

-Chapter 3.52 UTILITY USERS TAX

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Section 3.52.010. Definitions.

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

(a) "Person" shall mean, without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and non-profit), receiver, trustee, guardian, or other representative appointed by order of any court.

(b) ≥Billing Address≤ shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

(c) ≥Charges for Mobile Telecommunications Services≤ has 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.

(d) "City" shall mean the City of Pico Rivera.

(e) ≥City Manager≤ means the City Manager of City, or his or her authorized representative.

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

(g) "Electrical corporation", "gas corporation", "water corporation", "telephone corporation", and "video provider" shall have the same meanings as defined in California Public Utilities Code Sections 218, 222, 241, and 234 respectively, and Business and Professions Code Section 22770 (b), except "electrical corporation," "gas corporation" and "water corporation" shall also be construed to include any municipality, public agency, broker/marketer or person engaged in the selling or supplying of electrical power or gas or water to a service user.

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

(i) "Gas" shall mean natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.

(j) "Mobile Telecommunications Service" has the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (*4 U.S.C. Section 124*) and the regulations thereunder.

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

(l) "Non-utility Supplier" shall mean:

(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, municipal utility district, federal power marketing authority, exempt wholesale generator, 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 to users within the City.

(m) "Place of Primary Use" has 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.

(n) "Service Address" means the residential street address or the business street address of the service user. For a telephone communication service user, "service address" means either:

a. The location of the telecommunications equipment to which a service user's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid; or,

b. If the location in subsection (1) of this definition is unknown (e.g., mobile telecommunications or VoIP service), the service address means the location of the service user's place of primary use.

(o) "Service Supplier" shall mean any entity or person, including the City, that provides telephone communication, electric, or gas service to a user of such services within the City, and includes an entity or person required to collect, or self-collect under Section 3.52.1104.1 of this Chapter, and remit a tax as imposed by this Chapter, including its billing agent in the case of electric, gas, and video services.

(p) "Service User" shall mean a person required to pay a tax imposed under the provisions of this Chapter.

(q) "State" shall mean the State of California.

(r) "Tax Administrator" shall mean the Financial Director of the City.

(s) \geq Telephone communication services \leq shall include any service that is capable of transmitting telephonic quality communications with the general telephone public [including the use of Internet Protocol (IP) or other protocol], whether provided by analog, digital, electronic, radio or similar means through \geq interconnected service \leq with the \geq public switched network \leq [as these terms are commonly used in the Federal Communications Act and the regulations of the Federal Communications Commission \neq see *47 U.S.C.A. Section 332 (d)*] or over digital networks by which communications with the general telephone public is available (e.g., voice using internet protocol or VoIP), and whether such transmission occurs by wire, typewriter, cable, cable modem or digital subscriber line (DSL), internet, fiber-optic, WiFi, light wave, laser, microwave, switching facilities, satellite, radio wave [including, but not limited to, mobile telecommunications service, cellular service, commercial mobile service and commercial mobile radio service (see *47 U.S.C.A. 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], or any other similar facilities and whether charges for such services are based on time, distance, or on any other basis. \geq Telecommunication Services \leq shall also include, but is not limited to, \geq communication services \leq as defined in *Sections 4251 and 4252 of the Internal Revenue Code*, and the regulations thereunder.

(t) \geq Video Service Supplier \leq shall mean 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 or 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: a multichannel video programming distributor [as defined in *47 U.S.C.A. Section 522(13)*]; a supplier of: open video systems (OVS), cable television, master antenna television, satellite master antenna television, multichannel multipoint distribution services (MMDS), video services using internet protocol (e.g., IP-TV and IP-Video, which provide, among other things, broadcasting and video on demand), or direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video programming or communications (including two-way communications), whatever their technology.

(u) \geq Video Services \leq shall mean 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, or the technology used to deliver such services, and shall include the leasing of channel access. \geq Video Services \leq shall not include services for which a tax is paid under Section 3.52.020.

Section 3.52.020 Telephone Users Tax.

(a) There is hereby 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 of five (5) percent of all charges made for such telephone communication services. There is a rebuttable presumption that telephone communication services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this Chapter. If the billing address of the service user is different from the service address, the service address shall be used for purposes of imposing the tax. 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. Notwithstanding the foregoing, the tax shall not apply to any individual who qualifies, and has been accepted, for \geq lifeline telephone service \leq as such criteria is established by the California Public Utilities Commission pursuant to *Public Utilities Code Section 873 et seq.* In the event that said \geq lifeline telephone service \leq is repealed or otherwise ceases to exist in a substantially similar form, the exemption granted under this subsection shall automatically terminate.

(b) 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 \geq private mobile service \leq , as defined in 47 U.S.C.A. Section 332(d)(3), which is not interconnected with the public switched network or is not provided over digital networks by which communications with a substantial portion of the public is available (e.g., voice using internet protocol or VoIP). The tax imposed under subsection (a) above shall not be imposed upon any person for using telecommunication services to the extent that, pursuant to Sections 4252(d) and 4253 of the Internal Revenue Code, the amounts paid for such communication services are exempt from or not subject to the tax imposed under Section 4251 of the Internal Revenue Code. In the event that the federal excise tax on "communication services" as provided in Sections 4251, 4252 and 4253 of the Internal Revenue Code is subsequently repealed, any reference in this Section 3.52.020 and in Section 3.52.010(s) 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 final published decision by the U.S. Supreme Court or by a federal court in the 9th Circuit Court of Appeals interpreting such federal excise tax law.

(c) As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telephone communication services. The term "charges" shall also include charges to a service user by a hotel or motel for telephone communication services used in the City when such charges are incidental to the right of occupancy in such hotel or motel. The collection of the tax from the service user shall be the responsibility of the hotel or motel owner. "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 the tax due.

(d) 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 Section, an administrative ruling which identifies those telecommunication services that are subject to the tax of subsection (a) above and identifies the sourcing of such services for tax administration purposes. This administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this Section, or increase an existing tax. An administrative ruling shall not constitute a new tax 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;
 - b) the sourcing of taxable transactions based upon industry custom and practice, which furthers administrative efficiency and minimizes multi-jurisdictional taxation; or,
 - c) the definition, interpretation, or application of the federal excise tax rules, regulations, and laws pertaining to \geq communications services \leq (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.

(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 service, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city, provided, however, the amount of credit shall not exceed the tax owed to the City under this section.

(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 the 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.

Section 3.52.030 Electricity Users Tax.

(a) There is hereby imposed a tax upon every person, other than an electric corporation, using electricity in the City. The tax imposed by this section shall be at the rate of five (5) percent of the charges made for such electricity, and for any supplemental services or other associated activities directly related and/or necessary for the provision of electricity to the end-user, which are provided by a service supplier or non-utility 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 \geq charges \leq 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 \geq charges \leq shall include, but is not limited to, the following charges:

- (1) energy charges;
- (2) distribution and transmission charges;
- (3) metering charges;
- (4) stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar minimum charges for supplemental services to an electric service user that produces electricity for self-use and is subject to Section 3.52.050 of this Chapter;

(5) customer charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fee, franchise surcharge, annual and monthly charges, and other charges, fees and surcharges which are necessary to or common for the receipt, use and enjoyment of electric service; and

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

(c) As used in this section, the term \geq charges \leq 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 include electricity used and consumed by an electric service supplier in the conduct of its business as an electric public utility; nor shall the term include the mere receiving of such energy by an electric public utility at a point within the city for resale.

(f) The tax on electricity provided by self-production or by a non-utility supplier or an electric utility not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section 3.52.050. All other taxes on charges for electricity imposed by this section shall be collected from the service user by the electric service supplier or its billing agent. The amount of the tax collected in one month shall be remitted to the Tax Administrator on or before the twentieth (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 the tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (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.

Section 3.52.040 Gas Users Tax.

(a) There is hereby imposed a tax upon every person, other than a gas corporation, using gas in the City, which is transported through a pipeline distribution system. The tax imposed by this section shall be at the rate of five (5) percent of the charges made for such gas, including all services related to the storage, transportation, and delivery of such gas.

(b) As used in this section, the term $\geq \text{charges} \leq$ 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 $\geq \text{charges} \leq$ 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, service establishment or reestablishment charges, transition charges, customer charges, administrative charges, marketing fees, brokers fees, minimum charges, annual and monthly charges, and any other charges which are necessary or common to the receipt, use and enjoyment of gas service; and

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

(c) As used in this section, the term \geq charges \leq 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) The following shall be excluded from the base on which the tax imposed in this section is computed:

- (1) charges made for gas which is to be resold and delivered through a pipeline distribution system;
- (2) charges made for gas used in the propulsion of a motor vehicle, as that phrase is defined in the Vehicle Code of the state of California, utilizing natural gas.

(f) The tax on gas provided by self-production or by a non-utility supplier not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section 3.52.050. 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 twentieth (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 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.

Section 3.52.050 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity.

(a) Any service user subject to the tax imposed by Sections 3.52.030 or 3.52.040, hereof, which produces gas or electricity for self-use, or which receives gas or electricity directly from a non-utility supplier not under the jurisdiction of this ordinance, or which otherwise is not having the full tax due on the use of gas or electricity in the City that is directly billed and collected by the service supplier or its billing agent, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the pattern payment of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60)

days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

(b) The Tax Administrator may require said service user to identify its non-utility supplier and provide, subject to audit, invoices, books of account, or other satisfactory evidence documenting the quantity of gas or electricity used and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax, in the opinion of the City, is excessive, the City may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used had been provided by the service supplier, which is the primary supplier of gas or electricity within the City. Rate schedules for this purpose shall be available from the City.

Section 3.52.060 Video Users Tax.

(a) There is hereby imposed a tax upon every person, other than a video provider, using video services in the City from a video service supplier. The tax imposed by this section shall be at the rate of five percent (5%) of the 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 \geq charges \leq shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of video service; or, ii) currently are 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 \geq charges \leq 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, video on demand, 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 \geq charges \leq 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 for 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

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Section 3.52.070 Effect of Bundling Non-Taxable with Taxable Items.

Except as otherwise provided by federal or state law, 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.

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Section 3.52.080 Substantial Nexus / Minimum Contacts.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Section, ≥substantial nexus≤ and ≥minimum contacts≤ shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment.

Section 3.52.090 Constitutional and Statutory 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 a federal or state statute or the Constitution of the United States or the Constitution of the State of California; or

(2) Any person or entity that has applied, qualified for, and continues to qualify for any one of the utility discount programs pursuant to the regulations of their telephone, electricity service, or natural gas supplier, shall be exempt from all utility taxes imposed by this chapter.

(3) Any school district, governmental agency or water corporation shall be exempt from all utility taxes imposed by this chapter.

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

provide a copy of the federal exemption certificate for each exempt customer within the City that is served by such service supplier.

(c) The decision of the Tax Administrator may be appealed pursuant to Section 3.52.200 of this Chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 3.52.200 of this Chapter is a prerequisite to a suit thereon.

Section 3.52.100 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 the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. The Tax Administrator shall have the power to make an assessment for delinquent taxes as provided for in Section 3.52.150 of this Chapter thereby relieving the service supplier from the obligation to collect these delinquent taxes.

(b) The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this 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.

Section 3.52.120 Filing Return and Payment.

Each person required by this Chapter to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he/she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this 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 exempt from disclosure provisions of the Public Records Act.

Section 3.52.130 Collection Penalties ≠ service suppliers or self-collectors.

(a) Taxes collected from a service user, or self-collected by a service user subject to Section 3.52.050 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 a service supplier, or a service user subject to Section 3.52.050 of this Chapter, fails to remit any tax collected, on or before the due date, said person shall pay a penalty for such delinquencies at

the rate of fifteen percent (15%) of the total tax that is delinquent in the remittance, and shall pay interest at the rate of three-quarters of one percent ($\frac{3}{4}\%$) 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.

(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 and/or required to be remitted, or as recomputed by the Tax Administrator.

(d) For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid.

Section 3.52.140 Deficiency Determination and Assessment \neq Tax Application Errors.

(a) The Tax Administrator shall make a deficiency determination if he or she determines that any person required to collect or self-collect taxes pursuant to the provisions of this Chapter has failed to collect and remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges.

(b) The Tax Administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of three-quarters of one percent ($\frac{3}{4}\%$) per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) calendar days after the date of service of such notice, the person may request in writing to the Tax Administrator for a hearing on the matter. If the person fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the City.

(c) If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be held within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

(d) At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.52.200 of this Chapter. Filing a request for a hearing with the Tax Administrator and appeal to the City Manager pursuant to Section 3.52.200 of this Chapter is a prerequisite to a suit thereon.

(f) Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of three-quarters of one percent ($\frac{3}{4}\%$) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Section 3.52.140 shall commence from the date of delinquency as provided in this subsection (f).

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

Section 3.52.150 Administrative Remedy - Non-Paying Service Users.

(a) Whenever the Tax Administrator determines that a service user has withheld the full amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interests 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 (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Chapter.

(b) In addition to the tax owed, the non-paying service user shall pay a delinquency penalty at the rate of fifteen percent (15%) of the total tax that is owed, and shall pay interest at the rate of three-quarters of one percent ($\frac{3}{4}\%$) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

(c) The Tax Administrator shall notify the non-paying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.

(d) If the service user fails to remit the tax to the Tax Administrator within thirty (30) days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of fifteen percent (15%) of the amount of the total tax that is owed.

Section 3.52.160 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 in an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this 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 attorneys fees.

In the event that a service user or service supplier owing a tax under this chapter files bankruptcy, then such debt to the City shall be deemed an unsecured priority excise tax obligation under *11 U.S.C.A. Section 507(a)(8)(C)*.

Section 3.52.170 Additional Powers and Duties of the Tax Administrator.

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

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

(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 3.52.050 of this Chapter) so long as said agreements result in the collection of the tax in conformance with the intent 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 subject to cancellation by the Tax Administrator or the City at any time.

(d) The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this Chapter, of any person required to collect and/or remit a tax pursuant to this Chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 3.52.140 of this Chapter for all taxes, penalties and interest owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

(e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Chapter for a period not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of three-quarters of one percent ($\frac{3}{4}\%$) per month, prorated for any portion thereof.

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

(g) The Tax Administrator, with the written approval of the City Attorney, may compromise a claim pursuant to this Chapter where the portion of the claim proposed to be released is less than the amount set by separate resolution of the City Council relating to the settlement of general liability claims against the City. and, with the approval of the City Attorney and the City Council, may compromise such a claim where the portion proposed to be released is equal to or greater than the amount set by separate resolution of the City Council relating to the settlement of general liability claims against the City.

(h) Notwithstanding any provision in this Chapter to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this Chapter if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration industry practice or other precedence.

Section 3.52.180 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/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator, or the Tax Administrator's designated representative, shall have the right to inspect at a reasonable time.

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

(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, then 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.

Section 3.52.190. Refunds.

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

(a) The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers.

(b) The submission of a written claim, which is acted upon by the City Council, shall be a prerequisite to a suit thereon. (*See Section 935 of the California Government Code.*) The City Council shall act upon the refund claim within the time period set forth in *Government Code Section 912.4*. If the City Council fails or refuses to act on a refund claim within the time prescribed by *Government Code Section 912.4*, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in *Government Code Section 912.4*. It is the intent of the City Council that the one year written claim requirement of this subsection be given retroactive effect; provided, however, that any claims which arose prior to the commencement of the one year claims period of this subsection, and which are not otherwise barred by a then applicable statute of limitations or claims procedure, must be filed with the Tax Administrator as provided in this subsection within ninety days following the effective date of this ordinance.

(c) Notwithstanding the notice provisions of subsection (a) of this section, a service supplier that has collected any amount of tax in excess of the amount of tax imposed by this Chapter and actually due from a service user (whether due to overpayment or to erroneous or illegal collection of said tax), may refund such amount to the service user, or credit to charges subsequently payable by the service user to the service supplier, and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the Tax Administrator, provided such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous or illegal collection of said tax. The Tax Administrator shall determine the validity of the service user's claim of credit, and the underlying basis for such claim.

(d) Notwithstanding the notice provisions of subsection (a) of this section, in the event that a service supplier, or a service user subject to Section 3.52.050 of this Chapter, remits a tax to City in excess of the amount of tax imposed by this Chapter, said service supplier, or service user subject to Section 3.52.050 of this Chapter, may claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the Tax Administrator, provided such credit is claimed in a return dated no later than one year from the date of overpayment of said tax. The Tax Administrator shall determine the validity of the service user's claim of credit, and the underlying basis for such claim.

(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.

Section 3.52.200. Appeals.

(a) The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 3.52.190 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.52.190 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. [*See Government Code Section 935(b).*] Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

(b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.52.190 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

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

(d) Based upon the submission of such evidence and the review of the City's files, the City Manager shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with *Code of Civil Procedure Section 1094.6*. If the City Manager fails or refuses to act on a refund claim within the fourteen (14) day period, the claim shall be deemed to have been rejected by the City Manager on the fourteenth (14th) day.

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

Section 3.52.210 No Injunction/Writ of Mandate.

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

Section 3.52.220 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.*) and the California Unfair Practices Act (*Business and Professions Code Section 17070 et seq.*), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

Section 3.52.230 Notice of Changes to Ordinance.

If a tax under this Chapter is added, repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of *California 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 administrators and remitters of the City's utility users taxes according to the latest payment records of the Tax Administrator.

Section 3.52.240 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.

Section 3.52.250 Penalties.

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

Section 3.52.260 Future Amendment or Recodification of Cited Statute or Regulation.

Unless specifically provided otherwise, any reference to a state or federal statute or regulation in this Chapter shall mean such statute as it may be amended or recodified from time to time.

Section 3.52.270 Annual review.

The city council shall review the tax imposed by this chapter on each anniversary date of the ordinance codified in this chapter, or at such earlier time as the council may desire, to determine if the revenues produced by this chapter are necessary for the current and necessary operations of the city.