Utility Users Tax Ordinance

City of Vallejo, CA

CHAPTER 3.12 TELECOMMUNICATION, GAS, ELECTRICITY, AND VIDEO USERS TAX

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3.12.010 Definitions. Except where the context otherwise requires, the definitions given in this
Section govern the construction of this chapter:

(a) "Person" shall mean, without limitation, any natural individual, firm, trust, common law trust,
estate, partnerships of every kind, association, syndicate, club, joint stock company, joint venture,
limited liability company, corporation (foreign or domestic, except for "Telephone Corporation" as
defined under subsection (s) below), cooperative, or receiver, trustee, guardian or other
representative appointed by order of any court.

(b) "City" shall mean the City of Vallejo.

(c) "Cogenerator" shall mean any corporation or person employing cogeneration (as defined in

section 218.5 of the California Public Utilities Code) for producing power for the generation of
electricity for self use or sale to others from a qualified cogeneration facility (as defined in the
federal Public Utility Regulatory Policies Act of 1978 and regulations thereunder).

(d) "Electrical Corporation" shall mean a corporation or person as defined in Public Utilities Code
Section 218.

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

(f) "Franchised Video Provider" shall mean any video provider that provides video services within
the City pursuant to a video services franchise granted by the City.

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

(h) "Gas Corporation" shall mean a corporation or person as defined in Public Utilities Code
Section 222.

(i) "Intrastate Telecommunication" shall mean all telecommunications regardless of routing that
either (i) originate in the City and terminate in the State, or (ii) originate in the State and terminate
in the City, where, in either instance, the service or billing address of the service user is in the City.

(j) "Interstate Telecommunication" shall mean all telecommunications that either (i) originate in the
City and terminate in another state, or (ii) originate in another state and terminate in the City,
where, in either instance, the service or billing of the service user is in the City.

(k) "International Telecommunication" shall mean all telecommunications that either (i) originate in
the City and terminate outside of the United States, or (ii) originate outside of the United States
and terminate in the City, where, in either instance, the service or billing of the service user is in the
City.

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

(m) "Non-utility Supplier" shall mean: (1) a service supplier, other than an electrical corporation
franchised to serve within the City, which generates electricity in capacities of 50 kilowatts, or more,
for its own use or for sale to others, and shall include but is not limited to any publicly-owned
electric utility, investor-owned utility, municipal utility district, federal power marketing agency,
electric rural cooperative, or other supplier or seller of electricity; or, (2) a gas supplier other than a
gas corporation franchised to serve within the City, which sells or supplies gas to users within the
City.

(n) "Service Supplier" shall mean any entity or person required to collect or self collect and remit a
tax as imposed by this ordinance.

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

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

(q) "Tax Collector" shall mean the City Treasurer/Finance Director of the City.

(r) "Telecommunication services" include, in addition to the meaning ordinarily and popularly
ascribed to it, without limitation, the transmission of messages or information (including but not
limited to voice, data, facsimile, video, text) through the use of the local, toll, and wide area
telephone service; telegraph and teletypewriter services; cellular telephone services; or any other
transmission of messages or information by electronic or similar means through "interconnected
service" with the "public switched network" [as those terms are commonly used in the Federal
Communications Act and the regulations of the Federal Communications Commission - see 47
U.S.C.A. § 322(d)] by wire, cable, fiber-optics, light waves, laser, microwaves, radio waves,
switching facilities, satellite or similar facilities, whether such service is provided by a telephone
corporation, competitive access provider, private communication service provider, or any other
person. "Telecommunication services" shall include "basic telecommunication services" and
"directly related services", as those terms are defined and interpreted by the

Federal
Communications Commission in its regulations and decisions.
"Telecommunication Services" shall not include private communication services, land mobile
services or maritime mobile services, which are not interconnected with the public switched network.

(s) "Telephone Corporation" shall mean a corporation or person as defined in Public Utilities Code
Section 234.

(t) "Video Provider" shall mean any person, company, or service which provides one or more
channels of video programming or communications (including the leasing of channel access to
provide such video programming or communications) to an address in the City, including to a
business, home, condominium, or apartment, where some fee is paid, whether directly or as
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 provider" includes, but is not
limited to, multichannel video programming distributors [as defined in 47 U.S.C. § 522(12)],
providers of cable television, master antenna television, satellite master antenna television, direct
broadcast satellite, multichannel multi point distribution services, and other providers of video
programming or communication (including two-way communication), whatever their technology.

(u) "Video Services" shall mean any and all services related to the providing of video programming
(including origination programming), communications (including two-way communications),
regardless of the content of the video programming or communications, and shall include the
leasing of channel access. "Video Services" shall not include services for which a tax is paid under
Section 3.12.020.

(v) "Video Services Franchise" shall mean a franchise agreement granted by the City to a video
provider for providing video services within the City, and which requires the video provider to pay a
franchise fee to the City, which fee is billed to the customers of the franchised video provider as
part of the bill for services.

3.12.020 Telecommunication users tax.

(a) There is hereby imposed a tax upon every person, other than a telephone corporation, using
interstate, international, and/or intrastate telecommunication services in the City. The tax imposed
by this section shall be at the rate of seven and one-half (7.5%) percent of the charges made for
such services, and shall be paid by the person paying for such services. The tax shall not be
based on network usage related charges for cellular telephone services and other similar mobile
services, for which the service provider cannot, as a practical matter, determine the origination or
termination of the telecommunication. The Tax Collector may adopt administrative rules for assuring
a reasonable and consistent allocation of the monthly cellular billing between network
usage-related charges and non-usage-related charges. "Charges" shall also include the value of
any other services, credits, property of every kind or nature, or other consideration provided by the
service user in exchange for the telecommunication services.

(b) Notwithstanding the provisions of Subsection (a) of this section, the tax imposed under this
section shall not be imposed upon any person for using telecommunication services to the extent
that the amounts paid for such services are exempt from or not subject to the tax imposed under
Section 4251 of the Internal Revenue Code, and the regulations thereunder, except for the
following charges, which shall be included in the calculation of the tax in this section:

i) charges to a service user by a hotel or motel for telecommunication services used in the City
when such charges are incidental to the right of occupancy in such hotel or motel. Collection of the
tax shall be the responsibility of the hotel or motel.

ii) charges to a service user in the City by a telecommunication service provider, including but not
limited to an alternative or nontraditional telephone service provider, a private communication
service provider, or a competitive access provider, for providing: i) telecommunication services used
in the City, and/or ii) access to telephone toll service of an interexchange carrier.

(c) The tax imposed by this section shall be collected from the service user by the person providing
the telecommunication services, or by the motel or hotel owner in the case of subsection (b) above.
The amount of tax collected in one month shall be remitted by U.S. Mail, to the Tax Collector, and
must be received by the Tax Collector on or before the 20th day of the following month; or, at the
option of the person required to collect or remit the tax, such person shall remit an estimated
amount of tax measured by the tax billed in the previous month or upon the payment pattern of
the customer(s) of the service supplier, which must be received by the Tax Collector on or before
the 20th day of the following month.

(d) To prevent actual multi-jurisdictional taxation of telecommunication services subject to tax under
this section, any service user, upon proof to the Tax Collector that the service user has previously
paid the same tax in another state or city on such telecommunication service, shall be allowed a
credit against the tax imposed to the extent of the amount of such tax legally imposed in such
other state or city, provided, however, the amount of credit shall not exceed the tax owed to the
City under this section.

3.12.030 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 seven and one-half (7.5%) percent of the charges made for
such electricity, and for any supplemental services provided by a service supplier or non-utility
supplier to a service user related to the provision of electricity, other than cogenerated electricity.
The tax shall be paid by the person paying for such electricity or supplemental services.

(b) "Charges", as used in this section, shall include charges made for (1) metered energy; (2)
minimum charges for services, including customer charges, service charges, demand charges,
standby charges, fuel or other cost adjustments, and all other annual and monthly charges,
authorized by the California Public Utilities Commission or the Federal Energy Regulatory
Commission. "Charges" for "supplemental services related to the provision of

electricity" shall
include charges made for: (1) wheeling, transmission, or distribution; and, (2) stand-by, reserves,
firming, ramping, voltage support, regulation, emergency, or other similar services. "Charges" shall
also include the value of any other services, credits, property of every kind or nature, or other
consideration provided by the service user in exchange for the electricity or services related to the
provision of such electricity.

(c) As used in this section, the term "using electricity" shall not be construed to mean the storage
of electrical energy by a person in a battery that he owns or possesses for use in an automobile or
other machinery or device apart from the premises upon which the electricity was received;
provided, however, the term shall include the receiving of such electricity for the purpose of using it
in the charging of batteries; nor shall the term include the mere receiving of such electricity by an
electrical corporation or governmental agency at a point within the City for resale.

(d) The tax imposed in this section shall be collected from the service user by any electricity service
supplier or non-utility supplier. The amount of tax collected in one month shall be remitted by U.S.
Mail, to the Tax Collector, and must be received by the Tax Collector on or before the 20th day of
the following month; or, at the option of the person required to collect or remit the tax, such person
shall remit an estimated amount of tax measured by the tax billed in the previous month or upon
the payment pattern of the customer(s) of the service supplier, which must be received by the Tax
Collector on or before the 20th day of the following month.

The tax on electricity provided by self-production or by a non-utility supplier or an electric utility not
under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in
Section 3. 12.060.

3.12.040 Cogenerated electricity users tax.

(a) Notwithstanding Section 3.12.030 of this chapter, there is hereby imposed a tax upon every
person using cogenerated electricity in the City. The tax imposed by this section shall be at the

rate of seven and one-half (7.5%) percent of the value of the cogenerated electricity consumed in the City. If the cogenerator consumes the cogenerated electricity, such electricity shall be valued at the electric utility supplier's combined "Avoided Cost Energy Pricing and Avoided Cost Capacity Pricing" which is filed with the California Public Utilities Commission. The cogenerator/service user shall pay the tax as provided in Section 3.12.060.

If the cogenerator sells the energy for consumption in the City, the value of the cogenerated electricity shall be based upon the actual charges made for such service and shall be collected from the service user by the cogenerator/non-utility supplier. The amount of tax collected in one month shall be remitted by U.S. Mail, to the Tax Collector, and must be received by the Tax Collector on or before the 20th day of the following month. The tax on cogenerated electricity provided by a non-utility supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 3.12.060.

Whether the cogenerator consumes or sells the cogenerated energy, in addition to the tax provided in this section, the service user shall pay a tax on all charges for supplemental services as described in Section 3.12.030 (b) above.

(b) The cogenerator shall install and maintain an appropriate metering system which will enable compliance with this section.

3.12.050 Gas users tax.

(a) There is hereby imposed a tax upon every person using gas in the City, which is transported through a pipeline distribution system or by mobile transport. The tax imposed by this section shall be at the rate of seven and one-half (7.5%) percent of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas, and shall be paid by the person using such gas; provided, however, that the tax shall not apply to any charges for gas storage services when the service provider cannot, as a practical matter, determine the location where such stored gas is ultimately used. "Charges" as used in this section shall include: (1) the

commodity charges for purchased gas, or the cost of gas owned by the service user, which is delivered through a gas pipeline distribution system or by mobile transport; (2) gas transportation charges (including interstate charges to the extent not included in commodity charges); and (3) capacity or demand charges, service charges, customer charges, minimum charges, annual and monthly charges, and any other charges authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission.

The "cost of gas owned by the service user" shall include 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. "Charges" shall also include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas.

(b) There shall be excluded from the calculation of the tax imposed in this section: (1) charges made for gas which is to be resold and delivered through a pipeline distribution system or by mobile transport; or, (2) charges made for gas used in the production of electricity by a cogenerator, an electric corporation, a public agency that supplies or sells electricity, or an exempt wholesale generator.

(c) The tax that is calculated on charges for gas provided by self-production or by a non-utility supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 3.12.060. All other taxes on charges for gas imposed by this section shall be collected from the service user by the gas service supplier. The amount of tax collected in one month shall be remitted by U.S. Mail, to the Tax Collector, and must be received by the Tax Collector on or before the 20th day of the following month; or, at the option of the person required to collect or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Collector on or before the 20th day of the following month.

(d) Where a gas service supplier is providing transportation services to a service user and the service user has purchased the commodity from a third party, then the transporting gas service supplier shall collect the tax imposed by this section from the service user, which shall be calculated as follows:

i) seven and one-half (7.5%) of the transportation charges (including interstate charges to the extent not included in the commodity charges); plus,

ii) seven and one-half (7.5%) of the imputed value of the transported commodity as calculated in accordance with Public Utilities Code Section 6353 (a) (b) and (c), or, at the election of the service user, seven and one-half (7.5%) of the actual charges for the transported commodity.

(e) If the service user elects to pay the tax based upon the actual charges for the transported commodity as provided in subsection (d) (ii) above, the service user must:

i) give thirty days (30) prior written notice to the Tax Collector of such election; and,

ii) submit to the Tax Collector an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter to reflect the difference between the tax based upon the imputed value in accordance with the Public Utilities Code § 6353 (a) (b) and (c) and the actual charges of the transported commodity. The credit, if approved by the Tax Collector, may be applied against any subsequent tax bill that becomes due.

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

(a) Any service user subject to the tax imposed by Section 3.12.030, 3.12.040 or 3.12.050 hereof, which produces gas or electricity for self use, or which receives gas or electricity directly from a non-utility supplier not under the jurisdiction of this ordinance, or which otherwise is not having the full tax due on the use of gas or electricity in the City that is directly billed and collected by the service supplier, shall report said fact to the Tax Collector and shall remit the tax due directly to the Tax Collector 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 Collector within thirty (30) days of such use an estimated
amount of tax measured by the tax billed in the previous month, or upon the pattern payment of
similar customers of the service supplier using similar amounts of gas or electricity, provided that
the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty
(60) days following each calendar quarter. The credit, if approved by the Tax Collector, may be
applied against any subsequent tax bill that becomes due.

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

3.19.070 Not used.

3.12.080 Video users tax.

(a) There is hereby imposed a tax upon every person in the City using video services from a video
provider. The tax imposed by this section shall be at the rate of seven and one-half (7.5%) percent
of the charges made for such service and shall be paid by the person paying for such service.
"Charges" shall include charges for leased assess channels and origination programming, which
are transmitted to video users in the City, and shall also include the value of any other services,
credits, property of every kind or nature, or other consideration provided by the service user in
exchange for the video services.

(b) The tax imposed by this section shall be collected from the service user by the video provider.
Franchised video providers subject to this section shall provide the Tax

Collector within thirty (30)
days of the effective date of this section sufficient information to set the rate of the tax in
accordance with Section 3.12.080 (a) above, and shall promptly notify the Tax Collector of any
change in any such information that affects the determination of the tax rate. The amount of tax
collected in one month shall be remitted by U.S. Mail, to the Tax Collector, and must be received
by the Tax Collector on or before the 20th day of the following month.

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

(a) any person or service if imposition of such tax upon that person or service would be in violation
of the Constitution of the United States or the Constitution of the State of California;

(b) the City;

(c) charges related to late payments, returned checks and collection charges.
The exemptions granted above shall not eliminate the duty of the service supplier from collecting
such taxes from such exempt individuals or the duty of such exempt individuals from paying such
taxes to the service supplier, unless an exemption is applied for by the service user and granted in
accordance with the provisions of this section. Any service user exempt from the taxes imposed by
this chapter because of the provisions of this subsection may file an application with the Tax
Collector for an exemption. Such application shall be made upon a form supplied by the Tax
Collector and shall state those facts, declared under penalty of perjury, which qualify the applicant
for an exemption.

The Tax Collector shall review all such applications and shall certify as exempt those applicants
determined to be qualified hereunder. The Tax Collector shall notify all service suppliers affected
that such exemptions have been approved. Upon the receipt of such notice, the service supplier
shall not be required to continue to bill any further tax imposed by this chapter on such exempt
service user until further notice by the Tax Collector is given. The service supplier shall eliminate
such exempt service user from its tax billing procedure no later than (60) days after the receipt of
such notice from the Tax Collector

All exemptions shall continue so long as the prerequisite facts supporting the initial qualification for exemption shall continue; provided, however, the exemption shall automatically terminate with any change in the service address or residence of the exempt individual; and provided, further, such individual may nevertheless apply for a new exemption with each change of address or residence.
The Tax Collector shall have the power and right to demand evidence of the continued eligibility of a service user for exemption under the provisions above. Such evidence may include, but need not be limited to, copies of business records, letters, statements from the Social Security Administration, copies of income tax returns, and such other evidence concerning the service user or other members of his household which may tend to prove or disapprove such eligibility. Failure to provide such evidence, when such evidence is requested from the service user in writing by the Tax Collector, shall be grounds for the immediate discontinuance of the service user's eligibility for exemption under the provisions of this subsection.

Any individual exempt from the tax shall notify the Tax Collector within ten (10) days of any change in fact or circumstance which might disqualify such individual from receiving such exemption. It shall be a misdemeanor for any person to knowingly receive the benefits of the exemption when the basis for such exemption either does not exist or ceases to exist.

If the Tax Collector determines that an application for exemption is faulty, or that the applicant has failed to truthfully set forth such facts, the application for the exemption shall be denied in writing to the applicant. The applicant shall thereafter have a right to file an amended application for an exemption or to appeal the Tax Collector's decision to the City Manager within ten (10) days after the mailing date of the Tax Collector's rejection. In the case of an appeal, the City Manager shall review the facts in consultation with the City Attorney and shall render a final determination on such appeal.

The Tax Collector shall annually prepare a list of the persons exempt from the above provisions and furnish a copy thereof to each service supplier. The list shall contain the

name of the exempt
person, together with the current address to which service is supplied.

3.12.100 Duty to collect: Procedures.

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

(a) The tax shall be collected insofar as practicable at the same time as, and along with, the
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, such amount and any subsequent payments by a
service user shall be applied to the utility charge first until such charge has been fully satisfied. Any
remaining balance shall be applied to taxes due. In those cases where a service user has notified
the service supplier of refusal to pay the tax imposed on said charges, Section 3.12.150(b) shall
apply.

(b) The duty 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.

3 12.110 Filing return and payment. Each service supplier or service user subject to Section

3.12.060 shall make a return to the Tax Collector, on forms provided by him. The full amount of the
tax collected shall be included with the return and filed with the Tax Collector. The Tax Collector is
authorized to require such additional information as he deems necessary to determine if the tax is
being levied and collected in accordance with this chapter. Returns are due immediately upon
cessation of business for any reason.

3.12.120 Collection penalties.

(a) Taxes collected from a service user which are not remitted to the Tax Collector on or before the due date provided in this chapter are delinquent. Taxes owed by a service user subject to Section 3.12.060 are delinquent if not received by the Tax Collector 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 Collector on the first regular working day following a Saturday/Sunday, or legal holiday.

(b) Penalties for delinquency in the remittance of any tax collected, or any deficiency determination thereof, shall attach and be paid by the person required to collect and remit at the rate of fifteen (15%) percent of the total tax collected or imposed by the provisions of this chapter.

(c) The Tax Collector 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 and negligence in reporting or remitting at the rate of fifteen (15%) percent of the amount of the tax collected, or as recomputed by the Tax Collector.

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

3.12.130 Actions to collect.

(a) 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 Collector shall be deemed a debt owed to the City by the person required to collect and remit. 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 reasonable attorneys fees.

(b) Notwithstanding any other provision of this chapter, no interest or penalty may be imposed on a service supplier for a delinquent remittance of tax collected under Section 3.12.050(d) unless such delinquency is the result of the service supplier's gross negligence or intentional disregard of the applicable tax collection and remittance obligations of this chapter.

3.12.140 Additional power and duties of Tax Collector.

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

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

(c) The Tax Collector may make administrative agreements to vary from the strict requirements of this chapter so that collection of any tax imposed herein may be made in conformance with the billing procedures of a particular service supplier (or service user subject to Section 3.12.060) so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter. A copy of each such agreement shall be on file in the Tax Collector's office.

(d) The Tax Collector, or his designee, shall provide prompt written notice to all service suppliers of any change in the City's boundaries following any annexation or other change in the City's boundaries. Said notice shall set forth the revised boundaries by street and address along with a copy of the final annexation order from the Local Agency Formation Commission.

3.12.150 Assessment - administrative remedy.

(a) Whenever the Tax Collector 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 Collector deems it in the best interest of the City, he may relieve such person of the obligation to collect the taxes due under this chapter from certain named service users for specific billing periods. Whenever the service user has failed to pay the amount of tax owed for a period of two or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the

City with the names
and addresses of such service users and the amounts of taxes owed under the provisions of this
chapter.

(b) The Tax Collector shall notify the non-paying service user that he has assumed the
responsibility to collect the taxes due for the stated periods and demand payment of such taxes.
The notice shall be served on the service user by personal delivery or by deposit of the notice in
the United States mail, postage prepaid thereon, addressed to the service user at the address to
which billing was made by the person required to collect the tax;
or, should the service user have changed his address, to his last known address. If the service
user fails to remit the tax to the Tax Collector within fifteen (15) days from the date of the service of
the notice upon him, which shall be the date of mailing if service was not accomplished in person,
a penalty of twenty-five (25%) percent of the amount of the tax set forth in the notice shall be
imposed, but not less than Five and no/100ths ($5.00) Dollars. The penalty shall become a part of
the tax required to be paid.

(c) The Tax Collector may make an assessment for taxes not paid or remitted by a person required
to pay or remit. A notice of the assessment shall refer briefly to the amount of the taxes and
penalties imposed and the time and place when such assessment shall be submitted to the City
Council for confirmation or modification. The City Clerk shall mail a copy of such notice to the
service supplier and to the service user at least ten (10) days prior to the date of the hearing and
shall post such notice for at least five (5) continuous days prior to the date of the hearing. Any
interested party having any objections may appear and be heard at the hearing provided his
objection is filed in writing with the City Clerk prior to the time act for the hearing. At the time fixed
for considering such assessment, the City Council shall hear the same, together with any
objections filed as provided in this subsection, and thereupon may confirm or modify such
assessment by motion.

3.12.160 Records.

(a) It shall be the duty of every person required to collect and remit to the City any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and remittance to the Tax Collector, which records the Tax Collector shall have the right to inspect at all reasonable times.

(b) The Tax Collector 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 of its transportation customers within the City pursuant to Section 6354(e) of Chapter 2.5 of Division 3 of the California Public Utilities Commission.

3.12.170 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 Collector under this chapter, it may be refunded as provided in this section:

(a) The Tax Collector 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 Collector under this chapter, provided that no refund shall be paid under the provisions of this section unless the claimant has submitted a written claim to the Tax Collector 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. The submission of a written claim, which is acted upon by the City Council, shall be a prerequisite to a suit thereon. (See Government Code Section 935). The City Council shall act upon the refund claim within the time period set forth in Government Code Section 912.4. If the City Council fails or refuses to act on a refund claim within the time prescribed by Government Section 912.4, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in Government Code Section 912.4. It is the intent of the City Council that the

one year written claim requirement of this subsection be given retroactive effect; provided, however, that any claims which arose prior to the commencement of the one year claims period of this subsection, and which are not otherwise barred by a then applicable statute of limitations or claims procedure, must be filed with the Tax Collector as provided in this subsection within ninety (90) days following the effective date of this ordinance.

(b) Notwithstanding the notice provisions of subsection (a) of this section, a service supplier that has collected any amount of tax in excess of the amount of tax imposed by this chapter and actually due from a service user (whether due to overpayment or to erroneous or illegal collection of said tax), may refund such amount to the service user, or credit to charges subsequently payable by the service user to the service supplier, and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the Tax Collector, 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 Collector shall determine the validity of the service user's claim of credit, and the underlying basis for such claim.

(c) Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this chapter on the amount of such refunded charges shall also be refunded to service users, and the service supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly returns. In the event this ordinance is repealed, the amounts of any refundable taxes will be borne by the City.

3.12.180 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this chapter or any part thereof. The City Council hereby

declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

3.12.190 Termination or suspension of utility users tax.

The service supplier shall, upon notification, terminate or suspend any utility users tax commencing with the first full billing period which occurs after the effective date of such action by the City Council.

3.12.200 Collection of tax on new charges.

In the event that this chapter imposes a tax on a charge that was not subject to collection prior to , 1995, the Tax Collector may allow the person responsible for collecting and remitting such tax a reasonable period of time to install and implement necessary billing changes to effect such collection, but in no event to exceed ninety (90) days from the date the charge first became subject to collection under this chapter.