

**ORDINANCE NO. 3809**

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF  
BURBANK, CALIFORNIA, AMENDING ARTICLE 11 OF  
CHAPTER 4, TITLE 2 OF THE BURBANK MUNICIPAL  
CODE WITH RESPECT TO THE UTILITY USERS TAX.**

THE PEOPLE OF THE CITY OF BURBANK, CALIFORNIA, DO ORDAIN AS FOLLOWS:

**SECTION 1.** Article 11 of Chapter 4, Title 2 of the Burbank Municipal Code is hereby amended in its entirety to read as follows:

**Article 11  
Utility Users Tax**

- 2-4-1101: Definitions**
- 2-4-1102: Telecommunications Service Users' Tax**
- 2-4-1103: Electricity Users' Tax**
- 2-4-1104: Gas Users' Tax**
- 2-4-1105: Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity**
- 2-4-1106: Substantial Nexus/Bundling**
- 2-4-1107: Constitutional and Statutory Exemptions**
- 2-4-1108: Senior Citizen Exemption**
- 2-4-1109: Disability Exemption**
- 2-4-1110: Automatic Adjustment of Income Levels**
- 2-4-1111: Duty to Collect; Procedures**
- 2-4-1112: Filing Return and Payment**
- 2-4-1113: Collection Penalties; Service Suppliers or Self-Collectors**
- 2-4-1114: Deficiency Determination and Assessment; Tax Application Errors**
- 2-4-1115: Administrative Remedy; Nonpaying Service Users**
- 2-4-1116: Actions to Collect**
- 2-4-1117: Additional Power and Duties of the Tax Administrator**
- 2-4-1118: Records**
- 2-4-1119: Refunds**
- 2-4-1120: Appeals**
- 2-4-1121: No Injunction/Writ of Mandate**
- 2-4-1122: Remedies Cumulative**
- 2-4-1123: Notice of Changes to this Article**
- 2-4-1124: Severability**
- 2-4-1125: Penalties**
- 2-4-1126: Future Amendment or Recodification of Cited Statute or Regulation**

## **2-4-1101: DEFINITIONS:**

Except where the context otherwise requires, the definitions given in this section govern the construction of this article:

A. ANCILLARY TELECOMMUNICATIONS SERVICE (or ANCILLARY SERVICE) means services that are associated with or incidental to the provision, use or enjoyment of telecommunications service, including but not limited to Conference Bridging Service, Detailed Telecommunications Billing Service, Directory Assistance, Vertical Service and Voicemail Service as defined herein.

B. BILLING ADDRESS means the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

C. CITY means the City of Burbank.

D. CITY MANAGER means the City Manager of City, or his or her authorized representative.

E. COGENERATOR means mean any corporation or person employing cogeneration (as defined in Section 218.5 of the California Public Utilities Code) for producing power for the generation of electricity for self use or sale to others from a qualified cogeneration facility (as defined in the federal Public Utility Regulatory Policies Act of 1978 and regulations thereunder).

F. CONFERENCE BRIDGING SERVICE means ancillary service that links two (2) 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.

G. DETAILED TELECOMMUNICATIONS BILLING SERVICE means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

H. DIRECTORY ASSISTANCE means an ancillary service of providing telephone number information, and/or address information.

I. ELECTRICAL CORPORATION means a corporation or person as defined in Public Utilities Code Section 218.

J. EXEMPT WHOLESALE GENERATOR shall have the same meaning and usage as set forth in the Federal Power Act (15 U.S.C.S. 79z-5a) and regulations thereunder.

K. GAS means natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.

L. GAS CORPORATION means a corporation or person as defined in Public Utilities Code Section 222.

M. GROSS ANNUAL INCOME OF THE HOUSEHOLD means the income of every member of the household received during the year for which the refund is claimed and shall include but not be limited to wages, salaries, bonuses, tips, gross amount of pensions and annuities, retirement

benefits, social security payments, disability payments, life insurance benefits, interests, capital gains, spousal support and inheritances.

N. HANDICAPPED PERSON means a person who is disabled and lacks sufficient annual income to meet the costs of health care and whose other assets are so limited that their application toward the costs of such care would jeopardize such person or such person's family's future minimum self-maintenance and security. For the purposes of this article, the term "handicapped person" shall not include any person who regularly requires the use of an essential life-support device.

O. MOBILE TELECOMMUNICATIONS SERVICE shall have the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 116 et seq.) and the regulations thereunder.

P. MONTH means a calendar month.

Q. NON-UTILITY 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 authority, electric rural cooperative, or other supplier or seller of electricity;

2. an electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; and

3. a gas service supplier, aggregator, marketer, or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas or supplemental services to users within the City.

R. PAGING SERVICE means a “telecommunications service” that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

S. PERSON means without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, joint power authority, limited liability company, corporation (including foreign, domestic, and nonprofit), municipal district or municipal corporation (other than the City) cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

T. PERSON WHO REGULARLY REQUIRES THE USE OF AN ESSENTIAL LIFE-SUPPORT DEVICE means a person who daily uses, for eight (8) or more hours each day, either a respirator, an iron lung, or a kidney dialysis machine.

U. PLACE OF PRIMARY USE means the street address representative of where the customer's use of the communications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

V. POST-PAID TELECOMMUNICATIONS SERVICE means telecommunications 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 telecommunications service.

W. PREPAID TELECOMMUNICATIONS SERVICE means the right to access telecommunications service that is paid for in advance, that enables the origination of communications using an access number or authorization code, whether manually or electronically dialed, and is sold in predetermined units or dollars of which the number declines with use in a known amount.

X. PRIVATE TELECOMMUNICATIONS SERVICE means telecommunications 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).

Y. SERVICE ADDRESS means the residential street address or the business street address of the service user. For a telecommunications service user, "service address" means:

1. The location of the service user's communication equipment from which the communication originates or terminates, regardless of where the communication is billed or paid; or,
2. If the location in subsection (1) of this definition is unknown (e.g., mobile telecommunications service or VoIP service), the service address means the location of the service user's place of primary use.
3. For prepaid telecommunications service, "service address" means the location associated with the service number or, if not known, the point of sale of the services.

Z. SERVICE SUPPLIER means any entity or person, including the City, that provides telecommunications, electric, or gas service to a user of such services within the City, and includes an entity or person required to collect, or self-collect under Section 2-4-1105 of this article, and remit a tax as imposed by this article, including its billing agent in the case of electric or gas.

AA. SERVICE USER means a person required to pay a tax imposed under the provisions of this article.

BB. STATE means the State of California.

CC. STREAMLINED SALES AND USE TAX AGREEMENT means the multi-state agreement commonly known and referred to as the Streamlined Sales and Use Tax Agreement, as it is amended from time to time.

DD. TAX ADMINISTRATOR shall mean the City's Finance Director, or his or her designee.

EE. TELECOMMUNICATIONS SERVICE means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used. The term "telecommunications services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that is functionally integrated with "telecommunication services." "Telecommunications service" includes, but is not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunications service; intrastate, interstate, and international telecommunications service; mobile telecommunications service; prepaid telecommunications service; post-paid telecommunications service; private telecommunications 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). The term "telecommunications service" also includes, but is not limited to, charges for: connection, reconnection, termination, movement, or change of telecommunications service; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory, administrative and other cost recovery charges; local number portability charges; and text and instant messaging. "Telecommunications service" shall not include digital downloads that are not "ancillary telecommunications service," such as music, ringtones, games, and similar digital products.

FF. 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.

GG. 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.

HH. WATER CORPORATION means a corporation or person as defined in Public Utilities Code Section 241.

II. VOICE OVER INTERNET PROTOCOL (or VOIP) means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

JJ. 800 SERVICE means a “telecommunications service” that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800,” “855,” “866,” “877,” and “888” toll-free calling, and shall include any subsequent numbers designated for such service by the Federal Communications Commission.

KK. 900 SERVICE means an inbound toll “telecommunications service” purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. “900 service” does not include the charge for collection services provided by the seller of the “telecommunications services” to the subscriber, or service or product sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900” service, and shall include any subsequent numbers designated for such service by the Federal Communications Commission.

## **2-4-1102: TELECOMMUNICATIONS SERVICE USERS’ TAX:**

A. There is hereby imposed a tax upon every person in the City using telecommunications service. The tax imposed by this Section shall be at the rate of seven (7%) percent of the charges made for such services and shall be collected from the service user by the telecommunications service supplier or its billing agent. There is a rebuttable presumption that telecommunications service that is billed to a billing or service address in the City is used, in whole or in part, within the City’s boundaries, and such service is subject to taxation under this section. There is also a rebuttable presumption that prepaid telecommunications service sold within the city is used, in whole or in part, within the City and is therefore subject to taxation under this section. 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, but not be limited to, 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 116 et seq.)*. The Tax Administrator may issue and disseminate to communication service suppliers, which are subject to the tax collection requirements of this Section, sourcing rules for the taxation of other communication services, including but not limited to post-paid communication services, prepaid communication services, VoIP, and private communication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi jurisdictional taxation (e.g., Streamlined Sales and Use Tax Agreement).

C. The Tax Administrator may issue and disseminate to telecommunications service suppliers, which are subject to the tax collection requirements of this Section, an administrative ruling identifying those telecommunications services, or charges therefor, that are subject to or not subject to the tax of subsection A. above.

D. To prevent actual multi jurisdictional taxation of telecommunications service 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 telecommunications service, 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.

E. The tax on telecommunications service imposed by this Section shall be collected from the service user by the service supplier. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

#### **2-4-1103: 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 seven percent (7%) of the charges made for such electricity, and for any supplemental services or other associated activities directly related and/or necessary for the provision of electricity to the end user, which are provided by a service supplier or nonutility supplier to a service user. The tax shall be collected from the service user by the service supplier or nonutility 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: 1) necessary or common to the receipt, use and enjoyment of electric service; or 2) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

1. Energy charges;
2. Distribution and transmission charges;
3. Metering charges;
4. Standby, reserves, firming, ramping, voltage support, regulation, emergency, or other similar minimum charges for services;
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 fee, franchise surcharge, annual and monthly charges, and other charges, fees and surcharges which are necessary to or common for the receipt, use and enjoyment of electric service; and
6. Charges, fees, or surcharges for electricity services or programs, which are mandated by the California Public Utilities Commission, or the Federal Energy Regulatory Commission,

whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

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

D. The Tax Administrator, from time to time, may survey the 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: 1) necessary or common to the receipt, use or enjoyment of electric service; or 2) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection A of this section.

E. 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 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 supplier or an electric utility not under the jurisdiction of this article shall be collected and remitted in the manner set forth in Section 2-4-1105 of this Article. All other taxes on charges for electricity imposed by this Section shall be collected from the service user by the electric service supplier or its billing agent. The amount of the tax collected in one (1) month shall be remitted to the Tax Administrator on or before the twentieth (20<sup>th</sup>) day of the following month or, at the option of the person required to collect or remit the tax, such person shall remit an estimated amount of the tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20<sup>th</sup>) day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

#### **2-4-1104: GAS USERS' TAX:**

A. There is hereby imposed a tax upon every person using gas in the City, which is transported through a pipeline distribution system or by mobile transport. The tax imposed by this section shall be at the rate of seven percent (7%) of the charges made for such gas, including all services related to the storage, transportation, and delivery of such gas, and shall apply to all uses of gas including but not limited to, heating.

B. As used in this section, the term "charges" shall apply to all services, components and items for gas service that are: 1) necessary or common to the receipt, use and enjoyment of gas service; or 2) currently, or historically have been, included in a single or bundled rate for gas service by a



local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

1. The commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunk-line, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system or by mobile transportation;

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, administrative charges, marketing fees, brokers fees, minimum charges, annual and monthly charges, and any other charges which are necessary or common to the receipt, use and enjoyment of gas service; and

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

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

D. The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: 1) necessary or common to the receipt, use or enjoyment of gas service; or 2) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution

company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection A of this section.

E. The following 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 a 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 corporation for gas used and consumed in the conduct of the business of gas corporations.

F. The tax on gas provided by self-production or by a non-utility supplier not under the jurisdiction of this article shall be collected and remitted in the manner set forth in Section 2-4-1105 of this article. 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 (20<sup>th</sup>) day of the following month; or, at the option of the person required to collect or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20<sup>th</sup>) day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

#### **2-4-1105: COLLECTION OF TAX FROM SERVICE USERS RECEIVING DIRECT PURCHASE OF GAS OR ELECTRICITY:**

A. Any service user subject to the tax imposed by Section 2-4-1103 or 2-4-1104 of this article, which produces gas or electricity for self-use, or which receives gas or electricity, including any related supplemental services, directly from a non-utility supplier not under the jurisdiction of this Article, or that, 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 said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the pattern payment of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

B. The Tax Administrator may require said service user to identify its non-utility supplier and provide, subject to audit, invoices, books of account, or other satisfactory evidence documenting the quantity of gas or electricity used, 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 City, is excessive, the City may determine the tax by applying the tax rate to the equivalent charges the service user would have

incurred if the gas or electricity used had been provided by the service supplier, which is the primary supplier of gas or electricity within the City.

#### **2-4-1106: SUBSTANTIAL NEXUS/BUNDLING:**

A. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this article, "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 telecommunications service (including VoIP) used by a person with a service address in the City which service is capable of terminating a call to another person on the general telephone network shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax or establishing a duty to collect and remit a tax under this Chapter. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include but are not limited to any of the following: maintains or has within the City directly or through an agent, affiliate, or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents, or other representatives; solicits business in the City on a continuous regular, seasonal, or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the City or distributed from a location within the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of services that are subject to a tax under this Chapter.

B. If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation of the taxable and non-taxable services.

#### **2-4-1107: CONSTITUTIONAL AND STATUTORY EXEMPTIONS:**

A. The taxes imposed by this article shall not apply to:

1. Any person or service if imposition of such tax upon that person or service would be in violation of a federal or state statute or the Constitution of the United States or the Constitution of the State of California; or

2. The City.

B. Any service user that is exempt from the tax imposed by this Article pursuant to subsection A of this section shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a state or federal agency or subdivision (such as a public school district or a community college district) 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 noncompliance. Upon request of the Tax Administrator, a service supplier or non-utility supplier, or their billing agents, shall provide a list of names and addresses of those customers which, according to their billing records, are deemed exempt from the utility users tax.

C. The decision of the Tax Administrator may be appealed pursuant to Section 2-4-1120 of this article. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 2-4-1120 of this article is a prerequisite to a suit thereon.

D. The City Council may, by resolution, establish one or more classes of persons or one or more classes of utility service otherwise subject to payment of a tax imposed by this Article and provide that such classes of persons or service shall be exempt, in whole or in part from such tax for a specified period of time.

#### **2-4-1108: SENIOR CITIZEN EXEMPTION:**

A. Eligibility: Any service user who is sixty two (62) years of age or older shall be eligible for an exemption from the taxes imposed by this article if the gross annual income of the household in which such individual resides is less than the amount established by Council and designated in the Burbank Fee Resolution.

B. Application: Applications for exemption shall be filed with the Tax Administrator on such forms as he/she may provide.

C. Time to File: Applications may be filed at any time.

D. Contents of Application: Applications shall be verified by declaration under penalty of perjury and shall contain such information as may be required by the Tax Administrator. An application must be accompanied by a copy of the applicant's federal income tax return for the most recent year. However, if no federal income tax return was filed in the previous year, the applicant shall provide any other taxpayer return or return information requested by the Tax Administrator. An application will not be considered complete and will not be processed without a copy of the applicant's federal income tax return or if no federal income tax return was filed, such other taxpayer return or return information requested by the Tax Administrator.

E. Review And Certification: The Tax Administrator shall review each application and shall certify the applicant as exempt if the eligibility requirements of subsection A of this section are met, except that no exemption shall be granted to an applicant who is receiving service from a service supplier through a master meter, or who is sharing or prorating service with other service users even though such service users qualify under the provisions of subsection A of this section and no exemption shall be granted with respect to any tax imposed by this article which is or has been paid by a public agency or where the applicant receives funds from a public agency specifically for the payment of such tax.

F. Notice To Service Supplier: If an applicant is certified as exempt, the Tax Administrator shall promptly notify applicant's service suppliers, stating the name of the applicant, the address to which such exempt service is being supplied, the account number, if any, and such other information as may be necessary for the service supplier to remove the exempt service user from its tax billing procedure.

G. Discontinuance Of Billing: Upon receipt of such notice, the service supplier shall within sixty (60) days discontinue billing applicant for taxes imposed by this article, except as otherwise provided in subsection H of this section.

H. Prior Taxes to Be Collected: Taxes billed by the service supplier to the service user prior to removing the service user from its tax billing procedure, shall be collected from the service user and the service user shall pay such taxes to the service supplier. Taxes billed to and paid by the service user between the time that the application for exemption is filed and the service supplier removes the service user from its taxing procedure will not be refunded to the service user.

I. Duration of Exemption: Exemptions certified by the Tax Administrator shall continue so long as the facts supporting the qualification for exemption shall exist; provided, however, that the exemption shall automatically terminate with any change in the service address or residence of the exempt individual, or assignment of a different account number by the service supplier because of discontinuance or suspension of service at the request of the service user; and provided further, that such individual may nevertheless apply for a new exemption with each change of address or residence.

The Tax Administrator shall have the right to request a copy of an exempt service user's most recent federal income tax return and/or any other taxpayer return or return information at any time. The exemption shall terminate if this information shows that the exempt service user is no

longer eligible for the exemption or if the exempt service user refuses or fails to provide the Tax Administrator with the requested documents or information.

J. Duty to Disclose Disqualification: Any service user who has been exempted under this section shall notify the Tax Administrator within ten (10) days of any change in fact or circumstance which might disqualify said individual from receiving such exemption. It shall be a misdemeanor for any person to knowingly receive the benefits of the exemption provided by this section when the basis for such exemption does not exist or ceases to exist.

Any service supplier, who determines by any means that a new or nonexempt service user is receiving service through a meter or connection exempt by virtue of an exemption issued to a previous user or exempt user of the same meter or connection, shall immediately notify the Tax Administrator of such fact and the Tax Administrator shall conduct an investigation to ascertain whether or not the provisions of this section have been complied with, and, where appropriate, order the service supplier to commence collecting the tax from the nonexempt service user.

K. Adjustments: Income levels as designated in the Burbank Fee Resolution and referred to in subsection A of this section shall be updated and changed annually, if necessary, by an adjustment as set forth in Section 2-4-1110 of this article.

#### **2-4-1109: DISABILITY EXEMPTION:**

A. Eligibility: Any service user who is a handicapped person or the head of the household supporting a handicapped person shall be exempt from the taxes imposed by this article if the gross annual income of the household in which such individual resides is less than the amount established by Council and designated in the Burbank Fee Resolution. Any person who regularly requires the use of an essential life support device, or the head of any household who supports such a person, shall be exempt from the taxes imposed by this article regardless of gross annual income.

B. Application: Application for exemption shall be filed with the Tax Administrator on such forms as he/she may provide.

C. Time to File: Applications may be filed at any time.

D. Contents of Application: Applications shall be verified by declaration under penalty of perjury and shall contain such information as may be required by the Tax Administrator. An application must be accompanied by a copy of the applicant's federal income tax return for the most recent year. However, if no federal income tax return was filed in the previous year, the applicant shall provide any other taxpayer return or return information requested by the Tax Administrator. An application will not be considered complete and will not be processed without a copy of the applicant's federal income tax return or if no federal income tax return was filed, such other taxpayer return or return information requested by the Tax Administrator. However, if the applicant is a person who regularly requires the use of an essential life support device, or the head of any household who supports such a person, such application need not be accompanied by the applicant's federal income tax return or any other taxpayer return or return information and

may be considered complete and processed without such documents or information if the application is otherwise complete.

E. Review And Certification: The Tax Administrator shall review each application and shall certify the applicant as exempt if the eligibility requirements of subsection A of this section are met, except that no exemption shall be granted to an applicant who is receiving service from a service supplier through a master meter, or who is sharing or prorating service with other service users even though such service users qualify under the provisions of subsection A of this section and no exemption shall be granted with respect to any tax imposed by this article which is or has

been paid by a public agency or where the applicant receives funds from a public agency specifically for the payment of such tax.

F. Notice to Service Supplier: If an applicant is certified as exempt, the Tax Administrator shall promptly notify applicant's service suppliers, stating the name of the applicant, the address to which such exempt service is being supplied, the account number, if any, and such other information as may be necessary for the service supplier to remove the exempt service user from its tax billing procedure.

G. Discontinuance of Billing: Upon receipt of such notice, the service supplier shall within sixty (60) days discontinue billing applicant for taxes imposed by this article, except as otherwise provided in subsection H of this section.

H. Prior Taxes to Be Collected: Taxes billed by the service supplier to the service user prior to removing the service user from its tax billing procedure, shall be collected from the service user and the service user shall pay such taxes to the service supplier. Taxes billed to and paid by the service user between the time that the application for exemption is filed and the service supplier removes the service user from its taxing procedure will not be refunded to the service user.

I. Duration of Exemption: Exemptions certified by the Tax Administrator shall continue so long as the facts supporting the qualification for exemption shall exist; provided, however, that the exemption shall automatically terminate with any change in the service address or residence of the exempt individual, or assignment of a different account number by the service supplier because of discontinuance or suspension of service at the request of the service user, and provided further, that such individual may nevertheless apply for a new exemption with each change of address or residence.

The Tax Administrator shall have the right to request a copy of an exempt service user's most recent federal income tax return and/or any other taxpayer return or return information at any time. The exemption shall terminate if this information shows that the exempt service user is no longer eligible for the exemption or if the exempt service user refuses or fails to provide the Tax Administrator with the requested documents or information. However, if the service user qualified for the exemption because the service user is a person who regularly requires the use of an essential life support device, or the head of any household who supports such a person, the Tax Administrator shall not have the right to request a copy of the service user's federal income tax return or other taxpayer return or return information.

J. Duty to Disclose Disqualification: Any service user who has been exempted under this section shall notify the Tax Administrator within ten (10) days of any change in fact or circumstance which might disqualify said individual from receiving such exemption. It shall be a misdemeanor for any person to knowingly receive the benefits of the exemption provided by this section when the basis for such exemption does not exist or ceases to exist.

Any service supplier, who determines by any means that a new or nonexempt service user is receiving service through a meter or connection exempt by virtue of an exemption issued to a previous user or exempt user of the same meter or connection, shall immediately notify the Tax

Administrator of such fact and the Tax Administrator shall conduct an investigation to ascertain whether or not the provisions of this section have been complied with, and, where appropriate, order the service supplier to commence collecting the tax from the nonexempt service user.

K. Adjustments: Income levels as designated in the Burbank Fee Resolution and referred to in subsection A of this section shall be updated and changed annually, if necessary, by an adjustment as set forth in Section 2-4-1110 of this article.

#### **2-4-1110: AUTOMATIC ADJUSTMENT OF INCOME LEVELS:**

A. Annual Adjustment: An annual adjustment of the income levels mentioned in Sections 2-4-1108 and 2-4-1109 of this article shall be made by replacing, if different, the income level figures appearing in the Burbank Fee Resolution with the most recent figures for "very low family income" households published by the U.S. Department of Housing and Urban Development ("HUD") in its "Income Limits For Public Housing And Section 8 Programs" for the Los Angeles-Long Beach (Los Angeles County) area (hereinafter "HUD Guidelines"). Should the title of the HUD Guidelines change or vary from the foregoing, the document published by HUD most closely approximating the intent and purpose of the HUD Guidelines shall be utilized.

B. Exception: Nothing in this section shall prevent the Burbank City Council from setting income levels greater or less than indicated in the HUD Guidelines.

#### **2-4-1111: DUTY TO COLLECT; PROCEDURES:**

The duty of service suppliers to collect and remit the taxes imposed by the provisions of this Article 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 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 2-4-1115 of this article 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 Article. 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.

#### **2-4-1112: FILING RETURN AND PAYMENT:**

Each person required by this article to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator on or before the due date. The full amount of the tax



collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he/she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this Article. Returns are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code Section 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information exempt from disclosure provisions of the Public Records Act.

**2-4-1113: COLLECTION PENALTIES; SERVICE SUPPLIERS OR SELF-COLLECTORS:**

A. Taxes collected from a service user, or self-collected by a service user subject to Section 2-4-1105 of this article, 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 2-4-1105 of this article, fails to remit any tax collected (by failing to properly assess the tax on one or more services or charges on the customer's billing), 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 (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 article 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. The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes pursuant to the provisions of this chapter for fraud or gross

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

E. 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.

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

## **2-4-1114: 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 Article 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. Nothing herein shall require that the Tax Administrator institute proceedings under this section if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. The Tax Administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of 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 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 or entity allegedly owing the tax fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the City. If 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 2-4-1120 of this Article. Filing a request for a hearing with the Tax Administrator and appeal to the City Manager pursuant to Section 2-4-1120 of this Article 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 (30<sup>th</sup>) 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 ( $3/4\%$ ) 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 shall commence from the date of delinquency as provided in this subsection.

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.

#### **2-4-1115: ADMINISTRATIVE REMEDY; NONPAYING SERVICE USERS:**

A. Whenever the Tax Administrator determines that a service user has withheld the full 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 article 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 article. Nothing herein shall require that the Tax Administrator institute proceedings under this section if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. In addition to the tax owed, the nonpaying 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 (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 nonpaying 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.

#### **2-4-1116: ACTIONS TO COLLECT:**

Any tax required to be paid by a service user under the provisions of this article 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 article shall be liable in an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this Article, along with any collection costs incurred by the City as a result of the person's noncompliance with this article, including, but not limited to, reasonable attorney fees.

## **2-4-1117: 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 Article.

B. The Tax Administrator may adopt administrative rules and regulations not inconsistent with provisions of this Article 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. To the extent that the Tax Administrator determines that the tax imposed under this Article shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of *Government Code Section 53750* or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of *Government Code Section 53750*, and the City does not waive or abrogate its ability to impose the utility users' tax in full as a result of promulgating administrative rulings or entering into agreements.

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 Article and thereby: 1) conform to the billing procedures of a particular service supplier (or service user subject to Section 2-4-1105 of this Article) so long as said agreements result in the collection of the tax in conformance with the intent of this Article; 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 subject to cancellation 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 Article, of any person required to collect and/or remit a tax pursuant to this Article. 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 2-4-1114 of this article 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 article, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

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

G. The Tax Administrator, with the written approval of the City Attorney, may compromise a claim pursuant to this article 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 article 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 article 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. The Tax Administrator may also participate with other UUT public agencies in conducting coordinated compliance reviews with the goal of achieving administrative efficiency and uniform tax application determinations, where possible. To encourage full disclosure and on-going cooperation on annual compliance reviews, the Tax Administrator, and its agents, may enter into agreements with the tax-collecting service providers and grant prospective only effect on any changes regarding the taxation of services or charges that were previously deemed by the service provider, in good faith and without gross negligence, to be non-taxable. In determining whether the non-collection was in good faith and without gross negligence, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence.

#### **2-4-1118: RECORDS:**

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

may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator, or the Tax Administrator's designated representative, shall have the right to inspect at a reasonable time.

B. The City may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this article, 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 nondisclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code Sections 7284.6 and 7284.7. The Tax Administrator, or the Tax Administrator's designated representative, may request from a person providing transportation services of gas or electricity to service users within the City a list of the names and addresses, and other pertinent information, of its transportation customers within the City pursuant to Section 6354(e) of the California Public Utilities Code.

D. If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: 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, then the Tax Administrator may impose a penalty of five hundred dollars (\$500.00) on such person for each day following: 1) the initial date that the person refuses to provide such access; or 2) 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 Article.

#### **2-4-1119: REFUNDS:**

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

A. The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Article from a service user or service supplier, 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 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 claim on behalf of a class or group of taxpayers.

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

the one year written claim requirement of this subsection be given retroactive effect; provided, however, that any claims which arose prior to the commencement of the one year claims period of this subsection, and which are not otherwise barred by a then applicable statute of limitations or claims procedure, must be filed with the Tax Administrator as provided in this subsection within ninety (90) days following the effective date hereof.

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

#### **2-4-1120: APPEALS:**

A. The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 2-4-1119 of this Article), 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 2-4-1119 of this article), 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 2-4-1119 of this article), 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 day.

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

#### **2-4-1121: 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 article of any tax or any amount of tax required to be collected and/or remitted.

#### **2-4-1122: REMEDIES CUMULATIVE:**

All remedies and penalties prescribed by this article 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 article.

#### **2-4-1123: NOTICE OF CHANGES TO THIS ARTICLE:**

If a tax under this article is added, repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of Section 799 of the California Public Utilities Code. 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.

#### **2-4-1124: SEVERABILITY:**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article 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 Article 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.



## **2-4-1125: PENALTIES:**

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, or an infraction at the discretion of the City Attorney.

## **2-4-1126: FUTURE AMENDMENT OR RECODIFICATION OF CITED STATUTE OR REGULATION:**

Unless specifically provided otherwise, any reference to a state or federal statute or regulation in this Article shall mean such statute as it may be amended or recodified from time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease (as a result of excluding all or a part of a utility service, or charge therefore, from taxation). Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the city's authorization to collect or impose any tax imposed under this chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter.

## **SECTION 2. Relationship to Prior Acts.**

(a). Collection of Tax by Service Providers. Service providers, including those not presently collecting the tax imposed by Article 11 of Chapter 4, Title 2 of the Burbank Municipal Code (as amended herein), shall begin to collect said tax as soon as feasible after the effective date of this Ordinance, but in no event later than the time permitted by Section 799 of the California Public Utilities Code.

(b) In the event that a final court order should determine that the election at which this Ordinance was approved is invalid for whatever reason, or that any tax imposed under Article 11 of Chapter 4, Title 2 of the Burbank Municipal Code (as amended herein) is invalid in whole or in part, then the taxes imposed under Article 11 of Chapter 4, Title 2 of the Burbank Municipal Code, as it existed prior to its amendment as provided herein, shall automatically continue to apply with respect to any service for which the tax has been determined to be invalid. Such automatic continuation shall be effective beginning as of the first date of service (or billing date) for which the tax imposed by Article 11 of Chapter 4, Title 2 of the Burbank Municipal Code is not valid. However, in the event of an invalidation, any tax (other than a tax that is ordered refunded by the court or is otherwise refunded by the City) paid by a person with respect to a service and calculated pursuant to Article 11 of Chapter 4, Title 2 (as amended herein) shall be deemed to satisfy the tax imposed under Article 11 of Chapter 4, Title 2, as it existed prior to its amendment as

provided herein, on that service, so long as the tax is paid with respect to a service provided no later than six months subsequent to the date on which the final court order is published.

**SECTION 3. Effective Date.** This shall be deemed adopted upon the date that the vote is declared by the City Council and shall go into effect ten (10) days after that date, as provided in section 9217 of the California Elections Code.

**SECTION 4. Amendment or Repeal.** Article 11 of Chapter 4, Title 2 of the Burbank Municipal Code, as amended by this Ordinance, may be repealed or amended by the City Council without a vote of the people. However, as required by Article XIII C of the California Constitution, voter approval shall be required for any amendment that would impose a new tax or increase the rate of any existing tax levied pursuant to this Ordinance. The People of the City of Burbank affirm that the following actions shall not constitute an increase of the rate of a tax:

1. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of the tax;
2. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance.
3. The establishment of a class of persons that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Ordinance); and
4. The collection of the tax imposed by this Ordinance, even if the City had, for some period of time, failed to collect the tax.

**SECTION 5. Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The people hereby declares that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

**SECTION 6. Ratification of Prior Tax.** The voters of the City of Burbank hereby ratify and approve the past collection of the Utility Users' Tax as imposed by Article 11 of Chapter 4, Title 2 of the Burbank Municipal Code as it existed prior to the effective date of this Ordinance.

**SECTION 7. Execution.** The Mayor of the City of Burbank shall sign this Ordinance where indicated below as evidence of its adoption by the voters of the City, and the City Clerk shall attest.

Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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City Attorney