

## City of Culver City Municipal Code

### Chapter 33B. UTILITY USERS TAX

#### Section 33B-1. Title.

This Chapter shall be known as the Utility Users Tax Ordinance of the City of Culver City.

#### Section 33B-2. Definitions.

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

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

(b) "City" shall mean the City of Culver City.

(c) "Telephone corporation," "electrical corporation," "gas corporation," "water corporation," and "cable television corporation" shall have the same meanings as defined in Sections 234, 218, 222, 241, and 215.5, respectively, of the Public Utilities Code of the State of California. "Electrical corporation" and "water corporation" shall be construed to include any organization or municipality or agency engaged in the selling or supplying of electricity or water to a Service User.

(d) "Tax Administrator" shall mean the Treasurer of the City of Culver City, or his or her authorized representative.

(e) "Service Supplier" shall mean any entity or Person that provides telephone communication, electric, gas, water, or video service to a user of such services within the City. The term shall include an entity or Person required to collect or self-collect under Section 33B-5.5 of this Chapter and remit a tax imposed by this Chapter, including its billing agent in the case of gas, electric, water and video Service Suppliers.

(f) "Service User" shall mean a Person required to pay a tax imposed by this Chapter.

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

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

(i) "Billing Address" shall mean the mailing address of the Service User where the Service Supplier submits invoices or bills for payment by the customer.

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

(k) "Non-Utility Service Supplier" shall mean:

(1) a Service Supplier, other than a provider of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, Exempt Wholesale Generator, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

(2) an electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a provider 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 provider 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) “Gas” shall mean natural or manufactured Gas or any alternate hydrocarbon fuel, which may be substituted therefor.

(m) “Telephone Communication Services” shall mean any telephonic quality communication that is interconnected to the public switched network, and shall include, without limitation, for the purpose of transmitting messages or information (including but not limited to voice, telegraph, teletypewriter, data, facsimile, video, or text) by electronic, radio or similar means through “interconnected service” with the “public switched network” [as these terms are commonly used in the Federal Communications Act and the regulations of the Federal Communications Commission - see 47 U.S.C.A. Section 332(d)], whether such transmission occurs by wire, cable, fiber-optic, light wave, laser, microwave, radio wave (regardless of radio spectrum used), switching facilities, satellite or any other similar facilities.

(n) “Video Service Supplier” shall mean any Person, company, or service which provides one or more channels of video programming or communications (including the leasing of channel access to provide such video programming or communications) to or from an address in the City, including to or from a business, home, condominium, or apartment, 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. Section 522 (12)], suppliers of cable television, master antenna television, satellite master antenna television, multichannel multipoint distribution services, direct broadcast satellite (to the extent allowed by federal law), and other suppliers of video programming or communications (including two-way communications), whatever their technology.

(o) “Video Services” shall mean any and all services related to the supplying of video programming (including origination programming), communications (including two-way communications), regardless of the content of the video programming or communications, and shall include the leasing of channel access (e.g., home shopping) to the extent that the Service User is subject to an additional direct or indirect charge for programming or communications over the leased channel. “Video Services” shall not include services for which a tax is paid under Section 33B-3 of this Chapter.

Section 33B-3. Telephone Users Tax.

(a) There is hereby imposed a tax upon every Person who uses Telephone Communication Services in the City, including intrastate, interstate (including calls to the District of Columbia), and international Telephone Communication Services. The tax imposed by this Section shall be at the rate of eleven percent (11%) of the charges made for such Telephone Communication Services and shall be collected from the Service User by the Telephone Communication Services supplier or its billing agent. To the extent allowed by law, the tax on Telephone Communication Services shall apply to a Service User if the Billing or Service Address of the Service User is within the City's boundaries.

(b) Except as otherwise provided herein, the words "telephone communication services" shall mean "communications services" as defined in Sections 4251 and 4252 of the Internal Revenue Code, and the regulations thereunder, regardless of the means or technology used to provide such services. "Telephone communication services" shall not include "private mobile radio service" [as defined in Part 20 of Title 47 of the Code of Federal Regulations], which is not interconnected to the public switched network. The tax imposed under subsection (a), above, shall not be imposed upon any Person for using Telephone Communication Services to the extent that, pursuant to Sections 4252 and 4253 of the Internal Revenue Code, the amounts paid for such communication services are exempt from or are not subject to the tax imposed under Section 4251 of the Internal Revenue Code. In the event that the federal excise tax on "communication services" as provided in Sections 4251, 4252 and 4253 of the Internal Revenue Code is subsequently repealed, any reference in this section to such law, including any related federal regulations, private letter rulings, case law, and other opinions interpreting these sections, shall refer to that body of law that existed immediately prior to the date of repeal.

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

(d) To prevent actual multi-jurisdictional taxation of Telephone Communication Services subject to tax under this Section, any Service User, upon proof to the Tax Administrator that the Service User has previously paid the same tax in another state or city on such Telephone Communication Services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city; provided, however, the amount of credit shall not exceed the tax owed to the City under this section. For purposes of establishing sufficient legal nexus for the imposition and collection of utility users' tax on charges for Telephone Communication Services pursuant to this Chapter, "minimum contacts" shall be construed broadly in favor of the imposition and collection of the utility users' tax to the fullest extent permitted by California and federal law, and as it may change from time to time.

(e) Claims for refunds pursuant to Subsection (d) above or pursuant to any claim of multiple taxation or overpayment shall be made within ninety (90) days of the date of the billing notice or invoice upon which the alleged overpayment is based. The tax on Telephone 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. If a Service Supplier of Telephone Communication Services uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the Service Supplier shall: i) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the Service Supplier to bill, collect, and/or remit the tax to the City; and, ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

(f) The Tax Administrator may, from time to time, issue and disseminate to telecommunication Service Suppliers, which are subject to the tax collection requirements of this ordinance, an administrative ruling identifying those telecommunication services that are subject to the tax of subsection (a) above. This administrative ruling shall be consistent with legal nexus and the federal excise tax rules, regulations, and laws pertaining to “communications services”. In the event that the federal excise tax on telecommunications is repealed, this administrative ruling shall refer to the federal excise tax law on telecommunications that existed immediately prior to the date of repeal.

#### Section 33B-4. 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 eleven percent (11%) 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.

(b) As used in this Section, the term “charges” shall include:

(1) energy charges;

(2) distribution or transmission charges;

(3) metering charges;

(4) stand-by, 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 fees, franchise surcharges, annual and monthly charges, and other charges, fees and surcharges, which are necessary or common to the receipt, use and enjoyment of electric service; and,

(6) charges, fees, or surcharges for electric 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) The Tax Administrator shall, from time to time, survey the electric Service Suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential 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 may, thereafter, issue and disseminate to such electric Service Suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use and enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Unbundled charges for such components and items shall be subject to the tax of subsection (a) above.

(d) As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the Service User in exchange for the electricity or services related to the provision of such electricity. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the Service Supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.

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

(f) The tax on electricity provided 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 33B-5.5 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. If an electric Service Supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the Service Supplier shall: i) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the Service Supplier to bill, collect, and/or remit the tax to the City; and, ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

#### Section 33B-5. Gas Users Tax.

(a) There is hereby imposed a tax upon every Person using Gas in the City, which is delivered through a pipeline distribution system. The tax imposed by this Section shall be at the rate of eleven percent (11%) of the charges made for such Gas, including all services related to the storage, transportation and delivery of such Gas.

(b) As used in this section, the term “charges” shall include:

(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 or by mobile transport;

(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 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) The Tax Administrator shall, from time to time, 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 may, thereafter, issue and disseminate to such Gas Service Suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use and enjoyment of Gas service; or, ii) currently, or historically have been, included in a single or bundled rate for Gas service by a local distribution company to a class of retail customers. Unbundled charges for such components and items shall be subject to the tax of subsection (a) above.

(d) As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the Service User in exchange for the Gas or services related to the delivery of such Gas. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the Service Supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.

(e) There shall be excluded from the base on which the tax imposed in this Section is computed (1) charges made for Gas which is to be resold and delivered through a pipeline distribution system; (2) charges made for Gas to be used in the generation of electricity by an Electrical Corporation; (3) charges made by a Gas public utility for Gas used and consumed in the conduct of the business of Gas public utilities; (4) charges made for Gas used in the propulsion of a motor vehicle, as defined in the California Vehicle Code, utilizing natural Gas, and (5) charges made for Gas used by a Non-Utility Service Supplier to generate electricity for its own use or for sale to others provided the electricity so generated is subject to the tax in accordance with Section 33B-4 of this Chapter.

(f) The tax that is calculated on charges for 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 33B-5.5 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. If a Gas Service Supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the Service Supplier shall: i) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the Service Supplier to bill, collect, and/or remit the tax to the City; and, ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

#### Sec. 33B-5.5. Collection of tax from service users receiving direct purchase of gas or electricity.

(a) Any Service User subject to the tax imposed by Section 33B-4 or by Section 33B-5 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, 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 payment pattern of similar customers of the Service Supplier using similar amounts of Gas or electricity, provided that the Service User shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

(b) The Tax Administrator may require said Service User to identify its Non-Utility Service Supplier and provide, subject to audit, invoices, books of account, or other satisfactory evidence documenting the quantity of Gas or electricity used, including any related supplemental services, and the cost or price thereof. If the Service User is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the equivalent charges the Service User would have incurred if the Gas or electricity used, including any related supplemental services, had been provided by the Service Supplier that is the primary supplier of Gas or electricity within the City. Rate schedules for this purpose shall be available from the City.

#### Section 33B-6. Water Users Tax.

(a) There is hereby imposed a tax upon every Person using the City water which is delivered through mains or pipes. The tax imposed by this Section shall be at the rate of eleven percent (11%) of the charges made for such water and shall be paid by the Person paying for such water.

(b) There shall be excluded from the base on which the tax imposed in this Section is computed charges made for water which is to be resold and delivered through mains or pipes; and charges made by a municipal water department, public utility or a county or municipal water district for water used and consumed by such department, utility or district in the conduct of the business of such department, utility or district.

### Section 33B-7. Video Users Tax.

(a) There is hereby imposed a tax upon everyone in the City using Video Services from a Video Service Supplier. The tax imposed by this Section shall be at a rate of eleven percent (11%) of the charges made for such Video Services.

(b) As used in this section, the term “charges” shall include charges made for:

(1) franchise fees and access fees (PEG), whether designated on the customer’s bill or not;

(2) initial installation of equipment necessary for provision and receipt of Video Services;

(3) late fees, collection fees, bad debt recoveries, and return check fees;

(4) activation fees, reactivation fees, and reconnection fees;

(5) all programming services (e.g., basic services, premium services, audio services, video games, pay-per-view services, and electronic program guide services);

(6) equipment leases (e.g., converters, remote devices);

(7) service calls, service protection plans, name changes, changes of services, and special services (e.g., no promotional mail);

(8) the leasing of channel access (e.g., home shopping) to the extent that the Service User is subject to an additional direct or indirect charge for programming or communications over the leased channel; provided that, in the absence of evidence of direct payment by the Service User, the indirect payment of the Service User(s), which is subject to the utility users’ tax, shall be deemed to be the lease payment to the Video Service Supplier by the party leasing the channel access.

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

(d) As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the Service User in exchange for the Video Services. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the Service Supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.

(e) The tax imposed by this section shall be collected from the Service User by the Video Service Supplier, its billing agent, or a reseller of such services. In the case of Video Services, the Service User shall be deemed to be the purchaser of the bulk Video Services (e.g., an apartment owner), unless such services are resold to individual users, in which case the Service User shall be the ultimate purchaser of the Video Service. 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. If a Video Service Supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the Service Supplier shall: i) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the Service Supplier to bill, collect, and/or remit the tax to the City; and, ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

#### Section 33B-8. Exemptions.

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

(1) any Person or service if imposition of such tax upon that Person or service would be in violation of a federal or California statute, the Constitution of the United States or the Constitution of the State of California; and,

(2) the City.

(b) Any Service User that is exempt from the tax imposed by this Chapter pursuant to subsection (a) shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a Service User that is a state or federal agency or subdivision with a commonly recognized name, or is a Service User of Telephone Communication Services that has received a federal excise tax exemption certificate for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all utility Service Suppliers serving that Service User. If deemed exempt by the Tax Administrator, such Service User shall give the Tax Administrator timely written notice of any change in utility Service Suppliers so that the Tax Administrator can properly notify the new utility Service Supplier of the Service User's tax exempt status. A Service User that fails to comply with this section shall not be entitled to a refund of utility users' taxes collected and remitted to the Tax Administrator from such Service User as a result of such 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. With respect to a Service User of Telephone Communication Services, a Service Supplier of such Telephone Communication Services doing business in the City shall, upon request of the Tax Administrator, provide a copy of the federal exemption certificate for each exempt customer within the City that is served by such Service Supplier.

#### Section 33B-9. Collection of Tax.

(a) The duty of Service Suppliers to collect and remit the taxes imposed by the provisions of this Chapter shall be performed as follows:

(b) The tax shall be collected insofar as practicable at the same time as, and along with, the collection of charges made in accordance with the regular billing practice of the Service Supplier.

(c) The duty to collect tax from a Service User shall commence with the beginning of the first regular billing period applicable to that Person which starts on or after the operative date of this Chapter. Where a Person receives more than one (1) billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

(d) If the amount paid by a Service User to a Service Supplier is less than the full amount of the charge and tax which has 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 33B-13 of this Chapter shall apply.

#### Section 33B-10. Reporting and Remitting.

Each Person required by this Chapter to remit a tax shall file a return with the Tax Administrator on forms approved by the Tax Administrator on or before the due date. The full amount of the tax owed shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such further information as he deems necessary to properly determine if the tax here imposed is being levied and collected in accordance with this Chapter. Returns and remittances are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code §7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information, and not subject to the Public Records Act.

#### Section 33B- 11. Penalty.

(a) Taxes collected from a Service User, or owed by a Service User subject to Section 33B-5.5 of this Chapter, which are not remitted to the Tax Administrator on or before the due dates provided in this Chapter are delinquent. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday.

(b) If the Person required to collect and/or remit the utility users' tax fails to collect the tax by failing to properly assess the tax on one or more services or charges on the customer's billing, or fails to remit the tax collected, or, in the case of a Service User that fails to properly self-collect and remit the tax under Section 33B-5.5 of this Chapter, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen percent (15%) of the total tax that is delinquent or deficient in the remittance.

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

(d) In addition to any other penalties imposed by this Chapter, any Person required to collect and/or remit any tax imposed by the provisions of this Chapter who fails to collect the tax (by failing to properly assess the tax on the customer's billing) or fails to remit the tax collected, or, in the case of a Service User that fails to properly self-collect and remit the tax under Section 33B-5.5 of this Chapter, 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.

#### Section 33B-12. 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 ordinance shall be liable to an action brought in the name of the City for the recovery of such amount, plus any collection costs incurred by the City as a result of the Person's noncompliance with this Chapter, including, but not limited to, reasonable attorneys fees.

#### Section 33B-12.5. Additional Power and Duties of Tax Administrator.

(a) The Tax Administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this Chapter.

(b) The Tax Administrator may adopt administrative rules and regulations not inconsistent with provisions of this Chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such 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: i) conform to the billing procedures of a particular Service Supplier (or Service User subject to Section 33B-5.5 of this Chapter) so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this Chapter; or, ii) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and are voidable by the Tax Administrator or the City at any time.

(d) The Tax Administrator alone shall be authorized to determine the eligibility of any Person who asserts a right to exemption from or a refund of, the tax imposed by this Chapter.

#### Section 33B-13. Failure to Pay Tax-Administrative Remedy.

(a) Whenever the Tax Administrator determines that a Service User has deliberately withheld the amount of the tax owed by him from the amounts remitted to a Service Supplier, or that a Service User has failed to pay the amount of the tax for a period of two (2) or more billing periods, or whenever the Tax Administrator deems it in the best interest of the City, he may relieve the Service Supplier of the obligation to collect taxes due under this Chapter from certain named Service Users for specified billing periods. The Service Supplier shall provide the City with the names and addresses of such Service Users and the amounts of taxes owed under the provisions of this Chapter.

(b) The Tax Administrator shall notify the non-paying Service User that he has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the Service User by handing it to him personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the Service User at the address to which billing was made by the Service Supplier; or should the Service User have changed his address, to his last known address. If a Service User fails to remit the tax to the Tax Administrator within fifteen (15) days from the date of the service of the notice upon him, which shall be the date of mailing if service is not accomplished in Person, a penalty of twenty-five percent (25%) of the amount of the tax set forth in the notice shall be imposed, along with interest at the rate of three-quarters of one percent (3/4%) per Month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid, but not less than Five Dollars (\$5.00).

(c) The Tax Administrator may make an assessment for taxes not paid or remitted by a Service User required to pay or remit. A notice of the assessment which shall refer briefly to the amount of the taxes and penalties imposed and the time and place when such assessment shall be submitted to the City Council for confirmation or modification. The Tax Administrator shall mail a copy of such notice to the Service Supplier and Service User at least ten (10) days prior to the date of the hearing and shall post such notice for at least five (5) continuous days prior to the date of the hearing in a conspicuous place freely accessible to the public at large. Any interested party having any objections may appear and be heard at the hearing provided his objection is filed in writing with the Tax Administrator prior to the time set for the hearing. At the time fixed for considering said assessment, the City Council shall hear the same together with any objection filed aforesaid and thereupon may confirm or modify said assessment by motion.

#### Section 33B-14 Appeals.

(a) If the Service User or Service Supplier is aggrieved by any decision or administrative ruling of the Tax Administrator, or with the failure to grant a refund or exemption as provided for under this Chapter, he/she may appeal to a Board of Review comprised of the Chief Administrative Officer, the Community Development Director and the Public Works Director, or their duly authorized designee, by filing a notice of appeal with the Tax Administrator within fourteen (14) days of the decision or administrative ruling which aggrieved the Service User or Service Supplier. The Tax Administrator shall thereupon fix a time and place for a hearing of such appeal. The Tax Administrator shall give notice to such Person of the time and place of hearing as herein provided herein.

(1) The notice of appeal shall contain the name and address of the Person appealing the action, the decision appealed from and the grounds for the appeal. A defect in the form of the notice does not affect the validity or right to an appeal. The notice of appeal shall be accompanied by the fee fixed by resolution of the City Council. The notice of appeal shall be served upon the Person either by handing it to him or her personally, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the Person at the address of the Billing Address appearing on the face of the registration certificate. For the purpose of this Section, a service by mail is complete at the time of deposit in the United States mail. Within fifteen (15) days after the date of service, the Person assessed may either apply in writing to the Tax Administrator for a hearing on the assessment or may file a written request that such hearing be waived. If the Person neither requests a hearing upon the assessment nor requests a waiver of hearing within the prescribed time, the amount of the assessment shall be final and the amount thereof shall immediately be due and owing to the City of Culver City, but penalties and interest as provided by this Chapter shall continue to accrue until paid.

(2) Waiver of Hearing. If the Person requests that the hearing be waived, the Tax Administrator may either grant such request and notify the Person thereof in writing or may, in his or her discretion, deny the request and set the assessment for hearing at the time and in the manner prescribed herein. If the Tax Administrator grants the request for waiver of hearing, the administrative proceedings prescribed by the Section shall be deemed exhausted and the City shall have the right to bring an action in any court of competent jurisdiction to collect the amount of the assessment, plus such penalties and interest as may have accrued thereon as provided by this Chapter.

(3) If the Person requests a hearing upon any decision or administrative ruling of the Tax Administrator or if the Tax Administrator denies the request for the waiver of hearing, the Tax Administrator shall cause the matter to be set for hearing before the Board of Review no later than ninety (90) days after the date of the application, or as the case may be, the date of the Tax Administrator's denial of the request for waiver of hearing. Notice of the time and place of the

hearing shall be mailed to the Person assessed not later than fifteen (15) days before the date set for hearing and, if the Tax Administrator desires said Person to produce specific records at such hearing, such notice may designate the records required to be produced.

(4) At the hearing the Person appealing the action and the Tax Administrator, may submit such evidence as they believe to be relevant to their respective positions. The Board of Review may require the presentation of additional evidence from either the Person assessed or from the Tax Administrator, or from both, and may continue the hearing from time to time for the purpose of allowing the presentation of additional evidence.

(5) Exception. Within fifteen (15) days from the date of service of the notice of decision of the Board of Review, the Person appealing the action may file written exceptions to the decision of the Board of Review, but shall not be required to do so. If the Person does not do so, the Person shall nevertheless be deemed to have exhausted the administrative proceedings provided by this Section. Upon filing of written exceptions, the Board of Review may either deny the exceptions or modify its decision, as it deems appropriate. If the Board of Review modifies its decision, it shall cause a written notice of decision as required herein to be given to the Person assessed at the time, and in the manner provided therein. If the Board of Review does not modify its decision within thirty (30) days from the service of said exceptions, the exceptions shall be deemed denied.

(6) Effect of Delay in Administrative Proceedings. Failure of the Tax Administrator to set any hearing within the time prescribed herein and failure of the Board of Review to complete any procedure prescribed in this Section within the period stated shall not affect the validity of any proceedings taken hereunder.

(7) Effect of Payment of a Tax. Acceptance of any payment upon a tax, the validity of which has not previously been passed upon by the Board of Review, shall not preclude the Tax Administrator from subsequently levying another assessment in any case where the original assessment does not truly reflect the correct tax liability.

(b) 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.

#### Section 33B-15. Records.

(a) It shall be the duty of every Person required to collect and/or remit to the City any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he 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 all reasonable times. The Tax Administrator, or the Tax Administrator's designated representative, is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to Revenue and Tax Code § 7284.6-.7.

(b) The Tax Administrator, or the Tax Administrator's designated representative, may request from a Person providing transportation or distribution services of Gas or electricity to Service Users within the City, a list of the names, Billing and Service Addresses, quantities of Gas or electricity delivered, and other pertinent information, of its transportation customers within the City pursuant to Section 6354(e) of the California Public Utilities Code.

(c) 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, the Tax Administrator or the Tax Administrator's designated representative may impose a penalty of five hundred dollars (\$500) on such Person for each day following the initial date that the Person refuses to provide such access. This penalty shall be in addition to any other penalty imposed under this Chapter.

#### Section 33B-16. Refunds.

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

(b) The Tax Administrator may refund any tax that has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter, provided that no refund shall be paid under the provisions of this Section unless the claimant or his or her guardian, conservator, executor or administrator has submitted a written claim to the Tax Administrator within one 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. The submission of a written claim, which is acted upon by the City Council, shall be a prerequisite to a suit thereon. (See Government Code Section 935). 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.

(c) 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 Section, 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 of this ordinance.

(d) Notwithstanding other provisions of this Section, whenever a Service Supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to Service Users of charges for past utility services, the taxes paid pursuant to this Chapter on the amount of such refunded charges shall also be refunded to Service Users, and the Service Supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly return. In the event this ordinance is repealed, the amounts of any refundable taxes shall be borne by the City.

#### Section 33B-17. 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 unconstitutional, such decision shall not affect the validity of the remaining portions of this Chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one (1) or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

### Section 33B-18. Exemptions.

(a) The utility users' tax imposed by this Subchapter shall not apply to any individual sixty (60) years of age or older, who uses telephone, electric, gas, water or video services; in or upon any premises occupied by such individual; provided the total adjusted gross income of that individual, as used for purposes of the California Personal Income Tax Law, was no more than \$18,200.00 for the most recent completed calendar years; and provided the combined adjusted gross income of all members of the household in which such individual resided was no more than \$21,500.00.

(b) The provisions of this exemption shall also apply to any individual who meets the criterion of disability, as established by the Social Security Administration's Supplemental Security Income Program for the Aged, Blind, and Disabled (Title XVI of the Social Security Act as amended), without regard to the age of such disabled individual.

(c) The exemption granted by this section shall not eliminate the duty of the Service Supplier from collecting taxes from such exempt individuals, or the duty of such exempt individuals from paying such taxes to the Service Supplier; unless an exemption is applied for by the Service User and granted in accordance with the provisions of this section.

(d) Any Service User exempt from the taxes imposed by this Chapter because of the provisions of subsections (a) or (b) above, may file an application with the Tax Administrator for an exemption. Such application shall be made upon a form supplied by the Tax Administrator; and shall state those facts, declared under oath, which qualify the applicant for an exemption.

(e) The Tax Administrator shall review all such applications, and shall certify as exempt those applicants determined to qualify therefor; and shall notify all Service Suppliers affected that such exemptions have been approved. For each exemption, the following information shall be transmitted to the Service Supplier:

(1) Name of exempt applicant;

(2) Account number shown on utility bill;

(3) Address to which exempt service is being supplied; and

(4) Any other information as may be necessary for the Service Supplier to remove the exempt Service User from its tax billing procedure.

(f) Upon receipt of such notice, the Service Supplier shall not be required to continue to bill any further tax imposed by this Chapter from such exempt Service User, until further notice by the Tax Administrator is given. The Service Supplier shall eliminate such exempt Service User from its tax billing procedure no later than sixty (60) days after receipt of such notice from the Tax Administrator.

(g) All exemptions shall continue and be renewed automatically by the Tax Administrator, so long as the prerequisite facts supporting the initial qualification for exemption shall continue; provided, however, that the exemption shall automatically terminate with any change in the Service Address or residence of the exempt individual; further provided such individual may nevertheless apply for a new exemption with each change of address or residence.

(h) The Tax Administrator shall have the power and right to demand evidence of continued eligibility of a Service User for exemption under the provisions of this Section. Such evidence may include, but

need not be limited to, copies of business records, letters or statements from the Social Security Administration, copies of income tax returns, and such other evidence concerning the Service User or other members of his household as may tend to prove or disprove such eligibility. Failure to provide such evidence as is within the control of a Service User to so provide, either directly by him or by his consent or the consent of a member of his household when such evidence is requested of the Service User in writing by the Tax Administrator, shall be grounds for the immediate discontinuance of the Service User's eligibility for exemption under the provisions of this Section. Evidence provided to the Tax Administrator upon request, or voluntarily provided by the Service User without request, may not be used against such Service User as evidence of violation of the provisions of this Section; such evidence may only be used as grounds for termination of the exemption herein provided.

(i) Any individual exempt from the tax 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 exemptions provided by this Section, when the basis for such exemption either does not exist or ceases to exist.

(j) Notwithstanding any of the provisions hereof, 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, such Service Supplier 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) Commencing January 1, 1977, any individual entitled to be exempt from the taxes imposed by this Subchapter, who used telephone, electric, gas, water or video services and paid more than \$3.00 in such taxes, may, during the calendar year following such payment, apply for a refund thereof on forms provided by the Tax Administrator. Refund applications shall contain a declaration of those facts, under oath, which qualify the applicant for a refund, and shall be accompanied by the customer's bills showing the amount of such taxes billed by service supplier during the preceding calendar year. Refund claims may be filed by an individual who used telephone, electric, gas, water or video services and paid the taxes prescribed by this subchapter either directly or indirectly to the "service user" rather than the service supplier. In the event the applicant has lost or destroyed any relevant billings or statements showing the amount of tax paid, or if the applicant indirectly paid such taxes in conjunction with the occupation of premises without receiving a specific billing therefor from the service user, the maximum refund shall be \$48.00, or \$4.00 for each full month of services received by the applicant, whichever is less.

(l) If the Tax Administrator determines that an application for exemption is faulty, or that the applicant has failed to truthfully set forth such facts, application for the exemption shall be denied in writing to the applicant. The applicant shall thereafter have a right to file an amended application for exemption: or to appeal the Tax Administrator's decision to the Chief Administrative Officer within a 10-day period after the mailing date of the Tax Administrator's rejection. In the case of an appeal, the Chief Administrative Officer shall review the facts in consultation with the City Attorney, and shall render a final determination on such appeal.

#### Section 33B-19. Notice of Changes to Ordinance.

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

effective date of the ordinance change, the Service Supplier shall provide the Tax Administrator with a copy of any written procedures describing the information that the Service Supplier needs to implement the ordinance change. If the Service Supplier fails to provide such written instructions, the Tax Administrator, or its agent, shall send, by first class mail, a copy of the ordinance change to all collectors and remitters of the City's utility users' taxes according to the latest payment records of the Tax Administrator.