

SPECIAL MEETING
CITY COUNCIL

Thursday, March 5, 2009

5:00 p.m.

AGENDA



Dan Skoglund, Mayor

Ken Cooley, Vice Mayor

Robert J. McGarvey, Council Member

David Sander, Council Member

Linda Budge, Council Member

Rancho Cordova City Council – AGENDA
Special Meeting of March 5, 2009

2009

NOTE: PROPOSED REGULAR CITY COUNCIL MEETING DATES ARE SCHEDULED ON THE 1ST AND 3RD MONDAYS OF EACH MONTH, UNLESS WHEN FALLING ON A HOLIDAY, THE MEETING WILL BE SCHEDULED ON THE FOLLOWING TUESDAY (THESE DATES ARE SHADED GREY AND ARE SUBJECT TO CHANGE). REFER TO HOLIDAY SCHEDULES BELOW.

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2009 PROPOSED HOLIDAY SCHEDULE – CITY HALL CLOSED (SHOWN ITALICIZED)

NEW YEAR'S DAY (THURS, JAN 1)	INDEPENDENCE DAY (FRI, JUL 3) (OBSERVED?)	DAY AFTER THANKSGIVING (FRI, NOV 27)
MARTIN LUTHER KING JR. DAY (MON, JAN 19)	LABOR DAY (MON, SEP 7)	CHRISTMAS EVE (THURS, DEC 24)
PRESIDENT'S DAY (MON, FEB 16)	VETERAN'S DAY (WED, NOV 11)	CHRISTMAS DAY (FRI, DEC 25)
MEMORIAL DAY (MON, MAY 25)	THANKSGIVING DAY (THUR, NOV 26)	

2010

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2010 PROPOSED HOLIDAY SCHEDULE – CITY HALL CLOSED (SHOWN ITALICIZED)

NEW YEAR'S DAY (FRI, JAN 1)	INDEPENDENCE DAY (SUN, JUL 4)	DAY AFTER THANKSGIVING (FRI, NOV 26)
MARTIN LUTHER KING JR. DAY (MON, JAN 18)	LABOR DAY (MON, SEP 6)	CHRISTMAS EVE (FRI, DEC 24)
PRESIDENT'S DAY (MON, FEB 15)	VETERAN'S DAY (THUR, NOV 11)	CHRISTMAS DAY (SAT, DEC 25)
MEMORIAL DAY (MON, MAY 31)	THANKSGIVING DAY (THUR, NOV 25)	

2011

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2011 PROPOSED HOLIDAY SCHEDULE - CITY HALL CLOSED (SHOWN ITALICIZED)																														
NEW YEAR'S DAY (SAT, JAN 1)										INDEPENDENCE DAY (MON, JUL 4)										DAY AFTER THANKSGIVING (FRI, NOV 25)										
MARTIN LUTHER KING JR. DAY (MON, JAN 17)										LABOR DAY (MON, SEP 5)										CHRISTMAS EVE (SAT, DEC 24)										
PRESIDENT'S DAY (MON, FEB 21)										VETERAN'S DAY (FRI, NOV 11)										CHRISTMAS DAY (SUN, DEC 25)										
MEMORIAL DAY (MON, MAY 30)										THANKSGIVING DAY (THUR, NOV 24)																				



CITY COUNCIL SPECIAL MEETING

City Hall
2729 Prospect Park Drive, Rancho Cordova

Thursday, March 5, 2009

5:00 P.M.
David B. Roberts Council Chambers

AGENDA

A. SPECIAL MEETING – CALL TO ORDER / ROLL CALL

Council Members Budge, Sander, McGarvey, Cooley, and Mayor Skoglund

B. PUBLIC COMMENT

At a special meeting, citizens wishing to address the Council for any matter on the agenda may do so at the time the matter is discussed. Note, under the provisions of the California Government Code, the City Council is prohibited from discussing or taking action on any unagendized item.

C. PUBLIC HEARING ITEM

Subject: Adoption of Resolution(s) for New Utility User Tax (UUT) Ordinance Given the May 19, 2009 Special Election Called by the State of California

Recommendation: That Council:

- Adopt Resolution No. 17-2009 adopting emergency findings, and;
- Adopt Resolution No. 18-2009 **establishing May 19, 2009 as the date for an election on a proposed ballot measure seeking voter approval to modernize the language contained in City's existing UUT ordinance as a general tax for General Fund purposes.**

OR

- Approve Resolution No. 19-2009 **establishing May 19, 2009 as the date for an election on a proposed ballot measure seeking voter approval to modernize the language contained in the City's existing UUT ordinance as a special tax for funding police services, maintenance of and improvements to city streets, sidewalks, and landscaping, graffiti removal, and code enforcement.**

Result of Recommended Action: The amended ordinance would contain updated definitions of telecommunication and video (cable-like) services so that tax payers are treated the same regardless of the technology used. If the City Council chooses to place the modification of the tax on the ballot as a special tax measure, the tax will be used for funding police services, maintenance of and improvements to city streets, sidewalks, and landscaping, graffiti removal, and code enforcement. Measure B, and all required supporting resolutions, ordinances and documents will be submitted to the County of Sacramento on Friday March 6, 2009, for inclusion on the May 19, 2009 Statewide special election ballot, at an approximate cost share of \$140,507.

Advances Goal: 11

D. ADJOURNMENT OF SPECIAL MEETING

CERTIFICATION OF POSTING OF AGENDA

I, Mindy Cuppy, City Clerk for the City of Rancho Cordova, declare that the foregoing agenda for the March 5, 2009 Special Meeting of the Rancho Cordova City Council was posted and available for review on March 4, 2009 at City Hall of the City of Rancho Cordova, 2729 Prospect Park Drive, Rancho Cordova, California, 95670. The agenda is also available on the city web site at www.cityofranhocordova.org.

Signed this 4th day of March 2009 at Rancho Cordova, California.


Mindy Cuppy, City Clerk

MEMORANDUM



DATE: March 5, 2009

TO: Honorable Mayor and Council Members

FROM: Donna Silva, Finance Director

SUBJECT: **ADOPTION OF A RESOLUTION(S) TO PLACE THE MODIFICATION OF THE CITY'S CURRENT UTILITY USERS' TAX (UUT) AS EITHER A GENERAL TAX OR A SPECIAL TAX ON THE MAY 19, 2009 STATEWIDE SPECIAL ELECTION BALLOT**

RECOMMENDATION

That Council:

- Adopt Resolution No. 17-2009 adopting emergency findings, and;
- Adopt Resolution No. 18-2009 establishing May 19, 2009 as the date for an election on a proposed ballot measure seeking voter approval to modernize the **language contained in City's existing UUT ordinance as a general tax for General Fund purposes.**

OR

- Approve Resolution No. 19-2009 establishing May 19, 2009 as the date for an election on a proposed ballot measure seeking voter approval to modernize the **language contained in the City's existing UUT ordinance as a special tax for funding police services, maintenance of and improvements to city streets, sidewalks, and landscaping, graffiti removal, and code enforcement.**

RESULT OF RECOMMENDED ACTION

The amended ordinance would contain updated definitions of telecommunication and video (cable-like) services so that tax payers are treated the same regardless of the technology used. If the City Council chooses to place the modification of the tax on the ballot as a special tax measure, the tax will be used for funding police services, maintenance of and improvements to city streets, sidewalks, and landscaping, graffiti removal, and code enforcement. Measure B, and all required supporting resolutions, ordinances and documents will be submitted to the County of Sacramento on Friday March 6, 2009, for inclusion on the May 19, 2009 Statewide special election ballot, at an approximate cost share of \$140,507.

AGENDA ITEM C

BACKGROUND

On July 7, 2008 staff brought to Council a resolution to adopt a new Utility Users' Tax Ordinance. The effect of the new ordinance would have been to modernize the language so that the tax would remain applicable to telecommunications and cable in spite of changing technologies, to protect us from ongoing litigation that if successful would invalidate our current tax, and to expand the tax to apply to wireless communications. At this meeting, and a subsequent vote on July 22, 2008, the proposal did not receive the required two-thirds vote of the Council Members.

Since that time the recession has deepened to unforeseeable levels as evidenced by:

- The formal declaration of recession by the National Bureau of Economic Research in December 2008.
- A decline in the Dow Jones Industrial Average of 40% from June 2008.
- Unprecedented crash in the financial system:
 - Bear Stearns and Lehman Brothers both failed
 - Washington Mutual sold to JP Morgan Chase after its shares collapsed
 - Merrill Lynch acquired by Bank of America in a distressed sale
 - Treasury Department takeover of Fannie Mae and Freddie Mac
 - Federal Reserve took control of American International Group (AIG)
 - Congress approved a \$700 billion bailout package for the financial system which included loans to U.S. auto giants Chrysler and GM
- Federal Government declared an emergency to enact the spending set forth in the American Recovery and Reinvestment Act of 2009.
- In December 2008, when consumer confidence was at 37.4, economists predicted it would fall to 35:
 - Consumer Confidence has sunk to 25, its lowest level since 1967
- State unemployment rate increased from 6.1% in January 2008 to 10.1% in January 2009, a 4% increase in one year with 2.8% of the increase coming just since July 2008.
- State of California faced a \$42 billion shortfall by the end of June 2010.
- **The State's budget solution relies upon the successful passage of several measures on the May 19, 2009 special election ballot.** If they fail to pass there is a strong likelihood that the State will shift or reduce revenues to local governments.
- In February 2008 the City of Rancho Cordova predicted total revenues over the next three years would be \$133,810,000. In February 2009, due to the deepening of the recession the prediction was lowered to \$118,850,000, a three year decline in revenues of \$14,960,000 (average annual decline of \$4.98 million).
- Property tax revenues will be permanently decreased due to foreclosures and the plunge in housing valuation.
- After the County released the July 2008 property tax roll for fiscal year 2008-2009, which already included Proposition 8 reductions, there have been subsequent reductions of assessed value reduction of \$105 million in Rancho Cordova. Additional decreases of assessed valuation are still occurring for Fiscal Year 2008-2009 as well as expected Fiscal Year 2009-2010 decreases.

- Future increases in assessed valuation are limited to the lower of Statewide CPI or 2% so it will be years before some properties reach their previous assessed valuation.
- The County Assessor advised that the countywide decline in assessed valuation would be in the range of 5%. This is the first time in at least 20 years that there will be a countywide decreases in assessed valuation.
- The City has experienced year over year \$1 million declines in Sales Tax revenues due to the recession for each of the last two years.
- It is now evident that Sales Tax revenue levels just prior to the onset of the recession were not sustainable and we do not expect a return to that level of consumer spending for many years.

In addition to the devastating economy, the City will be faced with an annual loss of revenues in the amount of \$750,000 starting July 1, 2010. For the first 7 years of Cityhood, the City receives an increased amount of Vehicle License Fees; fiscal year 2009-2010 is the last year we will receive this payment.

In order to protect against the effects of the recession, and the threats to our existing UUT from existing litigation against other jurisdictions, and the threat of legislation prohibiting the new taxation of wireless communications, the City needs to modernize the language in its UUT ordinance. By doing so, the tax will apply to all forms of telecommunications and video or cable-like services. For a further description of these conditions please reference the July 7, 2008 staff report included as **Attachment A** to this staff report.

The State of California has suddenly called for a special election on May 19, 2009 providing a new opportunity to take this item to ballot. Staff is recommending we keep the UUT as a general tax, which would necessitate an emergency declaration in order to place the measure on any ballot prior to November 2010. If the Council would prefer, we can change the UUT to a special tax, designated for specific uses. The merits of both taxes are further described below.

General Tax

- Requires emergency declaration, which requires the unanimous vote all of the Council Members present and voting.
- Requires two-thirds approval of all members of the Council to place the measure on the ballot.
- Only requires simple majority approval of voters.
- Use of funds are not restricted; funds may be used for any general governmental purpose.

Special Tax

- Does NOT require an emergency declaration.
- Only requires simple majority approval of the Council to be placed on the ballot.
- Requires two-thirds voter approval.
- Use of funds is restricted to a specified use. We are proposing the following specific uses:
 - Police services
 - Maintenance of and improvements to city streets, sidewalks, and landscaping

- Graffiti removal
- Code enforcement

Staff recommends a general tax for the following reasons:

- Retains maximum flexibility in the use of the proceeds.
- Polling suggests we can obtain the level of voter approval necessary to approve the measure.

We can take this issue to any approved election date. By consolidating with the State on the May 19th election we may benefit from a higher voter turn-out than if we go solo (although the turnout may still be lower than a regular election) and our measure, since **it's about fairness and** is not an increase in a tax rate, may contrast nicely with the companion State measures. If the measure is successful at the ballot, the costs of the election would be recouped in the first year of the new tax.

May 19th is not our only option. We can take either a general or a special tax to any approved election date. The requirements and merits/drawbacks are listed below.

If the Council desires to retain the UUT as a general tax we could:

- Call for a special election on any of the established election dates prior to November 2010:
 - Requires an emergency declaration
 - May result in low voter turnout as we would be the only jurisdiction participating in the election and ours would be the only measure on the ballot
- Wait until November 2010 when a formal declaration of emergency is not needed to change a general tax:
 - By this time we would have experienced further declines in sales tax revenues, property tax revenues and the loss of the VLF bump, without a corresponding increase in other revenues. This would result in a decrease in service levels
 - An adverse appellate court ruling may have been reached by this time, invalidating our tax, resulting in the need for us to ask voters for a new tax
 - Legislation may have been enacted prohibiting the new taxes on wireless communication

ATTACHMENTS

- A. **March 2, 2009 Utility Users' Tax Staff Report**
- B. Resolution No. 17-2009
- C. Resolution No. 18-2009 including **(Exhibit 1)** Ordinance No. 3-2009
- D. Resolution No. 19-2009 including **(Exhibit 1)** Ordinance No. 4-2009

MEMORANDUM



DATE: March 2, 2009
TO: Honorable Mayor and Council Members
FROM: Donna Silva, Finance Director
SUBJECT: DISCUSSION OF OPTIONS FOR NEW UTILITY USERS' TAX ORDINANCE GIVEN THE MAY 19, 2009 SPECIAL ELECTION CALLED BY THE STATE OF CALIFORNIA

RECOMMENDATION

Council to Receive Analysis Prepared by Staff and Provide Direction.

Based upon prudent analysis of the various options for addressing future Utility Users' Tax (UUT) changes, staff recommends the following actions:

1. Keeping the UUT as a general tax.
2. Declaring an emergency on the basis of the potential legislation, current discrimination and pending legislation. This will require the unanimous vote of the Council and the declaration can be made separate of the vote to place the item on the ballot.
3. Placing a measure on the May 19, 2009 ballot at an approximate cost of \$200,000. This includes the cost of consolidating with other jurisdictions on the ballot and the costs of community outreach and education.
4. The measure shall hold the rate constant.

The deadline for the May 19, 2009 election is Friday, March 6th. Therefore, if Council **concurs with staff's recommendation this meeting will need to be carried over to a time** certain prior to March 6th for adoption of the necessary resolutions and the required public hearing.

RESULT OF RECOMMENDED ACTION

This discussion will educate the Council regarding the definitions and implications of a general tax versus a special tax at a general election versus a special election enabling Council to provide direction to staff on the methodology and timing for adoption of a new Utility Users' Tax ordinance.

BACKGROUND

On July 7, 2008 staff brought to Council a resolution to adopt a new Utility Users' Tax Ordinance. The effect of the new ordinance would have been to modernize the language so that the tax would remain applicable to telecommunications and cable in spite of changing technologies, to protect us from ongoing litigation that if successful would invalidate our current tax, and to expand the tax to apply to wireless communications (in exchange for a slight decrease in the tax rate). At this meeting, and a subsequent vote on July 22, 2008, the proposal did not receive the required two-thirds vote of the Council Members.

Due to the importance of this revenue stream to the ongoing fiscal health of the City, staff has advised Council on multiple occasions that we will continue to monitor the UUT issue and return to Council for their future consideration.

The State of California has suddenly called for a special election for May 19, 2009 providing a new opportunity to take this item to ballot. Staff determined that this new opportunity justified taking another look at our options regarding solving the challenges facing our UUT. The purpose of this staff report is to educate the Council on our analysis and receive direction from Council on how to proceed.

The analysis of our options as they pertain to the UUT is complex. Up for consideration is the type of tax (general vs. special), type and timing of the election (general vs. special), cost of election, changes in the tax rates and all of the fiscal and political ramifications of each particular option. Altogether there are approximately 30 different combinations we could propose. Rather than examining the merits of each possible combination we examined the advantages and disadvantages of the components. However before doing so, it is beneficial to note the following definitions:

Distinction between General Election and Special Election

A **"general election"** is an election at which members of the Council will be elected.

A **"special election"** is any election in which no members of the City Council will be elected.

Distinction between General Taxes and Special Taxes

A **"general tax"** is any tax imposed for general governmental purposes. Our current Utility Users' Tax is a general tax received into the General Fund.

A **"special tax"** is any tax imposed for specific purposes. Ordinances or resolutions enacting special taxes must include the purpose or service for which the tax is imposed. The revenues from special taxes may only be used for these purposes.

Council has previously been provided with a staff report that explains all the reasons why we need to take action to preserve our UUT. The original staff report from July 7, 2008 is included for your reference as **Attachment 1**.

TYPE OF TAX

The first element to consider as we look at the future of the UUT is the type of tax that we would propose on a ballot measure. The requirements to place a general tax versus a special tax on the ballot are quite different.

General Tax

An ordinance or resolution proposing a general tax (or change thereof) must be **approved by at least "two-thirds of all the members" of a City Council (4 out of 5 in our case)**. However, once on the ballot it need only gain a simple majority of the voters.

A general tax can only be proposed to the voters at a regularly scheduled general election at which members of the Council will be elected. November 2010 is our next opportunity. However, the Council can place the proposed tax before the voters at a special election on a date selected by the Council if the Council, by unanimous vote, finds there is an emergency which justifies placing the proposed tax on the ballot. In either a regular election or emergency election situation, a general tax will take effect if approved by a majority of the voters at the election.

In order to avoid an emergency declaration we would have to wait until the November 2010 to seek a change to the UUT as a General Tax. If we declare an emergency, we could take the measure to any of the scheduled elections, described below, the soonest being May 19, 2009.

An emergency is something that is both important and unexpected. Other cities have made emergency declarations based on threats of pending legislation and litigation which went to ballot unchallenged. The City is currently facing both of these situations. During this legislative year (2009), federal legislation will soon be introduced that will impose a five year moratorium on new wireless taxes. Additional federal legislation will be introduced that requires participating states to adopt uniform tax definitions and uniform applications. Nearly all California UUT public agencies interpret their old and new UUT ordinances as being applicable to wireless communications. Unfortunately, Sacramento County failed to make such an interpretation many years ago, and the City is now bound by that interpretation. This results in a discriminatory tax (based on technology) which cannot be corrected without voter approval. The aforementioned federal bills necessitate that the City seek voter approval in 2009.

There is litigation in other UUT taxing jurisdictions that, if lost, could cause the City to lose all telecom UUT that involves any form of long distance, including wired and wireless and VoIP. Again, many cities have averted such an adverse ruling by removing the allegedly defective language from their ordinances, and seeking voter approval of a modern ordinance. It is expected that there will be a trial court ruling on this issue in 2009.

The City's current ordinance, limited by historical interpretation by the County, results in **an unfair application of the City's UUT on its taxpayers, as the tax is not being applied to similar services in the same manner**. This unfairness will be even greater if the litigation mentioned above is lost. Also, the current definitions in **the City's UUT ordinance are outdated and new technologies may arguably bypass the City's tax**. Those new technologies include: IP-TV, VoIP, text messaging, and wireless communications.

Cities with voter approved modern ordinances have updated their ordinances so that all taxpayers are treated the same regardless of the technology used.

These impending threats of legislation and litigation may affect the City's **\$650,000** of telecom and cable UUT revenue. This year, 2009, is the appropriate time to address these threats with a voter approved ordinance, and failure to do so could jeopardize the City's **existing UUT revenues**. We believe that these factors provide grounds for an emergency determination to hold a 2009 election. The City Attorney may provide additional comments and advice on this topic to the Council.

Special Tax

If the Council does not wish to declare an emergency we could convert the UUT to a special tax. Emergency findings are not necessary in order to place a special tax on the ballot. A special tax may be submitted to the electorate at a general or special election, so we could take a special tax measure to any of the scheduled elections, choosing the most advantageous in terms of timing and cost. An ordinance or resolution proposing a special tax needs only a simple majority of the City Council (excluding abstentions).

While it is easier to get a special tax on the ballot, it is more difficult to obtain voter approval. The major drawbacks of a special tax are that it requires two-thirds voter approval; our preliminary polling suggests that we might have difficulties obtaining this level of support, and it involves restrictions on the use of the tax proceeds. This is problematic if the proceeds of the tax are not adequate to fully fund the specified use. Other jurisdictions have encountered significant difficulties in obtaining additional funding for specified uses after requesting a tax increase.

If we decide to move forward with a special tax, staff recommends specifying the use for Code Enforcement (Strong Neighborhoods Initiative) and/or Public Safety. Of these options Code Enforcement or Strong Neighborhoods would be our first choice as we already are levying the Police Tax on new development within the City.

TYPE, TIMING AND COST OF AN ELECTION

In addition to considering the type of tax to go on a ballot measure, we need to determine the type and timing of such an election, while taking into consideration various cost factors of doing so. The following election dates are available for placement of the UUT ballot measure, with their associated costs:

1. May 19, 2009 (special election – recently created by the State)
(cost = \$185,000)
2. June 2, 2009 (special election) (cost = \$185,000)
3. November 3, 2009 (general election, but no Council Member election)
(cost = \$185,000)
4. April 2010 (special election) (cost = \$185,000)
5. June 2010 (special election) (**cost ≈ \$50,000**)
6. November 2010 (general election with Council Member election) (**cost ≈ \$4,000**)

In general the cost of an election is borne by the participating jurisdictions, exclusive of the State; therefore, the cost of an election depends upon the number of local jurisdictions or entities participating in the election. Separate ballot packets are prepared for local versus state elections. Since there are currently no other jurisdictions planning to consolidate with the special May 19th election, the City would bear the full cost of the election, quoted by the County at \$185,000.

The only other local entities going to ballot before November 2010 are the City of Sacramento and the County of Sacramento, both in June 2010. We could consolidate with them and split the costs. The County has quoted us an estimated price of \$30,000. We would spend an additional \$20,000 on community outreach and education. In order to avoid paying the full cost of \$185,000 we would need to wait until November 2010. Placing an additional measure on the November 2010 ballot would only cost approximately \$4,000 due to the large number of local jurisdictions scheduled for an election on that date.

November 2010 is attractive in that it would allow us to proceed with a general tax, only requiring a simple majority to pass, without having to declare an emergency (further explained below). The major drawback to November 2010 is that it may be too late. By this time a decision may have been rendered in the pending litigation resulting in the loss of the long distance component of our UUT and a requirement to repay up to \$500,000 in back taxes. Also, the proposed legislation banning new taxes on wireless communications may have passed requiring us to wait at least five years before we could change our ordinance.

Going to ballot in June 2010 would cost more money than November 2010 but considerably less than going in 2009. However, June 2010 may also be too late. Staff needs direction from Council on whether or not they would like us to incur the cost of a special election prior to June 2010. Going it alone poses other challenges. Having our citizens come out to vote on one single ballot measure focuses all of their attention on this one issue. Combined with an anticipated low voter turnout, the chances of success at a standalone election would be lower than those at a consolidated election.

By consolidating on the May 19th election we may benefit from a higher voter turnout than if we go solo (although it would still be lower than a general election) and our measure, since **it's about fairness and isn't an increase in a tax rate, would contrast** nicely with the companion state measures. If Council is willing to take the risk and bear the cost of the election, May 19, 2009 may be a wise option. If the measure is successful at the ballot the costs of the election would be recouped in the first year of the new tax regardless of whether we changed the tax rate.

TAX RATE

Our current UUT rate is 2.5% and is applicable to all components of the UUT. We have three general choices concerning the tax rate: increase the rate, hold it constant, or offer a small tax decrease as an incentive.

Tax Rate Increase

Increasing the tax rate and the base to which it applies could produce substantial additional revenues, sufficient to not only carry us through the recession but to offset the

anticipated loss in motor vehicles fees of approximately \$1 million in fiscal year 2010/11. This could eliminate our anticipated long term structural operating imbalance, as well as provide funding for increased service levels. Our rate is among the lowest in the state. At least 125 cities in California have a UUT rate higher than ours. Fewer than 10 cities have a rate lower than ours. The highest UUT rates are in Culver City and Seal Beach at 11%. Los Angeles County has 4 cities with a 10% UUT. In our region the City of Sacramento has a 7% UUT. Elk Grove and Citrus Heights still share our rates which were inherited by the County. Increasing our rate to 10% would produce an additional \$6 million of annual revenues to the General Fund.

Cities seeking to increase their UUT tax rates have not been very successful. In fact since November of 2006 only the City of San Gabriel has secured a rate increase. However, linking a tax to a designated purpose such as public safety usually increases voter approval. No other City, with the possible exception of San Francisco, has a UUT as a special tax. A special tax requires two-thirds voter approval. Even though taxes with a specified and designated special use are more palatable to voters there is a higher threshold for passing such a tax thereby possibly mitigating the additional votes gained by virtue of having a specified use. Additionally, if we seek an increase as a special tax, and it isn't **enough to fund the designated activity or service, we may be** unable to request additional taxes in the future for the service or activity.

Holding the Rate Constant

Keeping the tax rate constant improves our chances of passing the measure. Since November 2006 there have been 16 UUT ballot measures that held the tax rate constant. Only 1 of the 16 measures failed to pass (City of Covina, February 2007). Covina ultimately passed the measure, without a rate reduction, in June 2008. While holding the **rate constant doesn't produce the increase in tax revenues we could get** from an increase in the tax rate, it would still produce an additional \$880,000 per year (by capturing wireless) while protecting our existing \$500,000 per year from telecommunications.

Decreasing the Tax Rate Applicable to Telecommunications

Decreasing the tax rate applicable to telecommunications further increases our chances of passing the measure. Since November 2006 there have been 24 ballot measures seeking new UUT ordinances in exchange for a small decrease in the tax rate. *All 24 ballot measures have been approved by the voters.*

While offering the decline in the tax rate increases the likelihood of voter approval, it provides the smallest increase in revenues. However, we would still realize additional revenues of approximately \$720,000 per year, while protecting our existing \$500,000 per year from telecommunications.

ATTACHMENTS

1. Original UUT Staff Report – July 7, 2008
2. Summary of UUT Election Results

MEMORANDUM



DATE: July 7, 2008

TO: Honorable Mayor and Council Members

FROM: Donna Silva, Finance Director

SUBJECT: UTILITY USER TAX REDUCTION AND FAIRNESS MEASURE –
APPROVAL OF RESOLUTION ESTABLISHING NOVEMBER 4, 2008
AS THE DATE FOR AN ELECTION ON ORDINANCE NO. 19-2008
UTILITY USER TAX

RECOMMENDATION

Staff recommends adoption of Resolution No. 59-2008.

RESULT OF RECOMMENDED ACTION

Adoption of this resolution will place a measure on the November 2008 ballot seeking voter approval of a revised Utility Users Tax ordinance.

BACKGROUND

Summary

With emerging technologies now providing traditional telephone services, the City's Utility User Tax ordinance is not applied to all communications users fairly. The proposed ordinance will ensure that all communications users are treated fairly, regardless of the means of transmission or the technology used. The proposed ordinance also addresses changes in federal law, protecting the tax, and our ability to maintain funding for our current service levels, against the threat of loss due to existing litigation in other jurisdictions.

Analysis

The City of Rancho Cordova assesses a 2.5% Utility Users Tax (UUT) on users of electricity, gas, cable, and telecommunications, resulting in approximately \$2 million of general fund revenues annually, our fourth largest revenue source.

Upon incorporation in July 2003, the City adopted the County of Sacramento's UUT ordinance. The ordinance is outdated as it applies to telecommunications usage and needs to be amended to reflect recent changes in Federal tax law and to modernize the definition of telecommunications so that it is technology neutral. With emerging technologies now providing and replacing traditional land line telephone services, the City's Utility Users Tax ordinance is not applied to all communications users fairly. The

proposed ordinance will ensure that all communications users are treated fairly, regardless of the technology used.

The City's tax has historically been applied in a similar manner as the application of the Federal Excise Tax (FET) upon local and long distance telecommunication services as the Internal Revenue Service (IRS) interprets the FET. The FET statute defines long distance or "toll" calls as those for which charges varied according to both the elapsed time of the call and the distance between the persons on the call. Today, long distance calls are based on time only, or in the case of cellular calls, they are based on a flat monthly rate.

On May 25, 2006, the IRS issued a Notice that it intended to stop applying the FET to nearly all telephone communication services, except local exchange services, which leaves only about 25% of all the telecommunication services as federally taxable. This IRS action came following many federal court cases losses involving the outdated **definition of "toll telephone service" (or long distance) contained in the FET. Like the vast majority of California cities that have a UUT ordinance, Rancho Cordova's UUT ordinance is based on the FET and some of its many exemptions. This was done in response to the telephone companies' request many years ago to achieve administrative ease. The Treasury Department's May 25th Notice reversed it prior Revenue Rulings and interpretation of the FET, calling in to question the validity of our ordinance as it applies to long distance telephone calls.**

The proposed Ordinance primarily updates the telecommunications portion of the City's existing UUT ordinance. Because of the many changes to, and additions of, definitions it was prudent to rewrite the ordinance in its entirety. The new ordinance will modernize the communications tax definitions and other provision by, among other things, eliminating the reference to the FET and broadening the scope of communication services to include: wireless communications, private communication service (e.g. T-1 lines); paging and Voice Over Internet (VoIP). Importantly, the new definitions are technology neutral and anticipate additional changes in technology. This broadening of **definitions closes "technology loopholes", and ensures that all taxpayers will be treated the same, regardless of the technology used.**

There are over 150 cities in California with a Utility Users Tax. Rancho Cordova is unique amongst the majority of these cities in that our ordinance, as initially written and interpreted by the County of Sacramento, does not apply to wireless communications. This creates a significant inequality in the tax. Under this interpretation, the tax burden is borne solely by individuals utilizing land line telephones. Those using cell phones or T-1 lines currently do not pay the tax. Broadening the base to which the tax applies corrects for this inequality and enables the City to reduce the communications component of the tax from 2.5 to 2.25%. In addition to reducing the tax rate, it protects our existing revenues and is likely to generate additional revenues, furthering our ability to provide high quality municipal services to our citizens.

The following is a brief summary of the changes to the City's UUT relative to telecommunication and video services:

- Reduces the current tax percentage on telecommunications and video services from 2.5% to 2.25%

- Includes a modern, functional definition of telecommunication services that is technology neutral, and now adds or specifically identifies the following services: interstate and international calls; wireless; VoIP, paging, private communication services (e.g. T-1 lines for providing data, video and voice services)
- **Incorporates definitions of "ancillary telecommunication services" that are** commonly recognized by the industry as being part of such services
- Anticipates the possibility of new technologies and services to provide telecommunication and video services, so that all taxpayers will be treated the same
- Does not tax internet access such as DSL and cable modem lines
- Nor does it tax internet services such as purchase transactions or downloads of music, books, ring tones, games, etc.
- Provides other administrative tools for addressing telecommunication taxation issues including administrative rulings and sourcing, bundling and nexus guidelines.

Over the past two years 25 other cities in California have gone to ballot and successfully adopted a modern UUT ordinance (see Attachment A Summary of UUT Election Results) with all but two initially failing to pass their ballot measure. Of those 23 successful measures 14 reduced the tax rate and 9 kept their rate constant. An estimated 20 more cities are scheduled to take similar UUT measures to the ballot in November, including the City of Sacramento, as there is predicted to be an historic voter turnout for the presidential election.

Failure to modernize the City's UUT ordinance relative to telecommunication services could result in a loss of up to 100% of the telecommunications portion of the tax (currently \$500,000 annually). **This would have a substantial impact on the City's ability** to maintain current service levels and would most likely result in an immediate and ongoing reduction in service levels. If we do not amend our ordinance and the current litigation prevails, the City would immediately lose the entire tax on the long distance component, which currently is approximately \$250,000 annually. Additionally, the City would be required to repay all taxes received on long distances calls back to August 1, 2006. This equates to over \$500,000 at this time but could be more depending upon when the litigation is resolved. The remaining \$250,000 from local land line phones will erode over time as technology advances and escapes the language of our existing ordinance and more people convert from land line phones to cell phones.

Staff recommends that the City Council adopt the attached Resolution calling for a measure to be placed on the November 2008 ballot. This resolution requires a 3/5 vote of the City Council. The measure would need to be approved by a simple majority of voters.

If the City Council does not approve the attached Resolution the City will have three options to address this issue:

1. If an adverse decision is reached on the outstanding litigation, the City could potentially call for a special election, which would cost in excess of \$200,000 and would require a unanimous vote of the council. Then, the measure would be asking for a new tax and would be required to receive 2/3 voter approval for passage.

2. Wait until the June 2010 election thus avoiding the high cost of a special election, still requiring a unanimous vote of the council and 2/3 voter approval.
3. Wait until the November 2010 election, avoiding the high cost of a special election, allowing for 3/5 council approval and a simple majority vote by the public. By this time it is very likely that the litigation will be resolved and we would have already lost our telecommunications UUT on long distance and would be asking for a new tax.

ATTACHMENTS

1. Summary of UUT Election Results
2. Resolution No. 59-2008
3. Proposed Ordinance No. 19-2008

Summary of UUT Election Results

Agency	Result	Pass Vote Percent	Rate Reduction
June 2008			
Oakland	Passed	79%	-
Winters	Passed	70%	5 to 4.75%
Covina	Passed	65%	-
County of Alameda	Passed	65%	-
Torrance	Passed	56%	-
McFarland	Failed	25%	expansion to 15%
February 2008			
San Bernardino	Passed	80%	7.83 to 7.75%
Huntington Park	Passed	79%	7 to 6.5%
Richmond	Passed	74%	10 to 9.5%
Los Angeles	Passed	65%	10 to 9%
Pasadena	Passed	58%	-
November 2007			
Emeryville	Passed	86%	-
Los Altos	Passed	84%	3.5 to 3.2%
Redwood City	Passed	81%	5 to 4%
Hermosa Beach	Passed	72%	6 to 5.5%
Benecia	Passed	70%	4 to 3.5%
Gilroy	Passed	64%	5 to 4.5%
El Monte	Passed	63%	7 to 6.5%
Ventura	Passed	63%	5 to 4.5%
June 2007			
Tulare	Passed	86%	7 to 6%
February 2007			
Covina	Failed	41%	-
November 2006			
Compton	Passed	89%	10 to 8.5%
Daly City	Passed	72%	-
Eureka	Passed	51%	-
Menlo Park	Passed	51%	-
Total Jurisdictions gone to ballot since November 2006			25
Total that passed			23
Percent that passed			92%

CITY OF RANCHO CORDOVA

RESOLUTION NO. 59-2008

A RESOLUTION OF THE CITY OF RANCHO CORDOVA ESTABLISHING NOVEMBER 4, 2008, AS THE DATE FOR AN ELECTION ON A PROPOSED BALLOT MEASURE SEEKING VOTER APPROVAL TO MODIFY THE CITY'S EXISTING UTILITY USERS' TAX FOR GENERAL FUND PURPOSES, ESTABLISHING POLICIES AND PROCEDURES IN CONNECTION WITH SUCH AN ELECTION, AND REQUESTING THAT THE COUNTY OF SACRAMENTO CONDUCT SUCH AN ELECTION

RECITALS

WHEREAS, California Constitution Article XIII C, Section 2, provides that no local government may extend any general tax unless and until that tax is submitted to the electorate and approved by a majority vote; and

WHEREAS, pursuant to Rancho Cordova Municipal Code Chapter 3.40, the City of Rancho Cordova ("City") imposes a utility users' tax of two and one-half percent, which is charged to persons utilizing electrical energy; gas delivered through mains or pipes; using intrastate, interstate and international telephone services; using cable television service furnished by a cable television corporation; and using sewer service within the City; and

WHEREAS, the utility users' tax is a general tax, the revenues of which are used for general governmental purposes, and placed in the City's general fund for the usual current expenses of the City; and

WHEREAS, the City Council desires to update its definitions of telecommunication and video (cable-like) services so that taxpayers are treated the same regardless of the technology used, and at the same time reduce the utility users' tax from 2.5% to 2.25% for telephone and video (cable-like) services used within the City; and

WHEREAS, the City Council desires to maintain the utility users' tax at 2.5% percent for electrical energy, gas and sewer services, as described above, to help maintain the City's general fund while being sensitive to costs incurred by the citizens of Rancho Cordova; and

WHEREAS, the tax to be submitted to the voters, if approved, would be paid by persons using electrical energy, gas, telephone service, telecommunication service, cable television and video (cable-like) service and sewer service, as described above, within the City; and

WHEREAS, the utility users' tax ordinance, attached hereto as Exhibit 1, will provide rebates for companies engaging in activities that help sustain the environment; and

WHEREAS, California Constitution Article XIII C, Section 2, provides that a measure proposing to increase a general tax must be consolidated with a regularly scheduled general election for members of the City Council, except in cases of emergency declared by unanimous vote of the City Council; and

WHEREAS, on the basis of the foregoing, the City Council determines it is appropriate to place a measure regarding the City's utility users' tax before the voters at the November 4, 2008 general election; and

WHEREAS, the Rancho Cordova City Council is authorized by California Elections Code Section 9222 to place measures before the voters; and

WHEREAS, it is desirable that the election be consolidated with the statewide election to be held on the same date and that within the City, the precincts, polling places and election officers of the two elections be the same, and that the county election department of the County of Sacramento canvass the returns of the General Election and that the election be held in all respects as if there were only one election.

NOW, THEREFORE, IT IS HEREBY RESOLVED, the City Council of the City of Rancho Cordova does ordain as follows:

1. Placement of Measure on the Ballot. Pursuant to California Elections Code Section 9222, the City Council hereby resolves that the ballot for the November 4, 2008 election shall include a measure that, if approved, would **lower the utility users' tax from 2.5% to 2.25%** for telephone and cable users and **maintain the utility users' tax at 2.5% for users of electrical, gas and sewer services** in order to fund general services in the City.

(a) Ballot Language

The ballot language for the measure shall be as follows:

UTILITY USER TAX REDUCTION AND FAIRNESS MEASURE. Shall an ordinance be adopted to reduce the City of Rancho Cordova's existing utility users' tax from 2.5% to 2.25% on telecommunications and video (cable-like) services; ensure that users of current and future technologies be treated fairly; and preserve funding for general municipal services such as police, maintenance of and improvements to city streets and sidewalks and graffiti removal?

☐ Yes

☐ No

3. Proposed Ordinance. The ordinance authorizing the general tax to be approved by the voters pursuant to Section 1 is as set forth in Exhibit 1 hereto. The City Council hereby approves the submission of the ordinance to the voters of the City at the November 4, 2008, election.

4. Publication of Measure. The City Clerk is hereby directed to cause notice of the measure to be published once in the official newspaper of the City of Rancho Cordova, in accordance with Section 12111 of the Elections Code and Section 6061 of the Government Code.

5. Request to Consolidate and Conduct Election and Canvass Returns.

(a) Pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of Sacramento is hereby requested to consent and agree to the

consolidation of a General Municipal Election with the Statewide Election on Tuesday, November 4, 2008, for the purpose of placing the measure set forth in Section 1 on the ballot.

(b) The County of Sacramento Election Department is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

(c) The Board of Supervisors is requested to issue instructions to the County of Sacramento Election Department to take any and all steps necessary for the holding of the consolidated election.

(d) The City of Rancho Cordova recognizes that additional costs will be incurred by the County of Sacramento by reason of this consolidation and agrees to reimburse the County for any costs.

6. Submission of Ballot Arguments and Impartial Analysis.

(a) The last day for submission of direct arguments for or against the measure shall be by 5:00 p.m. on July 21, 2008.

(b) The last day for submission of rebuttal arguments for or against the measure shall be by 5:00 p.m. on July 31, 2008.

(c) Direct arguments shall not exceed three hundred words and shall be signed by not more than five persons.

(d) Rebuttal arguments shall not exceed two hundred fifty words and shall be signed by not more than five persons; those persons may be different persons than the persons who signed the direct arguments.

(e) The City Attorney shall prepare an impartial analysis of the measure by July 22, 2008.

(f) Pursuant to California Elections Code Section 9282, the Mayor is hereby authorized to prepare a written argument in favor of the proposed measure, not to exceed 300 **words, on behalf of the City Council. At the Mayor's discretion, the argument may also be** signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote on the measure. In the event that an argument is filed against the measure, the Mayor is also authorized to prepare a rebuttal argument on behalf of the City Council, which may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote on the measure.

(g) Pursuant to California Elections Code Section 9285, when the City Clerk has selected the arguments for and against the measure, which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument, which it seeks to rebut.

7. Effective Date. This Resolution shall become effective immediately upon its passage and adoption and the City Clerk is directed to send certified copies of this Resolution to

the Sacramento Board of Supervisors, to the County Clerk-Recorder, and County of Sacramento Election Department.

8. CEQA. This Resolution is exempt from the California Environmental Quality Act (Public Resources Code §21000, "CEQA") pursuant to CEQA guidelines 15060, "Preliminary Review," subdivision (c)(2) in that it will not result in a direct or reasonably foreseeable indirect physical change in the environment; and 15378, "Project," subdivisions (2) and (4) of subdivision (b), in that this tax does not constitute a project under CEQA and therefore review under CEQA is not required.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova this 7th day of July, 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Linda Budge, Mayor

ATTEST:

Stacy Leitner, Interim City Clerk

ORDINANCE NO. 19-2008

**AN ORDINANCE OF THE CITY OF RANCHO CORDOVA ADDING CHAPTER
3.41 OF THE RANCHO CORDOVA MUNICIPAL CODE WITH RESPECT TO A
UTILITY USERS' TAX.**

THE PEOPLE OF THE CITY OF RANCHO CORDOVA DO ORDAIN AS FOLLOWS:

SECTION 1: Chapter 3.41 of the Municipal Code is hereby added, and it shall read as follows:

CHAPTER 3.41

UTILITY USERS' TAX

- 3.41.010 Short Title.
- 3.41.020 Definitions.
- 3.41.030 Constitutional, Statutory, and Other Exemptions.
- 3.41.040 Telecommunication Tax
- 3.41.050 Video Tax
- 3.41.060 Electricity Tax
- 3.41.070 Gas Tax
- 3.41.080 Collection of tax from service users receiving direct purchase of gas or electricity.
- 3.41.090 Sewer Tax
- 3.41.100 Bundling Taxable Items with Non-taxable Items
- 3.41.110 Substantial Nexus / Minimum Contacts.
- 3.41.120 Duty to collect--Procedures.
- 3.41.130 Collection Penalties – Service Suppliers.
- 3.41.140 Actions to Collect.
- 3.41.150 Deficiency Determination and Assessment – Tax Application Errors.
- 3.41.160 Administrative Remedy - Non-Paying Service Users.
- 3.41.170 Additional powers and duties of the Tax Administrator.
- 3.41.180 Records.
- 3.41.190 Refunds.
- 3.41.200 Appeals.
- 3.41.210 Notice No Injunction/Writ of Mandate.
- 3.41.220 Notice of Changes to Ordinance.
- 3.41.230 Effect of State and Federal Reference/Authorization.
- 3.41.240 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure.
- 3.41.250 Remedies Cumulative.
- 3.41.260 Interaction with Prior Tax.

3.41.010 Short Title

This chapter shall be known as the "Utility Users' Tax Ordinance" of the City.

3.41.020 Definitions.

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

(a) "Ancillary telecommunication services" means services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to the following services:

(1) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

(2) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(3) "Directory assistance" means an ancillary service of providing telephone number information, and/or address information.

(4) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(5) "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(b) "Ancillary video services" means services that are associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, search functions, recording services, or other interactive services or communications that are associated with or incidental to the provision, use or enjoyment of video services.

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

(d) "City" shall mean the City of Rancho Cordova.

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

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

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

(h) "Non-Utility Service Supplier" means:

(1) a service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator (15 U.S.C. Section 79z-5a), municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

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

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

(i) **"Paging service"** means a **"telecommunications service"** that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

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

(k) **"Place of Primary Use"** means the **street address representative of where the customer's use** of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

(l) "Post-paid telecommunication service" means the telecommunication service obtained by making a payment on a telecommunication-by-telecommunication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.

(m) "Prepaid telecommunication service" means the right to access telecommunication services, which must be paid for in advance and which enables the origination of telecommunications using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(n) "Private telecommunication service" means a telecommunication service that entitles the customer to exclusive or priority use of a telecommunications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A telecommunications channel is a physical or virtual path of telecommunications over which signals are transmitted between or among customer channel termination points (i.e., the location where the customer either inputs or receives the telecommunications).

(o) "Service Address" shall mean the residential street address or the business street address of the service user. For a telecommunication or video service user, "service address" means either:

(1) **The location of the service user's telecommunication or video equipment from which** the communication originates or terminates, regardless of where the communication is billed or paid; or,

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

(3) **For prepaid telecommunication service, "service address" shall mean the location associated with the service number.**

(p) "Service Supplier" shall mean any entity or person, including the City, that provides telecommunication or video service to a user of such service within the City.

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

(r) **"State" shall mean the State of California.**

(s) **"Streamlined Sales and Use Tax Agreement shall mean the multi-state agreement commonly known and referred to as the Streamlined Sales and Use Tax Agreement, and as it is amended from time to time.**

(t) "Tax Administrator" means the Finance Director of the city or his or her designee.

(u) **"Telecommunications services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used. The term "telecommunications services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Telecommunications Commission as enhanced or value added, and includes video and/or data services that is functionally integrated with "telecommunication services". "Telecommunications services" include, but are not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Telecommunications Commission); 900 service (or any other similar numbers designated by the Federal Telecommunications Commission for services whereby subscribers who call in to pre-recorded or live service).**

(v) **"Video Programming" means those programming services commonly provided to subscribers by a "video service supplier" including but not limited to basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.**

(w) **"Video Services" means "video programming" and any and all services related to the providing, recording, delivering, use or enjoyment of "video programming" (including origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video) using one or more channels by a "video service supplier", regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes ancillary video services, data services, "telecommunication**

services", or interactive communication services that are functionally integrated with "video services".

(x) **"Video Service Supplier"** means any person, company, or service which provides or sells one or more channels of video programming, or provides or sells the capability to receive one or more channels of video programming, including any telecommunications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the City, 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 telecommunications**. A **"video service supplier"** includes, but is not limited to, multichannel video programming distributors [as defined in 47 U.S.C.A. Section 522(13)]; open video systems (OVS) suppliers; and suppliers of 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), direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video services (including two-way communications), whatever their technology.

(y) VoIP (voice over internet protocol) means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

(z) **"800 service"** means a **"telecommunications service"** that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name **"800", "855", "866", "877", and "888"** toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

(aa) **"900 service"** means an inbound toll **"telecommunications service"** purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. **"900 service"** does not include the charge for: collection services provided by the seller of the **"telecommunications services"** to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name **"900" service**, and any subsequent numbers designated by the Federal Communications Commission.

3.41.030 Constitutional, statutory, and other exemptions.

(a) Nothing in this Chapter shall be construed as imposing a tax upon 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.

(b) Any service user that is exempt from the tax imposed by this Chapter pursuant to subsection (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 for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all utility service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in utility service suppliers so that the Tax Administrator can properly notify the new utility service supplier **of the service user's tax exempt status. A service user that fails to comply with this section shall**

not be entitled to a refund of utility users' taxes collected and remitted to the Tax Administrator from such service user as a result of such noncompliance.

The decision of the Tax Administrator may be appealed pursuant to Section 3.41.200 of this Chapter. Filing an application with the Tax Administrator and appeal to the Chief Executive Officer pursuant to Section 3.41.200 of this Chapter is a prerequisite to a suit thereon.

3.41.040 Telecommunication Users' Tax.

(a) There is hereby imposed a tax upon every person in the City using telecommunication services. The tax imposed by this section shall be at the rate of two and 25/100 percent (2.25%) of the charges made for such services and shall be collected from the service user by the telecommunication services supplier or its billing agent. There is a rebuttable presumption that telecommunication 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. 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 telecommunication services.**

(b) **"Mobile Telecommunications Service" shall be sourced in accordance with the sourcing rules** set forth in the *Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124)*. The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Chapter, sourcing rules for the taxation of other telecommunication services, including but not limited to post-paid telecommunication services, and prepaid telecommunication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation (e.g., Streamline Sales and Use Tax Agreement).

(c) The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those telecommunication services, or charges therefor, that are subject to or not subject to the tax of subsection (a) above.

(d) **As used in this section, the term "telecommunication services" shall include, but are not limited to charges for: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory, administrative and other cost recovery charges; and local number portability charges. "Telecommunication services" shall not include digital downloads that are not "ancillary telecommunications services", such as books, music, ringtones, games, and similar digital products.**

(e) To prevent actual multi-jurisdictional taxation of telecommunication 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 local jurisdiction on such telecommunication 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 local jurisdiction; provided, however, the amount of credit shall not exceed the tax owed to the City under this section.

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

3.41.050 Video Users Tax.

(a) There is hereby imposed a tax upon every person in the City using video services. The tax imposed by this section shall be at the rate of two and 25/100 percent (2.25%) of the charges made for such services and shall be collected from the service user by the video service supplier or its billing agent. There is a rebuttable presumption that video 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.

(b) As used in this section, the term "charges" shall include, but is not limited to, charges for the following:

- (1) regulatory fees and surcharges, franchise fees and access fees (PEG);
- (2) initial installation of equipment necessary for provision and receipt of telecommunication services;
- (3) late fees, collection fees, bad debt recoveries, and return check fees;
- (4) activation fees, reactivation fees, and reconnection fees;
- (5) video programming and video services;
- (6) ancillary video programming services (e.g., electronic program guide services, search functions, recording functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of the video services);
- (7) equipment leases (e.g., remote, recording and/or search devices; converters); and,
- (8) service calls, service protection plans, name changes, changes of services, and special services.

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

(c). The Tax Administrator may issue and disseminate to video service suppliers, which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those video services, or charges therefor, that are subject to or not subject to the tax of subsection (a) above.

(d) The tax imposed by this section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service

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

3.41.060 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 two and 50/100 percent (2.5%) of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent. Notwithstanding the foregoing, the first forty-five dollars (\$45.00) in total monthly charges made for electrical energy to a residential service user shall be exempt from the tax levied by this Section 3.41.060.

(b) As used in this **section, the term "charges" shall apply to all services, components and items** that are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The **term "charges" shall include, but is not limited to, the following charges:**

- (1) energy charges;
- (2) distribution or transmission charges;
- (3) metering charges;
- (4) stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar charges for supplemental services to self-generation service users;
- (5) customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees or surcharges which are necessary for or common to the receipt, use or enjoyment of electric service; and,
- (6) charges, fees, or surcharges for electricity services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

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

(d) The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the of the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those

components and items which are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

(e) **As used in this section, the term "using electricity" shall not include the mere receiving of** such electricity by an electrical corporation or governmental agency 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 Section 3.41.080 of this Chapter. All other taxes on charges for electricity imposed by this section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

3.41.070 Gas Users Tax.

(a) There is hereby imposed a tax upon every person using gas in the City, which is transported and delivered through a pipeline or by mobile transport. The tax imposed by this section shall be at the rate of two and 50/100 percent (2.5%) of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent, and shall apply to all uses of gas, including but not limited to, heating, electricity generation, and the use of gas as a component of a manufactured product. Notwithstanding the foregoing, the charges made for the baseline rate usage approved by the California Public Utilities Commission for gas furnished to a residential service user shall be exempt from the tax levied by this Section 3.40.080.

(b) **As used in this section, the term "charges" shall apply to** all services, components and items for gas service that are: i) necessary for or common to the receipt, use or enjoyment of gas service; or, ii) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. **The term "charges" shall include, but is not limited to, the following charges:**

- (1) the commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;
- (2) gas transportation charges (including interstate charges to the extent not included in commodity charges);
- (3) storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used;

but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;

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

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

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

(d) The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of gas service; or, ii) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

(e) There shall be excluded from the calculation of the tax imposed in this section, charges made for gas which is to be resold and delivered through a pipeline distribution system.

(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 Section 3.41.080 of this Chapter. All other taxes on charges for gas imposed by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator, on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

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

(a) Any service user subject to the tax imposed by Section 3.41.060 or by Section 3.41.070 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 said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use, based on the charges for, or value of, such gas or electricity, or supplemental services, as provided in subsection (b). In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator in writing, may be applied against any subsequent tax bill that becomes due.

(b) The Tax Administrator may require said service user to identify its non-utility service supplier, and otherwise 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.

3.41.090 Sewer Tax

(a) There is hereby imposed a tax upon every person in the city using sewer services within the city. The tax imposed by this section shall be at the rate of two and 50/100 percent (2.5%) of the charges made for such sewer service. The tax shall be paid by the person using such sewer service.

(b) As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of sewer service; or, ii) currently are or historically have been included in a single or bundled rate for sewer service to retail customers. The term "charges" shall include, but is not limited to, the following charges:

- (1) customer charges, late charges, service establishment or reestablishment charges, annual and monthly charges, and other charges, fees and surcharges which are necessary for or common to the receipt, use or enjoyment of sewer service; and,
- (2) charges, fees, or surcharges for sewer services or programs, which are mandated by the City, 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) The tax on sewer service imposed by this section shall be collected from the service user by the sewer service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

3.41.100 Bundling Taxable Items with Non-Taxable Items.

If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation of the taxable and non-taxable services.

3.41.110 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. Any telecommunication service (including VoIP) used by a person with a service address in the City, which service is capable of terminating a call to another person on the general telephone network, shall **be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this Chapter.** A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the City, directly or through an agent, affiliate, or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents or other representatives; solicits business in the City on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the City or distributed from a location within the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are **significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of services that are subject to a tax under this Chapter**

3.41.120 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 said charges, Section 3.41.160 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 service user 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 *Revenue and Tax Code Section 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.

3.41.130 Collection Penalties – Service Suppliers.

(a) Taxes collected by service supplier from a service user 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 subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer **settles into the City's** account on 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, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen (15%) percent of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of and 75/100ths (0.75%) percent 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 fifteen (15%) percent 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.

(e). Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this Chapter to be consistent with any uniform standards or procedures that are mutually agreed upon by other public agencies imposing a utility users tax, or otherwise legally established, to create a central payment location or mechanism.

3.41.140 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.A. Section 507(a)(8)(C)*.

3.41.150 Deficiency Determination and Assessment – Tax Application Errors.

(a) The Tax Administrator shall make a deficiency determination if he or she determines that any service supplier or service user required to pay, collect, and/or remit taxes pursuant to the provisions of this Chapter has failed to pay, 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. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3.41.150 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) The Tax Administrator shall mail a notice of such deficiency determination to the person or entity allegedly owing the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) calendar days after the date of service of such notice, the person or entity allegedly owing the tax may request in writing to the Tax Administrator for a hearing on the matter.

(c) If the person or entity allegedly owing the tax 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 thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person or entity at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person or entity 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 or entity owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.41.200 of this Chapter. Filing an application with the Tax Administrator and appeal to the Chief Executive Officer pursuant to Section 3.41.200 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 (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of 75/100ths (0.75%) percent 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 subsection (e).

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

3.41.160 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 (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Chapter. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3.41.160 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of fifteen percent (15%) of the total tax that is owed, and shall pay interest at the rate of 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

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

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

3.41.170 Additional Powers and Duties of the Tax Administrator.

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

(b) The Tax Administrator may adopt administrative rules and regulations consistent 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. To the extent that the Tax Administrator determines that the tax imposed under this chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of *Government Code Section 53750* or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of *Government Code Section 53750* and the City does not waive or **abrogate its ability to impose the utility users' tax in full as a result of promulgating** administrative rulings or entering into agreements.

(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 so long as said 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 said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 3.41.150 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 said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

(e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Chapter for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of 75/100ths (0.75%) percent per month, prorated for any portion thereof.

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

(g) 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.

3.41.180 Records.

(a) It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at a reasonable time.

(b) The City, through the City Council, may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this 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 Counsel to protect the confidentiality of customer information pursuant to *California Revenue and Tax Code Sections 7284.6 and 7284.7*.

(d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: i) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and, ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City .

(e) If any person subject to record-keeping under this section unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of \$500 on such person for each day following: i) the initial date that the person refuses to provide such access; or, ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Chapter.

3.41.190 Refunds.

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

(b) The City Manager, where the claim is less than the settlement authority established in 2.04.110 of the Municipal Code, or the City Council where the claim is in excess of that amount, shall act upon the refund claim within forty-five (45) days of the initial receipt of the refund claim. Said decision shall be final. If the City Manager/City Council fails or refuses to act on a refund claim within the forty-five (45) day period, the claim shall be deemed to have been rejected by the City Manager/City Council on the forty-fifth (45th) day. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in California Government Code Section 913.

(c) The filing of a written claim pursuant to California Government Code Section 935 is a prerequisite to any suit thereon. Any action brought against the City pursuant to this section shall be subject to the provisions of California Government Code Sections 945.6 and 946.

(d) Notwithstanding the notice provisions of subsection (a) of this Section, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this Chapter, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator, provided that: i) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; ii) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, iii) in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

(e). Notwithstanding subsections (a) through (d) above, a service supplier shall be entitled to take any overpayment as a credit against an underpayment whenever such overpayment has been received by the City within the three (3) years next preceding a deficiency determination or assessment by the Tax Administrator in connection with an audit instituted by the Tax Administrator pursuant to Section 3.41.170(d). A service supplier shall not be entitled to said credit unless it first clearly establishes, to the satisfaction of the Tax Administrator, the right to the credit by written records showing entitlement thereto. Under no circumstances shall an overpayment taken as a credit against an underpayment pursuant to this subsection qualify a

service supplier for a refund to which it would not otherwise be entitled under the one-year written claim requirement of this section.

3.41.200 Appeals.

(a) The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 3.41.190 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.41.200 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. [See *Government Code Section 935(b)*]. Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

(b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.41.190 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

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

(d) **Based upon the submission of such evidence and the review of the City's files, the 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 fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with *Code of Civil Procedure Section 1094.6*.

(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.

3.41.210 No Injunction/Writ of Mandate.

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

3.41.220 Notice of changes to ordinance.

If a tax under this Chapter is added repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of *California Public Utilities Code Section 799*.

3.41.230 Effect of State and Federal Reference/Authorization.

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, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease (as a result of excluding all or a part of a utility service, or charge therefor, from taxation). Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the City's authorization to collect or impose any tax imposed under this Chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this Chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this Chapter.

3.41.240 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure.

The City shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted in accordance with this Chapter, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

3.41.250 Remedies Cumulative.

All remedies and penalties prescribed by this Chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (*Government Code Section 12650 et seq.*) and the California Unfair Practices Act (*Business and Professions Code Section 17070 et seq.*), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

3.41.260 Interaction with Prior Tax.

(a). **Collection of Tax by Service Providers.** Service providers shall begin to collect the tax imposed by this amended Chapter 3.41 as soon as feasible after the effective date of the

Chapter, but in no event later than permitted by *Section 799* of the *California Public Utilities Code*.

(b). Satisfaction of Tax Obligation by Service Users. Prior to April 1, 2009, any person who pays the tax levied pursuant to Chapter 3.40 of this Code with respect to any charge for a service shall be deemed to have satisfied his or her obligation to pay the tax levied pursuant to Chapter 3.41 with respect to that charge. The intent of this paragraph is to prevent the imposition of multiple taxes upon a single utility charge during the transition period from the prior **Utility Users' Tax ordinance to the amended Utility Users' Tax ordinance (which transition period ends April 1, 2009)** and to permit service providers or other persons with an obligation to remit the tax hereunder, during that transition period, to satisfy their collection obligations by collecting either tax.

(c) In the event that a final court order should determine that the election enacting this Chapter 3.41 is invalid for whatever reason, or that any tax imposed under this Chapter 3.41 is invalid in whole or in part, then the taxes imposed under Chapter 3.40 of this Code shall automatically continue to apply with respect to any service for which the tax levied pursuant to this Chapter has been determined to be invalid. Such automatic continuation shall be effective beginning as of the first date of service (or billing date) for which the tax imposed by this Chapter is not valid. However, in the event of an invalidation, any tax (other than a tax that is ordered refunded by the court or is otherwise refunded by the City) paid by a person with respect to a service and calculated pursuant to this Chapter 3.41 shall be deemed to satisfy the tax imposed under Chapter 3.40 on that service, so long as the tax is paid with respect to a service provided no later than six months subsequent to the date on which the final court order is published.

SECTION 2. Effective Date. This chapter shall become effective immediately upon the date that this Ordinance is approved by the voters of the City of Rancho Cordova at the **Election of November 4, 2008, as confirmed by the City Council's declaration of the vote.**

SECTION 3. Amendment or Repeal. Chapter 3.41 of the Municipal Code may be repealed or amended by the City Council without a vote of the people. However, as required by Chapter XIIC of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance. The People of the City of Rancho Cordova affirm that the following actions shall not constitute an increase of the rate of a tax:

1. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of the tax;
2. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance.
3. The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Ordinance); and
4. The collection of the tax imposed by this Ordinance, even if the City had, for some period of time, failed to collect the tax.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The people hereby declares that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

SECTION 5. Ratification of Prior Tax. The voters of the City of Rancho Cordova hereby ratify and approve the past collection of the Utility Users' Tax under Chapter 3.40 of the Municipal Code as it existed prior to the effective date of this Ordinance.

APPROVED by the following vote of the People of the City of Rancho Cordova on November 4, 2008.

ADOPTED by Declaration of the vote by the City Council of the City of Rancho Cordova on July 7, 2008:

AYES:

NOES:

ABSENT:

ABSTAIN:

Linda Budge, Mayor

ATTEST:

Stacy Leitner, Interim City Clerk

APPROVED AS TO FORM:

Adam Lindgren, City Attorney

Summary of UUT Election Results

Agency	Result	Pass Vote Percent	Rate Reduction
June 2008			
Oakland	Passed	79%	-
Winters	Passed	70%	5 to 4.75%
Covina	Passed	65%	-
County of Alameda	Passed	65%	-
Torrance	Passed	56%	-
McFarland	Failed	25%	expansion to 15%
February 2008			
San Bernardino	Passed	80%	7.83 to 7.75%
Huntington Park	Passed	79%	7 to 6.5%
Richmond	Passed	74%	10 to 9.5%
Los Angeles	Passed	65%	10 to 9%
Pasadena	Passed	58%	-
November 2007			
Emeryville	Passed	86%	-
Los Altos	Passed	84%	3.5 to 3.2%
Redwood City	Passed	81%	5 to 4%
Hermosa Beach	Passed	72%	6 to 5.5%
Benecia	Passed	70%	4 to 3.5%
Gilroy	Passed	64%	5 to 4.5%
El Monte	Passed	63%	7 to 6.5%
Ventura	Passed	63%	5 to 4.5%
June 2007			
Tulare	Passed	86%	7 to 6%
February 2007			
Covina	Failed	41%	-
November 2006			
Compton	Passed	89%	10 to 8.5%
Daly City	Passed	72%	-
Eureka	Passed	51%	-
Menlo Park	Passed	51%	-
Total Jurisdictions gone to ballot since November 2006			25
Total that passed			23
Percent that passed			92%

Statewide UUT Election Results

ATTACHMENT 2

Election	Agency	Result	Percent Voting "Yes"	No Rate Change	Rate Reduction	Rate Increase	New Ordinance and Tax
November 2008							
	Santa Monica	Passed	52.2%	maintain 10%			
	Lakewood	Passed	78.7%	maintain 3%			
	Hawthorne	Passed	73.8%	maintain 5%			
	Indio	Passed	66.0%	maintain 5%			
	Long Beach	Passed	59.1%	maintain 5%			
	Stockton	Passed	61.1%	maintain 7%			
	Inglewood	Passed	84.3%		10% to 8%		
	San Leandro	Passed	83.0%		6% to 5.7%		
	San Jose	Passed	79.4%		5% to 4.5%		
	Moreno Valley	Passed	78.7%		6% to 5.75%		
	Santa Barbara	Passed	70.6%		6% to 5.75%		
	Cathedral City	Passed	68.0%				3%
	San Gabriel	Passed	66.5%			6% to 8%	
	Lynwood	Passed	64.9%		10% to 9%		
	Sacramento	Passed	64.2%		7.5% to 7%		
	Los Angeles	Passed	62.5%		5% to 4.5%		
	Sebastopol	Passed	59.4%				4%
	Proposed City of Rossmoor - Measure U2	Failed	29.3%				7%
	Proposed City of Rossmoor - Measure U3	Failed	20.2%				9%
	Holtville	Failed	57.2%			5% to 9%	
	Pomona	Failed	27.7%			9% to 10%	
	Hemet	Failed	45.2%				5%
	Morgan Hill	Failed	35.0%				2%
June 2008							
	Oakland	Passed	79%	maintain			
	Covina	Passed	65%	maintain			
	County of Alameda	Passed	65%	maintain			
	Torrance	Passed	56%	maintain			
	Winters	Passed	70%		5 to 4.75%		
	McFarland	Failed	25%			to 15%	
February 2008							
	Pasadena	Passed	58%	maintain			
	San Bernardino	Passed	80%		7.83 to 7.75%		
	Huntington Park	Passed	79%		7 to 6.5%		
	Richmond	Passed	74%		10 to 9.5%		
	Los Angeles	Passed	65%		10 to 9%		
November 2007							
	Emeryville	Passed	86%	maintain			
	Los Altos	Passed	84%		3.5 to 3.2%		
	Redwood City	Passed	81%		5 to 4%		
	Hermosa Beach	Passed	72%		6 to 5.5%		
	Benecia	Passed	70%		4 to 3.5%		
	Gilroy	Passed	64%		5 to 4.5%		
	El Monte	Passed	63%		7 to 6.5%		
	Ventura	Passed	63%		5 to 4.5%		
June 2007							
	Tulare	Passed	86%		7 to 6%		
February 2007							
	Covina	Failed	41%	maintain			
November 2006							
	Daly City	Passed	72%	maintain			
	Eureka	Passed	51%	maintain			
	Menlo Park	Passed	51%	maintain			
	Compton	Passed	89%		10 to 8.5%		
Total UUT Measures on ballots since November 2006					48		
Total that passed					42		
Percent that passed					88%		
Percent passing that didn't increase rate					92.9%		

CITY OF RANCHO CORDOVA

RESOLUTION NO. 17-2009

A RESOLUTION OF THE CITY OF RANCHO CORDOVA ADOPTING EMERGENCY FINDINGS AND DECLARING AN EMERGENCY FOR THE PURPOSES OF PLACING A PROPOSED BALLOT MEASURE SEEKING VOTER APPROVAL TO MODIFY THE CITY'S EXISTING UTILITY USERS' TAX ON THE MAY 19, 2009 STATEWIDE SPECIAL ELECTION AS A GENERAL TAX

RECITALS

WHEREAS, the City Council desires to update its definitions of telecommunication and video (cable-like) services so that taxpayers are treated the same regardless of the technology used; and

WHEREAS, on February 19, 2009, pursuant to Urgency Senate Bill 19, the Legislature called a statewide special election be held throughout the State on May 19, 2009. This legislation allows for any election scheduled to be held during the period from May 19, 2009, to June 2, 2009, inclusive, to be held on May 19, 2009, and consolidated with the statewide special election; and

WHEREAS, California Constitution Article XIII C, Section 2(b), provides that no local government may extend any general tax unless and until that tax is submitted to the electorate and approved by a majority vote; and

WHEREAS, California Constitution Article XIII C, Section 2(b), provides that a measure proposing to increase a general tax must be consolidated with a regularly scheduled general election for members of the City Council, except in cases of emergency declared by unanimous vote of the City Council; and

WHEREAS, in July 2008, the City Council decided not to place a modification to the City's Utility Users' Tax ("UUT") as a ballot measure on the November 2008 regularly scheduled general election; and

WHEREAS, since July 2008, the international, statewide and local recession has dramatically and unexpectedly worsened, compromising the City's finances and forcing the City to make critical cuts in City services if the revenues that the UUT provides the City are not stabilized by the enactment of the UUT measure prior to the November 2010 general election; and

WHEREAS, pursuant to California Constitution Article XIII C, Section 2(b), the City Council now finds and declares that an emergency exists, which necessitates the call of a special election to modify the City's existing utility users' tax; and

WHEREAS, this resolution declares the emergency and explains facts and evidence that support the declaration that in the current economic climate the anticipated loss of significant UUT funds threaten the City's ability to continue to provide critical services, including police, code enforcement, street and sidewalk maintenance and improvement, and graffiti removal (together "City Services").

NOW, THEREFORE, IT IS HEREBY RESOLVED, the City Council of the City of Rancho Cordova does ordain and find as follows:

1. Emergency Finding and Declaration. In accordance with California Constitution Article XIII C, Section 2(b), the City Council finds and declares that an emergency exists because the City will be forced to make critical cuts in City Services as a combined result of the recession and the anticipated loss of UUT revenues, if the UUT measure is not enacted prior to the November 2010 general election.

2. Evidence In Support of Finding and Declaration of Emergency.

The finding and declaration of emergency in this Resolution is based on all the evidence in the record and presented to the City Council between July 7, 2008 and March 5, 2009 relating to the UUT, the City budget, City services, State services, the State budget, County services, and the County budget. The evidence includes, without limitation Agenda Reports, testimony and comments received from the public at the City Council Financial Workshops in 2008 and 2009, and City Council reports on the UUT on July 7, 2008, July 22, 2008, March 2, 2009, and March 5, 2009. The evidence also includes, without limitation, the following:

(A) **Recession.** On December 1, 2008, the National Bureau of Economic Research declared that the Nation was in a **recession**. A **"recession" is defined as "two quarters of successive contraction in gross domestic product."** The City did not foresee, nor could it have reasonably foreseen, the depth and strength of the recession. The impact of the recession on the City has increased since the summer of 2008 when the City Council decided not to place the modification of the UUT on the November 2008 ballot. The dramatic impacts resulting from the recession on the City's finances and its ability to provide City Services were unforeseeable.

The Dow Jones Industrial Average fell 33.8% in 2008, it's worst decline since 1931 and its third worst year ever. The Standard and Poors 500 index fell 38.6%, it's worst performance since 1937 and third worst loss ever. In June 2008 just prior to the Council considering placing a UUT measure on the November 2008 ballot the Dow Jones closed at 11,350.01. By March of 2009 it was down to 6,726.02 a decline of 40%. This dramatic decline in the stock market was not, and could not have been, reasonably predicted.

Since July 2008, a disaster befell banks, brokerages and insurance companies, threatening the global financial system. Investment banks Bear Stearns and Lehman Brothers both failed. **Washington Mutual, the nation's largest savings bank, was sold to JP Morgan Chase after its shares collapsed. Merrill Lynch, possibly the world's best known stock brokerage, was acquired in a distressed sale to Bank of America. The Treasury Department took over Freddie Mac and Fannie Mae, the largest suppliers of mortgage capital to the housing industry. A week later, the Federal Reserve topped that by taking control of American International Group (AIG), the world's largest insurance company. The Federal government increased the bank deposit insurance to \$250,000. Congress was persuaded to approve \$700 billion in emergency aid for the financial system. On February 17, 2009, the Federal Government enacted the American Recovery and Reinvestment Act of 2009. Section 5(a) of the Act declares an emergency for the purposes of the spending the \$787 billion as set forth in the Act.**

In December 2008, President Bush approved a \$17.4 billion bailout for American auto giants GM and Chrysler. The loans were intended to keep the companies afloat until March 31, 2009, at which time the Obama administration will review the effect of the bailout and determine if additional assistance is warranted and necessary. The loans are part of the \$700 billion stimulus package previously approved by Congress.

As the economy has worsened, the national unemployment rate increased from 4.8% in February of 2008 to 7.6% in January 2009.

The State unemployment rate increased from 6.1% in January 2008 to 10.1% in January 2009, a 4% increase in one year with 2.8% of the increase coming just since July 2008. To put that into perspective, the next largest one-year increase in the State unemployment rate from January to January in the last 30 years was 2.1% increase from January 1982 to January 1983. In May 2008, the State predicted employment would actually increase .6% by 2009. In December 2008, they revised their prediction to reflect a decline of 1.6% in employment. The actual unemployment level in January 2009 was 10.1% compared to 6.1% a year prior. This illustrates the unpredictability of the effects of the recession.

The recession has resulted in one of the most difficult budget years for the State of California. Faced with a \$42 billion shortfall by the end of June 2010, the State just passed a budget package that includes \$14.0 billion in reduced spending, \$12.5 billion in temporary tax increases, and \$11.4 billion in borrowing. The tax increases and borrowing would be in place for only two years. Additionally, the tax increase proposals are contingent upon various triggers linked to the successful passage by voters of several ballot measures on the May 19, 2009 ballot. And, if the economy continues to worsen, and there is no reason to believe that it will not, the State will most likely have to make further adjustments to stay in balance. Any declines in the economy or the failure of the ballot measure creates great uncertainty over State shifting or reducing revenues to local government.

(B) **Impacts of Recession on the City.** For the City of Rancho Cordova, the impacts of the recession have been much more severe than anticipated in July 2008. In February 2008, the City projected total revenues over the next three years (2008/09–2010/11) to be \$133,810,000. In February 2009, due to the unexpected deepening of the recession, the City lowered the projection for the same time period to \$118,850,000. This represents a three year decline in revenues of \$14,960,000, an average annual decline in revenues of \$4.98 million.

	Projected Revenues 08/09	Projected Revenues 09/10	Projected Revenues 10/11	Total Projected Revenues
February 2008	\$42,900,000	\$44,850,000	\$46,060,000	\$133,810,000
February 2009	\$40,220,000	\$39,200,000	\$39,430,000	\$118,850,000
Projected Decline	(\$2,680,000)	(\$5,650,000)	(\$6,630,000)	(\$14,960,000)

(C) **Property and Sales Tax Revenue Decrease due to the Recession.** Projected declines in Property Tax Revenues and Sales Tax Revenues account for 23% and 28% of the declines of total revenues, respectively. Continued declines in Property Taxes are expected due to the historically high level of foreclosures in the Region and Rancho Cordova. Additionally, the County will continue with systemic Proposition 8 rollbacks of assessed valuation, due to the massive decline in property values. Continued declines in Sales Taxes are expected as the revenues received in the first four (4) years of Cityhood are now deemed to

have been unsustainable revenue levels achieved only by virtue of being at the height of the economic cycle for the first few years of incorporation. The City now does not anticipate a return to this level of sales tax generation for at least 7 to 10 years. While fully funded, the **City's Economic Uncertainty Reserve is not adequate to absorb all of the expected long term losses from sales tax and property taxes due to the recession.**

(D) **Loss of Sales Tax Generators.** In 2008, the City lost three of its top 25 sales tax generators, Target, Mervyns and Office Depot. While Target is expected to re-open in late 2009, continued economic declines are expected to continue.

(E) **Loss of Important Revenue Source Before November 2010 Tax Measures Produce Revenues.** Additionally, the City will no longer receive annual revenues of \$750,000 in fiscal year 2010/11 from the Vehicle License Fee. For the first 7 years of Cityhood, the City was to receive an increased amount of Vehicle License fees. Fiscal year 2009/10 is the last year the City will receive this payment. If the City waits until November 2010 to modify the City's UUT ordinance, the City will have experienced seven months of activities without this major funding source; approximately \$437,500 will be lost, creating a funding gap. This is critical funding to maintain our existing service levels to the community. These funds are used to provide for Public Safety, Code Enforcement, Building Safety and Economic Development, as well as other general governmental activities.

(F) **Property Tax.** The City's 2008/09 projections predict that property tax will be **35.3% of the General Fund revenues. This means 35.3% of the City's revenues are now** susceptible to fluctuations in property assessed values. After the County released the July 2008 property tax roll for fiscal year 2008/09, which included the aforementioned Proposition 8 reductions, there have been subsequent reductions of assessed value: \$1.47 billion countywide and \$105 million in the City of Rancho Cordova. Additionally, the County will be processing more Proposition 8 rollbacks for next year's tax roll. The magnitude of those reductions is not yet known. However, back in December 2008, when City Staff met with the County Assessor, the Assessor predicted a countywide decline in the range of 5%. This will be the first time in at least 20 years that there has been a countywide decrease in assessed valuation.

While the 2009/10 tax roll has not been completed, three factors are now indicating the decline will continue: (1) commercial properties have now begun requesting Proposition 8 reassessments which will add to the decline in assessed values; (2) additional Proposition 8 reductions will occur with the residential parcels; (3) the Proposition 13 yearly adjustment to assessed value is the lower of statewide CPI or 2%, and it is anticipated this year the CPI will be used as the factor. The record foreclosure rate will also have a significant, long term impact on our property tax revenues. Sacramento County had almost 18,000 foreclosures in 2008, compared to approximately 8,000 in 2007. When these properties sell at the reduced prices from the current assessed value, Proposition 13 will establish their assessed value at the selling price, resulting in a permanent reduction in property tax revenues.

(G) **Consumer Confidence.** Decreases in sales tax revenue reflect historical lows being reported for consumer confidence. The consumer confidence index sunk to 37.4 in **December 2008, the lowest score since the report's inception in 1967. At that time, many** economists predicted it would continue to fall to 35. However, by February 2009 it had plunged to 25. The ongoing housing and credit crisis combined with continued job loss point to continued decreases in this critical funding source.

(H) **Importance of the UUT Revenues to the City and Anticipated Loss of UUT Revenues.** (The UUT produced \$1,930,878 for the City in Fiscal Year 07/08). As explained below, and in the record, legal interpretations, litigation and legislation combine to create such an immediate and probable threat to future collections that the City must anticipate the loss of at least \$650,000 of these revenues before November 2010.

In order to absorb a loss of \$650,000 in revenues in the general fund, the City would have to cut 4 police officers, or some combination of police officers, code enforcement officers and street and sidewalk maintenance and improvements.

Anticipated Loss of UUT. Upon incorporation, the City adopted the County of Sacramento's Utility Users' Tax ordinance by reference. This tax ordinance followed the pattern of many other ordinances that had been adopted by jurisdictions in California, containing outdated language defining the circumstances where the UUT could be collected on telecommunication services. The ordinance makes specific references to the Federal Excise Tax (FET) with respects to its application. On May 25, 2006, the IRS reversed its long standing interpretation and ruled that the FET would no longer apply to wireless communications that were billed based on time only.

The key legal issue raised by the IRS ruling is whether the reference to the FET in the Rancho Cordova's UUT ordinance could jeopardize the continued collection of the City's UUT on the services that the IRS has declared that the FET does not cover. This is now the subject of widespread litigation in other taxing jurisdictions including the County of Los Angeles (*Granados v. County of Los Angeles* BC-361470 - class action lawsuit at the trial stage); three lawsuits against the City of Los Angeles (*Ardon v. City of Los Angeles* - class action lawsuit - all at the trial stage); and a lawsuit against the City of Long Beach (*McWilliams v. City of Long Beach* - class action lawsuit at the trial stage). The City's election's consultant has informed the City that this issue has also been the subject of an increasing number of refund claims against California public agencies with UUT ordinances similar to the City's UUT ordinance.

An adverse final court ruling against the public agency in one or more of these lawsuits could likely be found by a Court of Appeal to apply to ordinances like the City's current ordinance. This would result in a permanent reduction of telecom UUT, along with possible refund claims for past taxes. It is also possible and now increasingly likely that the utility users who collect Rancho Cordova's UUT will refuse to remit that tax to the City.

The League of California Cities has also cautioned California jurisdictions that federal legislation relating to utility users' taxes will likely be considered in 2009 and become effective January 1, 2010. This legislation would impose a five year moratorium on new wireless taxes. If this legislation is be introduced and passed, it would preclude the City from modernizing its UUT in a manner that is both technology-neutral and fair. A moratorium would prevent the City from updating its UUT ordinance to include new technologies for five years.

The City has been advised by its expert consultant that the combined risks posed to its UUT by the above litigation and legislation are sufficiently significant that it should anticipate the loss of the \$650,000 portion of its UUT.

(I) **By Addressing the Unfairness of the Current UUT Ordinance, the City Will Address Critical Funding Shortfalls Created by the Recession**

Based on projections made in February 2009, the City faces a general fund shortfall that will result in the elimination of police officers and other critical services if revenues are not expanded.

Even if the City were to assume, as it cannot, that the UUT is not reduced or eliminated, the City's projected total shortfall for fiscal year 2009/10 is approximately \$2.5 million, and approximately \$4.2 million for fiscal year 2010/11. This shortfall would require the elimination of 15 sworn officers or a combination of other cuts. This would be 22% of all the City's sworn officers.

If the City expanded the base to which the UUT applies to include evolving technologies, it would preserve the existing funding from the UUT and provide additional annual revenues of approximately \$880,000. This additional revenue would significantly help to close the gap caused by the recession and the loss of other annual revenues.

The City has a \$9.4 million economic uncertainty reserve. While it is now fully funded, it is not sufficient to carry the City through a prolonged recession and to absorb the anticipated loss of annual revenues. The City anticipates a \$10.5 million shortfall over the next three years if the UUT measure is not adopted. Following this three year period, the shortfalls would continue in **the future. For example, it is not anticipated that the City's gross sales tax revenues will** return to their peak level for seven to ten years, even without accounting for the loss in real revenue terms related to inflation and population growth. Assessed value and property tax impacts will also be felt for a long time beyond the next three years because of the severe recession. Accordingly, the economic uncertainty reserve can only cover a fraction of the shortfalls anticipated over time, especially if the City were to lose the long distance component of the UUT, given also the certain loss of our vehicle license fees.

3. Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

4. Passage of the Resolution. Pursuant to California Constitution Article XIII C, Section 2(b), this Resolution is adopted by the unanimous vote of the City Council and declares an emergency for purposes of placing the UUT general tax on the May 19, 2009 Statewide Special Election.

5. CEQA. This Resolution is exempt from the California Environmental Quality Act (Public Resources Code §21000, "CEQA") pursuant to CEQA guidelines 15060, "Preliminary Review," subdivision (c)(2) in that it will not result in a direct or reasonably foreseeable indirect physical change in the environment; and 15378, "Project," subdivisions (2) and (4) of subdivision (b), in that this tax does not constitute a project under CEQA and therefore review under CEQA is not required.

ATTACHMENT B

PASSED AND ADOPTED this 5th day of March 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dan Skoglund, Mayor

ATTEST:

Mindy Cuppy, City Clerk

CITY OF RANCHO CORDOVA

RESOLUTION NO. 18-2009

A RESOLUTION OF THE CITY OF RANCHO CORDOVA ESTABLISHING MAY 19, 2009, AS THE DATE FOR AN ELECTION ON A PROPOSED BALLOT MEASURE SEEKING VOTER APPROVAL TO MODIFY THE CITY'S EXISTING UTILITY USERS' TAX FOR GENERAL FUND PURPOSES, ESTABLISHING POLICIES AND PROCEDURES IN CONNECTION WITH SUCH AN ELECTION, AND REQUESTING THAT THE COUNTY OF SACRAMENTO CONDUCT SUCH AN ELECTION

RECITALS

WHEREAS, on February 19, 2009, pursuant to Urgency Senate Bill 19, the Legislature called a statewide special election be held throughout the State on May 19, 2009. This legislation allows for any election scheduled to be held during the period from May 19, 2009, to June 2, 2009, inclusive, to be scheduled and held on May 19, 2009, and consolidated with the statewide special election; and

WHEREAS, it is desirable that the election be consolidated with the statewide election to be held on the same date and that within the City, the precincts, polling places and election officers of the two elections be the same, and that the county election department of the County of Sacramento canvass the returns of the special election and that the election be held in all respects as if there were only one election; and

WHEREAS, the Rancho Cordova City Council is authorized by California Elections Code Section 9222 to place measures before the voters; and

WHEREAS, California Constitution Article XIII C, Section 2, provides that no local government may extend any general tax unless and until that tax is submitted to the electorate and approved by a majority vote; and

WHEREAS, pursuant to Rancho Cordova Municipal Code Chapter 3.40, the City of Rancho Cordova ("City") imposes a utility users' tax of two and one-half percent, which is charged to persons utilizing electrical energy; gas delivered through mains or pipes; using intrastate, interstate and international telephone services; using cable television service furnished by a cable television corporation; and using sewer service within the City; and

WHEREAS, the utility users' tax is a general tax, the revenues of which are used for general governmental purposes, and placed in the City's general fund for the usual current expenses of the City; and

WHEREAS, the City Council desires to update its definitions of telecommunication and video (cable-like) services so that taxpayers are treated the same regardless of the technology used; and

WHEREAS, the utility users' tax ordinance, attached hereto as Exhibit 1, may provide rebates for companies engaging in activities that help sustain the environment; and

WHEREAS, the tax to be submitted to the voters, if approved, would be paid by persons using electrical energy, gas, telephone service, telecommunication service, cable television and video (cable-like) service and sewer service, as described above, within the City; and

WHEREAS, California Constitution Article XIII C, Section 2, provides that a measure proposing to increase a general tax must be consolidated with a regularly scheduled general election for members of the City Council, except in cases of emergency declared by unanimous vote of the City Council; and

WHEREAS, pursuant to California Constitution Article XIII C, Section 2(b), the City Council, by adopting Resolution 17-2009, found and declared that an emergency exists, which necessitates the call of a special election to allow the voters to consider a general tax measure to modify the City's existing utility users' tax; and

WHEREAS, on the basis of the foregoing and Resolution 17-2009, the City Council determines that it is appropriate to place a measure before the voters at the May 19, 2009, election regarding a modification to the City's existing utility users' tax.

NOW, THEREFORE, IT IS HEREBY RESOLVED, the City Council of the City of Rancho Cordova does ordain as follows:

1. Placement of Measure on the Ballot. Pursuant to California Elections Code Section 9222 and Urgency Senate Bill 19, the City Council hereby resolves that the ballot for the May 19, 2009 election shall include a measure that, if approved, would update its definitions of telecommunication and video (cable-like) services so that taxpayers are treated the same regardless of the technology used, in order to fund general services in the City.

(a) **Ballot Language**

The ballot language for the measure shall be as follows:

UTILITY USERS' TAX MODERNIZATION AND FAIRNESS MEASURE. Shall an ordinance be adopted to continue the City of Rancho Cordova's existing 2.5% utility users' tax on telecommunication and video services; modernize the ordinance to treat taxpayers equally regardless of technology used; to preserve funding for general municipal services such as neighborhood improvements and safety including, but not limited to, police services, maintenance of and improvements to city streets, sidewalks, landscaping and graffiti removal?

☐ Yes

☐ No

2. Proposed Ordinance. The ordinance authorizing the general tax to be approved by the voters pursuant to Section 2 is as set forth in **Exhibit 1** hereto. The City Council hereby approves the submission of the ordinance to the voters of the City at the May 19, 2009, election. The City requests that County of Sacramento print **Exhibit 1** in its entirety with the election materials.

3. Publication of Measure. The City Clerk is hereby directed to cause notice of the measure to be published once in the official newspaper of the City of Rancho Cordova, in accordance with Section 12111 of the Elections Code and Section 6061 of the Government Code.

4. Request to Consolidate and Conduct Election and Canvass Returns.

(a) Pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of Sacramento is hereby requested to consent and agree to the consolidation of a special election with the Statewide Election on Tuesday, May 19, 2009, for the purpose of placing the measure set forth in Section 1 on the ballot.

(b) The County of Sacramento Election Department is authorized to canvass the returns of the Statewide Special Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

(c) The Board of Supervisors is requested to issue instructions to the County of Sacramento Election Department to take any and all steps necessary for the holding of the consolidated election.

(d) The City of Rancho Cordova recognizes that additional costs will be incurred by the County of Sacramento by reason of this consolidation and agrees to reimburse the County for any additional costs above and beyond those reimbursed by the State.

5. Submission of Ballot Arguments and Impartial Analysis.

(a) The last day for submission of direct arguments for or against the measure shall be by 5:00 p.m. on March 10, 2009.

(b) The last day for submission of rebuttal arguments for or against the measure shall be by 5:00 p.m. on March 12, 2009.

(c) Direct arguments shall not exceed three hundred words and shall be signed by not more than five persons.

(d) Rebuttal arguments shall not exceed two hundred fifty words and shall be signed by not more than five persons; those persons may be different persons than the persons who signed the direct arguments.

(e) The City Attorney shall prepare an impartial analysis of the measure by March 13, 2009.

(f) Pursuant to California Elections Code Section 9282, the Mayor is hereby authorized to prepare a written argument in favor of the proposed measure, not to exceed 300 words, on behalf of the **City Council**. **At the Mayor's discretion, the** argument may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote on the measure. In the event that an argument is filed against the measure, the Mayor is also authorized to prepare a rebuttal argument on behalf of the City Council, which may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote on the measure.

(g) Pursuant to California Elections Code Section 9285, when the City Clerk has selected the arguments for and against the measure, which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument, which it seeks to rebut.

6. Effective Date. This Resolution shall become effective immediately upon its passage and adoption and the City Clerk is directed to send certified copies of this Resolution to the Sacramento Board of Supervisors, to the County Clerk-Recorder, and County of Sacramento Election Department.

7. **Passage of the Resolution.** Pursuant to California Government Code Section 53724(b), this Resolution, including the approval of the submission of the proposed Ordinance (attached as **Exhibit 1**) must be approved by a two-thirds vote of all members of the City Council.

8. **CEQA.** This Resolution is exempt from the California Environmental Quality Act (Public Resources Code §21000, "CEQA") pursuant to CEQA guidelines 15060, "Preliminary Review," subdivision (c)(2) in that it will not result in a direct or reasonably foreseeable indirect physical change in the environment; and 15378, "Project," subdivisions (2) and (4) of subdivision (b), in that this tax does not constitute a project under CEQA and therefore review under CEQA is not required.

PASSED AND ADOPTED this 5th day of March, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dan Skoglund, Mayor

ATTEST:

Mindy Cuppy, City Clerk

1200216.3

ORDINANCE NO. 3-2009

**AN ORDINANCE OF THE CITY OF RANCHO CORDOVA ADDING
CHAPTER 3.40 OF THE RANCHO CORDOVA MUNICIPAL CODE
WITH RESPECT TO A UTILITY USERS' TAX**

WHEREAS, the City desires to update the definitions of telecommunication and video (cable-like) services in the City's Municipal Code Chapter 3.40 pertaining to the utility users' tax in order that taxpayers be treated the same regardless of the technology used; and

WHEREAS, California Constitution Article XIII C, Section 2, provides that no local government may extend any general tax unless and until that tax is submitted to the electorate and approved by a majority vote; and

WHEREAS, California Constitution Article XIII C, Section 2, provides that a measure proposing to increase a general tax must be consolidated with a regularly scheduled general election for members of the City Council, except in cases of emergency declared by unanimous vote of the City Council; and

WHEREAS, the City Council has unanimously declared that an emergency exists requiring that the changes reflected in this ordinance be placed on the May 19, 2009 statewide special election. The City declared as follows:

[Emergency Findings will be inserted from the Emergency Resolution if it is adopted.]

THE PEOPLE OF THE CITY OF RANCHO CORDOVA DO ORDAIN AS FOLLOWS:

SECTION 1: Chapter 3.40 of the Municipal Code is hereby deleted and replaced in its entirety to read as follows:

CHAPTER 3.40

UTILITY USERS' TAX

3.40.010 Short Title.

3.40.020 Definitions.

3.40.030 Constitutional, Statutory, and Other Exemptions.

3.40.040 Telecommunication Tax

3.40.050 Video Tax

3.40.060 Electricity Tax

3.40.070 Gas Tax

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

3.40.090 Sewer Tax

3.40.100 Bundling Taxable Items with Non-taxable Items

3.40.110 Substantial Nexus / Minimum Contacts.

3.40.120 Duty to collect--Procedures.

3.40.130 Collection Penalties -- Service Suppliers.

3.40.140 Actions to Collect.

- 3.40.150 Deficiency Determination and Assessment – Tax Application Errors.
- 3.40.160 Administrative Remedy - Non-Paying Service Users.
- 3.40.170 Additional powers and duties of the Tax Administrator.
- 3.40.180 Records.
- 3.40.190 Refunds.
- 3.40.200 Appeals.
- 3.40.210 Notice No Injunction/Writ of Mandate.
- 3.40.220 Notice of Changes to Ordinance.
- 3.40.230 Effect of State and Federal Reference/Authorization.
- 3.40.240 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure.
- 3.40.250 Remedies Cumulative.
- 3.40.260 Interaction with Prior Tax.

3.40.010 Short Title

This chapter shall be known as the "Utility Users' Tax Ordinance" of the City.

3.40.020 Definitions.

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

(a) **"Ancillary telecommunication services"** means services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to the following services:

(1) **"Conference bridging service"** means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

(2) **"Detailed telecommunications billing service"** means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(3) **"Directory assistance"** means an ancillary service of providing telephone number information, and/or address information.

(4) **"Vertical service"** means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(5) **"Voice mail service"** means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(b) **"Ancillary video services"** means services that are associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, search functions, recording services, or other interactive services or

EXHIBIT 1

communications that are associated with or incidental to the provision, use or enjoyment of video services.

(c) **"Billing Address"** shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

(d) **"City"** shall mean the City of Rancho Cordova.

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

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

(g) **"Month"** shall mean a calendar month.

(h) **"Non-Utility Service Supplier"** means:

(1) a service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator (15 U.S.C. Section 79z-5a), municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

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

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

(i) **"Paging service"** means a **"telecommunications service"** that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

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

(k) **"Place of Primary Use"** means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

EXHIBIT 1

(l) "Post-paid telecommunication service" means the telecommunication service obtained by making a payment on a telecommunication-by-telecommunication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.

(m) "Prepaid telecommunication service" means the right to access telecommunication services, which must be paid for in advance and which enables the origination of telecommunications using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(n) "Private telecommunication service" means a telecommunication service that entitles the customer to exclusive or priority use of a telecommunications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A telecommunications channel is a physical or virtual path of telecommunications over which signals are transmitted between or among customer channel termination points (i.e., the location where the customer either inputs or receives the telecommunications).

(o) "Service Address" shall mean the residential street address or the business street address of the service user. For a telecommunication or video service user, "service address" means either:

(1) The location of the service user's **telecommunication or video equipment from** which the communication originates or terminates, regardless of where the communication is billed or paid; or,

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

(3) **For prepaid telecommunication service, "service address" shall mean the** location associated with the service number.

(p) "Service Supplier" shall mean any entity or person, including the City, that provides telecommunication or video service to a user of such service within the City.

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

(r) **"State" shall mean the State of California.**

(s) **"Streamlined Sales and Use Tax Agreement shall mean** the multi-state agreement commonly known and referred to as the Streamlined Sales and Use Tax Agreement, and as it is amended from time to time.

(t) "Tax Administrator" means the Finance Director of the city or his or her designee.

(u) **"Telecommunications services"** means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used. The term **"telecommunications services"** includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Telecommunications Commission as enhanced or value added, and includes video and/or data services that is functionally integrated with **"telecommunication services"**. **"Telecommunications services"** include, but are not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Telecommunications Commission); 900 service (or any other similar numbers designated by the Federal Telecommunications Commission for services whereby subscribers who call in to pre-recorded or live service).

(v) **"Video Programming"** means those programming services commonly provided to subscribers by a **"video service supplier"** including but not limited to basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.

(w) **"Video Services"** means **"video programming"** and any and all services related to the providing, recording, delivering, use or enjoyment of **"video programming"** (including origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video) using one or more channels by a **"video service supplier"**, regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes ancillary video services, data services, **"telecommunication services"**, or interactive communication services that are functionally integrated with **"video services"**.

(x) **"Video Service Supplier"** means any person, company, or service which provides or sells one or more channels of video programming, or provides or sells the capability to receive one or more channels of video programming, including any telecommunications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the City, 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 telecommunications. A **"video service supplier"** includes, but is not limited to, multichannel video programming distributors [as defined in 47 U.S.C.A. Section 522(13)]; open video systems (OVS) suppliers; and suppliers of 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), direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video services (including two-way communications), whatever their technology.

(y) VoIP (voice over internet protocol) means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

(z) **"800 service" means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.**

(aa) **"900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.**

3.40.030 Constitutional, statutory, and other exemptions.

(a) Nothing in this Chapter shall be construed as imposing a tax upon 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.

(b) Any service user that is exempt from the tax imposed by this Chapter pursuant to subsection (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 for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all utility service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in utility service suppliers so that the Tax Administrator can properly notify the new utility service supplier of the service users' 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.

The decision of the Tax Administrator may be appealed pursuant to Section 3.40.200 of this Chapter. Filing an application with the Tax Administrator and appeal to the Chief Executive Officer pursuant to Section 3.40.200 of this Chapter is a prerequisite to a suit thereon.

3.40.040 Telecommunication Users' Tax.

(a) There is hereby imposed a tax upon every person in the City using telecommunication services. The tax imposed by this section shall be at the rate of two and 50/100 percent (2.5%) of the charges made for such services and shall be collected from the service user by the telecommunication services supplier or its billing agent. There is a rebuttable presumption that telecommunication 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.** 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 telecommunication services.

(b) **"Mobile Telecommunications Service"** shall be sourced in accordance with the sourcing rules set forth in the *Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124)*. The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Chapter, sourcing rules for the taxation of other telecommunication services, including but not limited to post-paid telecommunication services, and prepaid telecommunication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation (e.g., Streamline Sales and Use Tax Agreement).

(c) The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those telecommunication services, or charges therefor, that are subject to or not subject to the tax of subsection (a) above.

(d) As used in this section, the term **"telecommunication services"** shall include, but are not limited to charges for: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features(including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory, administrative and other cost recovery charges; and local **number portability charges.** **"Telecommunication services" shall not include digital downloads that are not "ancillary telecommunications services", such as books, music, ringtones, games, and similar digital products.**

(e) To prevent actual multi-jurisdictional taxation of telecommunication 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 local jurisdiction on such telecommunication 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 local jurisdiction; provided, however, the amount of credit shall not exceed the tax owed to the City under this section.

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

3.40.050 Video Users' Tax.

(a) There is hereby imposed a tax upon every person in the City using video services. The tax imposed by this section shall be at the rate of two and 50/100 percent (2.5%) of the charges made for such services and shall be collected from the service user by the video service supplier or its billing agent. There is a rebuttable presumption that video 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.

EXHIBIT 1

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.

(b) As used in this section, the term "charges" shall include, but is not limited to, charges for the following:

- (1) regulatory fees and surcharges, franchise fees and access fees (PEG);
- (2) initial installation of equipment necessary for provision and receipt of telecommunication services;
- (3) late fees, collection fees, bad debt recoveries, and return check fees;
- (4) activation fees, reactivation fees, and reconnection fees;
- (5) video programming and video services;
- (6) ancillary video programming services (e.g., electronic program guide services, search functions, recording functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of the video services);
- (7) equipment leases (e.g., remote, recording and/or search devices; converters); and,
- (8) service calls, service protection plans, name changes, changes of services, and special services.

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

(d) The Tax Administrator may issue and disseminate to video service suppliers, which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those video services, or charges therefor, that are subject to or not subject to the tax of subsection (a) above.

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

3.40.060 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 two and 50/100 percent (2.5%) of the charges made for such electricity, and for any supplemental services or other associated

activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent. Notwithstanding the foregoing, the first forty-five dollars (\$45.00) in total monthly charges made for electrical energy to a residential service user shall be exempt from the tax levied by this Section 3.40.060.

(b) As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. **The term "charges" shall include, but is not limited to, the following charges:**

- (1) energy charges;
- (2) distribution or transmission charges;
- (3) metering charges;
- (4) stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar charges for supplemental services to self-generation service users;
- (5) customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees or surcharges which are necessary for or common to the receipt, use or enjoyment of electric service; and,
- (6) charges, fees, or surcharges for electricity services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

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

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

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

(e) **As used in this section, the term "using electricity" shall not include the mere** receiving of such electricity by an electrical corporation or governmental agency 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 Section 3.40.080 of this Chapter. All other taxes on charges for electricity imposed by this section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

3.40.070 Gas Users' Tax.

(a) There is hereby imposed a tax upon every person using gas in the City, which is transported and delivered through a pipeline or by mobile transport. The tax imposed by this section shall be at the rate of two and 50/100 percent (2.5%) of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent, and shall apply to all uses of gas, including but not limited to, heating, electricity generation, and the use of gas as a component of a manufactured product. Notwithstanding the foregoing, the charges made for the baseline rate usage approved by the California Public Utilities Commission for gas furnished to a residential service user shall be exempt from the tax levied by this Section 3.40.080.

(b) **As used in this section, the term "charges" shall apply to** all services, components and items for gas service that are: i) necessary for or common to the receipt, use or enjoyment of gas service; or, ii) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. **The term "charges" shall include, but is not limited to, the following charges:**

(1) the commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;

(2) gas transportation charges (including interstate charges to the extent not included in commodity charges);

(3) storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;

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

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

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

(d) The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of gas service; or, ii) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

(e) There shall be excluded from the calculation of the tax imposed in this section, charges made for gas which is to be resold and delivered through a pipeline distribution system.

(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 Section 3.40.080 of this Chapter. All other taxes on charges for gas imposed by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator, on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

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

(a) Any service user subject to the tax imposed by Section 3.40.060 or by Section 3.40.070 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 said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use, based on the charges for, or value of, such gas or electricity, or supplemental services, as provided in subsection (b). In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator in writing, may be applied against any subsequent tax bill that becomes due.

(b) The Tax Administrator may require said service user to identify its non-utility service supplier, and otherwise 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.

3.40.090 Sewer Tax

(a) There is hereby imposed a tax upon every person in the city using sewer services within the city. The tax imposed by this section shall be at the rate of two and 50/100 percent (2.5%) of the charges made for such sewer service. The tax shall be paid by the person using such sewer service.

(b) As used in this **section, the term "charges" shall apply to all services, components and items that are:** i) necessary for or common to the receipt, use or enjoyment of sewer service; or, ii) currently are or historically have been included in a single or **bundled rate for sewer service to retail customers. The term "charges" shall include, but is not limited to, the following charges:**

- (1) customer charges, late charges, service establishment or reestablishment charges, annual and monthly charges, and other

charges, fees and surcharges which are necessary for or common to the receipt, use or enjoyment of sewer service; and,

- (2) charges, fees, or surcharges for sewer services or programs, which are mandated by the City, 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) The tax on sewer service imposed by this section shall be collected from the service user by the sewer service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

3.40.100 Bundling Taxable Items with Non-Taxable Items.

If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation of the taxable and non-taxable services.

3.40.110 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. Any telecommunication service (including VoIP) used by a person with a service address in the City, which service is capable of terminating a call to another person on the general telephone network, shall be subject **to a rebuttable presumption that "substantial nexus/minimum contacts" exists for** purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this Chapter. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the City, directly or through an agent, affiliate, or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents or other representatives; solicits business in the City on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the City or distributed from a location within the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than

the United States mail; or if there are activities performed in the City on behalf of the **service supplier that are significantly associated with the service supplier's ability to** establish and maintain a market in the City for the provision of services that are subject to a tax under this Chapter.

3.40.120 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 said charges, Section 3.40.160 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 service user 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 *Revenue and Tax Code Section 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.

3.40.130 Collection Penalties – Service Suppliers.

(a) Taxes collected by service supplier from a service user 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 subsection shall be considered timely if the transfer is initiated on

or before the due date, and the transfer settles into the City's account on 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, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen (15%) percent of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of and 75/100ths (0.75%) percent 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 fifteen (15%) percent 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.

(e) Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this Chapter to be consistent with any uniform standards or procedures that are mutually agreed upon by other public agencies imposing a utility users tax, or otherwise legally established, to create a central payment location or mechanism.

3.40.140 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.A. Section 507(a)(8)(C)*.

3.40.150 Deficiency Determination and Assessment – Tax Application Errors.

(a) The Tax Administrator shall make a deficiency determination if he or she determines that any service supplier or service user required to pay, collect, and/or remit taxes pursuant to the provisions of this Chapter has failed to pay, 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. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3.40.150 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) The Tax Administrator shall mail a notice of such deficiency determination to the person or entity allegedly owing the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) calendar days after the date of service of such notice, the person or entity allegedly owing the tax may request in writing to the Tax Administrator for a hearing on the matter.

(c) If the person or entity allegedly owing the tax 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 thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person or entity at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person or entity 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 or entity owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.40.200 of this Chapter. Filing an application with the Tax Administrator and appeal to the Chief Executive Officer pursuant to Section 3.40.200 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 (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of 75/100ths (0.75%) percent 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 subsection (e).

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

3.40.160 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 (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Chapter. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3.40.160 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of fifteen percent (15%) of the total tax that is owed, and shall pay interest at the rate of 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

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

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

3.40.170 Additional Powers and Duties of the Tax Administrator.

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

(b) The Tax Administrator may adopt administrative rules and regulations consistent 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. To the extent that the Tax Administrator determines that the tax imposed under this chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of *Government Code Section 53750* or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of *Government Code Section 53750* and the City does not waive or abrogate its ability to

impose the utility users' tax in full as a result of promulgating administrative rulings or entering into agreements.

(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 so long as said 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 said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 3.40.150 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 said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

(e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Chapter for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of 75/100ths (0.75%) percent per month, prorated for any portion thereof.

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

(g) 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.

3.40.180 Records.

(a) It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at a reasonable time.

(b) The City, through the City Council, may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this 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 Counsel to protect the confidentiality of customer information pursuant to *California Revenue and Tax Code Sections 7284.6 and 7284.7*.

(d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: i) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and, ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City .

(e) If any person subject to record-keeping under this section unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of \$500 on such person for each day following: i) the initial date that the person refuses to provide such access; or, ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Chapter.

3.40.190 Refunds.

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

(b) The City Manager, where the claim is less than the settlement authority established in 2.04.110 of the Municipal Code, or the City Council where the claim is in excess of that amount, shall act upon the refund claim within forty-five (45) days of the initial receipt of the refund claim. Said decision shall be final. If the City Manager/City Council fails or refuses to act on a refund claim within the forty-five (45) day period, the claim shall be deemed to have been rejected by the City Manger/City Council on the forty-fifth (45th) day. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in California Government Code Section 913.

(c) The filing of a written claim pursuant to California Government Code Section 935 is a prerequisite to any suit thereon. Any action brought against the City pursuant to this section shall be subject to the provisions of California Government Code Sections 945.6 and 946.

(d) Notwithstanding the notice provisions of subsection (a) of this Section, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this Chapter, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator, provided that: i) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; ii) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, iii) in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

(e) Notwithstanding subsections (a) though (d) above, a service supplier shall be entitled to take any overpayment as a credit against an underpayment whenever such overpayment has been received by the City within the three (3) years next preceding a deficiency determination or assessment by the Tax Administrator in connection with an audit instituted by the Tax Administrator pursuant to Section 3.40.170(d). A service supplier shall not be entitled to said credit unless it first clearly establishes, to the satisfaction of the Tax Administrator, the right to the credit by written records showing entitlement thereto. Under no circumstances shall an overpayment taken as a credit against an underpayment pursuant to this subsection qualify a service supplier for a refund to which it would not otherwise be entitled under the one-year written claim requirement of this section.

3.40.200 Appeals.

(a) The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 3.40.190 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.40.200 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. [See *Government Code Section 935(b)*]. Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

(b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.40.190 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

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

(d) **Based upon the submission of such evidence and the review of the City's files, the** 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 fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with *Code of Civil Procedure Section 1094.6*.

(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.

3.40.210 No Injunction/Writ of Mandate.

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

3.40.220 Notice of changes to ordinance.

If a tax under this Chapter is added repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of *California Public Utilities Code Section 799*.

3.40.230 Effect of State and Federal Reference/Authorization.

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, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease (as a result of excluding all or a

part of a utility service, or charge therefor, from taxation). Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the City's authorization to collect or impose any tax imposed under this Chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this Chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this Chapter.

3.40.240 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure.

The City shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted in accordance with this Chapter, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

3.40.250 Remedies Cumulative.

All remedies and penalties prescribed by this Chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (*Government Code Section 12650 et seq.*) and the California Unfair Practices Act (*Business and Professions Code Section 17070 et seq.*), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

3.40.260 Interaction with Prior Tax.

(a) Collection of Tax by Service Providers. Service providers shall begin to collect the tax imposed by this amended Chapter 3.40 as soon as feasible after the effective date of the Chapter, but in no event later than permitted by *Section 799 of the California Public Utilities Code*.

(b) Satisfaction of Tax Obligation by Service Users. Prior to April 1, 2009, any person who pays the tax levied pursuant to Chapter 3.40 of this Code with respect to any charge for a service shall be deemed to have satisfied his or her obligation to pay the tax levied pursuant to Chapter 3.40 with respect to that charge. The intent of this paragraph is to prevent the imposition of multiple taxes upon a single utility charge during the **transition period from the prior Utility Users' Tax ordinance to the amended Utility Users' Tax ordinance** (which transition period ends April 1, 2009) and to permit service providers or other persons with an obligation to remit the tax hereunder, during that transition period, to satisfy their collection obligations by collecting either tax.

(c) In the event that a final court order should determine that the election enacting this Chapter 3.40 is invalid for whatever reason, or that any tax imposed under this Chapter 3.40 is invalid in whole or in part, then the taxes imposed under Chapter 3.40 of this Code shall automatically continue to apply with respect to any service for which the tax levied pursuant to this Chapter has been determined to be invalid. Such automatic continuation shall be effective beginning as of the first date of service (or billing date) for which the tax imposed by this Chapter is not valid. However, in the event of an invalidation, any tax (other than a tax that is ordered refunded by the court or is otherwise refunded by the City) paid by a person with respect to a service and calculated pursuant to this Chapter 3.40 shall be deemed to satisfy the tax imposed under Chapter 3.40 on that service, so long as the tax is paid with respect to a service provided no later than six months subsequent to the date on which the final court order is published.

SECTION 2. Effective Date. This chapter shall become effective immediately upon the date that this Ordinance is approved by the voters of the City of Rancho Cordova at the Election of May 19, 2009, **as confirmed by the City Council's declaration** of the vote.

SECTION 3. Amendment or Repeal. Chapter 3.40 of the Municipal Code may be repealed or amended by the City Council without a vote of the people. However, as required by Chapter XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance. The People of the City of Rancho Cordova affirm that the following actions shall not constitute an increase of the rate of a tax:

1. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of the tax.
2. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance.
3. The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Ordinance).
4. The collection of the tax imposed by this Ordinance, even if the City had, for some period of time, failed to collect the tax.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The people hereby declares that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

EXHIBIT 1

SECTION 5. Ratification of Prior Tax. The voters of the City of Rancho Cordova hereby ratify and approve the past collection of the Utility **Users' Tax** under Chapter 3.40 of the Municipal Code as it existed prior to the effective date of this Ordinance.

APPROVED by the following vote of the People of the City of Rancho Cordova on May 19, 2009

ADOPTED by Declaration of the vote by the City Council of the City of Rancho Cordova on _____, 2009:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dan Skoglund, Mayor

ATTEST:

Mindy Cuppy, City Clerk

APPROVED AS TO FORM:

Adam U. Lindgren, City Attorney

CITY OF RANCHO CORDOVA

RESOLUTION NO. 19-2009

A RESOLUTION OF THE CITY OF RANCHO CORDOVA ESTABLISHING MAY 19, 2009, AS THE DATE FOR A SPECIAL MUNICIPAL ELECTION ON A PROPOSED BALLOT MEASURE SEEKING VOTER APPROVAL TO MODIFY THE CITY'S EXISTING UTILITY USERS' TAX AS A SPECIAL TAX TO BE USED FOR THE FOLLOWING PURPOSES: POLICE SERVICES, MAINTENANCE OF AND IMPROVEMENTS TO CITY STREETS, SIDEWALKS, AND LANDSCAPING, GRAFFITI REMOVAL AND CODE ENFORCEMENT, AND ESTABLISHING POLICIES AND PROCEDURES IN CONNECTION WITH SUCH AN ELECTION, AND REQUESTING THAT THE COUNTY OF SACRAMENTO CONDUCT SUCH AN ELECTION

RECITALS

WHEREAS, on February 19, 2009, pursuant to Urgency Senate Bill 19, the Legislature called a statewide special election be held throughout the State on May 19, 2009. This legislation allows for any election scheduled to be held during the period from May 19, 2009, to June 2, 2009, inclusive, to be held on May 19, 2009, and consolidated with the statewide special election; and

WHEREAS, it is desirable that the election be consolidated with the statewide election to be held on the same date and that within the City, the precincts, polling places and election officers of the two elections be the same, and that the county election department of the County of Sacramento canvass the returns of the special election and that the election be held in all respects as if there were only one election; and

WHEREAS, the Rancho Cordova City Council is authorized by California Elections Code Section 9222 to place measures before the voters; and

WHEREAS, California Constitution Article XIII C, Section 2(d), provides that no local government may impose a special tax unless and until that tax is submitted to the electorate and approved by two-thirds vote; and

WHEREAS, pursuant to Rancho Cordova Municipal Code Chapter 3.40, the City of Rancho Cordova imposes a utility users' tax of two and one-half percent, which is charged to persons utilizing electrical energy; gas delivered through mains or pipes; using intrastate, interstate and international telephone services; using cable television service furnished by a cable television corporation; and using sewer service within the City; and

WHEREAS, the current utility users' tax is a general tax, the revenues of which are used for general governmental purposes, and placed in the City's general fund for the usual current expenses of the City; and

WHEREAS, the City Council desires to update its definitions of telecommunication and video (cable-like) services so that taxpayers are treated the same regardless of the technology used; and

WHEREAS, the utility users' tax ordinance, attached hereto as **Exhibit 1**, may provide rebates for companies engaging in activities that help sustain the environment; and

WHEREAS, the City Council desires to designate the proceeds received from the modification of the utility users' tax as a special tax and restrict the use of the revenues received from such tax to pay for police services, maintenance of and improvements to city streets, sidewalks, and landscaping, graffiti removal and code enforcement ; and

WHEREAS, the proceeds of special taxes must be placed in a special fund and, unlike a general tax, which may be used for any governmental purpose, the proceeds from a special tax may be used only for purposes specified in the adopting measure; and

WHEREAS, the tax to be submitted to the voters, if approved, would be paid by persons using electrical energy, gas, telephone service, telecommunication service, cable television and video (cable-like) service and sewer service, as described above, within the City; and

WHEREAS, in accordance with Government Code Section 50077(a), the City Council held a noticed, public hearing on March 5, 2009, where it received and considered public testimony and a report from staff on the matter of the special tax described above; and

WHEREAS, on the basis of the foregoing, the City Council determines it is appropriate to place a measure before the voters at the May 19, 2009, election regarding a modification to the City's existing utility users' tax.

NOW, THEREFORE, IT IS HEREBY RESOLVED, the City Council of the City of Rancho Cordova does ordain as follows:

1. Purpose and Intent. In accordance with Government Code Sections 53724(a) and 50077(a), it is the purpose and intent of this Resolution to call an election **for the purpose of placing on the ballot a proposition to modify the City's utility users' tax** by updating its definitions of telecommunication and video (cable-like) services so that taxpayers are treated the same regardless of the technology used. The proceeds received from the modification to the utility users' tax is designated a special tax and shall be by persons using electrical energy, gas, telephone service, telecommunication service, cable television and video (cable-like) service and sewer service in the City.

In accordance with Government Code Section 50075.1:

(a) The purposes of the tax received from the modifications to the utility users' tax are:

(i) To obtain, furnish, operate and maintain police equipment or apparatus, for paying the salaries and benefits of police personnel, and for such other police service expenses as are deemed necessary for the benefit of the residents of Rancho Cordova; and

(ii) To maintain, or improve streets, sidewalks and public landscaping within the City of Rancho Cordova, and for such other street expenses as are deemed necessary for the benefit of the residents of Rancho Cordova; and

(iii) To pay for, furnish, operate and maintain graffiti removal equipment and for paying the salaries and benefits of City personnel engaged in graffiti abatement for the benefit of the residents of Rancho Cordova; and

(iv) To obtain, furnish, operate and maintain code enforcement equipment or apparatus, for paying the salaries and benefits of code enforcement personnel, and for such other code enforcement expenses as are deemed necessary for the benefit of the residents of Rancho Cordova.

(b) The proceeds received from the utility users' tax shall be applied only to the specific purposes identified in subsection (a) above; and

(c) **The City's Finance Director shall establish a special account for the deposit** of the proceeds received from the modification to the utility users' tax; and

(d) **The City's** Finance Director shall prepare an annual report pursuant to Government Code 50075.3, which shall describe the amount of funds collected and expended and the status of any project required or authorized to be funded as identified in subsection (a) above.

It is the intent of the City Council that revenues received from the existing 2.5% utility users' tax shall be unaffected by the modification and remain a general tax, which can be placed in the general fund and used for any governmental purpose.

2. Placement of Measure on the Ballot. Pursuant to California Elections Code Section 9222 and Urgency Senate Bill 19, the City Council hereby resolves that the ballot for the May 19, 2009 election shall include the measure herein described.

(a) **Ballot Language**

The ballot language for the measure shall be as follows:

UTILITY USERS' TAX MODERNIZATION AND FAIRNESS MEASURE. In order to provide funding for police services, maintenance of and improvements to city streets, sidewalks, and landscaping, graffiti removal, and code enforcement, shall an ordinance be adopted to continue the City of Rancho Cordova's existing 2.5% utility users' tax on telecommunication and video services, and to modernize the ordinance to treat taxpayers equally regardless of technology used?

☐ Yes

☐ No

3. **Proposed Ordinance.** The ordinance authorizing the special tax to be approved by the voters pursuant to Section 3 is as set forth in **Exhibit 1** hereto. The City Council hereby approves the submission of the ordinance to the voters of the City at the May 19, 2009, election. The City requests that County of Sacramento print **Exhibit 1** in its entirety with the election materials.

4. **Publication of Measure.** The City Clerk is hereby directed to cause notice of the measure to be published once in the official newspaper of the City of Rancho Cordova, in accordance with Section 12111 of the Elections Code and Section 6061 of the Government Code.

5. **Request to Consolidate and Conduct Election and Canvass Returns.**

(a) Pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of Sacramento is hereby requested to consent and agree to the consolidation of a special election with the Statewide Election on Tuesday, May 19, 2009, for the purpose of placing the measure on the ballot.

(b) The County of Sacramento Election Department is authorized to canvass the returns of the special municipal election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

(c) The Board of Supervisors is requested to issue instructions to the County of Sacramento Election Department to take any and all steps necessary for the holding of the consolidated election.

(d) The City of Rancho Cordova recognizes that additional costs will be incurred by the County of Sacramento by reason of this consolidation and agrees to

reimburse the County for any additional costs above and beyond those reimbursed by the State.

6. Submission of Ballot Arguments and Impartial Analysis.

(a) The last day for submission of direct arguments for or against the measure shall be by 5:00 p.m. on March 10, 2009.

(b) The last day for submission of rebuttal arguments for or against the measure shall be by 5:00 p.m. on March 12, 2009.

(c) Direct arguments shall not exceed three hundred words and shall be signed by not more than five persons.

(d) Rebuttal arguments shall not exceed two hundred fifty words and shall be signed by not more than five persons; those persons may be different persons that the persons who signed the direct arguments.

(e) The City Attorney shall prepare an impartial analysis of the measure by March 13, 2009.

(f) Pursuant to California Elections Code Section 9282, the Mayor is hereby authorized to prepare a written argument in favor of the proposed measure, not to **exceed 300 words, on behalf of the City Council. At the Mayor's discretion, the** argument may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote on the measure. In the event that an argument is filed against the measure, the Mayor is also authorized to prepare a rebuttal argument on behalf of the City Council, which may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote on the measure.

(g) Pursuant to California Elections Code Section 9285, when the City Clerk has selected the arguments for and against the measure, which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument, which it seeks to rebut.

7. Effective Date. This Resolution shall become effective immediately upon its passage and adoption and the City Clerk is directed to send certified copies of this Resolution to the Sacramento Board of Supervisors, to the County Clerk-Recorder, and County of Sacramento Election Department.

8. CEQA. This Resolution is exempt from the California Environmental Quality Act (Public Resources Code §21000, "CEQA") pursuant to CEQA guidelines 15060, "Preliminary Review," subdivision (c)(2) in that it will not result in a direct or

ATTACHMENT D

reasonably foreseeable indirect physical change in the environment; and 15378, "**Project**," subdivisions (2) and (4) of subdivision (b), in that this tax does not constitute a project under CEQA and therefore review under CEQA is not required.

PASSED AND ADOPTED this 5th day of March, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dan Skoglund, Mayor

ATTEST:

Mindy Cuppy, City Clerk

ORDINANCE NO. 4-2009

**AN ORDINANCE OF THE CITY OF RANCHO CORDOVA ADDING
CHAPTER 3.40 OF THE RANCHO CORDOVA MUNICIPAL CODE
WITH RESPECT TO A UTILITY USERS' TAX**

WHEREAS, the City desires to update the definitions of telecommunication and video (cable-like) services in the City's Municipal Code Chapter 3.40 pertaining to the utility users' tax in order that taxpayers be treated the same regardless of the technology used; and

WHEREAS, California Constitution Article XIII C, Section 2(d), provides that no local government may impose a special tax unless and until that tax is submitted to the electorate and approved by two-thirds vote; and

WHEREAS, the proceeds of special taxes must be placed in a special fund and, unlike a general tax, which may be used for any governmental purpose, the proceeds from a special tax may be used only for purposes specified in the adopting measure; and

WHEREAS, the proceeds received from the utility users' tax will be designated as a special tax and only be used to pay for police services, maintenance of and improvements to City streets, sidewalks, and landscaping, graffiti removal, and code enforcement.

THE PEOPLE OF THE CITY OF RANCHO CORDOVA DO ORDAIN AS FOLLOWS:

SECTION 1: Chapter 3.40 of the Municipal Code is hereby deleted and replaced to read as follows:

CHAPTER 3.40

UTILITY USERS' TAX

3.40.010 Short Title.

3.40.020 Definitions.

3.40.030 Constitutional, Statutory, and Other Exemptions.

3.40.040 Telecommunication Tax

3.40.050 Video Tax

3.40.060 Electricity Tax

3.40.070 Gas Tax

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

3.40.090 Sewer Tax

3.40.100 Bundling Taxable Items with Non-taxable Items

3.40.110 Substantial Nexus / Minimum Contacts.

3.40.120 Duty to collect--Procedures.

3.40.130 Collection Penalties – Service Suppliers.

3.40.140 Actions to Collect.

3.40.150 Deficiency Determination and Assessment – Tax Application Errors.

- 3.40.160 Administrative Remedy - Non-Paying Service Users.
- 3.40.170 Additional powers and duties of the Tax Administrator.
- 3.40.180 Records.
- 3.40.190 Refunds.
- 3.40.200 Appeals.
- 3.40.210 Notice No Injunction/Writ of Mandate.
- 3.40.220 Notice of Changes to Ordinance.
- 3.40.230 Effect of State and Federal Reference/Authorization.
- 3.40.240 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure.
- 3.40.250 Remedies Cumulative.
- 3.40.260 Interaction with Prior Tax.

3.40.010 Short Title

This chapter shall be known as the "Utility Users' Tax Ordinance" of the City.

3.40.020 Definitions

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

(a) **"Ancillary telecommunication services"** means services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to the following services:

- (1) **"Conference bridging service"** means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.
- (2) **"Detailed telecommunications billing service"** means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.
- (3) **"Directory assistance"** means an ancillary service of providing telephone number information, and/or address information.
- (4) **"Vertical service"** means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.
- (5) **"Voice mail service"** means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(b) **"Ancillary video services"** means services that are associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, search functions, recording services, or other interactive services or

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communications that are associated with or incidental to the provision, use or enjoyment of video services.

(c) **"Billing Address"** shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

(d) **"City"** shall mean the City of Rancho Cordova.

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

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

(g) **"Month"** shall mean a calendar month.

(h) **"Non-Utility Service Supplier"** means:

(1) a service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator (15 U.S.C. Section 79z-5a), municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

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

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

(i) **"Paging service"** means a **"telecommunications service"** that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

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

(k) **"Place of Primary Use"** means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

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(l) "Post-paid telecommunication service" means the telecommunication service obtained by making a payment on a telecommunication-by-telecommunication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.

(m) "Prepaid telecommunication service" means the right to access telecommunication services, which must be paid for in advance and which enables the origination of telecommunications using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(n) "Private telecommunication service" means a telecommunication service that entitles the customer to exclusive or priority use of a telecommunications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A telecommunications channel is a physical or virtual path of telecommunications over which signals are transmitted between or among customer channel termination points (i.e., the location where the customer either inputs or receives the telecommunications).

(o) "Service Address" shall mean the residential street address or the business street address of the service user. For a telecommunication or video service user, "service address" means either:

(1) The location of the service user's telecommunication or video equipment from which the communication originates or terminates, regardless of where the communication is billed or paid; or,

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

(3) For prepaid telecommunication service, "service address" shall mean the location associated with the service number.

(p) "Service Supplier" shall mean any entity or person, including the City, that provides telecommunication or video service to a user of such service within the City.

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

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

(s) "Streamlined Sales and Use Tax Agreement shall mean the multi-state agreement commonly known and referred to as the Streamlined Sales and Use Tax Agreement, and as it is amended from time to time.

(t) "Tax Administrator" means the Finance Director of the city or his or her designee.

(u) **"Telecommunications services"** means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used. The term **"telecommunications services"** includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Telecommunications Commission as enhanced or value added, and includes video and/or data services that is functionally integrated with **"telecommunication services"**. **"Telecommunications services"** include, but are not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Telecommunications Commission); 900 service (or any other similar numbers designated by the Federal Telecommunications Commission for services whereby subscribers who call in to pre-recorded or live service).

(v) **"Video Programming"** means those programming services commonly provided to subscribers by a **"video service supplier"** including but not limited to basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.

(w) **"Video Services"** means **"video programming"** and any and all services related to the providing, recording, delivering, use or enjoyment of **"video programming"** (including origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video) using one or more channels by a **"video service supplier"**, regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes ancillary video services, data services, **"telecommunication services"**, or interactive communication services that are functionally integrated with **"video services"**.

(x) **"Video Service Supplier"** means any person, company, or service which provides or sells one or more channels of video programming, or provides or sells the capability to receive one or more channels of video programming, including any telecommunications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the City, 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 telecommunications. A **"video service supplier"** includes, but is not limited to, multichannel video programming distributors [as defined in 47 U.S.C.A. Section 522(13)]; open video systems (OVS) suppliers; and suppliers of 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), direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video services (including two-way communications), whatever their technology.

(y) VoIP (voice over internet protocol) means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

(z) **"800 service" means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.**

(aa) **"900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.**

3.40.030 Constitutional, statutory, and other exemptions.

(a) Nothing in this Chapter shall be construed as imposing a tax upon 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.

(b) Any service user that is exempt from the tax imposed by this Chapter pursuant to subsection (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 for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all utility service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in utility service suppliers so that the Tax Administrator can properly notify the new utility service supplier of the service users' 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.

The decision of the Tax Administrator may be appealed pursuant to Section 3.40.200 of this Chapter. Filing an application with the Tax Administrator and appeal to the Chief Executive Officer pursuant to Section 3.40.200 of this Chapter is a prerequisite to a suit thereon.

3.40.040 Telecommunication Users' Tax.

(a) There is hereby imposed a tax upon every person in the City using telecommunication services. The tax imposed by this section shall be at the rate of two and 50/100 percent (2.5%) of the charges made for such services and shall be collected from the service user by the telecommunication services supplier or its billing agent. There is a rebuttable presumption that telecommunication 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.** 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 telecommunication services.

(b) **"Mobile Telecommunications Service" shall be sourced in accordance with the sourcing rules set forth in the *Mobile Telecommunications Sourcing Act* (4 U.S.C. Section 124).** The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Chapter, sourcing rules for the taxation of other telecommunication services, including but not limited to post-paid telecommunication services, and prepaid telecommunication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation (e.g., Streamline Sales and Use Tax Agreement).

(c) The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those telecommunication services, or charges therefor, that are subject to or not subject to the tax of subsection (a) above.

(d) **As used in this section, the term "telecommunication services" shall include, but are not limited to charges for: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features(including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory, administrative and other cost recovery charges; and local number portability charges. "Telecommunication services" shall not include digital downloads that are not "ancillary telecommunications services", such as books, music, ringtones, games, and similar digital products.**

(e) To prevent actual multi-jurisdictional taxation of telecommunication 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 local jurisdiction on such telecommunication 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 local jurisdiction; provided, however, the amount of credit shall not exceed the tax owed to the City under this section.

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

3.40.050 Video Users' Tax.

(a) There is hereby imposed a tax upon every person in the City using video services. The tax imposed by this section shall be at the rate of two and 50/100 percent (2.5%) of the charges made for such services and shall be collected from the service user by the video service supplier or its billing agent. There is a rebuttable presumption that video 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.

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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.

(b) As used in this section, the term "charges" shall include, but is not limited to, charges for the following:

- (1) regulatory fees and surcharges, franchise fees and access fees (PEG);
- (2) initial installation of equipment necessary for provision and receipt of telecommunication services;
- (3) late fees, collection fees, bad debt recoveries, and return check fees;
- (4) activation fees, reactivation fees, and reconnection fees;
- (5) video programming and video services;
- (6) ancillary video programming services (e.g., electronic program guide services, search functions, recording functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of the video services);
- (7) equipment leases (e.g., remote, recording and/or search devices; converters); and,
- (8) service calls, service protection plans, name changes, changes of services, and special services.

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

(d) The Tax Administrator may issue and disseminate to video service suppliers, which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those video services, or charges therefor, that are subject to or not subject to the tax of subsection (a) above.

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

3.40.060 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 two and 50/100 percent (2.5%) of the charges made for such electricity, and for any supplemental services or other associated

activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent. Notwithstanding the foregoing, the first forty-five dollars (\$45.00) in total monthly charges made for electrical energy to a residential service user shall be exempt from the tax levied by this Section 3.40.060.

(b) As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. **The term "charges" shall include, but is not limited to, the following charges:**

- (1) energy charges;
- (2) distribution or transmission charges;
- (3) metering charges;
- (4) stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar charges for supplemental services to self-generation service users;
- (5) customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees or surcharges which are necessary for or common to the receipt, use or enjoyment of electric service; and,
- (6) charges, fees, or surcharges for electricity services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

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

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

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

(e) **As used in this section, the term “using electricity” shall not include the mere receiving of such electricity by an electrical corporation or governmental agency 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 Section 3.40.080 of this Chapter. All other taxes on charges for electricity imposed by this section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

3.40.070 Gas Users' Tax.

(a) There is hereby imposed a tax upon every person using gas in the City, which is transported and delivered through a pipeline or by mobile transport. The tax imposed by this section shall be at the rate of two and 50/100 percent (2.5%) of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent, and shall apply to all uses of gas, including but not limited to, heating, electricity generation, and the use of gas as a component of a manufactured product. Notwithstanding the foregoing, the charges made for the baseline rate usage approved by the California Public Utilities Commission for gas furnished to a residential service user shall be exempt from the tax levied by this Section 3.40.080.

(b) **As used in this section, the term “charges” shall apply to all services, components and items for gas service that are: i) necessary for or common to the receipt, use or enjoyment of gas service; or, ii) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term “charges” shall include, but is not limited to, the following charges:**

(1) the commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;

(2) gas transportation charges (including interstate charges to the extent not included in commodity charges);

(3) storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;

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

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

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

(d) The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of gas service; or, ii) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

(e) There shall be excluded from the calculation of the tax imposed in this section, charges made for gas which is to be resold and delivered through a pipeline distribution system.

(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 Section 3.40.080 of this Chapter. All other taxes on charges for gas imposed by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator, on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

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

(a) Any service user subject to the tax imposed by Section 3.40.060 or by Section 3.40.070 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 said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use, based on the charges for, or value of, such gas or electricity, or supplemental services, as provided in subsection (b). In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator in writing, may be applied against any subsequent tax bill that becomes due.

(b) The Tax Administrator may require said service user to identify its non-utility service supplier, and otherwise 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.

3.40.090 Sewer Tax

(a) There is hereby imposed a tax upon every person in the city using sewer services within the city. The tax imposed by this section shall be at the rate of two and 50/100 percent (2.5%) of the charges made for such sewer service. The tax shall be paid by the person using such sewer service.

(b) As used in this **section, the term "charges" shall apply to all services, components and items that are:** i) necessary for or common to the receipt, use or enjoyment of sewer service; or, ii) currently are or historically have been included in a single or **bundled rate for sewer service to retail customers. The term "charges" shall** include, but is not limited to, the following charges:

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

- (2) charges, fees, or surcharges for sewer services or programs, which are mandated by the City, 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) The tax on sewer service imposed by this section shall be collected from the service user by the sewer service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

3.40.100 Bundling Taxable Items with Non-Taxable Items.

If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation of the taxable and non-taxable services.

3.40.110 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. Any telecommunication service (including VoIP) used by a person with a service address in the City, which service is capable of terminating a call to another person on the general telephone network, shall be subject **to a rebuttable presumption that "substantial nexus/minimum contacts" exists** for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this Chapter. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the City, directly or through an agent, affiliate, or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents or other representatives; solicits business in the City on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the City or distributed from a location within the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the **service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of services that are subject to a tax under this Chapter.**

3.40.120 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 said charges, Section 3.40.160 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 service user 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 *Revenue and Tax Code Section 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.

3.40.130 Collection Penalties – Service Suppliers.

(a) Taxes collected by service supplier from a service user 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 subsection shall be considered timely if the transfer is initiated on **or before the due date, and the transfer settles into the City's account on 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, the Tax**

Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen (15%) percent of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of and 75/100ths (0.75%) percent 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 fifteen (15%) percent 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.

(e) Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this Chapter to be consistent with any uniform standards or procedures that are mutually agreed upon by other public agencies imposing a utility users' tax, or otherwise legally established, to create a central payment location or mechanism.

3.40.140 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.A. Section 507(a)(8)(C)*.

3.40.150 Deficiency Determination and Assessment – Tax Application Errors.

(a) The Tax Administrator shall make a deficiency determination if he or she determines that any service supplier or service user required to pay, collect, and/or remit taxes pursuant to the provisions of this Chapter has failed to pay, 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. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3.40.150 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) The Tax Administrator shall mail a notice of such deficiency determination to the person or entity allegedly owing the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have

been received by the City. Within fourteen (14) calendar days after the date of service of such notice, the person or entity allegedly owing the tax may request in writing to the Tax Administrator for a hearing on the matter.

(c) If the person or entity allegedly owing the tax 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 thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person or entity at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person or entity 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 or entity owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.40.200 of this Chapter. Filing an application with the Tax Administrator and appeal to the Chief Executive Officer pursuant to Section 3.40.200 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 (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of 75/100ths (0.75%) percent 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 subsection (e).

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

3.40.160 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 (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Chapter. Nothing herein shall require that the Tax Administrator

institute proceedings under this Section 3.40.160 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of fifteen percent (15%) of the total tax that is owed, and shall pay interest at the rate of 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

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

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

3.40.170 Additional Powers and Duties of the Tax Administrator.

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

(b) The Tax Administrator may adopt administrative rules and regulations consistent 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. To the extent that the Tax Administrator determines that the tax imposed under this chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of *Government Code Section 53750* or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of *Government Code Section 53750* and the City does not waive or abrogate its ability to **impose the utility users' tax in full as a result of promulgating administrative rulings or entering into agreements.**

(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 so long as said 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 said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 3.40.150 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 said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

(e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Chapter for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of 75/100ths (0.75%) percent per month, prorated for any portion thereof.

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

(g) 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.

3.40.180 Records.

(a) It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at a reasonable time.

(b) The City, through the City Council, may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this 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 Counsel to protect the confidentiality of customer information pursuant to *California Revenue and Tax Code Sections 7284.6 and 7284.7*.

(d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: i) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and, ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City .

(e) If any person subject to record-keeping under this section unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of \$500 on such person for each day following: i) the initial date that the person refuses to provide such access; or, ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Chapter.

3.40.190 Refunds.

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

(b) The City Manager, where the claim is less than the settlement authority established in 2.04.110 of the Municipal Code, or the City Council where the claim is in excess of that amount, shall act upon the refund claim within forty-five (45) days of the initial receipt of the refund claim. Said decision shall be final. If the City Manager/City Council fails or refuses to act on a refund claim within the forty-five (45) day period, the claim shall be deemed to have been rejected by the City Manager/City Council on the forty-fifth (45th) day. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in California Government Code Section 913.

(c) The filing of a written claim pursuant to California Government Code Section 935 is a prerequisite to any suit thereon. Any action brought against the City pursuant to this section shall be subject to the provisions of California Government Code Sections 945.6 and 946.

(d) Notwithstanding the notice provisions of subsection (a) of this Section, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this Chapter, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator, provided that: i) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; ii) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, iii) in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

(e) Notwithstanding subsections (a) though (d) above, a service supplier shall be entitled to take any overpayment as a credit against an underpayment whenever such overpayment has been received by the City within the three (3) years next preceding a deficiency determination or assessment by the Tax Administrator in connection with an audit instituted by the Tax Administrator pursuant to Section 3.40.170(d). A service supplier shall not be entitled to said credit unless it first clearly establishes, to the satisfaction of the Tax Administrator, the right to the credit by written records showing entitlement thereto. Under no circumstances shall an overpayment taken as a credit against an underpayment pursuant to this subsection qualify a service supplier for a refund to which it would not otherwise be entitled under the one-year written claim requirement of this section.

3.40.200 Appeals.

(a) The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 3.40.190 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.40.200 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. [See *Government Code Section 935(b)*]. Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

(b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.40.190 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

(c) The matter shall be scheduled for hearing before an independent hearing officer selected by the City Manager, no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, and any other interested person may present such

relevant evidence as he or she may have relating to the determination from which the appeal is taken.

(d) **Based upon the submission of such evidence and the review of the City's files, the** 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 fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with *Code of Civil Procedure Section 1094.6*.

(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.

3.40.210 No Injunction/Writ of Mandate.

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

3.40.220 Notice of changes to ordinance.

If a tax under this Chapter is added repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of *California Public Utilities Code Section 799*.

3.40.230 Effect of State and Federal Reference/Authorization.

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, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease (as a result of excluding all or a part of a utility service, or charge therefor, from taxation). Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the City's authorization to collect or impose any tax imposed under this Chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this Chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this Chapter.

3.40.240 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure.

The City shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted in accordance with this Chapter, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

3.40.250 Remedies Cumulative.

All remedies and penalties prescribed by this Chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (*Government Code Section 12650 et seq.*) and the California Unfair Practices Act (*Business and Professions Code Section 17070 et seq.*), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

3.40.260 Interaction with Prior Tax.

(a) Collection of Tax by Service Providers. Service providers shall begin to collect the tax imposed by this amended Chapter 3.40 as soon as feasible after the effective date of the Chapter, but in no event later than permitted by *Section 799 of the California Public Utilities Code*.

(b) Satisfaction of Tax Obligation by Service Users. Prior to April 1, 2009, any person who pays the tax levied pursuant to Chapter 3.40 of this Code with respect to any charge for a service shall be deemed to have satisfied his or her obligation to pay the tax levied pursuant to Chapter 3.40 with respect to that charge. The intent of this paragraph is to prevent the imposition of multiple taxes upon a single utility charge during the **transition period from the prior Utility Users' Tax ordinance to the amended Utility Users' Tax ordinance** (which transition period ends April 1, 2009) and to permit service providers or other persons with an obligation to remit the tax hereunder, during that transition period, to satisfy their collection obligations by collecting either tax.

(c) In the event that a final court order should determine that the election enacting this Chapter 3.40 is invalid for whatever reason, or that any tax imposed under this Chapter 3.40 is invalid in whole or in part, then the taxes imposed under Chapter 3.40 of this Code shall automatically continue to apply with respect to any service for which the tax levied pursuant to this Chapter has been determined to be invalid. Such automatic continuation shall be effective beginning as of the first date of service (or billing date) for which the tax imposed by this Chapter is not valid. However, in the event of an invalidation, any tax (other than a tax that is ordered refunded by the court or is otherwise refunded by the City) paid by a person with respect to a service and calculated pursuant to this Chapter 3.40 shall be deemed to satisfy the tax imposed under Chapter 3.40 on that service, so long as the tax is paid with respect to a service provided no later than six months subsequent to the date on which the final court order is published.

SECTION 2. Effective Date. This chapter shall become effective immediately upon the date that this Ordinance is approved by the voters of the City of Rancho Cordova at the Election of May 19, 2009, **as confirmed by the City Council's declaration** of the vote.

SECTION 3. Amendment or Repeal. Chapter 3.40 of the Municipal Code may be repealed or amended by the City Council without a vote of the people. However, as required by Chapter XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance. The People of the City of Rancho Cordova affirm that the following actions shall not constitute an increase of the rate of a tax:

1. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of the tax;
2. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance.
3. The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Ordinance); and
4. The collection of the tax imposed by this Ordinance, even if the City had, for some period of time, failed to collect the tax.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The people hereby declares that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

SECTION 5. Ratification of Prior Tax. The voters of the City of Rancho Cordova hereby ratify and approve the past collection of the Utility Users' Tax under Chapter 3.40 of the Municipal Code as it existed prior to the effective date of this Ordinance.

EXHIBIT 1

APPROVED by the following vote of the People of the City of Rancho Cordova on May 19, 2009.

ADOPTED by Declaration of the vote by the City Council of the City of Rancho Cordova on _____, 2009:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dan Skoglund, Mayor

ATTEST:

Mindy Cuppy, City Clerk

APPROVED AS TO FORM:

Adam U. Lindgren, City Attorney

