

Utility Users Tax Ordinance

City of Pasadena, CA

Chapter 4-56

UTILITY USERS TAX

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This chapter shall be known and cited as "the utility users tax ordinance."

4.56.020 Definitions.

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

A. "Billing Address" means the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

B. "City" means the city of Pasadena.

C. "City Administrator" means the City Manager, or his or her authorized representative.

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

E. "Gas" means natural or manufactured gas or any alternate hydrocarbon fuel, which may be substituted therefor.

F. "Gross annual income" means all income regardless of source and includes, but is not limited to, income subject to federal and state income taxation, social security payments, pensions, welfare payments, interest on tax exempt investments, gifts and inheritances.

G. "Month" means a calendar month.

H. "Non-Utility Service Supplier" means:

(1) a service supplier, other than a supplier of electric distribution services to all or a significant portion of the city, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

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

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

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

J. "Service Address" means the residential street address or the business street address of the service user's primary place of usage.

K. "Service supplier", means any entity or person that provides telephone communication, electric, gas, water or video service to a user of such services within the city. The term includes any entity or person required to collect, or self-collect under Section 4.56.055 of this chapter, and remit a tax imposed by this chapter, including its billing agent in the case of electric, gas, water or video service suppliers.

L. "Service user" means a person required to pay a tax imposed by this chapter.

M. "Tax administrator" means the revenue administrator of the city of Pasadena.

N. "Telephone Communication Services" means "communications services" as defined in Sections 4251 and 4252 of the Internal Revenue Code, and the regulations thereunder, and includes any telephonic quality communication for the purpose of transmitting messages or information (including but not limited to voice, telegraph, teletypewriter, data, facsimile, video, or text) by electronic, radio or similar means through "interconnected service" with the "public switched network" [as these terms are commonly used in the Federal Communications Act and the regulations of the Federal Communications Commission - see 47 U.S.C.A. Section 332(d)], whether such transmission occurs by wire, cable, fiber-optic, light wave, laser, microwave, radio wave [including, but not limited to, cellular service, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service - see 47 U.S.C.A. Section 332(c)(7)(C) (i) -regardless of radio spectrum used], switching facilities, satellite or any other similar facilities.

O. "Telephone corporation," "electrical corporation," "gas corporation," and "water corporation" have the same meanings as defined in Sections 234, 218, 222, and 241, respectively, of the Public Utilities Code of the state of California, as said sections existed on January 1, 1969. "Electrical corporation" and "water corporation", shall be construed to include any municipality or franchised agency engaged in the selling or supplying of electrical power or water to a service user.

P. "Video Service Supplier" means any person, company, or service which provides one or more channels of video programming, including any communications that are ancillary, necessary or common to the use and

enjoyment of the video programming, to or from an address in the city, including to or from a business, home, condominium, or apartment, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or communications. A "video service supplier" includes, but is not limited to, multichannel video programming distributors [as defined in 47 U.S.C.A. Section 522(13)], open video systems (OVS) suppliers, suppliers of cable television, master antenna television, satellite master antenna television, multichannel multipoint distribution services (MMDS), direct broadcast satellite (to the extent allowed by federal law), and other suppliers of video programming or communications (including two-way communications), whatever their technology.

Q. "Video Services" means any and all services related to the providing of video programming (including origination programming), including any communications that are ancillary, necessary or common to the use or enjoyment of the video programming, regardless of the content of such video programming or communications. "Video services" does not include services for which a tax is paid under Section 4.56.030 of this chapter.

4.56.030 Telephone tax.

A. There is imposed a tax upon every person, other than a telephone corporation, who uses telephone communication services in the city, including intrastate, interstate, and international telephone communication services. The tax imposed by this section shall be at the rate established under Section 4.56.180(A) of this chapter. The tax shall apply to all charges made for such telephone communication services and shall be collected from the service user by the telephone communication services supplier or its billing agent. To the extent allowed by law, the tax on telephone communication services shall apply to a service user if the billing or service address of the service user is within the city's boundaries. If the billing address of the service user is different from the service address, the service address of the service user shall be used.

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. As used in this section, the term "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due; nor shall the term "telephone communication services" include telephone channel facilities used by a cable television corporation in supplying cable television service to its customers.

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, except as allowed by California Government Code Section 53750(h)(2)(A).

D. As used in this section, the term "telephone communication services" shall not include "private mobile radio service" [as defined in Part 20 of Title 47 of the Code of Federal Regulations] or "private mobile service" [as defined in 47 U.S.C.A. Section 332(d)] 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 4.56.030 and in Section 4.56.020(N) 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 Administrator that the service user has previously paid the same tax in another state or city on such telephone communication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city; provided, however, the amount of credit shall not exceed the tax owed to the city under this section. For purposes of establishing sufficient legal nexus for the imposition and collection of utility users, tax on charges for telephone communication services pursuant to this chapter, "minimum contacts" shall be construed broadly in favor of the imposition and collection of the utility users' tax to the fullest extent permitted by California and federal law, and as it may change from time to time.

F. The tax on telephone communication services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

4.56.040 Electricity tax.

A. There is imposed a tax upon every person using electricity in the city. The tax imposed by this section shall be at the rate established under Section 4.56.180(A) of this chapter. The tax shall apply to all charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service

user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

B. As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary or common to the receipt, use and enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. 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, fees and surcharges which are necessary to or common for the receipt, use and enjoyment of electric service; and,

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

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

D. The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the city, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: i) necessary 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 be construed to include electricity used in water pumping by water corporations; nor shall the term include the mere receiving of such electricity by an electrical corporation at a point within the city for resale. There shall be excluded from the base on which the tax imposed in this section is computed, charges made by a municipal light or power department, or electric public utility for electricity used and consumed by such department or utility in the conduct of the business of such department or utility.

F. The tax on electricity provided by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 4.56.055 of this chapter. All other taxes on charges for electricity imposed by this section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that 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.

4.56.050 Gas tax.

A. There is 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 established under Section 4.56.180 (A) of this chapter. The tax shall apply to all charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

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

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

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

D. The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the city, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary 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. Charges for such components and items shall be subject to the tax of subsection (A) above.

E. There shall be excluded from the base on which the tax imposed in this section is computed:

1. Charges made for gas which is to be resold and delivered through a pipeline distribution system; and

2. Charges made by a gas public utility for gas used and consumed in the conduct of business of gas public utilities.

F. The tax that is calculated on charges for gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 4.56.055 of this chapter. All other taxes on charges for gas imposed by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator, on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that 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.

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

A. Any service user subject to the tax imposed by Section 4.56.040 or by Section 4.56.050 of this chapter, which produces gas or electricity for self-use; which receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this chapter; or which, for any other reason, is not having the full tax collected and remitted by its service supplier, a non-utility service supplier, or its billing agent on the use of gas or electricity, including any related supplemental services, in the city, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

B. The Tax Administrator may require said service user to identify its non-utility service supplier and provide, subject to audit, invoices, books of account, or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier

of gas or electricity within the city. Rate schedules for this purpose shall be available from the city.

4.56.060 Water tax.

A. There is imposed a tax upon every person using water in the city which is transported and delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate established under Section 4.56.180 (A) of this chapter. The tax shall apply to all charges made for such water and shall be collected from the service user by the 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 or common to the receipt, use or enjoyment of water service; or, ii) currently, or historically have been, included in a single or bundled rate for water service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

(1) water commodity charges (potable and non-potable);

(2) distribution or transmission charges;

(3) metering charges;

(4) customer charges, late charges, service establishment or reestablishment charges, franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees and surcharges which are necessary for or common to the receipt, use or enjoyment of water service; and,

(5) charges, fees, or surcharges for water services or programs, which are mandated by a water district or a state or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

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

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

a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (A) above.

E. There shall be excluded from the base on which the tax imposed in this section is computed charges made for water which is to be resold and delivered through a pipeline distribution system; charges made by a municipal water department, water public utility or a county or municipal water district for water used and consumed by such department, utility or district in the conduct of the business of such department, utility or district; and charges made for water used in the generation of electricity by an electrical corporation.

F. The tax on water service imposed by this section shall be collected from the service user by the water service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

4.56.070 Video tax.

A. There is hereby imposed a tax upon every person using video services in the city from a video service supplier. The tax imposed by this section shall be at the rate established under Section 4.56.180(A) of this chapter. The tax shall apply to all charges made for such video services, and shall be collected from the service user by the video 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 or common to the receipt, use or enjoyment of video service; or, ii) currently, or historically have been, included in a single or bundled rate for video service by a local video service supplier to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

- (1) franchise fees and access fees (PEG), whether designated on the customer's bill or not;
- (2) initial installation of equipment necessary for provision and receipt of video services;
- (3) late fees, collection fees, bad debt recoveries, and return check fees;
- (4) activation fees, reactivation fees, and reconnection fees;
- (5) all programming services (e.g., basic services, premium services, audio services, video games, pay-per-view services, and electronic program guide services);
- (6) equipment leases (e.g., converters, remote devices);
- (7) service calls, service protection plans, name changes, changes of services, and special services (e.g., no promotional mail); and

(8) the leasing of channel access.

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

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

E. The tax imposed by this section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video service (e.g., an apartment owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of the video service. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

4.56.075 Effect of commingling non-taxable 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.

4.56.080 Constitutional exemptions.

A. Nothing in this chapter shall be construed as imposing a tax upon:

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

(2) the city, with the exception of the tax imposed under Section 4.56.050 upon charges made for gas used in the generation of electricity by generating plants wholly owned and operated by the city.

B. Any service user that is exempt from the tax imposed by this chapter pursuant to subsection (A) shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a state or federal agency or subdivision with a commonly recognized name. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all utility service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in utility service suppliers so that the Tax Administrator can properly notify the new utility service supplier of the service user's tax exempt status. A service user that fails to comply with this section shall not be entitled to a refund of utility users' taxes collected and remitted to the Tax Administrator from such service user as a result of such non-compliance. Upon request of the Tax Administrator, a service supplier or non-utility service supplier, or its billing agent, shall provide a list of the names and addresses of those customers which, according to its billing records, are deemed exempt from the utility users' tax.

4.56.090 Collection.

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 in so far as practicable at the same time as, and along with the collection of charges made in accordance with regular billing practice of the service supplier. If the amount paid by a service user is less than the full amount of the charge and the tax which has accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 4.56.130(B) of this chapter shall apply.

B. The duty of a service supplier to collect tax from a service user shall commence with the beginning of the first regular billing period applicable to that person which starts on or after the operative date of the ordinance enacting this section. When a person receives more than 1 billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

4.56.100 Reporting and remitting.

Each person required by this chapter to remit a tax shall file a return with the Tax Administrator on forms approved by the Tax Administrator on or before the due date. The full amount of the tax owed shall be included with the return and filed with the Tax Administrator. The tax administrator is authorized to

require such further information as he or she deems necessary to properly determine if the tax here imposed is being levied, collected and remitted in accordance with this chapter. Returns and remittances 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.

4.56.110 Penalty for delinquency.

A. Taxes collected from a service user, or owed by a service user subject to Section 4.56.055 of this chapter, are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on or before the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the city's account on or before the following business day.

B. If 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 under Section 4.56.055 of this chapter on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen percent (15%) of the total tax that is delinquent or deficient in the remittance. Notwithstanding the foregoing, a person required to collect and/or remit the utility users' tax shall not be subject to the 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 4.56.030(C), 4.56.040(D), 4.56.050(D), 4.56.060(D) and 4.56.070(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 power to impose additional penalties upon persons required to collect and/or remit taxes under the provisions of this chapter for fraud or gross negligence in reporting or remitting at the rate of fifteen percent (15%) of the amount of the tax collected 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 4.56.055 of this chapter on or before the due date, shall pay interest at the rate of three-quarters of one percent (3/4%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

4.56.120 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 is 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 plus any collection costs incurred by the city as a result of the person's noncompliance with this chapter, including, but not limited to, reasonable attorneys fees.

4.56.130 Failure to pay - Administrative remedy.

A. Whenever the tax administrator determines that a service user has deliberately withheld the amount of the tax owed by him from the amounts remitted to a service supplier, or that a service user has failed to pay the amount of the tax for a period of two (2) or more billing periods, or whenever the tax administrator deems it in the best interest of the city, he may relieve the service supplier of the obligation to collect taxes due under this chapter from the service users for specified billing periods. The service supplier shall provide the city with the names and addresses of such service users and the amounts of taxes owed under the provisions of this chapter.

B. The tax administrator shall notify the non-paying service user that he or she 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 or her personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the service supplier, or should the service user have changed his or her address, to his or her last known address.

C. If a service user fails to remit the tax to the tax administrator within fifteen (15) days from the date of service of the notice upon him, which shall be the date of mailing if service is not accomplished in person, the Tax Administrator shall assess the delinquent service user for the required tax pursuant to Section 4.56.135 of this chapter.

4.56.135 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/or 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 (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 prior to the time of the hearing. 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.

4.56.140 Civil debt.

The taxes imposed by this chapter shall be civil debts owing to the city from the service user.

4.56.150 Persons required to keep records.

A. It shall be the duty of every person required to collect and/or remit to the city any tax imposed by this chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and remittance to the tax administrator, which records the tax administrator 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 by the person electronically 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, or the Tax Administrator's designated representative, is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to Revenue and Tax Code Sections 7284.6 and 7284.7. The Tax

Administrator, or the Tax Administrator's designated representative, may request from a person providing transportation or distribution services of gas or electricity to service users within the city, a list of the names, billing and service addresses, quantities of gas or electricity delivered, and other pertinent information, of its transportation customers within the city pursuant to Section 6354(e) of the California Public Utilities Code.

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, or the Tax Administrator's designated representative, access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, the Tax Administrator may impose a penalty of five hundred dollars (\$500) on such person for each day following: i) the initial date that the person refuses to provide such access; or, ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this chapter.

4.56.155 Additional power and duties of tax administrator.

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

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

C. Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this chapter and thereby: i) conform to the billing procedures of a particular service supplier (or service user subject to Section 4.56.055 of this chapter) so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter; or, ii) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and are voidable by the Tax Administrator or the city at any time.

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

4.56.160 Refunds.

A. Whenever the amount of any tax imposed by this chapter has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the Tax Administrator, it may be refunded as provided in this section.

B. The Tax Administrator may refund any tax that has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the Tax Administrator under this chapter, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor or administrator has submitted a written claim to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a refund claim on behalf of a class or group of taxpayers. Where the amount of any individual refund claim is in excess of seventy-five thousand dollars (\$75,000), City Council approval shall be required in addition to approval by the Tax Administrator.

C. 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 commencement of the one year claims period of this section, and which are not otherwise barred by a then-applicable statute of limitations or claims procedure, must be filed with the Tax Administrator as provided in this subsection within ninety (90) days following the effective date of this ordinance.

D. The Tax Administrator, or the City Council where the claim is in excess of seventy-five thousand dollars (\$75,000) and the Tax Administrator has approved the claim, shall act upon the refund claim within forty-five (45) days of receipt of the refund claim. Said decision shall be final. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in Government Code Section 913.

E. The filing of a written claim is a prerequisite to any suit thereon. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in Government Code Section 913. Any action brought against the City pursuant to this section shall be subject to the provisions of Government Code Sections 945.6 and 946.

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 service supplier shall also refund to the service users the tax paid pursuant to this chapter on the amount of such refunded charges. The service supplier shall be

entitled to claim a credit for such refunded taxes against the amount of tax which is due the city on the next monthly returns. If this chapter is repealed, the city will bear the amounts of any refundable tax.

G. Notwithstanding subsections (B) and (C) 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 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.

4.56.165 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 4.56.160 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, 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.

4.56.170 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.

4.56.180 Resolution establishing adjusted tax rates and notice of changes to ordinance.

A. All tax rates provided in this Chapter have been established by resolution of the City Council and may be adjusted from time to time in conformance with the requirements of California Constitution Article XIII(C), California Government Code Section 53750(h)(2)(A), Pasadena Municipal Code Section 1.08.060 and all other applicable laws and regulations.

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

4.56.190 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); and,
- 8) 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 XIIC; 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.

4.56.200 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.

4.56.210 Exemptions - Eligibility.

Any service user who is 62 years of age or older and any service user who meets the criteria of disability as established by the Social Security Administration's Supplemental Income Program for the Aged, Blind and Disabled (Title XVI of the Social Security Act, as amended) shall be eligible for exemption from the taxes imposed by this chapter on service supplied to the service user's residence if the gross annual income per calendar year of the household in which such individual resides is less than the following:

A. If the household has only one qualifying individual, \$12,000.00:

B. If the household has more than one qualifying individual, \$12,000.00 plus \$4,000.00 for each additional qualifying individual.

The gross annual income of the household shall be calculated by forecasting the household's income for a 12-month period starting from the date of application for the exemption: actual income for the prior calendar year shall provide a basis for forecasting income, but shall not be used to deny an application.

4.56.211 Exemptions - Application - Where to file and filing time.

Applications for exemption shall be filed with the tax administrator on such forms as he may provide.

Applications may be filed at any time after applicant:

A. Attains age 69: or

B. Becomes eligible for disability under the provisions of Title XVI of the Social Security Act as amended.

4.56.212 Exemptions - Application - Contents required.

Applications shall contain such information as may be required by the tax administrator and shall be verified by declaration under penalty of perjury. The tax administrator may require such additional evidence as he deems necessary or appropriate in processing the application.

4.56.213 Exemptions - Application - Review and certification -- Limitations on granting.

The tax administrator shall review each application and shall certify the service user as exempt if the eligibility requirements of Section 4.56.219 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.

4.56.214 Certified exemption - Service supplier notification required.

If a service user is certified as exempt, the tax administrator shall promptly notify the service user's service supplier, 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.

4.56.215 Certified exemption - Discontinuance of billing.

Except as otherwise provided in subsection (h), the service supplier shall, within 60 days after receipt of the aforesaid notice, discontinue billing the service user for taxes imposed by this ordinance.

4.56.216 Certified exemption - 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.

4.56.217 Certified exemption - Duration and termination.

Exemptions certified by the tax administrator shall continue as 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 or residence.

4.56.218 Certified exemption - Disqualification disclosure required - Investigation of noncompliance.

Any service user who has been exempted under Sections 4.56.211 through 4.56.219.3 shall notify the tax administrator within 10 days of any change of fact or circumstance which might disqualify said individual from receiving such exemption.

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 Sections 4.56.211 through 4.56.219.3 have been complied with, and where appropriate, order the service supplier to commence collecting the tax from the nonexempt service user.

4.56.219 Exemption - Continued eligibility, Investigation and discontinuance authorized when.

The tax administrator shall have authority to demand evidence of continued eligibility of a service user for exemption under the provisions of Sections 4.56.211 through 4.56.219.3. Such evidence may include, but need not be limited to, birth certificate, driver's license, 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, copies of income tax returns and such other evidence concerning the service user or other members of his household as may tend to prove or disprove such eligibility. Failure to provide such evidence as is within the control of a service user to so provide, either directly by him or by his consent, or the consent of a member of his household when such evidence is requested of the service user in writing by the tax administrator, shall be grounds for the immediate discontinuance of the service user's eligibility for exemption under the provisions of Sections 4.56.211 through 4.56.219.3. Evidence provided to the tax administrator by the service user may only be used as grounds for termination of the exemption herein provided.

4.56.220 Effective date of imposition.

The taxes imposed by this chapter shall become imposed as of August 1, 1969, or at the beginning of the 1st regular billing period thereafter which would not include service prior to August 1, 1969.

SECTION 3. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.