

ORIGINAL

ORDINANCE NO. 2250

AN ORDINANCE OF THE CITY OF REDWOOD CITY AMENDING CHAPTER 32, ARTICLE VII OF THE REDWOOD CITY MUNICIPAL CODE REGARDING THE UTILITIES TAX OF THE CITY OF REDWOOD CITY

WHEREAS, the City Council adopted in 1983 the 2City of Redwood City Utilities Tax:5;

WHEREAS, the City has imposed a tax for many years on the use of telephone, electricity, gas and video utility services in order to provide a portion of the general fund revenues required to provide police, fire, general government and a host of other essential services to the community;

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

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

WHEREAS, the federal Wireless Telecommunications Sourcing Act of 2000 was enacted to authorize local government to employ simple 2sourcing:5 rules to achieve administrative ease and consistency in the collection of local taxes on wireless services;

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

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

WHEREAS, while modifying the Cityrrs utilities tax ordinance in the manner provided herein, it is the intent of the City Council that none of the clarifications or revisions shall impose a new tax, revise an existing tax methodology, or increase an existing tax.

NOW, THEREFORE, the City Council of the City of Redwood City does hereby ordain as follows:

SECTION 1. That Article VII of Chapter 32 of the Redwood City Municipal Code is hereby amended in its entirety to read as follows:

Article VII. UTILITY USERS TAX

Sec. 32.500. SHORT TITLE: This Article shall be known as the "Utility Users Tax Ordinance of the City of Redwood City."

Sec. 32.501 Definitions.

Except where the context otherwise requires, the definitions given in this Section govern the construction of this Article:

- (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) ;: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.:
- (c) ;:City:: means the City of Redwood City.
- (d) ;:City Manager:: means the City Manager of City, or his or her authorized representative.
- (e) ;: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.
- (f) ;:Gas:: means natural or manufactured gas or any alternate hydrocarbon fuel, which may be substituted therefor.
- (g) ;: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.
- (h) ;:Month:: means a calendar month.
- (i) ;: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.
- (j) ;:Person:: means, without limitation, any domestic, non-profit or foreign corporation; firm; association; syndicate; joint stock company; partnership of any kind; limited liability company; joint venture; club; trust; Massachusetts business or common law trust; estate; society; cooperative; receiver, trustee, guardian or other representative appointed by order of any court; any natural individual; municipal district or municipal corporation (other than the City).
- (k) ;: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.
- (l) "Service Address" means the residential street address or the business street address of the service user, and in the case of mobile telecommunications service, the service user's Place of Primary Use.
- (m) ;:Service Supplier:: means any person, including the City, that provides telephone communication, electric, gas, water or video service to a user of such services within the City. The term shall include any person required to collect, or self-collect under Section 32.505 of this Article, and remit a tax as imposed by this Article, including its billing agent in the case of electric, gas, water or video service suppliers.
- (n) ;:Service User:: means a person required to pay a tax imposed by this Article.
- (o) ;:State:: means the State of California.
- (p) ;:Tax Administrator:: means the Director of Finance of the City of Redwood City, or his or her designee.
- (q) ::Telephone Communication Services:: shall include ;:communications services:: as defined in Sections 4251 and 4252 of the Internal Revenue Code, and the regulations thereunder, and shall include any service that is capable of transmitting telephonic quality communications [including the use of Internet Protocol (IP) or other similar means for digitization and/or packetization of telephonic quality communications for transmission over digital networks] by analog, digital, electronic, radio or similar means through ;:interconnected service:: with the ;:public switched network:: [as these terms are commonly used in the Federal Communications Act and the regulations of the Federal Communications Commission - see *47 U.S.C.A. Section 332(d)*], whether such transmission occurs by wire, cable, cable modem or digital subscriber line (DSL), internet, fiber-optic, light wave, laser, microwave, 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. 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.

- (r) 2Telephone corporation, gas corporation, and electrical corporation:: shall have the same meanings as defined in Sections 234, 222 and 218 respectively, of the Public Utilities Code of the State of California, as said Sections existed on January 1, 1970. 2Electrical corporation:: shall be construed to include any municipality or franchised agency engaged in the selling or supplying of electrical power to a service user.
- (s) 2Video 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 2video 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 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.
- (t) 2Video 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. 2Video Services:: do not include services for which a tax is paid under Section 32.502 of this Article.

Sec. 32.502. Telephone Users Tax.

(a) There is hereby imposed a tax upon every person in the City, other than a telephone corporation, using intrastate telephone communication services. The tax imposed by this section shall be at the rate of five (5%) percent of the charges made for such services and shall be collected from the service user by the telephone communication services supplier or its billing agent. 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 Article. If the billing address of the service user is different from the service address, the service address of the service user shall

be used for purposes of imposing the tax. Charges for mobile telecommunications services are subject to taxation under this article if the customer's place of primary use is in the City, regardless of where the mobile telecommunications service may originate, terminate, or pass through.

(b) As used in this Section, the term 2charges:: 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 2charges:: shall not include charges for services paid for by inserting coins in coin-operated telephones except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due.

(c) The Tax Administrator, from time to time, may issue and disseminate to telecommunication service suppliers which are subject to the tax collection requirements of this Article, an administrative ruling identifying those telecommunication services that are subject to the tax of subsection (a) above. This administrative ruling shall not impose a new tax, revise an existing tax methodology, or increase an existing tax. An administrative ruling shall not constitute a new tax or an increase in an existing tax if such administrative ruling is:

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

(d) As used in this section, the term 2telephone communication services:: shall not include 2private mobile radio service:: [as defined in Part 20.3 of Title 47 of the Code of Federal Regulations] or 2private mobile service:: [as defined in 47 U.S.C.A. Section 332(d)(3)] which is not interconnected to the public switched network. The tax imposed under subsection (a), above, shall not be imposed upon any person for using telephone communication services to the extent that, pursuant to Sections 4252 and 4253 of the Internal Revenue Code, the amounts paid for such communication services are not subject to or are exempt from the tax imposed under Section 4251 of the Internal Revenue Code. In the event that the federal excise tax on "communication services" as provided in Sections 4251, 4252 and 4253 of the Internal Revenue Code is subsequently repealed, any reference in this section and in Section 32.501(q) 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.

(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.

Sec. 32.503. Electricity Users Tax.

(a) There is hereby imposed a tax upon every person using electricity in the City. The tax imposed by this section shall be at the rate of five (5%) percent of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent. Notwithstanding the foregoing, the tax shall not apply to any individual who qualifies, and has been accepted, for the California Alternate Rates for Energy (CARE) Program pursuant to *California Public Utilities Code* Sections 327 and 739.1 et. seq., and as it may be amended from time to time. In the event that the CARE Program 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 "charges" shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are 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 charges for supplemental services to self-generation service users;
- (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 or surcharges which are necessary for or common to the receipt, use or 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 for or common to the receipt, use or enjoyment of electric service; or, ii) currently are 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 electrical energy," shall not be construed to mean the storage of such energy by a person in a battery owned or possessed by him for use in an automobile or other machinery or device apart from the premises upon which the energy was received provided however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries. The term shall not include the mere receiving of electrical energy by an electric public utility or governmental agency at a location within the City for resale.

(f) The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this Article shall be collected and remitted in the manner set forth in Section 32.505 of this Article. 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 such person 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 remittance that becomes due.

Sec. 32.504. Gas Users Tax.

(a) There is hereby imposed a tax upon every person using gas in the City, which is transported and delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of five (5%) percent of the 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. Notwithstanding the foregoing, the tax shall not apply to any individual who qualifies, and has been accepted, for the California Alternate Rates for Energy (CARE) Program pursuant to *California Public Utilities Code* Sections 327 and 739.1 et. seq., and as it may be amended from time to time. In the event that the CARE Program 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 ;:charges:: shall apply to all services, components and items for gas service that are: i) necessary for or common to the receipt, use or enjoyment of gas service; or, ii) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term ;:charges:: shall include, but is not limited to, the following charges:

- (1) the commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;
- (2) gas transportation charges (including interstate charges to the extent not included in commodity charges);
- (3) storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;
- (4) capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary for or common to the receipt, use or enjoyment of gas service; and,
- (5) charges, fees, or surcharges for gas services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(c) 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 for or common to the receipt, use or enjoyment of gas service; or, ii) currently are 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 mains or pipes; (2) charges made for gas to be used in the generation of electrical energy by an electrical corporation; and (3) charges for the use of gas by a gas corporation in the production or distribution of gas.

(f) The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this Article shall be collected and remitted in the manner set forth in Section 32.505 of this Article. 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 such person 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 remittance that becomes due.

Sec. 32.505. Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity.

(a) Any service user subject to the tax imposed by Section 32.503 or by Section 32.504 of this Article, 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 Article; 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 in the City, including any related supplemental services, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within 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.

Sec. 32.506. Video Users 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 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 "charges" 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 "charges" shall include, but is not limited to, the following charges:

- (1) franchise fees and access fees (PEG), whether designated on the customers 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); and,
- (7) service calls, service protection plans, name changes, changes of services, and special services.

(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 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

Sec. 32.507. Effect of Commingling Taxable Items with Non-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 Article) under a single charge on a service users bill, the entire single charge shall be deemed taxable.

Sec. 32.508. Constitutional and Statutory Exemptions.

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

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

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

deemed exempt from the utility users tax. With respect to a service user of telephone communication services, a service supplier of such telephone communication services doing business in the City shall, upon request of the Tax Administrator, provide a copy of the federal exemption certificate for each exempt customer within the City that is served by such service supplier.

(c) The decision of the Tax Administrator may be appealed pursuant to Section 32.520 of this article. Filing an application with the Tax Administrator and appeal to the City Administrator pursuant to Section 32.520 of this article is a prerequisite to a suit thereon.

Sec. 32.509. Maximum Utility Users Tax Payable.

No service user shall be required to pay the combined amount of the taxes imposed pursuant to this Article in excess of fifty thousand dollars (\$50,000.00) per year. Any service user who pays the maximum utility users tax imposed by the City may, with the permission of the Director, pay the tax in equal quarterly installments directly to the City. The Director shall inform all service suppliers of the names and locations of all service users making payments directly to the City. (Ord. No. 1871, 11 1, 7-11-83)

Sec. 32.510. Substantial Nexus I Minimum Contacts.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Article, ;: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.

Sec. 32.511. Duty to Collect and Remit 'ç Procedures.

The duty of service suppliers to collect and remit the taxes imposed by the provisions of this Article shall be performed as follows:

(a) The tax shall be collected insofar as practicable at the same time as, and along with, 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. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 32.515 shall apply.

(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 Article. 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.

Sec. 32.512. Filing return and payment

Each person required by this Article 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 additional information as he or she deems necessary to determine if the tax is being levied, collected and remitted in accordance with this Article. Returns are due immediately upon cessation of business for any reason. Pursuant to *California Revenue and Tax Code Section 7284.6*, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information.

Sec. 32.513. Collection Penalties - service suppliers or self-collectors.

(a) Taxes collected from a service user, or self-collected by a service user subject to Section 32.505 of this Article, 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 32.505 of this Article, 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 (¾%) 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 Article 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.

Sec. 32.514. Deficiency Determination and Assessment 'ø 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 Article 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 (¾%) 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 32.520 of this Article. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 32.520 of this Article is a prerequisite to a suit thereon.

(e) 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 (¾%) 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 32.514 shall commence from the date of delinquency as provided in this subsection (e).

(f) 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.

Sec. 32.515. Administrative remedy ≠ nonpaying service users

(a) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this Article 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 Article.

(b) In addition to the tax owed, the 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 (¾%) 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.

Sec. 32.516. Actions to Collect.

Any tax required to be paid by a service user under the provisions of this Article 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 Article shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this Article, along with any collection costs incurred by the City as a result of the persons noncompliance with this Article, including, but not limited to, reasonable attorneys fees.

Sec. 32.517. 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 Article.

(b) The Tax Administrator may adopt administrative rules and regulations not inconsistent with provisions of this Article 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 Article and thereby: (1) conform to the billing procedures of a particular service supplier (or service user subject to Section 32.505 of this Article) so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this Article; or, (2) 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 may conduct an audit, to ensure proper compliance with the requirements of this Article, of any person required to collect and/or remit a tax pursuant to this Article. 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 32.514 of this Article 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 Article, 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 Article for a period of 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 (%%) 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 Article.

(g) The Tax Administrator, with the written approval of the City Attorney, may compromise a claim pursuant to this Article 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 Article 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 Article 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.

Sec. 32.518. Records.

(a) It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this Article 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 that such person 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, through its City Council, 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 Article, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the City on or before the due date, provided that such person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.

(c) The Tax Administrator is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to *California Revenue and Tax Code Sections 7284.6 and 7284.7*. The Tax Administrator may request from a person providing transportation or distribution services of gas or electricity to service users within the City, a list of the names, billing and service addresses, quantities of gas or electricity delivered, and other pertinent information, of its transportation customers within the City pursuant to *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: (1) 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, (2) 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 Article.

Sec. 32.519. Refunds.

(a) Whenever the amount of any tax has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the Tax Administrator under this Article, 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 Article, 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, under penalty of perjury, to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a refund claim on behalf of a class or group of taxpayers. Where the amount of any individual refund claim is in excess of the amount set by separate resolution of the City Council relating to the settlement of general liability claims against the City, City Council approval shall be required.

(c) It is the intent of the City that the one year written claim requirement of this section be given retroactive effect; provided, however, that any claims which arose prior to the enactment of the one year claims period of this section, and which are not otherwise barred by a then-applicable statute of limitations or claims procedure, must be filed with the Tax Administrator as provided in this 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 the amount set by separate resolution of the City Council relating to the settlement of general liability claims against the City, shall act upon the refund claim within forty-five (45) days of the initial receipt of the refund claim. Said decision shall be final. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the forty-five (45) day period, the claim shall be deemed to have been rejected by the Tax Administrator/City Council on the forty-fifth (45th) day. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in *Government Code Section 913*.

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

(f) Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this Article on the amount of such refunded charges shall also be refunded to service users, and the service supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly return. In the event this

ordinance is repealed, the amounts of any refundable taxes levied under the authority of the repealed ordinance shall be borne by the City.

(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 (3) years next preceding a deficiency determination 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. A service supplier shall not be entitled to said credit unless it clearly establishes the right to the credit by written records showing entitlement thereto. Under no circumstances shall an overpayment taken as a credit against an underpayment pursuant to this subsection qualify a service supplier for a refund to which it would not otherwise be entitled under the one-year written claim requirement of this section.

Sec. 32.520. Appeals.

(a) The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 32.519 of this Article), 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 32.519 of this Article), 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 32.519 of this Article), 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.

Sec. 32.521. 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 Article of any tax or any amount of tax required to be collected and/or remitted.

Sec. 32.522. Remedies Cumulative.

All remedies and penalties prescribed by this Article 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 Article.

Sec. 32.523. Notice of Changes to Ordinance.

If a tax under this Article is added, repealed, increased, reduced, or the tax base is changed, the Tax Manager 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 collectors and remitters of the City's utility users taxes according to the latest payment records of the Tax Administrator.

Sec. 32.524. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article 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 Article 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.

Sec. 32.525. Penalties.

Any person violating any of the provisions of this Article shall be deemed guilty of a misdemeanor, or an infraction at the discretion of the City Attorney, and upon conviction punished pursuant to section 1.7 of this Code.

Sec. 32.526. Future Amendment to Cited Statute.

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

SECTION 2. This ordinance shall be effective thirty (30) days from the date of its adoption.

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