

ORDINANCE NO. 955

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA VERNE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AMENDING AND RESTATING IN ITS ENTIRETY CHAPTER 3.10 OF THE LA VERNE MUNICIPAL CODE PERTAINING TO THE CITY'S UTILITY USERS TAX ORDINANCE.

WHEREAS, the City of La Verne imposes a tax on the use of telephone, electricity and gas utility services in order to provide a portion of the general fund revenues required to provide police, fire, general government and a host of other essential services to the community; and,

WHEREAS, state and federal regulators are encouraging competition in the provision of traditional utility services by deregulating monopoly providers and by unbundling the billing charges for the various components of these services; and,

WHEREAS, in recent years there has been a substantial increase in the number of providers of telephone, electric, and gas services in the City of La Verne, and in the technologies used; all of which has caused dramatic changes in the manner in which the services are produced, marketed and distributed; and,

WHEREAS, in view of these changes and in order to give guidance to the many new utility service providers regarding their collection and remittance obligations, it is appropriate for the City of La Verne to update its utility users tax ordinance with needed clarifications regarding the scope of the City of La Verne's existing taxes and the responsibilities of the various utility service providers; and,

WHEREAS, to assure fair and equal application of the law, the utility users tax ordinance of the City of La Verne should be applied to similar utility services, regardless of the provider or the technology used to provide it; and,

WHEREAS, while modifying the utility users tax ordinance of the City of La Verne in the manner provided herein, it is not the intent of the City Council either to increase the tax percentage imposed on charges for utility use, or to expand the base of the tax.

NOW, THREFORE, BE IT RESOLVED by the City Council of the City of La Verne as follows:

Section 1. The City Council hereby amends and restates in its entirety Chapter 3.10 of the La Verne Municipal Code entitled "Utility Users Tax" which is attached hereto as Exhibit "A", and made a part herein by reference.

Section 2. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard, and this Ordinance shall take effect thirty (30) days after such passage and adoption.

APPROVED AND ADOPTED this 18th day of March, 2002.

Mayor

ATTEST

City Clerk

EXHIBIT "A"

Chapter 3.10 of the La Verne Municipal Code is hereby amended to read as follows:

Chapter 3.10. Utility Users Tax.

3.10.010 Definitions.

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

- A. "Billing Address" shall mean the mailing address of the Service User where the Service Supplier submits invoices or bills for payment by the customer.
- B. "Charges for Mobile Telecommunications Services" shall have the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Sections 116 and 124) and the regulations thereunder.
- C. "City" shall mean the City of La Verne, California
- D. "City Administrator" shall mean the City Manager, or his or her authorized representative.
- E. "Church" shall mean a place of worship and is intended as a general term including mosques, temples and other places in which a congregation holds religious services and ancillary activities.
- F. "Electrical Corporation" shall mean a corporation or person as defined in Public Utilities Code Section 218.
- G. "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.
- H. "Gas" shall mean natural or manufactured Gas or any alternate hydrocarbon fuel, which may be substituted therefor.
- I. "Low Income Rate Assistance Customer" shall mean a Service User who meets the low-income criteria established by California Public Utilities Commission General Order 153, Section 1.3.7 as it now exists or may hereafter be amended.
- J. "Mobile Home Park" shall mean any area of land within the city where two or more mobile home spaces are rented, or held out for rent, to accommodate mobile homes used for habitation.
- K. "Mobile Telecommunications Service" shall have the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations thereunder.
- L. "Month" shall mean a calendar month.
- M. "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, distributed generation provider, 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 service 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.
- N. "Person" shall mean, without limitation, any natural individual; firm; trust; Massachusetts business or common law trust; estate; partnerships of every kind; association; syndicate; society; club; joint stock company; joint venture; limited liability company; corporation (including foreign, domestic, and non-profit); municipal corporation (other than the City); municipal district; cooperative; or receiver, trustee, guardian or other representative appointed by order of any court.
- O. "Place of Primary Use" shall have the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 116 et. seq.) and the regulations thereunder.

P. "Private School" shall mean a non-profit institution of learning, which is not controlled by a public agency and which offers instruction in one or more grades K-12 or higher levels of academic study and learning as accredited by the State of California.

Q. "Senior Citizens Housing Complex" shall mean grouped dwelling units occupied by persons sixty-two (62) years of age or older and having significant facilities and services specifically designed to meet the physical or social needs of older persons.

R. "Service Address" shall mean the residential street address or the business street address of the Service User and, in the case of Mobile Telecommunications Service, the Service User's Place of Primary Use.

S. "Service Supplier" shall mean any Person, including the City, that provides telephone communication, electric or Gas services to a user of such services within the City. The term includes a Person required to collect, or self-collect under Section 3.10.070 of this chapter, and remit a tax as imposed by this ordinance, including its billing agent in the case of electric and Gas Service Suppliers.

T. "Service User" shall mean a Person required to pay a tax imposed by this chapter.

U. "State" shall mean the State of California

V. "Tax Administrator" shall mean the Finance Officer of the City, or his or her designee.

W. "Telephone Communication Services" shall mean "communications services" as defined in Sections 4251 and 4252 of the Internal Revenue Code, and the regulations thereunder, and shall include any telephonic quality communication for the purpose of transmitting messages or information [including but not limited to voice (both analog and digital – including the use of Internet Protocol (IP) or other similar means for digitization and/or packetization of telephonic quality communications for transmission via digital networks, in part or in whole), 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, cable modem or digital subscriber line (DSL), internet, fiber-optic, light wave, laser, microwave, radio wave [including, but not limited to, Mobile Telecommunications Service, cellular service, commercial mobile service, commercial mobile radio service (see 47 U.S.C. Section 332(d)(1) and Part 20.3 of Title 47 of the Code of Federal Regulations), personal communications service (PCS), specialized mobile radio (SMR), and other similar services regardless of radio spectrum used], switching facilities, satellite or any other similar facilities.

X. "Telephone Corporation" shall mean a corporation or Person as defined in Public Utilities Code Section 234.

3.10.020 Exemptions.

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

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

(2) A Low Income Rate Assistance Customer, and

(3) The City.

B. Any Service User exempt from the taxes imposed by this chapter, other than the City and State and federal agencies or their subdivisions with commonly recognized names, shall 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 penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all utility service providers 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 providers so that the Tax Administrator can properly notify the new utility service provider 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. A Low Income Rate Assistance Customer who has filed an application pursuant to California Public Utilities Commission General Order 153 with the Service Supplier will be deemed to have filed an application with the City for services obtained from that provider. Upon request of the Tax Administrator, a Service Supplier or non-utility supplier, or their billing agents, shall provide a list of the names and addresses of those customers which, according to their billing records, are deemed exempt from the utility users tax.

C. The decision of the Tax Administrator may be appealed pursuant to Section 3.10.155. Filing an application with the Tax Administrator and appeal to the City Administrator pursuant to Section 3.10.155 is a prerequisite to a suit thereon.

3.10.030 Reduction in Tax Rate.

A. The six percent (6%) tax rate imposed by Sections 3.10.040, 3.10.050, 3.10.060 and 3.10.070 shall be imposed at the reduced rate of three percent (3%) for the following Service Users:

(1) Senior Citizens Housing Complexes, and residents thereof;

(2) Mobile Home Parks, and residents thereof; and,

(3) Churches, Private Schools and non-profit organizations exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

B. Any Service User eligible for the reduced rate of tax provided by this section shall file an application with the Tax Administrator for taxation at the reduced rate. Such application shall be made upon a form supplied by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for a reduced rate and shall include the names of all utility service providers serving that Service User. If deemed entitled to the reduced rate by the Tax Administrator, such Service User shall give the Tax Administrator timely written notice of any change in utility service providers so that the Tax Administrator can properly notify the new utility service provider of the Service User's 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.

3.10.040 Telephone User's Tax.

A. There is hereby imposed a tax upon every Person, other than a Telephone Corporation with a telephone Service Address in the City, who uses intrastate, interstate, and/or international Telephone Communication Services in the City. The tax imposed by this section shall be at the rate of six percent (6%) of all charges made for such 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, regardless of where any individual transmission may originate, terminate, or pass through. If the Billing Address of the Service User is different from the Service Address, the Service Address of the Service User shall be used. Charges for Mobile Telecommunications Services are subject to taxation under this chapter if the customer's Place of Primary Use is in the City, regardless of where the Mobile Telecommunications Service may originate, terminate, or pass through.

B. 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. "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.

C. The Tax Administrator, from time to time, may issue and disseminate to telecommunication Service Suppliers which are subject to the tax collection requirements of this chapter, an administrative ruling identifying those telecommunication services that are subject to 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" and shall not impose a new tax, revise an existing tax methodology, or

increase an existing tax. An administrative ruling shall not constitute a new tax, a revision of an existing tax methodology, or an increase in an existing tax if such administrative ruling is:

- (1) consistent with the existing ordinance language; and,
- (2) merely reflects a change in, clarification to, or new rendition of:
 - (a) the definition, interpretation, or application of substantial nexus by a court of competent jurisdiction or by preemptive State or federal law, for purposes of taxation; or,
 - (b) the definition, interpretation, or application of the federal excise tax rules, regulations, and laws pertaining to "communications services" (Sections 4251, 4252 and 4253 of the Internal Revenue Code) by the Internal Revenue Service, or by a State or local agency that assumes an interpretative role of those rules, regulations, and laws in the event that the federal excise tax on telecommunications is repealed.

D. As used in this section, the term "Telephone Communication Services" shall not include "private mobile radio service" [as defined in Part 20.3 of Title 47 of the Code of Federal Regulations] or "private mobile service" [as defined in 47 U.S.C.A. Section 332(d)(3)] 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 not subject to or are exempt from 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 3.10.040 and in Section 3.10.010(W) to such law, including any related federal regulations, private letter rulings, case law, and other opinions interpreting these sections, shall refer to that body of law that existed immediately prior to the date of repeal, as well as to any judicial or administrative decision interpreting such federal excise tax law which is published or rendered after the date of repeal.

E. To prevent actual multi-jurisdictional taxation of Telephone Communication Services subject to tax under this section, any Service User, upon proof to the Tax Collector 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 substantial 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 by judicial interpretation or by statutory enactment.

F. The tax imposed by this section shall be collected from the Service User by the Service Supplier or its billing agent. The amount collected in one Month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the 20th day of the following Month.

3.10.050 Electricity User's 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 six percent (6%) of the charges made for such electricity, and for any supplemental services or other associated activities directly related and/or necessary for the provision of electricity to the Service User, which are provided by a Service Supplier or Non-Utility Service Supplier to a Service User. The tax shall be collected from the Service User by the Service Supplier or Non-Utility Service Supplier, or its billing agent.

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

- (1) energy charges;

(2) distribution or transmission charges;

(3) metering charges;

(4) stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar 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, fee and surcharges which are necessary to or common for the receipt, use or enjoyment of electric service; and

(6) all other annual and monthly charges, fees, or surcharges for electricity services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

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

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

E. As used in this section, the term "using electricity" shall not include electricity used in water pumping by water corporations; nor shall the term include the mere receiving of such electricity by an Electrical Corporation or governmental agency at a point within the City for resale.

F. The tax on electricity provided by self-production or by a Non-Utility Service Supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 3.10.070. 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 Month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the 20th day of the following Month; or, at the option of the Person required to collect or remit the tax, such Person shall remit an estimated amount of tax measured by the tax billed in the previous Month or upon the payment pattern of the Service User, which must be received by the Tax Administrator on or before the 20th day of the following Month; provided that the Service User shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

G. A residential homeowners association which is assessed and pays the tax on electricity used for lighting street lights in a single family detached home subdivision shall be entitled to a refund of all taxes assessed on charges attributable to street lighting. The homeowners association shall apply for such a refund in the manner provided in Section 3.10.150.

3.10.060 Gas User's Tax

A. There is hereby imposed a tax upon every Person using Gas in the City, which is transported and delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of six percent (6%)

of the charges made for such Gas. The tax shall be collected from the Service User by the Service Supplier or Non-Utility Service Supplier, or its billing agent.

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

(1) the commodity charges for purchased Gas, or the cost of Gas owned by the Service User (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such Gas), which is delivered through a Gas pipeline distribution system;

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

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

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

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

C. The term "charges" shall also include the value of any other services, credits, property of every kind or nature, or other consideration provided by the Service User in exchange for the Gas or services related to the delivery of such Gas.

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

E. There shall be excluded from the calculation of the tax imposed in this section:

(1) charges made for Gas which is to be resold and delivered through a pipeline distribution system;

(2) charges made for Gas used in the production of electricity by a cogenerator, an electric corporation, a public agency that supplies or sells electricity, or an Exempt Wholesale Generator;

(3) charges made for Gas used in the production or distribution of water by a public utility or governmental agency; and

(4) charges for propane or other alternate hydrocarbon fuels which are to be used in motor vehicles or which are sold in quantities of twenty-five gallons or less.

F. The tax on Gas provided by self-production or by a Non-Utility Service Supplier not under the jurisdiction of this ordinance shall be collected and remitted in the manner set forth in Section 3.10.070. 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 Month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the 20th day of the following Month; or, at the option of the Person required to collect or remit the tax, such Person shall remit an estimated amount of tax measured by the tax billed in the previous Month or upon the payment pattern of the Service User, which must be received by the Tax Administrator on or before the 20th day of the following Month, provided that the Service User shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

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

A. Any Service User subject to the tax imposed by Sections 3.10.050 or 3.10.060 hereof, which produces Gas or electricity for self-use, which receives Gas or electricity directly from a Non-Utility Service Supplier not under the jurisdiction of this chapter, or which otherwise is not having the full tax collected and remitted by the Service Supplier, Non-Utility Service Supplier, or its billing agent on the use of Gas or electricity in the City, including any related supplemental services, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use. In lieu of paying said actual tax, the Service User may, at its option, remit to the Tax Administrator within (30) days of such use an estimated amount of tax measured by the tax billed in the previous Month, or upon the pattern payment of similar customers of the Service Supplier using similar amounts of Gas or electricity, provided that the Service User shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

B. The Tax Administrator may require said Service User to identify its Non-Utility Service Supplier and provide, subject to audit: invoices, books of account, or other satisfactory evidence documenting the quantity of Gas or electricity used 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 provider of Gas or electricity within the City. Rate schedules for this purpose shall be available from the City.

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

If one or more non-taxable items are bundled or billed together with one or more taxable items (as provided for by this chapter) under a single charge on a customer's bill, the entire single charge shall be deemed taxable unless, upon the written request of the customer, the Service Supplier can reasonably identify the non-taxable component of the single charge based upon one or more of the following methodologies, as selected by the Tax Administrator: i) the average industry charges for the individual non-taxable items included in the entire single charge; ii) the amount of the entire single charge less the average industry charges for the individual taxable items included in the entire single charge; or, iii) the Service Supplier's books and records that are kept in the regular course of business, which must be consistent with generally accepted accounting principles.

3.10.080 Temporary Rebates for Extraordinary Utility Costs.

A. The City Council, by resolution, may grant a temporary utility users tax rebate to any class of Service Users for the purpose of easing the tax burden on such customer class, which is due to an unusually large increase in the service charges for a particular utility industry subject to the utility users tax. The City Council may rebate an appropriate percentage of the tax prospectively for a period of no more than twelve (12) months. If applicable, the Tax Administrator shall implement the temporary tax rebate by giving sixty (60) day written notice to all affected Service Suppliers as required by Public Utilities Code Section 799.

B. The City Council shall consider the following factors in determining whether to grant a temporary tax rebate under this Section:

- (1) the amount of the increase in the average billing for the utility service for which a rebate is being considered;

(2) the severity of the burden that the increased billing and associated tax imposes on the customer class for which a rebate is being considered;

(3) the increased expense to the City as a utility customer, which occurs as a result of the increase in the cost of such utility service;

(4) the estimated time period that the billing increase will likely persist;

(5) the forecasted and historical increases or decreases in the other sources of utility users tax;

(6) the forecasted and historical increases or decreases in municipal tax revenues other than the utility users tax;

(7) the overall inflation rate during relevant time periods, as measured by the Consumer Price Index (CPI);

(8) the cost of administering the rebate; and,

(9) any other factor that affects the fairness or equity of granting such a temporary rebate.

C. In a resolution granting a temporary tax rebate, the City Council shall make the following findings:

(1) the temporary tax rebate is necessary to abate a significantly increased tax burden on a class of Service Users; and,

(2) the temporary tax rebate shall not adversely affect the City's ability to meet its financial obligations as contemplated in its current budget.

D. Nothing herein shall prohibit the City Council from granting consecutive temporary rebates, provided that the City Council reconsiders the factors enumerated in subsection (B), above, for each subsequent temporary rebate, and makes appropriate findings for each resolution. As stated in Government Code Section 9611, the enactment of a temporary tax rebate by the City Council shall not constitute a repeal of one or more of the original provisions of this chapter. Upon the expiration of the time of the temporary tax rebate, the original provisions of this chapter shall have the same force and effect as if the temporary tax rebate had not been enacted. Nothing herein is intended to constitute a decrease in a tax, or an increase in a tax requiring an election approval under California Constitution Article XIII C; and to the extent that any aspect of a temporary tax rebate resolution is found to invoke such a requirement, the entire temporary rebate resolution shall be deemed null and void *ab initio*, and there shall be no entitlement to a rebate for any Service User.

3.10.085 Duty to Collect: Procedures.

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

A. The tax shall be collected insofar as practicable at the same time as, and along with, the collection of charges made in accordance with the regular billing practice of the Service Supplier. Where the amount paid by a Service User to a Service Supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a Service User has notified the Service Supplier of refusal to pay the tax imposed on said charges, Section 3.10.130 shall apply.

B. The duty of a Service Supplier to collect tax from a Service User shall commence with the beginning of the first full 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 billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

3.10.090 Filing Return and Payment.

Each Service Supplier or Service User subject to Section 3.10.070 shall make a return to the Tax Administrator on forms approved by the Tax Administrator. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected and remitted in accordance with this chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code Section 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information, and not subject to the Public Records Act.

3.10.100 Collection Penalties.

A. Taxes collected from a Service User, or owed by a Service User subject to Section 3.10.070, are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a Friday, Saturday, Sunday or legal holiday, the return must be received by the Tax Administrator on the first regular working day thereafter. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a Service Supplier in satisfaction of its obligations under this subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on or before the following business day.

B. If 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 on or before the due date, or, in the case of a Service User that fails to properly self-collect and remit the tax on or before the due date under Section 3.10.070, the Tax Administrator shall attach a penalty for such delinquencies at the rate of fifteen percent (15%) of the total tax that is delinquent or deficient in the remittance. Notwithstanding the foregoing, a Person required to collect and/or remit the utility users' tax shall not be subject to the fifteen percent (15%) penalty and interest for an "improper assessment" if such "improper assessment" is voluntarily disclosed to the Tax Administrator, or its agent, and promptly corrected thereafter by such Person, whether the disclosure occurs in the course of a Tax Administrator survey under Sections 3.10.040(C), 3.10.050(D) and 3.10.060(D) or the disclosure is voluntarily initiated by such Person. For purposes of this subsection, the term "voluntarily disclosed" shall mean information freely offered by a Service Supplier to the City for the purpose of increasing the accuracy of the Service Supplier's tax collection and/or remittances before the issue has been raised or an inquiry has been initiated by the City or any other California municipality.

C. The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and/or remit taxes pursuant to the provisions of this chapter for fraud or gross negligence in reporting or remitting at the rate of fifteen percent (15%) of the amount of the tax collected, 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 one or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, or, in the case of a Service User that fails to properly self-collect and remit the tax under Section 3.10.070 of this chapter on or before the due date, 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.

E. Every penalty imposed pursuant to the provisions of this section shall become a part of the tax required to be remitted.

3.10.110 Actions to Collect.

Any tax required to be paid by a Service User under the provisions of this chapter shall be deemed a debt owed by the Service User to the City. Any such tax collected from a Service User which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the Person required to collect and remit and shall no longer be a debt of the Service User. Any Person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this chapter, along with any collection costs incurred by the City as a result of the Person's noncompliance with this chapter, including, but not limited to, reasonable attorney's fees.

3.10.120 Additional Power and Duties of Tax Administrator.

- A. The Tax Administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this chapter.
- B. The Tax Administrator may adopt administrative rules 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 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 3.10.070) so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter; or, ii) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and are voidable by the Tax Administrator or the City at any time.
- D. The Tax Administrator shall determine the eligibility of any Person who asserts a right to exemption from, or a refund of, the tax imposed by this chapter.

3.10.130 Administrative Remedy – Service Users.

- A. Whenever the Tax Administrator determines that a Service User has deliberately withheld the amount of the tax owed by the Service User from the amounts remitted to a Person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such Person of the obligation to collect the taxes due under this chapter from certain named Service Users for specific billing periods. Whenever the Service User has failed to pay the amount of tax owed for a period of two or more billing periods, the Service Supplier shall be relieved of the obligation to collect taxes due. The Service Supplier shall provide the City with the name 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 or she has assumed the 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 personal delivery 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 or her address, to his or her last known address.
- C. If the Service User fails to remit the tax to the Tax Administrator within fifteen (15) days from the date of the service of notice upon him or her, which shall be the date of mailing if service was not accomplished in person, the Tax Administrator shall assess the delinquent Service User for the required tax pursuant to Section 3.10.135.

3.10.135 Assessments.

The Tax Administrator may make an assessment for taxes not paid or remitted by a Person required to pay or remit. The Tax Administrator shall mail a notice of such assessment, which shall refer briefly to the amount of the taxes, penalties and interest imposed and the time and place where the assessment may be contested, to the Service Supplier and to the 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. 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 ($\frac{3}{4}\%$) 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, but not less than five dollars (\$5.00). Any interested party having any objections may appear and be heard at the hearing provided his or her objection is filed in writing with the Tax Administrator, within fourteen (14) calendar days of the date of the notice. . At the time fixed for considering such assessment, the Tax Administrator shall hear the same,

together with any objections filed as provided in this subsection, and thereupon may confirm or modify such assessment.

3.10.140 Records.

- A. It shall be 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 at least three years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator, shall have the right to inspect at a reasonable time.
- B. The City may issue an administrative subpoena to compel a Person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the Person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such Person may provide access to such records outside the City on or before the due date, provided that such Person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.
- C. The Tax Administrator is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code Sections 7284.6 and 7284.7. The Tax Administrator may request from a Person providing transportation or distribution services of Gas or electricity to Service Users within the City a list of the names, Billing and Service Addresses, quantities of Gas or electricity delivered, and other pertinent information, of its transportation customers within the City pursuant to Section 6354 (e) of the California Public Utilities Code.
- D. If a Service Supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the Service Supplier shall: 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.
- E. If any Person subject to record-keeping under this section unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, the Tax Administrator may impose a penalty of \$500 on such Person for each day following: i) the initial date that the Person refuses to provide such access; or, ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this chapter.

3.10.150 Refunds.

- A. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this 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 chapter unless the claimant, or his or her guardian, conservator, executor or administrator has submitted a written claim, under penalty of perjury, to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a refund claim on behalf of a class or group of taxpayers. Where the amount of any individual refund claim is in excess of forty thousand dollars (\$40,000), City Council approval shall be required in addition to approval by the Tax Administrator.
- C. The Tax Administrator, or the City Council where the claim is in excess of forty thousand dollars (\$40,000) and the Tax Administrator has approved the claim, shall act upon the refund claim within forty-five (45) days of

the initial receipt of the refund claim. Said decision shall be final. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the forty-five (45) day period, the claim shall be deemed to have been rejected by the Tax Administrator/City Council on the forty-fifth (45th) day. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in Government Code Section 913.

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

E. Notwithstanding 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, and the Service Supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly returns. In the event this ordinance is repealed, the amounts of any refundable taxes will be borne by the City.

F. Notwithstanding subsection (B) above, a Service Supplier shall be entitled to take any overpayment as a credit against an underpayment whenever such overpayment has been received by the City within 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 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.

3.10.155 Appeals

A. The provisions of this section apply to any assessment, decision or administrative ruling of the Tax Administrator, other than a decision relating to a refund pursuant to Section 3.10.150 of this chapter. Any Person aggrieved by any 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. If any Person is aggrieved by any assessment, decision or administrative ruling of the Tax Administrator, other than a decision relating to a refund; or with the failure of the Tax Administrator to grant an exemption as provided for under this chapter; he or she may appeal to the City Administrator by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the assessment, decision or administrative ruling of the Tax Administrator which aggrieved the Service User or Service Supplier.

C. The matter shall be set for hearing no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, the City 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 Administrator shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6. If the City Administrator fails or refuses to act on a refund claim within the fourteen (14) day period, the claim shall be deemed to have been rejected by the City Administrator on the fourteenth (14th) day.

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

3.10.160 Notice of Changes to Chapter.

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 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 provider 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.

3.10.165 Remedies Cumulative.

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

3.10.170 Annual Public Hearing to Determine Necessity of Tax.

Annually, as part of the City Council's budget review and adoption process, a public hearing shall be held to determine whether the utility user tax continues to be necessary, and if so, at what level.

3.10.180 Changes Without Voter Approval.

The City Council may, by order or resolution, establish one or more classes of persons or one or more classes of energy, products, services otherwise subject to payment of a tax imposed by this chapter and provide that such persons or service shall be exempt, in whole or in part, from such tax. The City Council is further authorized to make any amendments to this Ordinance, as adopted by the voters, without a vote of the people, provided however, that it shall not increase or extend to any other utilities any of the utility user's taxes specified herein without complying with all relevant constitutional and statutory provisions.

3.10.190 Severability.

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