of this Chapter for fraud or gross negligence in reporting or remitting at the rate of fifteen percent (15%) of the amount of the tax collected or required to be remitted, or as recomputed by the Tax Administrator.

(d) In addition to any other penalties imposed by this Chapter, any person required to collect or remit any tax imposed under the provisions of this Chapter who fails to collect the tax or who fails to remit the tax collected, or, in the case of a service user that fails to properly self-collect and remit the tax under Section 6.72.045 of this Chapter, shall pay interest at the rate of three-quarters of one percent (3/4%) per month, or any fraction thereof, on the amount of the tax from the date on which the remittance first became delinquent, until paid.

(e) The Tax Administrator shall have the power to reduce or to waive any penalty upon persons required to collect and remit taxes under the provisions of this Chapter so long as such reduction or waiver is in writing and complies with any administrative rules adopted by resolution of the City Council to facilitate the implementation of this Chapter. Any request for reduction or waiver of any penalty assessed pursuant to this Section shall be made in writing no later than thirty (30) days following the assessment of penalty.

#### Section 6.72.100. 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 in an action brought in the name of the City for the recovery of such amount, plus 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.

#### Section 6.72.110. Failure to Pay Tax - Administrative Remedy.

(a) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by him or her from the amounts remitted to a service supplier required to collect the tax, that a service user has failed to pay the amount of the tax for a period of two (2) or



more billing periods, or whenever the Tax Administrator deems it in the best interest of the City, the Tax Administrator, in his or her sole discretion, may relieve the service supplier of the obligation to collect taxes due under this Chapter from certain named service users for specified billing periods. 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) The Tax Administrator shall notify the service user that he or she 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 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 service supplier; or should the service user have changed his or her address, to his or her 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 or her, 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, along with interest at the rate of three-quarters of one percent ( $3/4\%$ ) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid, but not less than Five Dollars (\$5.00).

(c) The Tax Administrator may make an assessment for taxes not paid or remitted by a service user who was required to pay or remit a tax under this Chapter. The Tax Administrator shall mail a notice of such assessment, which shall identify the amount of the taxes and other charges, interest or penalties due or imposed and the time and place where the assessment may be contested, to the person selling the service and to the service user at least ten (10) days prior to the date of the hearing and shall conspicuously post such notice for at least five (5) continuous days prior to the date of the hearing at the Chambers of the City Council. Any interested party having any objections may appear and be heard at the hearing provided his or her objection

is filed in writing  
with the Tax Administrator prior to the time set for the hearing. At the time  
fixed for considering said  
assessment, the Tax Administrator shall hear the assessment together with any  
objection filed and  
thereupon may confirm or modify the assessment.

Section 6.72.120. Additional Power 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, issue administrative  
rulings and  
regulations consistent with the provisions of this Chapter for the purpose of  
carrying out and  
enforcing the payment, collection and remittance of the taxes imposed by this  
Chapter. A copy of  
the administrative rules and regulations shall be on file in the Tax  
Administrator's office. In  
performing his or her duties under this Chapter, the Tax Administrator shall not  
impose a new tax or  
increase an existing tax except as authorized by law.

(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: (i) conform to the billing procedures of a particular service supplier (or  
service user subject  
to Section 6.72.045 of this Chapter) so long as said agreements result in the  
collection of the tax  
in conformance with the general purpose and scope of this Chapter; or, (ii) 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 shall be authorized to determine the eligibility of  
any person who asserts  
a right to exemption from or a refund of, the tax imposed by this Chapter.

Section 6.72.125. 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 or she 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 within forty-five (45) days of the date that the notice of appeal is filed with the City Clerk. 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 and not appealable to the City Council, but subject to judicial review pursuant to California Code of Civil Procedure Section 1094.5.

(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 the City or against any office of the City to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected or remitted.

#### Section 6.72.130. Records.

(a) It shall be the duty of every person required to collect or remit to the City and 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 or she may have been liable for the collection of or 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 to 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, or the Tax Administrator's designated representative, 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 or distribution services of gas or electricity to service users within the City, a list of the names, billing and service addresses, quantities of gas or electricity delivered, 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, 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 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, the Tax Administrator or the Tax Administrator's designated representative may impose a penalty of

five hundred dollars (\$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 6.72.140. Refunds.

(a) Whenever the amount of any tax has been overpaid, 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.

(b) The Tax Administrator 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 to the Tax Administrator within one (1) year of the overpayment or erroneous or illegal collection of said tax. The claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers.

(c) The submission of a written claim shall be a prerequisite to a suit for a refund as provided for in Government Code Section 935. The City shall act upon the refund claim within the time period set forth in Government Code Section 912.4. If the City fails or refuses to act on a refund claim within the time prescribed by Government Code Section 912.4, the claim shall be deemed to have been rejected by the City on the last day of the period within which the City was required to act upon the claim as provided in Government Code Section 912.4.

(d) Notwithstanding other provisions of this Section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or 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 the 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. The service supplier shall provide to the Tax Administrator such documentation concerning its entitlement to a credit under this subsection as the Tax Administrator may deem necessary. In the event this Chapter is repealed, the amounts of any refundable taxes shall be borne by the City.

(e) Notwithstanding subsections (b) and (d) above, a service supplier shall be entitled to take any overpayment as a credit against an underpayment whenever such overpayment has been received by the City within three (3) years next preceding a notice of tax deficiency or assessment by the Tax Administrator, or during any year for which the service supplier, at the request of the Tax Administrator, has executed a waiver of the defense of the statute of limitations with regard to any claim the City may have for a utility users tax. Under no circumstances shall an overpayment taken as a credit against an underpayment pursuant to this subsection qualify a Service Supplier for a refund to which it would not otherwise be entitled under the one-year written claim requirement of this Section.

(f) Nothing in this section is intended to limit any right to refund that may be ordered by the California Public Utilities Commission.

#### Section 6.72.150. Special Exemption.

(a) In addition to the refund procedures set forth in Section 6.72.140, there is hereby established special exemption procedures for natural persons meeting the eligibility criteria established by this Section.

(b) To be eligible for the special exemption provided for in this Section, a person must be sixty-two (62) years of age or older, or such person must meet the criteria of disability as established by the Social Security Administration's supplemental security income program for the aged, blind and disabled (Title XVI of the Social Security Act, as amended). In addition, no person shall be eligible

for the special exemption provided for in this Section if such person's annual gross household income, as hereinafter defined, exceeds the maximum dollar amount for the calendar year for which a refund is claimed. The maximum dollar amount will be established and from time to time amended by administrative action of the City. For the purposes of this Section, "gross household income" shall be and include the income of every member of the household received during the year, including, but not limited to, wages, salaries, bonuses, tips, gross amounts of pensions and annuities, retirement benefits, social security payments, disability payments, life insurance benefits, interest, capital gains and inheritances.

(c) Notwithstanding Subsections (a) and (b), persons who receive taxable utility service from master meters, or for whom utility charges are included in house, apartment, or other rental charges shall not be eligible for the special exemption provided for in this Section. Persons receiving funds from any public agency specifically for the payment of such utility users taxes shall, likewise, not be eligible for the rebate provided for herein.

(d) Reserved.

(e) Special Exemption procedures are as follows:

(1) Any person eligible under subsections (a) and (b) may file an application for an exemption with the Tax Administrator or his or her designee. The application shall be submitted on the forms provided by the City and all statements made therein shall be under oath and subject to penalty of perjury. No application shall be granted unless the applicant establishes his or her right thereto by written record showing entitlement thereto. The Tax Administrator or his or her designee may require such additional evidence as he or she deems necessary or appropriate in determining entitlement.

(2) The Tax Administrator or his or her designee shall review all such applications and shall certify as exempt those applicants determined to qualify therefor. The Tax Administrator or his or her designee shall notify all service suppliers affected that such exemptions have been approved. For

each exemption, the following information shall be transmitted to the service supplier:

(i) Name of exempt applicant.

(ii) Account number shown on utility bill.

(iii) Address to which exempt service is being supplied.

(iv) Any other information as may be necessary for the service supplier to remove the exempt service user from its tax billing procedure.

(3) Upon receipt of such notification, the service supplier shall not be required to continue to bill any further tax imposed by this Chapter from such exempt service user, until further notice by the Tax Administrator or his or her designee is given. The service supplier shall eliminate such exempt service user from its tax billing procedure no later than sixty (60) days after receipt of such notice from the Tax Administrator or his or her designee.

(4) All exemptions shall continue and be renewed automatically by the Tax Administrator or his or her designee, so long as the prerequisite facts supporting the initial qualification for exemption shall continue. The exemption shall automatically terminate with any change in the service address or residence of the exempt service user, except that such service user may apply for a new exemption.

(5) The Tax Administrator or his or her designee shall have the right and the power to demand evidence of continued eligibility of a service user for exemption. Failure to provide any evidence requested by the Tax Administrator or his or her designee as is within the control of a service user to so provide shall be grounds for the immediate discontinuance of the exemption. Evidence provided to the Tax Administrator or his or her designee upon request may not be used against such service user as evidence of violation of the provisions of this Section; such evidence may only be used as grounds for termination of the exemption.

(6) Any individual exempt from the tax shall notify the Tax Administrator or his or her designee within ten (10) days of any change in fact or circumstance which might



disqualify the individual from receiving such exemption. No person shall knowingly receive the benefits of the exemptions provided by this Section, when the basis for such exemption either does not exist or ceases to exist.

(7) If the Tax Administrator or his or her designee determines that an application for an exemption is faulty or that the applicant has failed to truthfully set forth the required facts, the application for exemption shall be denied in writing to the applicant.

(f) A determination of the Tax Administrator or his or her designee to deny an application for exemption may be appealed in accordance with prior Municipal Code Section 6.16.020 within ten

(10) days after the date of mailing of the rejection of the claim or denial of the application. If an appeal by an aggrieved claimant or applicant is not taken within the ten (10) day period, no appeal of the decision of the Tax Administrator or his or her designee may thereafter be taken, and the determination of the Tax Administrator or his or her designee shall become final.

#### Section 6.72.160. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter or any part thereof is for any reason held to be invalid, unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this Chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

#### Section 6.72.170. 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 Public Utilities Code Section 799 or other applicable law. 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 its 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 2. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AS TO FORM:

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MARSHA JONES MOUTRIE  
City Attorney