

ORDINANCE NO. 950

**AN ORDINANCE OF THE
CITY COUNCIL OF THE CITY OF MENLO PARK
ADOPTING A UTILITY USERS TAX**

THE CITY COUNCIL OF THE CITY OF MENLO PARK ORDAINS AS FOLLOWS:

SECTION 1. The City of Menlo Park Municipal Code is hereby adopted by adding Chapter 3.14 to read as follows:

Chapter 3.14 UTILITY USERS TAX

3.14.010 Short title.

3.14.020 Definitions.

3.14.030 Communications users tax.

3.14.040 Electricity users tax.

3.14.050 Gas users tax.

3.14.060 Collection of tax from service users receiving direct purchase of gas or electricity.

3.14.070 Water users tax.

3.14.080 Effect of commingling taxable items with non-taxable items.

3.14.090 Constitutional and statutory exemptions

3.14.100 Accurate jurisdictional boundaries.

3.14.110 Substantial nexus/minimum contacts.

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3.14.250 No injunction/writ of mandate.

3.14.260 Remedies Cumulative.

3.14.270 Notice of changes to ordinance.

3.14.280 Severability.

3.14.290 Penalties.3.14.300 Future amendment to cited statute.3.14.310 Required Findings Every Two Years – Termination of Utility Users Tax.**3.14.010 Short title.**

This chapter shall be known as the “Utility Users Tax Ordinance”.

3.14.020 Definitions.

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

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

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

(2) “Detailed telecommunications billing service means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

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

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

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

(b) “Ancillary video services” means services that are associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, search functions, or other interactive services or communications that are associated with or incidental to the provision, use or enjoyment of video programming.

(c) “Billing Address” means the mailing address of the service user where the service supplier submits invoices or bills for payment by the service user.

(d) “City” means the City of Menlo Park.

- (e) “City Manager” means the City Manager of City, or his or her authorized representative.
- (f) “Communication Services” means: “telecommunication services”, “ancillary telecommunication services”, “video services” and “ancillary video services”.
- (g) “Gas” means natural or manufactured gas or any alternate hydrocarbon fuel, which may be substituted therefor.
- (h) “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.
- (i) “Month” means a calendar month.
- (j) “Municipal Organization” shall mean that statewide organization sanctioned by the League of California Cities, or created by statute or by voluntary action, whose purpose is to facilitate the development and dissemination of uniform rulings or interpretations regarding the application of utility users taxes to communication services in the state of California.
- (k) “Non-Utility Service Supplier” means:
- (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, distributed generation provider, exempt wholesale generator (*15 U.S.C. Section 79z-5a*), 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 operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; and
 - (3) a gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas or supplemental services to gas users within the City.
- (l) “Person” means, without limitation, any domestic, non-profit or foreign corporation; firm; association; syndicate; joint stock company; partnership of any kind; limited liability company; joint venture; club; trust; Massachusetts business or common law trust; estate; society; cooperative; receiver, trustee, guardian or other representative appointed by order of any court; any natural individual; municipal district or municipal corporation, other than the City.
- (m) “Place of Primary Use” means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.
- (n) “Post-paid telecommunication service” means the telecommunication service obtained by making a payment on a communication-by-communication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service

number which is not associated with the origination or termination of the telecommunication service.

(o) "Prepaid telecommunication service" means the right to access telecommunication services, which must be paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

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

(q) "Service Address" means the residential street address or the business street address of the service user. For a telecommunication service user, "service address" means either:

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

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

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

(r) "Service Supplier" means any person, including the City, who provides or sells communication, electric, gas, water or video service to a user of such services within the City. The term shall include any person required to collect, or self-collect under Section 3.14.060 of this Chapter, and remit a tax as imposed by this Chapter, including its billing agent in the case of electric, gas, water or video service suppliers. In the case of video service, where the purchaser of bulk video service (*e.g.*, an apartment owner) resells the video service to individual users, the purchaser of the bulk video service shall be deemed the "service supplier" for tax collection and remittance purposes in Sec. 3.14.030.

(s) "Service User" means a person required to pay a tax imposed by this Chapter.

(t) "State" means the State of California.

(u) "Tax Administrator" means the Director of Finance of the City of Menlo Park or his or her designee.

(v) "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, and includes

broadband service [e.g., digital subscriber line (DSL), fiber optic, coaxial cable, and wireless broadband, including Wi-Fi, WiMAX, and Wireless MESH] to the extent federal and/or state law permits taxation of such broadband services, now or in the future. The term “telecommunications service” 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 service is referred to as voice over internet protocol (VoIP) services or is classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data service that is functionally integrated with “telecommunication services”. Telecommunications services include, but is not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; intrastate, interstate and international telecommunication services; broadband service (to the extent federal and/or state law permits taxation of such service); mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to pre-recorded or live service); and value-added non-voice data service.

(w) “Value-added non-voice data service” means a service that otherwise meets the definition of “telecommunications services” in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

(x) “Video Programming” means those programming services commonly provided to subscribers by a “video service supplier” including but not limited to basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.

(y) “Video Services” means any and all services related to the providing or delivering of “video programming” (including origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video) using one or more channels by a “video service supplier”, regardless of the technology used to deliver or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes data services, “telecommunication services”, or interactive communication services that are functionally integrated with “video services”.

(z) “Video Service Supplier” means any person, company, or service which provides or sells one or more channels of video programming, or provides or sells the capability to receive one or more channels of video programming, including any communications that are ancillary, necessary or common to the

provision, use or enjoyment of the video programming, to or from a business or residential address in the City, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or communications. A “video service supplier” includes, but is not limited to, multichannel video programming distributors [as defined in *47 U.S.C.A. Section 522(13)*]; open video systems (OVS) suppliers; and suppliers of cable television; master antenna television; satellite master antenna television; multichannel multipoint distribution services (MMDS); video services using internet protocol (e.g., IP-TV and IP-Video, which provide, among other things, broadcasting and video on demand), direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video programming or communications (including two-way communications), whatever their technology.

3.14.030 Communications Users Tax.

(a) There is hereby imposed a tax upon every person in the City using communication services. The tax imposed by this section shall be at the rate of two and one-half percent (2.5%) of the charges made for such services and shall be collected from the service user by the communication services supplier or its billing agent. There is a rebuttable presumption that communication services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this Chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this Section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the communication services.

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

(c) The Tax Administrator may issue and disseminate to communication service suppliers, which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those communication services, or charges therefor, that are subject to the tax of subsection (a) above. This administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this Section, or increase an existing tax, except as allowed by *California Government Code Section 53750(h)(2)(A)*.

(d) To facilitate the uniform interpretation and application of similar ordinance provisions in other local jurisdictions in the state, the Tax Administrator shall, prior to issuing and disseminating a sourcing rule or an administrative tax ruling, submit its proposed

sourcing rule or administrative tax ruling to the Municipal Organization for review and comment, according to the rules and procedures of that organization, or its successor organization.

(e) As used in this section, the term “communication services” 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.

(f) Charges for communication services (video) shall include, but are not limited to, charges for the following:

- (1) franchise fees and access fees (PEG);
- (2) initial installation of equipment necessary for provision and receipt of communication services;
- (3) late fees, collection fees, bad debt recoveries, and return check fees;
- (4) activation fees, reactivation fees, and reconnection fees;
- (5) all video programming services (e.g., basic services, premium services, audio services, video games, pay-per-view services, or on demand programming);
- (6) ancillary programming services (e.g., electronic program guide services, search functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of the video programming);
- (7) equipment leases (e.g., converters, remote devices); and,
- (8) service calls, service protection plans, name changes, changes of services, and special services.

(g) To prevent actual multi-jurisdictional taxation of communication services subject to tax under this section, any service user, upon proof to the Tax Administrator that the service user has previously paid the same tax in another state or city on such communication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city; provided, however, the amount of credit shall not exceed the tax owed to the City under this section.

(h) 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.

(i) Upon a showing of hardship, the Tax Administrator may administratively delay the implementation of this section until no later than January 1, 2008. Prior to such time, the Tax Administrator may administratively permit the telecommunications tax to be applied to intrastate, interstate, and international telecommunication services in the same manner as the federal excise tax was applied to “communication services” as defined in *Sections 4251 and 4252 of the Internal Revenue Code*, and the IRS regulations and rulings pertaining thereto, prior to May 25, 2006, and regardless of whether charges for such services are based on time, distance, or on any other basis, and as such sections are limited by the exceptions of *Sections 4252(d) and 4253*.

3.14.040 Electricity Users Tax.

(a) There is hereby imposed a tax upon every person using electricity in the City. The tax imposed by this section shall be at the rate of three and one-half percent (3.5%) of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/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. Notwithstanding the foregoing, the tax shall not apply to any individual who qualifies, and has been accepted, for the California Alternate Rates for Energy (CARE) Program pursuant to *California Public Utilities Code* Sections 327 and 739.1 *et. seq.*, and as it may be amended from time to time. In the event that the CARE Program is repealed or otherwise ceases to exist in a substantially similar form, the exemption granted under this subsection shall automatically terminate.

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

- (1) energy charges;
- (2) distribution or transmission charges;
- (3) metering charges;
- (4) stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar charges for supplemental services to self-generation service users;
- (5) customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees or surcharges which are necessary for or common to the receipt, use or enjoyment of electric service; and,
- (6) charges, fees, or surcharges for electricity services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(c) As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity.

(d) The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers

an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

(e) As used in this section, the term “using electricity” shall not include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the City for resale.

(f) 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 3.14.060 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, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person 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 remittance that becomes due.

3.14.050 Gas Users Tax.

(a) There is hereby imposed a tax upon every person using gas in the City, which is transported and delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of three and one-half percent (3.5%) of the 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. Notwithstanding the foregoing, the tax shall not apply to any individual who qualifies, and has been accepted, for the California Alternate Rates for Energy (CARE) Program pursuant to *California Public Utilities Code* Sections 327 and 739.1 *et. seq.*, and as it may be amended from time to time. In the event that the CARE Program is repealed or otherwise ceases to exist in a substantially similar form, the exemption granted under this subsection shall automatically terminate.

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

(1) the commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with

the production and delivery of such gas), which is delivered through a gas pipeline distribution system;

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

(3) storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;

(4) capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary for or common to the receipt, use or enjoyment of gas service; and,

(5) charges, fees, or surcharges for gas services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(c) As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas.

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

(e) There shall be excluded from the calculation of the tax imposed in this section, charges made for gas which is to be resold and delivered through a pipeline distribution system.

(f) 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 3.14.060 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 must be received by the Tax Administrator, on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the

twentieth (20th) day of the following month, provided that such person 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 remittance that becomes due.

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

(a) Any service user subject to the tax imposed by Section 3.14.040 or by Section 3.14.050 of this Chapter, which produces gas or electricity for self-use; 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 in the City, including any related supplemental services, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the 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.

(c) Notwithstanding subsections (a) and (b) above, electricity produced for self-use by solar electricity generation or co-generation (as defined in *Public Utilities Code Section 218.5*) shall be temporarily exempted from the tax imposed under this Chapter. This temporary exemption shall automatically expire six (6) years from the effective date of this Ordinance without further action by the City Council or voter approval. The City Council shall review the exemption prior to its expiration and shall make a determination as to whether the exemption shall expire or shall be extended. The City Council may grant subsequent temporary exemptions by ordinance amendment.

3.14.070 Water Users Tax.

(a) There is imposed a tax upon every person in the City using water which is transported and delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of three and one-half percent (3.5%) of the charges made for such water and shall be collected from the service user by the water service supplier, or its billing agent.

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

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

(c) As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the water services.

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

(e) There shall be excluded from the base on which the tax imposed in this section is computed charges made for water which is to be resold and delivered through a pipeline distribution system.

(f) 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; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person 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 remittance that becomes due.

3.14.080 Effect of Commingling Taxable Items with Non-Taxable Items.

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

3.14.090 Constitutional and Statutory Exemptions

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

- (1) any person or service when imposition of such tax upon that person or service would be in violation of a federal or state statute, the Constitution of the United States or the Constitution of the State of California; and,
- (2) the City.

(b) Any person 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. 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 non-compliance. 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.

(c) The decision of the Tax Administrator may be appealed pursuant to Section 3.14.230 of this Chapter. Filing an application with the Tax Administrator and appeal to the City Administrator pursuant to Section 3.14.230 of this Chapter is a prerequisite to a suit thereon.

3.14.100 Accurate jurisdictional boundaries.

The City shall make available, upon request, an accurate description of its jurisdictional 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.

3.14.110 Substantial Nexus / Minimum Contacts.

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

3.14.120 Maximum Tax.

(a) The maximum cumulative tax payable by any service user pursuant to Sections 3.14.040, 3.14.050, 3.14.060, and 3.14.070, shall be \$12,000 per fiscal year. A service user with more than one meter or billing invoice per utility service at a single contiguous location may combine all billings for purposes of calculating the maximum tax amount.

(b) A person may apply to the Tax Administrator to be qualified for the maximum tax by providing billing invoices, and other information as required by the Tax Administrator, for the prior fiscal year. Upon receipt of satisfactory proof of paying the maximum tax for the prior fiscal year, the Tax Administrator shall qualify the applicant for the maximum tax. The qualified person shall thereafter be entitled to a refund of any tax in excess of \$12,000 that was paid by the qualified person during the prior fiscal year, provided that proof of such tax payments is received by the Tax Administrator within one year following the end of the fiscal year for which the refund is sought.

(c) At the request of the qualified person, and upon receipt of satisfactory information, Tax Administrator shall advise the service suppliers, in writing, of the qualified person to discontinue imposing a utility user tax on the billings of the qualified person, provided however, that the qualified person agrees to prepay the Tax Administrator \$12,000 at the commencement of the fiscal year. The service supplier shall comply with the written notice from the Tax Administrator by no later than ninety (90) days from receipt of the written notice.

(d) The qualified person shall have the duty to notify the Tax Administrator of any changes in service suppliers, or if the combined tax payments hereunder drops below the \$12,000 maximum tax per fiscal year. If a qualified person fails to notify the Tax Administrator that the combined tax payments drops below the \$12,000 maximum tax within ninety (90) days following such fiscal year, then the penalties and interest provisions of Section 3.14.160 shall apply.

3.14.130 Temporary Tax Percentage Reduction and Reinstatement of Tax Percentage without Election.

The City Council may, by resolution and upon a majority vote of the Council, temporarily reduce the tax percentage in Sections 3.14.040 through 32.070 for a period of no more than twelve (12) months. The Tax Administrator shall implement the temporary tax reduction by giving sixty (60) day written notice to all affected service suppliers as required by *Public Utilities Code Section 799*. At the end of the twelve month period, the original tax percentage shall be automatically reinstated without further notice or action by the City Council.

In a resolution granting a temporary tax rebate or tax reduction, the City Council shall make the following finding: The temporary tax reduction shall not adversely affect the City's ability to meet its financial obligations as contemplated in its current or its proposed budget.

Nothing herein shall prohibit the City Council from adopting consecutive temporary tax percentage reductions, as provided herein.

As stated in *Government Code Section 9611*, the enactment of a temporary tax percentage reduction by the City Council shall not constitute a repeal of one or more of the original provisions of this Chapter. Upon the expiration of the time of the temporary tax percentage reduction, the original provisions of this Chapter shall have the same force and effect as if the temporary tax percentage reduction had not been enacted.

Nothing herein is intended to constitute a decrease in a tax, or an increase in a tax requiring election approval under *California Constitution Article XIII C*; and to the extent that any aspect of a temporary tax percentage reduction is found to invoke such a requirement, the entire temporary tax percentage reduction shall be deemed null and void *ab initio*, and there shall be no entitlement to such tax reduction for any service user.

3.14.140 Duty to Collect and Remit – Procedures.

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 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 3.14.180 shall apply.

(b) The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this Chapter. Where a person receives more than one

billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

3.14.150 Filing return and payment.

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

3.14.160 Collection Penalties - service suppliers or self-collectors.

(a) Taxes collected from a service user, or self-collected by a service user subject to Section 3.14.060 of this Chapter, are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on or before the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on or before the following business day.

(b) If a service supplier, or a service user subject to Section 3.14.060 of this Chapter, fails to remit any tax collected, on or before the due date, said person shall pay a penalty for such delinquencies at the rate of fifteen percent (15%) of the total tax that is delinquent in the remittance, and shall pay interest at the rate of three-quarters of one percent ($\frac{3}{4}\%$) 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.

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

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

(e) Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates and/or penalty and interest provisions of this Chapter to be consistent with any uniform standards or procedures that are mutually agreed upon by

UUT public agencies, or otherwise legally established, to create a UUT central payment location or mechanism.

3.14.170 Deficiency Determination and Assessment – tax application errors.

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

(b) The Tax Administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of three-quarters of one percent ($\frac{3}{4}\%$) 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. If the person fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the City.

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

(d) At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.14.230 of this Chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 3.14.230 of this Chapter is a prerequisite to a suit thereon.

(e) Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of three-quarters of one percent ($\frac{3}{4}\%$) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Section 3.14.170 shall commence from the date of delinquency as provided in this subsection (e).

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

3.14.180 Administrative remedy – nonpaying service users.

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

(b) In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of fifteen percent (15%) of the total tax that is owed, and shall pay interest at the rate of three-quarters of one percent ($\frac{3}{4}\%$) 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.

3.14.190 Actions to Collect.

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

Sec. 3.14.200 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.

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

(c) Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this Chapter and thereby: (1) conform to the billing procedures of a particular service supplier (or service user subject to Section 3.14.060 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, (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and are voidable by the Tax Administrator or the City at any time.

(d) The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this Chapter, of any person required to collect and/or remit a tax pursuant to this Chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 3.14.170 of this Chapter for all taxes, penalties and interest owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency and issue a deficiency determination assessment. Said deficiency determination assessment shall be entitled to a rebuttable presumption of correctness.

(e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Chapter for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of three-quarters of one percent ($\frac{3}{4}\%$) per month, prorated for any portion thereof.

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

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

approval of the City Attorney and the City Council, may compromise such a claim where the portion proposed to be released is equal to or greater than the amount set by separate resolution of the City Council relating to the settlement of general liability claims against the City.

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

3.14.210 Records.

(a) It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax that such person 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.

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

(c) The Tax Administrator is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to *California Revenue and Tax Code Sections 7284.6 and 7284.7*. The Tax Administrator 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 *California Public Utilities Code Section 6354(e)*.

(d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: (1) 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, (2) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

(e) If any person subject to record-keeping under this section unreasonably denies the Tax Administrator, or the Tax Administrator's designated representative, access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, the Tax Administrator 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.

3.14.220 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, under penalty of perjury, to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a refund claim on behalf of a class or group of taxpayers. Where the amount of any individual refund claim is in excess of the amount set by separate resolution of the City Council relating to the settlement of general liability claims against the City, City Council approval shall be required.

(c) The Tax Administrator, or the City Council where the claim is in excess of the amount set by separate resolution of the City Council relating to the settlement of general liability claims against the City, shall act upon the refund claim within forty-five (45) days of the initial receipt of the refund claim. Said decision shall be final. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the forty-five (45) day period, the claim shall be deemed to have been rejected by the Tax Administrator/City Council on the forty-fifth (45th) day. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in *Government Code Section 913*.

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

(e) Notwithstanding the notice provisions of subsection (a) of this section, in the event that a service supplier, or a service user subject to Section 3.14.060 hereof, remits a tax to City in excess of the amount of tax imposed by this Chapter, said service supplier, or service user subject to Section 3.14.060 hereof, may claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the Tax Administrator, provided such credit is claimed in a return dated no later than one year from the date of overpayment of said tax. The Tax Administrator shall first determine the validity of the service user's claim of credit, and the underlying basis for such claim.

(f) Notwithstanding the notice provisions of subsection (a) of this section, a service supplier that has collected any amount of tax in excess of the amount of tax imposed by this Chapter and actually due from a service user (whether due to overpayment or erroneous or illegal collection of said tax), may refund such amount to the service user, or credit to charges subsequently payable by the service user to the service supplier, and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the Tax Administrator, provided such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous or illegal collection of said tax. The Tax Administrator shall first determine the validity of the service user's claim of credit, and the underlying basis for such claim.

3.14.230 Appeals.

(a) The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 3.14.220 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 3.14.220 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 3.14.220 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 set for hearing no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, the City Manager, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

(d) Based upon the submission of such evidence and the review of the City's files, the City Manager shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with *Code of Civil Procedure Section 1094.6*. If the City Manager fails or refuses to act on a refund claim within the fourteen (14) day period, the claim shall be deemed to have been rejected by the City Manager on the fourteenth (14th) day.

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

3.14.240 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure.

The City shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted in accordance with this Chapter, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

3.14.250 No Injunction/Writ of Mandate.

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

3.14.260 Remedies Cumulative.

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

3.14.270 Notice of Changes to Ordinance.

If a tax under this Chapter is added, repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of *California Public Utilities Code Section 799*. Prior to the effective date of the ordinance change, the service supplier shall provide the Tax Administrator with a copy of any written procedures describing the information that the service supplier needs to implement the ordinance change. If the service supplier fails to provide such written instructions, the Tax Administrator, or his or her agent, shall send, by first class mail, a copy of the ordinance change to all collectors and remitters of the City's utility users taxes according to the latest payment records of the Tax Administrator.

3.14.280 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, and the decision not to enforce such, shall not affect the validity of the remaining portion 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 invalid, unlawful or unconstitutional.

3.14.290 Penalties.

Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor, or an infraction at the discretion of the City Attorney, and upon conviction punished pursuant to Chapter 1.12 of this Code.

3.14.300 Future Amendment to Cited Statute.

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

3.14.310 Required Findings Every Two Years -- Termination of Utility Users Tax.

(a) The City Council shall review the need for the utility users tax imposed by this Chapter not later than June 30, 2008, and every two years thereafter, and shall, by a two thirds (2/3) vote of the Council, make findings that the utility users tax imposed by this Chapter is necessary for the financial health of the City. In the event the City Council fails to make such required findings by any such review date, the levy of taxes as provided in this Chapter shall terminate on December 31st of the year in which the City Council fails to make the required findings.

(b) The termination of the levy of taxes as provided herein shall not terminate the obligation to pay taxes levied on services used prior to such date. Taxes levied prior to such date shall remain a debt payable to the City. All provisions in this Chapter, except those relating to the levy of taxes, shall continue with full force and effect after such date.

(c) Nothing herein is intended to constitute an extension or an increase in a tax requiring voter approval under *California Constitution Article XIII C*; and to the extent that this Section 3.14.310 is found to invoke such a requirement, this Section 3.14.310 shall be deemed null and void *ab initio*.

SECTION 2. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 3. If a majority of the voters voting thereon approve this Chapter 3.14, it shall become effective ten (10) days after the results of the election are declared by

the City Council. Within fifteen (15) days of its adoption this ordinance shall be posted in three public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the 25th day of July, 2006.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the 1st day of August 2006, by the following vote:

AYES: Council Members: Jellins, Fergusson, Cohen,
Duboc and Winkler

NOES: Council Members: None

ABSENT: Council Members: None

ABSTAIN: Council Members: None