

## CHAPTER 5.76: UTILITIES TAX

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### § 5.76.010 Definitions.

The following words and phrases whenever used in this chapter shall be construed as defined in this section as follows.

**BILLING ADDRESS.** The mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

**CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES.** Has the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. §§ 116 and 124) and the regulations thereunder.

**CITY.** The City of Tulare.

**CITY MANAGER.** The City Manager of city, or his or her authorized representative.

**COGENERATOR.** Any corporation or person employing cogeneration (as defined in the Cal. Public Utilities Code § 218.5) 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).

**EXEMPT WHOLESALE GENERATOR.** Has the same meaning as set forth in the Federal Power Act (15 U.S.C. 79z-5a) and regulations thereunder.

**GAS.** Natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefore.

**MOBILE TELECOMMUNICATIONS SERVICE.** Has the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. § 124) and the regulations thereunder.

**MONTH.** A calendar month.

**NON-UTILITY SUPPLIER.**

(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, 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;

(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; and

(4) A water service supplier, distributor, wholesaler, marketer, or broker, which sells or supplies water to users within the city (other than a supplier of water distribution services to all or a significant portion of the city).

**PERSON.** 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), municipal district or municipal corporation (other than the city) cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

**PLACE OF PRIMARY USE.**

(1) The street address representative of where the customer's use of the telecommunications service primarily occurs, which must be:

(a) The residential street address or the primary business street address of the customer; and

(b) In the case of a mobile telecommunications service user, within the licensed service area of the home service provider.

(2) See Mobile Telecommunications Sourcing Act (4 U.S. C. §§ 116 *et seq.*).

**SERVICE ADDRESS.** The residential street address or the business street address of the service user. For a telephone communication service user, **SERVICE ADDRESS** means either:

(1) 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

(2) If the location in division (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.

**SERVICE SUPPLIER.** Any entity or person, including the city, that provides telephone communication, electric, gas, water or video service to a user of such services within the city, and includes an entity or person required to collect, or self-collect under § 5.76.060 of this chapter, and remit a tax as imposed by this chapter, including its billing agent in the case of electric, gas, water or video service suppliers.

**SERVICE USER.** A person required to pay a tax imposed under the provisions of this chapter.

**STATE.** The State of California.

**TAX ADMINISTRATOR.** The Finance Director/Treasurer of the City of Tulare or any person designated by the City Manager or the Finance Director to perform the functions of the Tax Administrator specified in this chapter.

**TELEPHONE COMMUNICATION SERVICES.** 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 **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. § 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. § 332(d) (1) and 47 C.F.R. part 20.3), 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. **TELECOMMUNICATION SERVICES** shall also include, but is not limited to, **COMMUNICATION SERVICES** as defined in the Internal Revenue Code §§ 4251 and 4252, and the regulations thereunder.

**VIDEO SERVICE SUPPLIER.** Any person, company, or service which provides one or more channels of video programming including any communications that are ancillary, necessary or common to the use and enjoyment of the video programming, to or from an address in the city, including to or from a business, home, condominium, or apartment, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or communications. A **VIDEO SERVICE SUPPLIER** includes, but is not limited to: a multichannel video programming distributor (as defined in 47 U.S.C. § 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.

**VIDEO SERVICES.** 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 such video programming, regardless of the content of such video programming or communications, or the technology used to deliver such services. **VIDEO SERVICES** shall not include services for which a tax is paid under § 5.76.030 of this chapter.

**WATER CORPORATION, TELEPHONE CORPORATION, ELECTRICAL CORPORATION, AND GAS CORPORATION.** Shall have the same meanings as defined in Cal. Public Utilities Code §§ 234, 218, 222, and 241, respectively, as the sections existed on January 1, 1969. **ELECTRICAL CORPORATION** and **WATER CORPORATION** shall be construed to include any organization, municipality or other agency engaged in the selling or supplying of electrical power or water to the service user; provided that, pursuant to Cal. Public Utilities Code § 218(b), **ELECTRICAL CORPORATION** does not include a corporation or person employing cogeneration technology or producing power from other than a conventional power source for the generation of electricity solely for the purposes specified therein.

(1995 Code, § 5.76.010) (Ord. 05-1958, passed - -2005)

### **§ 5.76.020 Constitutional and statutory exemptions.**

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

(1) Any person or service when the imposition of such tax upon such 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; and

(2) The city.

(B) Any person that is exempt from the tax imposed by this chapter pursuant to division (A) of this section 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. The 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 noncompliance. 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 § 5.76.190 of this chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to § 5.76.190 of this chapter is a prerequisite to a suit thereon.

(D) The City Council may, by resolution, establish one or more classes of persons or one or more classes of utility service otherwise subject to payment of a tax imposed by this chapter and provide that such classes of persons or service shall be exempt, in whole or in part from such tax for a specified period of time.

(E) The Tax Administrator shall prepare a list of the persons exempt from the provisions of this chapter by virtue of this section and furnish a copy thereof to each service supplier

(1995 Code, § 5.76.020) (Ord. 05-1958, passed - -2005)

### **§ 5.76.030 Telephone users' tax.**

(A) There is hereby imposed a tax upon every person in the city who uses intrastate telephone communication services. The tax imposed by this section shall be at the rate of seven 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 of the service user shall be used for purposes of imposing the tax, regardless of where the telephone communication service may originate, terminate, or pass through.

(B) As used in this section, the term **TELEPHONE COMMUNICATION SERVICES** shall not include **PRIVATE MOBILE RADIO SERVICE**, as defined in 47 C.F.R. part 20, or **PRIVATE MOBILE SERVICE**, as defined in 47 U.S.C. § 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 division (A) above shall not be imposed upon any person for using telecommunication services to the extent that, pursuant to the Internal Revenue Code §§ 4252(d) and 4253, the amounts paid for such communication services are exempt from or not subject to the tax imposed under the Internal Revenue Code § 4251. In the event that the federal excise tax on communication services as provided in the Internal Revenue Code §§ 4251, 4252 and 4253 is subsequently repealed, any reference in this § 5.76.030 and in § 5.76.010 (telephone communication services) 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 Ninth 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. As used in this section, the term **CHARGES** shall not include charges for services paid for by inserting coins in coin-operated telephones, except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee, plus any fixed monthly or other periodic charge, shall be included in the base for computing the amount of tax due.

(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 chapter, an administrative ruling, pursuant to § 5.76.160(B) of this chapter, identifying those telecommunication services that are subject to the tax of division (A) above and/or 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, except as allowed by Cal. Government Code § 53750(h)(2)(A). 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 **COMMUNICATIONS SERVICES** (26 U.S.C. §§ 4251, 4252 and 4253) by the Internal Revenue Service, or by the Tax Administrator in assuming an interpretative role of those rules, regulations, and laws in the event that the federal excise tax on communications services 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 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 imposed by this section shall be collected from the service user by the service supplier. 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 day of the following month.

(G) Notwithstanding the provisions of division (A) herein, the tax imposed under this section shall not exceed the sum of \$560 for any one calendar year of service.

(1995 Code, § 5.76.030) (Ord. 05-1958, passed - -2005)

#### **§ 5.76.040 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 six 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.

(B) (1) As used in this section, the term **CHARGES** shall apply to all services, components and items that are:

(a) Necessary or common to the receipt, use and enjoyment of electric service; or,

(b) 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.

(2) The term **CHARGES** shall include, but is not limited to, the following charges:

(a) Energy charges;

(b) Distribution or transmission charges;

(c) Metering charges;

(d) 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 § 5.76.060;

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

(f) 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:

(1) Necessary or common to the receipt, use or enjoyment of electric service; or,

(2) 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. Unbundled charges for such components and items shall be subject to the tax of division (A) above.

(E) As used in this section, the term **USING ELECTRICITY** shall not be construed to include electricity used in water pumping by water corporations; nor shall the term include the mere receiving of such electricity by an electrical corporation at a point within the city for resale.

(F) The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in § 5.76.060. All other taxes imposed by this section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the 20th day of the following month; or, at the option of the person required to collect 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 20th day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within 60 days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

(G) Notwithstanding the provisions of division (A) hereinabove, the City Council may, by Resolution, to be adopted on or before May 15 of each year, reduce the tax rate of division (A) and/or adopt a maximum tax for certain classes of customers, for the ensuing fiscal year as set forth in said Resolution. Unless the City Council re-adopts said Resolution by May 15 of the subsequent year the tax percentage reduction and any other actions taken (e.g. establishment of a maximum tax) shall automatically expire and be discontinued, and the original voter-approved tax percentage shall apply, without the necessity of a vote of the people.

(1995 Code, § 5.76.040) (Ord. 09-04, passed 12-1-2009; Ord. 05-1958, passed - -2005)

### **§ 5.76.050 Gas users' tax.**

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

(B) (1) As used in this section, the term **CHARGES** shall apply to all services, components and items for gas service that are:

(a) Necessary or common to the receipt; use and enjoyment of gas service; or

(b) 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.

(2) The term **CHARGES** shall include, but is not limited to, the following charges:

(a) 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;

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

(c) 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;

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

(e) 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 therefore, 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:

(1) Necessary or common to the receipt, use or enjoyment of gas service; or

(2) 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. Unbundled charges for such components and items shall be subject to the tax of division (A) above.

(E) The tax otherwise imposed by this section is not applicable to:

(1) Charges made for gas which is to be resold and delivered through mains and pipes;

(2) Charges made for gas to be used in the generation of electricity by an electrical corporation;

(3) Charges made by a gas corporation for gas used and consumed in the conduct of its business;

(4) Charges made for gas used in water pumping by water corporations.

(F) The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in § 5.76.060 of this chapter. All other taxes imposed by this section shall be collected from the service user by the gas

service supplier or its billing agent, the Administrator, and must be received by the Tax Administrator on or before the twentieth 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 day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within 60 days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

(G) Notwithstanding the provisions of division (A) hereinabove, the City Council may, by Resolution, to be adopted on or before May 15 of each year, reduce the tax rate of division (A) and/or adopt a maximum tax for certain classes of customers, for the ensuing fiscal year as set forth in said Resolution. Unless the City Council re-adopts said Resolution by May 15 of the subsequent year, the tax percentage reduction and any other actions taken (e.g. establishment of a maximum tax) shall automatically expire and be discontinued, and the original voter-approved tax percentage shall apply, without the necessity of a vote of the people.

(1995 Code, § 5.76.050) (Ord. 09-04, passed 12-1-2009; Ord. 05-1958, passed - -2005)

#### **§ 5.76.060 Collection of tax from service users receiving direct purchase of gas or electricity.**

(A) Any service user subject to the tax imposed. by §§ 5.76.040 or 5.76.050 of this chapter, which produces gas or electricity for self-use; which receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this chapter; or which, for any other reason is not having the full tax collected and remitted by its service supplier, a non-utility service supplier, or its billing agent on the use of gas or electricity in the city, including any related supplemental services, shall report the fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within 30 days of such use. In lieu of paying the actual tax, the service user may, at its option, remit to the Tax Administrator within 30 days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the 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 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 the 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.

(1995 Code, § 5.76.060) (Ord. 05-1958, passed - -2005)

#### **§ 5.76.070 Water users' tax.**

(A) There is hereby imposed a tax upon every person using water in the city which is delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of six percent of the charges made for such water and shall be collected by the water service supplier or its billing agent.

(B) (1) As used in this section, the term **CHARGES** shall apply to all services, components and items that are:

(a) Necessary or common to the receipt, use and enjoyment of water service; or

(b) Currently, or historically have been, included in a single or bundled: rate for water service by a local distribution company to a class of retail customers.

(2) The term **CHARGES** shall include, but is not limited to, the following charges:

(a) Water commodity charges (potable and non-potable);

(b) Distribution or transmission charges;

(c) Metering charges;

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

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

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

(D) (1) The Tax Administrator, from time to time, may survey the water service suppliers in the city to identify the various unbundled billing components of water retail service that they commonly provide to residential and commercial/industrial customers in the city, and the charges therefore, including those items that are mandated by a water district or a state or federal agency as a condition of providing such water service. The Tax Administrator, thereafter, may issue and disseminate to such water service suppliers an administrative ruling identifying those components and items which are:

(a) Necessary or common to the receipt, use or enjoyment of water service; or

(b) Currently, or historically have been, included in a single or bundled rate for water service by a local distribution company to a class of retail customers.

(2) Unbundled charges for such components and items shall be subject to the tax of division (A) of this section.

(E) There shall be excluded from the base on which the tax imposed in this section is computed charges made for water which is to be resold and delivered through mains or pipes and charges made by a water corporation for water used and consumed by such water corporation in the conduct of its business.

(F) The tax imposed by this section shall be collected from the service user by the 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 day of the following month.

(G) Notwithstanding the provisions of division (A) hereinabove, the City Council may, by Resolution, to be adopted on or before May 15 of each year, reduce the tax rate of division (A) and/or adopt a maximum tax for certain classes of customers, for the ensuing fiscal year as set forth in said Resolution. Unless the City Council re-adopts said Resolution by May 15 of the subsequent year, the tax percentage reduction and any other actions taken (e.g. establishment of a maximum) shall automatically expire and be discontinued, and the original voter-approved tax percentage shall apply, without the necessity of a vote of the people.

(1995 Code, § 5.76.070) (Ord. 09-04, passed 12-1-2009; Ord. 05-1958, passed - -2005)

**§ 5.76.080 Reserved.****§ 5.76.090 Bundling taxable items with non-taxable items.**

Except as otherwise provided by state or federal law, or as approved in writing by the Tax Administrator, if one or more non-taxable items are bundled or aggregated together with one or more taxable items (as provided for by this chapter) under a single charge on a service user's bill, the entire single charge shall be deemed taxable. Notwithstanding the foregoing, a telephone service provider of intrastate, interstate, and/or international services, may, with the prior written consent of the Tax Administrator, employ a reasonable method to estimate the intrastate portion of its collected revenues that are subject to the tax under § 5.76.030.

(1995 Code, § 5.76.090) (Ord. 05-1958, passed - -2005)

**§ 5.76.100 Substantial nexus/minimum contacts.**

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

(1995 Code, § 5.76.100) (Ord. 05-1958, passed - -2005)

**§ 5.76.110 Duty to collect—Procedures.**

(A) *Collection by service suppliers.* The duty of service suppliers to collect and remit the taxes imposed by the provisions of this chapter shall be performed as follows.

(1) The tax shall be collected by service suppliers 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. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on the charges, § 5.76.150 shall apply.

(2) 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.

(B) *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 or she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to Cal. Revenue and Tax Code § 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information that is exempt from the disclosure provisions of the Public Records Act.

(1995 Code, § 5.76.110) (Ord. 05-1958, passed - -2005)

**§ 5.76.120 Collection penalties—Service suppliers and self-collectors.**

(A) Taxes collected from a service user, or owed by a service user subject to § 5.76.060 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 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 division 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 the following business day.

(B) If the person required to collect and/or remit the utility users' tax fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, or, in the case of a service user that fails to properly self-collect and remit the tax under § 5.76.060 of this chapter on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of 15% of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of 0.75% 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 remit taxes pursuant to the provisions of this chapter for fraud or gross negligence in reporting or remitting at the rate of 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.

(1995 Code, § 5.76.120) (Ord. 05-1958, passed - -2005)

### **§ 5.76.130 Actions to collect.**

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the city. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the city by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount, including penalties and interest as provided for in this chapter, along with any collection costs incurred by the city as a result of the person's noncompliance with this chapter; including, but not limited to, reasonable attorneys fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under 11 U.S.C. § 507(a)(8)(C).

(1995 Code, § 5.76.130) (Ord. 05-1958, passed - -2005)

### **§ 5.76.140 Deficiency determination and assessment \_Tax application errors.**

(A) The Tax Administrator shall make a deficiency determination if he or she determines that any person required to pay, collect or self-collect taxes pursuant to the provisions of this chapter has failed to pay, collect, self-collect and/or 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 0.75% 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 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.

(C) 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. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled within 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 calendar days prior to the hearing, and, if the Tax Administrator desires the 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 § 5.76.190 of this chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to § 5.76.190 of this chapter 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 day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be 15% on the total amount of the assessment, along with interest at the rate of 0.75% 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 chapter shall commence from the date of delinquency as provided in this division (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.

(1995 Code, § 5.76.140) (Ord. 05-1958, passed - -2005)

### **§ 5.76.150 Administrative remedy\_Non-paying service users.**

(A) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the city, he or she may relieve such person of the obligation to collect the taxes due under this chapter from certain named service users for specific billing periods. To the extent the service user has failed to pay the amount of tax owed for a period of two or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the city with the 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 service user shall pay a delinquency penalty at the rate of 15% of the total tax that is owed, and shall pay interest at the rate of 0.75% 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 nonpaying 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 30 days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of 15% of the amount of the total tax that is owed.

(1995 Code, § 5.76.150) (Ord. 05-1958, passed - -2005)

## **§ 5.76.160 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. The adoption of an administrative ruling by Tax Administrator, pursuant to this division (B) shall not constitute an "extension" or "increase" of the tax imposed by this chapter, provided that the administrative ruling does not cause the percentage rate of the tax to exceed the percentage rates set forth in this chapter (as authorized by California Constitution Chapter XIII C, Section 2(d), and Cal. Government Code § 53750(h)(2)).

(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:

(1) Conform to the billing procedures of a particular service supplier (or service user subject to § 5.76.060 of this chapter) so long as the agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter; 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 chapter, of any person required to collect and/or remit a tax pursuant to this chapter. The Tax Administrator shall notify the 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 years next preceding the date of receipt of the written notice by the person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to § 5.76.140 of this chapter for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If the 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. The 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 of not to exceed 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 the extension at the rate of 0.75% 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) (1) The City Manager may compromise a claim made pursuant to this chapter in accordance with the authority set forth in Tulare Municipal Code § 5.76.120.

(2) ALTERNATIVE: 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 \$5,000; 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 \$5,000.

(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.

(1995 Code, § 5.76.160) (Ord. 05-1958, passed - -2005)

### **§ 5.76.170 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 years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at a reasonable time.

(B) The city may issue an administrative subpoena to compel a person to deliver to the Tax Administrator copies of all records deemed necessary by the Tax Administrator to establish compliance with this chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the city on or before the due date, provided that such person shall reimburse the city for all reasonable travel expenses incurred by the city to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the city to conduct the inspection.

(C) The Tax Administrator is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to Cal. Revenue and Tax Code §§ 7284.6 and 7284.7. The Tax Administrator 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 Cal. Public Utilities Code § 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) (1) If any person subject to record-keeping under this section unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of \$500 on such person for each day following:

(a) The initial date that the person refuses to provide such access; or

(b) The due date for production of records as set forth in the administrative subpoena.

(2) This penalty shall be in addition to any other penalty imposed under this chapter.

(1995 Code, § 5.76.170) (Ord. 05-1958, passed - -2005)

## § 5.76.180 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 the tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto.

(B) The submission of a written claim, which is acted upon by the City Council, shall be a prerequisite to a suit thereon. (See Cal. Government Code § 935.) The Tax Administrator, or the City Council where the claim is in excess of \$5,000, shall act upon the refund claim within the time period set forth in Cal. Government Code § 912.4. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the time prescribed by Cal. Government Code § 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 Cal. Government Code § 912.4. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in Cal. Government Code § 913. Nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers.

(C) Notwithstanding the notice provisions of division (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 erroneous or illegal collection of the 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 division (A) of this section, in the event that a service supplier, or a service user subject to § 5.76.060 of this chapter, remits a tax to city in excess of the amount of tax imposed by this chapter, the service supplier, or service user subject to § 5.76.060 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 the 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 chapter is repealed, the amounts of any refundable taxes will be borne by the city.

(F) A service user who desires to obtain the benefits of the maximum tax limitations in §§ 5.76.030(G), 5.76.040(G), 5.76.050(G), 5.76.060(F) and 5.76.070(F), shall file a claim for refund with the Tax Administrator and the claimant must establish his or her right to a refund by written records or other relevant evidence.

(1995 Code, § 5.76.180) (Ord. 05-1958, passed - -2005)

### **§ 5.76.190 Appeals.**

(A) The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to § 5.76.180 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 § 5.76.180 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 Cal. Government Code § 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 § 5.76.180 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 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 scheduled for hearing before an independent hearing officer selected by the City Manager, no more than 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 calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

(D) Based upon the submission of such evidence and the review of the city' files, the hearing officer 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 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 90 days from the date of the decision in accordance with Cal. Code of Civil Procedure § 1094.6.

(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.

(1995 Code, § 5.76.190) (Ord. 05-1958, passed - -2005)

### **§ 5.76.200 Notice 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.

(1995 Code, § 5.76.200) (Ord. 05-1958, passed - -2005)

### **§ 5.76.210 Notice of changes to chapter.**

If a tax under this chapter is added repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of Cal. Public Utilities Code § 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.

(1995 Code, § 5.76.210) (Ord. 05-1958, passed - -2005)

**§ 5.76.220 Future amendment of cited statute.**

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

(1995 Code, § 5.76.220) (Ord. 05-1958, passed - -2005)

**§ 5.76.230 Severability.**

If any section, division, 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 shall not affect the validity of the remaining portions of this chapter or any part thereof. The Mayor and Council hereby declare that they would have adopted each section, division, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, divisions, subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid, unlawful or unconstitutional.

(1995 Code, § 5.76.230) (Ord. 05-1958, passed - -2005)