

CITY OF HAWTHORNE

Chapter 3.44

UTILITY USER TAXES

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3.44.010 Definitions.

Except where the context otherwise requires, the definitions contained in this section governs the construction of this chapter.

A. \geq Person \leq means any domestic or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, Massachusetts business or common law trust, society or individual.

B. \geq City \leq means the city of Hawthorne.

C. \geq Telephone corporation, \leq \geq electrical corporation," \geq gas corporation, \leq \geq water corporation, \leq and \geq cable television corporation \leq have the same meanings as defined in Sections 215-5, 218, 222, 234 and 241, respectively, of the Public Utilities Code of the state as those sections existed on January 1, 1975. \geq Electrical corporation \leq includes any municipality or franchised agency engaged in the selling or supplying of electrical power to a service user.

D. \geq Tax administrator \leq means the treasurer of the city.

E. \geq Service supplier \leq means a person required to collect and remit a tax imposed by this ordinance.

F. \geq Service user \leq means a person required to pay a tax imposed by this chapter.

G. \geq Month \leq means a calendar month.

H. \geq Residential services \leq means services provided to an individual residence for personal use by the occupants.

(Ord. 1320 Section 1 (part), 1984.)

3.44.020 **Constitutional exemptions.**

Nothing in this chapter shall be construed as imposing a tax upon any person when imposition of such tax upon that person would be in violation of the Constitution of the United States or that of the state. (Ord.1310 B1 (part) 1984.)

3.44.30 **Telephone Users Tax**

A. There is imposed a tax on the amounts paid for any international, interstate or intrastate telephone communication services, including cellular telephone services and other telephone services that gain access to public switched network (PSN) by means of various technologies, by every person in the City other than a telephone corporation. The tax imposed by this section shall be at the rate of five percent (5%) of the charge made for such services and shall be paid by the person paying for such services. (Ordinance. No. 1572, July 1994)

B. As used in this section, the term \geq charges \leq shall not include charges for services paid for by inserting coins in coin-operated telephones except that where such coin-operated 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; nor shall the term \geq charges \leq include charges for any type of service or equipment furnished by a service supplier subject to public utility regulation during any period in which the same or similar services or equipment are also available for sale or lease from persons other than a service supplier subject to public utility regulation; nor shall the words \geq telephone communication

services≤ include land mobile services or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations as that section existed on January 1, 1970. The term "telephone communication services" refers to that service which provides access to a telephone system and the privilege of telephone quality communication with substantially all persons having telephone stations which are part of such telephone system. The telephone users tax is intended to, and does, apply to all charges billed to a telephone account having a situs in the city, irrespective of whether a particular communication service originates and/or terminates within the city.

- C. The tax imposed by this section shall be collected from the service user by the person providing the intrastate telephone communication services, or the person receiving payment for such services. The amount of the tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month.
- D. Notwithstanding the provisions of subsection A, the tax imposed under this section shall not be imposed upon any person for using intrastate telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under Division 2, Part 20, of the California Revenue and Taxation Code or the tax imposed under Section 4251 of the Internal Revenue Code.
(Ord. 1319 β 1 (part), 1984; Ord. 1310 Section 1, 1984.)

3.44.040 **Electricity users tax.**

A. There is imposed a tax upon every person in the City using electrical energy in the City. The tax imposed by this section shall be at the rate of five percent (5%) of the charges made for such energy and shall be paid by the person paying for such energy. "Charges", as used in this section, shall include charges made for: (1) metered energy, and (2) minimum charges for service, including customer charges, service charges, demand charges, standby charges and annual and monthly charges, fuel, cost adjustments, and the like. (Ord. 1572, July 1994)

B. As used in this section, the term ≥using electrical energy≤ shall not mean the storage of such energy by a person in a battery owned or possessed by him for use in an automobile or other machinery or device apart from the premises upon which the energy was received, provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; nor shall the term include electricity used and consumed by an electric utility supplier in the conduct of its business as an electric public utility; nor shall the term include the mere receiving of such energy by an electric public utility or governmental agency at a point within the city for resale; or the use of such energy in the production or distribution of water by a public utility or a governmental agency.

C. The tax imposed in this section shall be collected from the service user by the person supplying such energy. The amount of tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month.

(Ord. 1310 Section 1 (part), 1984.)

3.44.050 **Gas users tax.**

A. There is imposed a tax upon every person in the City, other than a gas corporation or electrical corporation, using in the City gas which is delivered through mains or pipes. The tax imposed by this section shall be at the rate of five percent (5%) of the charges made for such gas and shall be paid by the person paying for such gas. "Charges" as used in this section shall include: (1) gas which is delivered through mains or pipes; (2) minimum charges for such services, including customer charges, service charges, and annual and monthly charges. (Ord. 1572, July 1994).

B. There shall be excluded from the base on which the tax imposed in this section is computed: (1) charges made for gas which is to be resold and delivered through mains or pipes; (2) charges made for gas sold for use in the generation of electrical energy or for the production or distribution of water by a public utility or governmental agency; (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 that phrase is defined in the Vehicle Code of the state utilizing natural gas; and (5) charges related to late payments and returned checks.

C. The tax imposed in this section shall be collected from the service user by the person selling the gas. The person selling the gas shall on or before the twentieth of each calendar month commencing on the twentieth day of the calendar month after the effective date of this part, make a return to the tax administrator stating the amount of taxes billed during the preceding calendar month. At the time such returns are filed, the person selling the gas shall remit tax payments to the tax administrator in accordance with schedules established or approved by the tax administrator. The tax administrator is authorized to require such further information as necessary to properly determine if the tax imposed is being levied and collected in accordance with this chapter. Returns and remittances are due from the person selling the gas immediately upon cessation of business for any reason.
(Ord. 1310 section 1 (part), 1984.)

3.44.060 Water users tax.

A. There is imposed a tax upon every person in the City using water which is delivered through mains or pipes. The tax imposed by this section shall be at a rate of five percent (5%) of the charges made for such water. (Ord. 1572, July 1994)

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 city or municipal water district for water used and consumed by such department, utility or district.

C. The tax imposed in this section shall be collected from the service user by the person supplying the water. The amount collected in one month shall be remitted to the tax administrator on or before the last day of the following month.
(Ord. 1310 § 1 (part), 1984.)

3.44.070 Cable television users tax.

A. There is imposed a tax upon every person in the City using cable television service. The tax imposed by this section shall be at the rate of five percent (5%) of the charges made for such service and shall be paid by the person paying for such service. For purposes of this section, a cable television service shall mean any television signal delivered by cable, microwave or other method of telecommunication for a fee or charge. (Ord. 1572, July 1994)

B. The tax imposed in this section shall be collected from the service user by the person furnishing the cable television service. The amount collected in one month shall be remitted to the tax administrator on or before the last day of the following month.
(Ord. 1310 β I (part). 1984.)

3.44.080 Collection of tax-Duty-Procedures.

The duty to collect and remit the taxes imposed by this chapter shall be performed as follows:

A. Notwithstanding any other provision of this chapter, the tax shall be collected insofar as practicable at the same time as and along with the charges made in accordance with regular billing practice of the service supplier. Except in those cases where a service user pays the full amount of the charges but does not pay any portion of a tax imposed by this chapter, or where a service user has notified a service supplier that he is refusing to pay a tax imposed by this chapter which the service supplier is required to collect if the amount paid by a service user 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 have been paid.

B. The duty to collect tax from a service user commences 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 service user is billed for more than one billing period, the duty to collect arises separately for each separate billing period.
(Ord. 1310 β 1 (part). 1984.)

3.44.090 Delinquent taxes-Service supplier- When delinquent.

Taxes collected from a service user which are not remitted to the tax administrator on or before the due dates provided in this chapter are delinquent. (Ord. 1310 sec. 1 (part). 1984.)

3.44.100 Delinquent taxes-Service supplier- Penalty for failure to remit.

In addition to remitting the amount of the tax, any service supplier who fails to remit any tax imposed by this chapter within the time required and upon five days written notice to the service supplier of its failure to remit, shall pay a penalty of ten percent on the amount of tax which shall be added on the last day of each month following the date on which remittance was due until the tax and penalties are remitted. (Ord. 1310 β 1 (part), 1984.)

3.44.110 Delinquent taxes-Service supplier- Penalty for fraud.

If the tax administrator determines that the nonpayment by any service supplier of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added to the penalty imposed by Section 3.44.100. (Ord. 1310 β 1 (part), 1984.)

3.44.110 Delinquent Taxes-Service supplier-Interest.

In addition to the penalties imposed by Sections 3.44.100 and 3.44.110, any service supplier who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month, or fraction thereof, on the amount of the tax exclusive of penalties, from the date on which the remittance first become delinquent until paid. (Ord. 1310 β 1 (part), 1984)

3.44.130 Delinquent Taxes-Service supplier- Penalty and interest part of tax.

Every penalty imposed upon a service supplier and such interest as accrues under the provisions of Sections 3.44.100 through 3.44.120, becomes a part of the tax required to be remitted. (Ord.1310 Sect. 1 (part), 1984.)

3.44.140 Delinquent taxes-Service user- Penalty for failure to pay.

In addition to paying the amount of the tax, any service user who fails to pay any tax imposed by this chapter within sixty days of the date of the notice of the amount or tax due from the service supplier shall pay a penalty of ten percent of the amount of the tax which shall be added on the last day of each month following the date on which payment was due until the tax and penalties are paid. (Ord. 1310 Section 1 (part), 1984.)

3.44.150 Delinquent taxes-Service user- Penalty for fraud.

If the service supplier determines that the nonpayment by any service user of any tax imposed by this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalty imposed by Section 3.44.140. (Ord. 1310 Section 1 (part), 1984.)

3.44.160 Delinquent taxes-Service user- Interest.

In addition to the penalties imposed by Sections 3.44.140 and 3.44.150, any service user who fails to pay any tax imposed by this chapter shall pay interest at the rate of one percent per month, or fraction thereof, exclusive of penalties from the date on which the remittance first became delinquent until paid, and a collection charge of ten dollars for each delinquent account. (Ord. 1310 Section 1 (part), 1984.)

3.44.170 Delinquent taxes-Service user- Penalty and interest part of tax.

Every penalty imposed upon a service user, and such interest as accrues under the provisions of Sections 3.44.140 through 3.44.160, shall become a part of the tax required to be paid and to be remitted by the service supplier. (Ord. 1310 Section 1 (part), 1984.)

3.44.180 Actions to collect.

Any tax required to be paid by a service user under the provisions of this chapter shall be a debt owed by the service user to the city. Any such tax collected from a service user which has willfully been withheld from the tax administrator shall be a debt owed to the city by the person required to collect and remit. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount. Nothing in this section shall relieve any service supplier of the duty to collect and remit any tax, penalty or interest required by this chapter. (Ord. 1310 Section 1 (part), 1984.)

3.44.190 Additional power and duties of tax administrator.

A. The tax administrator shall have the power and duty, and is directed to enforce each and all of the provisions of this chapter.

B. The tax administrator shall have power to adopt 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 rules and regulations shall be on file in the tax administrator's office.

C. The tax administrator may make administrative agreements to vary the strict requirements of this chapter so that collection of any tax imposed here may be made in conformance with the billing procedures of a particular service supplier so long as those agreements result in collection of the tax in conformance with the general purpose and scope of this chapter. A copy of each such agreement shall be on file in the tax administrator's office.

D. The tax administrator shall determine the eligibility of any person who asserts a right to exemption from the tax imposed by this chapter. The tax administrator shall provide the service supplier with the name of any person who the tax administrator determines is exempt from the tax imposed, together with the address and account number to which service is supplied to any such exempt person.

(Ord.1310 B 1 (part), 1984.)

3.44.200 Assessment-Administrative remedy.

A. The tax administrator may make an assessment for taxes not remitted by a person required to remit.

B. Whenever the tax administrator determines that a service user has deliberately withheld the amount of the tax owed by such users from the amounts remitted to a person required to collect the tax or that a service user has refused to pay the amount of tax to such person or whenever the tax administrator deems it in the best interest of the city, he may relieve such person of the obligation to collect taxes due under this chapter from certain name service users for specified billing periods.

C. The service supplier shall provide the tax administrator with amounts refused along with the names, addresses and reasons of the service users refusing to pay the tax imposed under provisions of this chapter. Whenever the service user has filed to pay the amount of tax for a period of two or more billing periods, the service supplier may be relieved, of the obligation to collect taxes due.

D. The tax administrator shall notify the 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 person required to collect the tax; 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 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 of the amount of the tax set forth in the notice shall be imposed, but not less than five dollars. The penalty shall become part of the tax herein required to be paid.

E. Nothing in this section shall relieve the service supplier of any duty to collect and remit any tax, penalty or interest due under the provisions of this chapter.

(Ord. 1310 section 1 (part), 1984.)

3.44.210 Exemptions-Eligibility. Any service user who is sixty-two years of age or older and is head of household is eligible for an exemption from the taxes imposed by this chapter on service supplied the service users residential living quarters. 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 XLII of the Social Security Act as amended), without regard to the age of such disabled individual. {Ord. 1310 section 1 (part), 1984.}

3.44.210 Exemptions-Application- Time to file.

- A. Applications for exemption shall be filed with the tax administrator on such forms as he may provide.
- B. Applications may be filed at any time. (Ord. 1310 § 1 (part), 1984.)

3.44.230 Exemptions-Application-Contents.

Applications shall be verified by declaration under penalty of perjury and shall contain such information as may be required by the tax administrator. (Ord. 1310 section 1 (part), 1984.)

3.44.240 Exemptions-Application-Review and certification.

The tax administrator shall review each application and shall certify the service user as exempt if the eligibility requirements of Section 3.44.210 are met, except that no exemption shall be granted to a service user who is receiving service from a service supplier through a master meter and no exemption shall be granted with respect to any tax imposed by this chapter which is or has been paid by a public agency or where the service user receives funds from a public agency specifically for the payment of such tax. (Ord. 1310 Section 1 (part), 1984.)

3.44.250 Exemptions-Notice to service supplier.

If a service user is certified as exempt, the tax administrator shall promptly notify service user's service suppliers, stating the name of the service user, 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. (Ord. 1310 Section 1 (part), 1984.)

3.44.260 Exemptions-Discontinuance of billing.

Upon receipt of such notice, the service supplier shall within sixty days discontinue billing the service user for taxes imposed by this chapter, except as otherwise provided in Section 3.44.270 (Ord 1310 section 1 (part), 1984.)

3.44.270 Exemptions-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. (Ord. 1310 § 1 (part), 1984.)

3.44.280 Exemptions-Duration.

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; and provided further, that such individual may nevertheless apply for a new exemption with each change of address of residence. (Ord. 1310 section 1 (part), 1984.)

3.44.290 Exemptions-Duty to disclose disqualification.

A. Any service user who has been exempted under this chapter shall notify the collector within ten days of any change in fact or circumstance that might disqualify the individual from receiving such exemption. It shall be a misdemeanor for any person to knowingly receive the benefits of the exemption provided by this chapter when the basis for such exemption does not exist or ceases to exist.

B. 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 chapter have been complied with and, where appropriate, order the service supplier to commence collecting the tax from the nonexempt service user.

(Ord.1310 section 1 (part), 1984.)

3.44.300 Exemptions-Audit by tax administrator.

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 and state, county, city and private pension administrators or unemployment and welfare agencies, 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 chapter. Evidence provided to the tax administrator at his request, or voluntarily provided to him by the service user without the tax administrator's request, may not be used against such service user as evidence of violation of the provisions of this chapter. Such evidence may only be used as grounds for termination of the exemption herein provided. (Ord.1310 B 1 (part), 1984.)

3.44.310 Records.

It is the duty of every person required to collect and remit to the city any tax imposed by this chapter to keep and preserve, for a period of three 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 shall have the right to inspect at all reasonable times. (Ord. 1310 section 1 (part), 1984.)

3.44.320 Refunds.

A. Filing Claims. Whenever the amount of any utility users tax, interest, or penalty has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded as provided in this section.

B. Written Claim Shall Be Submitted Within One Year. The Tax Administrator may refund any utility users 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 which shall be the taxpayer who paid the utility users tax 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. Such claim shall be submitted under penalty of perjury. Nothing herein shall permit the filing of a refund claim on behalf of a class or group of taxpayers.

C. Claim Requirement To Be Given Retroactive Effect. It is the intent of the City that the one year written claim requirement of this subsection be given retroactive effect, provided, however, that any claims which arose prior to the enactment 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 section within ninety (90) days following the effective date of this ordinance.

D. Time In Which To Act Upon Refund Claim. The Tax Administrator shall act upon the refund claim within thirty (30) days of timely receipt of the refund claim. If the Tax Administrator fails or refuses to act on a refund claim within the thirty (30) day time period, the claim shall be deemed to have been rejected by the Tax Administrator. The Tax Administrator shall give notice of the rejection in a form which substantially complies with that set forth in Government Code § 913.

E. Appeal of Tax Administrator Decision Denying Tax Refund. The provisions of this section apply to any assessment, decision or administrative ruling of the Tax Administrator, relating only to a utility users tax refund. Any person aggrieved by any assessment, decision or administrative ruling of the Tax Administrator, relating to a utility users tax refund, 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.

(1) All appeals involving utility users tax refund claims valued at less than \$5,000.00 shall be made to the City Manager within fourteen (14) days of any adverse decision by the Tax Administrator. All appeals involving utility users tax refund claims valued at \$5,000.00 or more shall be made to the City Council within fourteen (14) days of any adverse decision by the Tax Administrator. The notice of appeal to either the City Manager or City Council shall be filed with the City Clerk within fourteen (14) days of the adverse decision by the Tax Administrator. The City Manager is authorized to settle any claim for utility users tax refund in an amount less than \$5,000.00. Appeal to the City Manager for individual refunds under \$5,000.00 and appeal to the City Council in the case of an individual refund in an amount of \$5,000.00 or more shall be a prerequisite to a suit thereon.

(2) The matter shall be set for hearing no more than thirty (30) days from the receipt of a timely notice of appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the

appealing party, the Tax Administrator, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

(3) Based upon the submission of such evidence and the review of the City's files, the City Manager/City Council 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.

(4) **Failure of City Manager/City Council to Act on Appeal Constitutes a Denial of Claim for Utility Users Tax Refund.** If the City Manager/City Council fails or refuses to act on the appeal upon receipt of notice therein, either by failure to set a hearing or failure to issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken as specified in Section 3.44.320(e)(1)(2) and (3), within forty-five days, the appeal of the denial of the claim for refund by the Tax Administrator shall be deemed to have been denied by the City Manager/City Council on the forty-fifth (45th) day.

F. Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission 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 by the service supplier, 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.

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

H. In addition, 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.

(amended by Ord. No. 1719, adopted July 23, 2001)

3.44.321

A. The provisions of this section apply to any utility users tax assessment, decision or administrative ruling of the Tax Administrator, other than a decision relating to a refund. Any person aggrieved by any utility users tax assessment, decision or administrative ruling of the Tax Administrator, other than a decision relating to a refund, 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. All appeals involving a utility users tax assessment, decision or administrative ruling of the Tax Administrator valued at less than \$5,000.00 shall be made to the City Manager within fourteen (14) days of any adverse decision by the Tax Administrator. All appeals involving a utility users tax assessment, decision or administrative ruling of the Tax Administrator valued at \$5,000.00 or more shall be made to the City Council within fourteen (14) days of any adverse decision by the Tax Administrator. The notice of appeal to either the City Manager or City Council shall be filed with the City Clerk within fourteen (14) days of the adverse decision by the Tax Administrator. The City manager is authorized to settle any claim for a utility users tax assessment, decision or administrative ruling of the Tax Administrator in an amount less than \$5,000.00. Appeal to the City Manager for individual refunds under \$5,000.00 and appeal to the City Council in the case of an individual refund in an amount of \$5,000.00 or more shall be a prerequisite to a suit thereon.

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

D. Based upon the submission of such evidence and the review of the City's files, the City Manager/City Council 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.

E. **Failure of City Manager/City Council to Act Constitutes a Denial of Appeal.** If the City Manager/City Council fails or refuses to act on the appeal upon receipt of notice therein, either by failure to set a hearing or failure to issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken as specified in Section 3.44.321(a-d), within forty-five days, the appeal of the utility users tax assessment, decision or administrative ruling of the Tax Administrator shall be deemed to have been denied by the City Manager/City Council on the forty-fifth (45th) day.

F. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against the City or against any 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.

(added by Ord. No. 1719, adopted July 23, 2001)

3.44.330 Violations-Penalties.

Any person violating any provision of this chapter, or any person willfully refusing to pay any tax required by this chapter, shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than five hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment. (Ord. 1310 B 1 (part), 1984.)

3.44.340 Jurisdiction of the Public Utilities Commission of the state.

Nothing contained in this chapter is intended to conflict with the applicable rules, regulations, and tariffs of any service supplier subject to the jurisdiction of the Public Utilities Commission of the State. In the event of any conflict, the provisions of such rules, regulations and tariffs shall control. (Ord. 1310 § 1 (part), 1984.)

3.44.350 Fund and purpose. All of the proceeds of the taxes levied under this chapter shall be placed in the general fund of the city and shall be utilized for general governmental purposes. (Ord. 1310 § 1 (part), 1984.)

3.44.360 (repealed by Ord. 1572, July 1994).