

## **Chapter 3.20**

# **UTILITY USERS' TAX**

Sections:

- [3.20.010](#) Definitions.
- [3.20.020](#) Constitutional exemptions.
- [3.20.030](#) Communication users' tax.
- [3.20.040](#) Electricity users' tax.
- [3.20.050](#) Gas users' tax.
- [3.20.060](#) Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity
- [3.20.070](#) Water Users' Tax
- [3.20.080](#) Effect of bundling nontaxable with taxable items.
- [3.20.090](#) Substantial nexus/minimum contacts.
- [3.20.100](#) Senior Citizen/Supplemental Social Security Exemptions
- [3.20.110](#) Duty to Collect and Remit – Procedures
- [3.20.120](#) Collection Penalties–Service Suppliers or Self-Collectors
- [3.20.130](#) Deficiency Determination and Assessment–Tax Application Errors
- [3.20.140](#) Administrative Remedy–Nonpaying Service Users
- [3.20.150](#) Actions to Collect
- [3.20.160](#) Additional powers and duties of the tax administrator.
- [3.20.170](#) Records
- [3.20.180](#) Refunds
- [3.20.190](#) Appeals
- [3.20.200](#) No Injunction/Writ of Mandate

[3.20.210](#) Remedies Cumulative

[3.20.220](#) Notice of Changes to Ordinance

[3.20.230](#) Future amendment to cited statute.

[3.20.240](#) Penalties

[3.20.250](#) Operative date.

[3.20.260](#) Temporary adjustments to amount to be collected.

### **3.20.010 Definitions.**

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

A. “Ancillary telecommunications services” shall mean 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. “Billing address” shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the service user.

- C. "City" shall mean the city of Gardena, California.
- D. "City manager" shall mean the city manager of the city, or his or her authorized representative.
- E. "Communication services" shall mean telecommunication services and ancillary telecommunication services.
- F. "Cogenerator" shall mean any corporation or person employing cogeneration (as defined in Section 218.5 of the California Public Utilities Code) for producing power for the generation of electricity for self use or sale to others from a qualified cogeneration facility (as defined in the federal Public Utility Regulatory Policies Act of 1978 and regulations thereunder).
- G. "Exempt wholesale generator" shall have the same meaning as set forth in the Federal Power Act (15 U.S.C. Section 79z-5a) and the regulations thereunder.
- H. "Gas" shall mean natural or manufactured gas or any alternate hydrocarbon fuel, which may be substituted therefor.
- I. "Mobile telecommunications service" shall have the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations thereunder.
- J. "Month" shall mean a calendar month.
- K. "Municipal organization" shall mean an organization or association created by statute or by voluntary action, whose purpose is to facilitate the development and dissemination of uniform rulings or interpretations regarding the application of utility users' taxes to communications services in the state of California.
- L. "Non-utility service supplier" shall mean:
1. A service supplier, other than a supplier of electric distribution services to all or a significant portion of the city, which generates electricity for sale to others, and shall include but is not limited to any publicly owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;
  2. An electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the city, which sells or supplies electricity or supplemental services to electricity users within the city;

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; or

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

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

N. "Place of primary use" shall mean the street address representative of where the customer's use of the communications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

O. "Post-paid telecommunication service" shall mean 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.

P. "Prepaid telecommunication service" shall mean 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.

Q. "Private telecommunication service" shall mean 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).

R. "Service address" means any of the following:

1. The location of the service user's telecommunications equipment from which the telecommunication originates or terminates, regardless of where the telecommunication is billed or paid; or

2. If the location in subsection (1) of this definition is unknown (e.g., mobile telecommunications or VoIP service), the “service address” means the location of the service user’s place of primary use; or
3. For prepaid telecommunication service, “service address” means the location associated with the service number.
- S. “Service supplier” shall mean any entity or person, including the city, that provides communication, electric, gas or water services to a user of such services within the city. The term shall include any entity or person required to collect, or self-collect under Section [3.20.060](#) of this chapter, and remit a tax as imposed by this chapter, including its billing agent in the case of communication, electric, gas or water service suppliers.
- T. “Service user” shall mean a person required to pay a tax imposed by this chapter.
- U. “State” shall mean the state of California.
- V. “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.
- W. “Tax administrator” shall mean the administrative services director of the city, or his or her authorized representative.
- X. “Telecommunications services” shall mean 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 Communications Commission as enhanced or value added, and includes video and/or data services that are 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 Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers call in to pre-recorded or live service).
- Y. “VoIP (voice over Internet protocol)” shall mean the digital process of making and receiving real-time voice transmissions over any Internet protocol network.

Z. “800 service” shall mean 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” shall mean 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. (Measure A, § 1, 2009: Ord. 1665, §1, 2005; prior code § 8-9.01)

### **3.20.020 Constitutional exemptions.**

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

1. Any person or service when imposition of such tax upon that person or service would be in violation of a federal or California statute, the Constitution of the United States or the Constitution of the State of California; and

2. The city.

B. Any service user that is exempt from the tax imposed by this 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. 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. Upon request of the tax administrator, a service supplier or non-utility service supplier, or its billing agent, shall provide a list of the names and addresses of those customers which, according to its billing records, are deemed exempt from the utility users’ tax.

C. The decision of the tax administrator regarding an exemption may be appealed pursuant to Section [3.20.190](#) of this chapter. Filing an application with the tax administrator and appeal to the city manager pursuant to Section [3.20.190](#) of this chapter is a prerequisite to a suit thereon.

(Measure A, § 2, 2009; Ord. No. 1665, § 1, 2005; prior code § 8-9.02)

### **3.20.030 Communication users' tax.**

A. There is hereby imposed a tax upon every person in the city who uses intrastate communication services in the city. The tax imposed by this section shall be at the rate of five percent of all charges made for such services and shall be collected from the service user by the service supplier or its billing agent. There is a rebuttable presumption that communication services, which services are capable of terminating a call to another person on the general telephone network, and 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. "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 communication service suppliers, which are subject to the tax collection requirements of this chapter, sourcing rules for the taxation of other communication services, including but not limited to post-paid telecommunication services, prepaid telecommunication services, and private telecommunication services; provided, that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation (e.g., Streamlined Sales and Use Tax Agreement).

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 communication services.

D. The tax administrator, from time to time, may issue and disseminate to communication service suppliers that are subject to the tax collection requirements of this chapter, an administrative ruling identifying those communication services that are subject to the tax of subsection A of this section. This administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this chapter, or increase an existing tax except as allowed by California Government Code Section 53750(h)(2), as it may be amended from time to time.

E. As used in this section, the term "communication services" shall not include "private mobile radio service" (as defined in Part 20.3 of Title 47 of the Code of Federal Regulations) or "private mobile service" (as defined in 47 U.S.C.A. Section 332(d)(3)), which is not interconnected with the public switched network. As used in this section, the term "communications services" shall include, but shall not be limited to charges for: connection, reconnection, termination, movement, or change of communications 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; local number portability charges; and text and instant messaging. “Communication services” shall not include digital downloads such as music, ringtones, games, and similar digital products.

F. To facilitate the uniform interpretation and application of similar ordinance provisions in other local jurisdictions in the state, the tax administrator may, prior to issuing and disseminating a sourcing rule or an administrative tax ruling, submit his or her proposed sourcing rule or administrative tax ruling to a municipal organization for review and comment, according to the rules and procedures of that municipal organization, or its successor organization.

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

H. The tax on communication services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the thirtieth day of the following month. (Measure A, § 3, 2009: Ord. No. 1665, § 1, 20005; prior code § 8-9.03)

### **3.20.040 Electricity users’ tax.**

A. There is imposed a tax upon every person using electricity in the city. The tax imposed by this section shall be at the rate of five percent (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.

B. As used in this section, the term “charges” shall apply to all services, components and items that are: i) necessary or common to the receipt, use and enjoyment of electric service; or ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term “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, voltage support, regulation, emergency, or other similar charges for supplemental services to an electric service user that produces electricity for self-use and is subject to Section [3.20.060](#) of this chapter;

(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 and surcharges which are necessary to or common for the receipt, use and enjoyment of electric service; and,

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

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

D. The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the city, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use or enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Unbundled 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 be construed to include the mere receiving of such electricity by an electric public utility or governmental agency at a point within the city for resale or the use of such electricity in the production or distribution of water by a public utility or a governmental agency.

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 [3.20.060](#) 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 thirtieth (30th) 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 thirtieth (30th) day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due. (Ord. 1665, § 1, 2005; Prior code § 8-9.04)

(1665, Repealed, 02/10/2005)

### **3.20.050 Gas users' tax.**

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

B. As used in this section, the term "charges" shall apply to all services, components and items for gas service that are: i) necessary or common to the receipt, use and enjoyment of gas service; or, ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "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 or common to the receipt, use and enjoyment of gas service; and,
- (5) charges, fees, or surcharges for gas services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory

Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

C. As used in this section, the term “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 or common to the receipt, use or enjoyment of gas service; or, ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Unbundled charges for such components and items shall be subject to the tax of subsection (a) above.

E. There shall be excluded from the base on which the tax imposed in this section is computed:

- (1) charges made for gas which is to be resold and delivered through a pipeline distribution system;
- (2) charges made for gas sold for use in the generation of electricity or for the production or distribution of water by a public utility or governmental agency;
- (3) charges made by a gas public utility for gas used and consumed in the conduct of the business of gas public utilities;
- (4) charges made for gas used in the propulsion of a motor vehicle, as that phrase is defined in the Vehicle Code of the State of California; and
- (5) charges made for gas used by a non-utility supplier to generate electrical energy for its own use or for sale to others provided the electricity so generated is subject to the tax in accordance with Section [3.20.060](#) of this chapter.

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 [3.20.060](#) 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 thirtieth (30th) 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 previ-

ous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the thirtieth (30th) day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due. (Ord. 1665, § 1, 2005; Prior code § 8-9.05)

(1665, Repealed, 02/10/2005)

### **3.20.060 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity**

A. Any service user subject to the tax imposed by Section [3.20.040](#) or by Section [3.20.050](#) of this chapter, which produces gas or electricity for self-use; which receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this chapter; or which, for any other reason, is not having the full tax collected and remitted by its service supplier, a non-utility service supplier, or its billing agent on the use of gas or electricity in the city, including any related supplemental services, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

B. The Tax Administrator may require said service user to identify its non-utility service supplier and provide, subject to audit, invoices, books of account, or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the city. Rate schedules for this purpose shall be available from the city. (Ord. 1665, § 1, 2005; Prior code § 8-9.06)

(1665, Repealed, 02/10/2005)

### **3.20.070 Water Users' Tax**

A. There is imposed a tax upon every person using water in the city which is delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of five percent (5%) of the charges made for such water.

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

- (1) water commodity charges (potable and non-potable);
- (2) distribution or transmission charges;
- (3) metering charges;
- (4) customer charges, late charges, service establishment or reestablishment charges, franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees and surcharges which are necessary for or common to the receipt, use and enjoyment of water service; and
- (5) charges, fees, or surcharges for water services or programs, which are mandated by a water district or a state or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

C. As used in this section, the term “charges” may include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the water services.

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

E. There shall be excluded from the base on which the tax imposed by this section is computed:

- (1) charges made for water which is to be resold and delivered through a pipeline distribution system; and

(2) charges made by a municipal water department, public utility or county or municipal water district for water used and consumed by such department, utility or district.

F. The tax imposed by this section shall be collected from the service user by the service supplier or its billing agent. The amount collected in one (1) month shall be remitted to the Tax Administrator on or before the thirtieth (30th) day of the following month, and must be received by the Tax Administrator on or before the thirtieth (30th) day of the following month. (Ord. 1665, § 1, 2005; Ord. 1503 § 3, 1996; prior code § 8-9.07)

(1665, Repealed, 02/10/2005)

### **3.20.080 Effect of bundling nontaxable with taxable items.**

If any nontaxable charges are bundled 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 nontaxable charges. If the service supplier offers a combination of taxable and nontaxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and nontaxable 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 nontaxable services. (Measure A, § 4, 2009; Ord. 1665, § 1; prior code § 8-9.08)

### **3.20.090 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. 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 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. (Measure A, § 5, 2009: Ord. No. 1665, § 1, 2005; prior code § 8-9.09)

### **3.20.100 Senior Citizen/Supplemental Social Security Exemptions**

- A. The taxes imposed by this chapter shall not apply to any residential property where an individual qualifies for an exemption under this section.
- B. An individual shall be made exempt from the taxes imposed by this chapter if he or she is the head of a household and either or both:
- (1) Are sixty-two (62) years old or older; or
  - (2) Receive supplemental social security benefits.
- C. To qualify for the exemption set forth in subsection (b) of this section, the individual shall file an application in a form, time and manner prescribed by the Tax Administrator. Applications may be filed at any time.
- D. Applications shall be verified by declaration under penalty of perjury and shall contain such information as may be required by the Tax Administrator. The Tax Administrator shall review each application and shall certify the service user as exempt if the eligibility requirements of subsection (b) of this section are met, except that no exemption shall be granted to a service user who is receiving service from a service supplier through a master meter and no exemption shall be granted with respect to any tax imposed by this chapter which is or has been paid by a public agency or where the service user receives funds from a public agency specifically for the payment of such tax. The decision of the Tax Administrator regarding an exemption may be appealed pursuant to Section [3.20.190](#) of this chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section [3.20.190](#) of this chapter is a prerequisite to a suit thereon.
- E. If a service user is certified as exempt, the Tax Administrator shall promptly notify the service user's service suppliers, stating the name of the service user, the address to which such exempt service is being supplied, the account number, if any, and such other information as may be necessary for the service supplier to remove the exempt service user from its tax billing procedure. Upon receipt of such notice, the service supplier shall within sixty (60) days discontinue billing service user for taxes imposed by this chapter.
- F. Exemptions certified by the Tax Administrator shall continue as long as the facts supporting the qualification for exemption shall exist; provided, however, that the exemption shall automatically terminate with any change in the service address or residence of the exempt individual; and provided further, that such individual may

nevertheless apply for a new exemption with each change of address or residence. Any service user who has been exempted under this section shall notify the Tax Administrator within ten (10) days of any change in fact or circumstance which might disqualify such individual from receiving such exemption. It shall be a misdemeanor for any person to knowingly receive the benefits of the exemption provided by this section when the basis for such exemption does not exist or ceases to exist.

G. The Tax Administrator shall have the power and right to demand evidence of continued eligibility of a service user for exemption under the provisions of this section. Such evidence may include, but need not be limited to, copies of business records, letters or statements from the Social Security Administration and state, county, city and private pension administrators or unemployment and welfare agencies, copies of income tax returns, and such other evidence concerning the service user or other members of the service user's household as may tend to prove or disprove such eligibility. Failure to provide such evidence as is within the control of a service user to so provide, either directly by the service user or by the service user's consent or the consent of a member of the service user's household when such evidence is requested of the service user in writing by the Tax Administrator, shall be grounds for the immediate discontinuance of the service user's eligibility for exemption under the provisions of the section. Evidence provided to the Tax Administrator at the Tax Administrator's request, or voluntarily provided to the Tax Administrator by the service user without the Tax Administrator's request, may not be used against such service user as evidence of violation of the provisions of this section. Such evidence may only be used as grounds for termination of the exemption provided by this section. (Ord. 1665, § 1, 2005; Prior code § 8-9.10)

(1665, Repealed, 02/10/2005)

### **3.20.110 Duty to Collect and Remit – Procedures**

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

A. The tax shall be collected insofar as practicable at the same time as, and along with, the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, 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 [3.20.140](#) shall apply.

B. The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this chapter. Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.



C. Each person required by this chapter to remit a tax shall file a return with the Tax Administrator, on forms approved by the Tax Administrator on or before the due date.

The full amount of the tax owed shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected and remitted in accordance with this chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to California Revenue and Tax Code Section 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information. (Ord. 1665, § 1, 2005; Prior code § 8-9.11)

(1665, Repealed, 02/10/2005)

### **3.20.120 Collection Penalties—Service Suppliers or Self-Collectors**

A. Taxes collected from a service user, or self-collected by a service user subject to Section [3.20.060](#) of this chapter, are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on or before the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on or before the following business day.

B. If a service supplier, or a service user subject to Section [3.20.060](#) of this chapter, fails to remit any tax collected, on or before the due date, said person shall pay a penalty for such delinquencies at the rate of fifteen percent (15%) of the total tax that is delinquent in the remittance, and shall pay interest at the rate of three-quarters of one percent ( $\frac{3}{4}\%$ ) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

C. The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and/or remit taxes pursuant to the provisions of this chapter for fraud or gross negligence in reporting or remitting at the rate of fifteen percent (15%) of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

D. For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid. (Ord. 1665, § 1, 2005; Prior code § 8-9.12)

(1665, Repealed, 05/11/2005)

### **3.20.130 Deficiency Determination and Assessment—Tax Application Errors**

- A. The Tax Administrator shall make a deficiency determination if he or she determines that any person required to collect or self-collect taxes pursuant to the provisions of this chapter has failed to collect and remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges.
- B. The Tax Administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of three-quarters of one percent ( $\frac{3}{4}\%$ ) per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) calendar days after the date of service of such notice, the person may request in writing to the Tax Administrator for a hearing on the matter. If the person fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the City.
- C. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing not later than fourteen (14) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.
- D. At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section [3.20.190](#) of this chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section [3.20.190](#) of this chapter is a prerequisite to a suit thereon.
- E. Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of three-quarters of one percent ( $\frac{3}{4}\%$ ) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Section [3.20.130](#) 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. (Ord. 1665, § 1, 2005; Prior code § 8-9.13)

(1665, Repealed, 02/10/2005)

### **3.20.140 Administrative Remedy—Nonpaying Service Users**

A. Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this chapter from certain named service users for specific billing periods. Whenever the service user has failed to pay the amount of tax owed for a period of

two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this chapter.

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

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

D. If the service user fails to remit the tax to the Tax Administrator within thirty (30) days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of fifteen percent (15%) of the amount of the total tax that is owed. (Ord. 1665, § 1, 2005; Ord. 1618, § 6, 2001; Prior code § 8-9.14)

(1665, Repealed, 02/10/2005)

### **3.20.150 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.

In the event that a service user or service supplier owing a tax under this chapter files bankruptcy, then such debt to the City shall be deemed an unsecured priority excise tax obligation under 11 U.S.C.A. Section 507(a)(8)(C). (Ord. No. 1665, § 1, 2005; Prior code § 8-9.15)

(1665, Repealed, 02/10/2005)

### **3.20.160 Additional powers and duties of the tax administrator.**

A. The tax administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this chapter.

B. The tax administrator may adopt administrative rules and regulations not inconsistent with provisions of this chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such administrative rules and regulations shall be on file in the tax administrator's office. 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 communication 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 (or service user subject to Section [3.20.060](#) of this Chapter) 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

[3.20.130](#) of this chapter for all taxes, penalties and interest owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

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

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

G. 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. (Measure A, § 6, 2009; Ord. 1665, §1, 2005)

### **3.20.170 Records**

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

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

C. The Tax Administrator is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code Sections 7284.6 and 7284.7. The Tax Administrator may request from a person providing transportation or distribution services of gas or electricity to service users within the City, a list of the names, billing and service addresses, quantities of gas or electricity delivered, and other pertinent information, of its transportation customers within the City pursuant to Section 6354(e) of the California Public Utilities Code.

D. If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: (1) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and, (2) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

E. If any person subject to record-keeping under this section unreasonably denies the Tax Administrator, or the Tax Administrator's designated representative, access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, the Tax Administrator may impose a penalty of five hundred dollars (\$500) on such person for each day following: i) the initial date that the person refuses to provide such access; or, ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Chapter. (Ord. 1665, §1, 2005)

(1665, Repealed & Replaced, 02/10/2005)

### **3.20.180 Refunds**

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

B. The City Manager may refund any tax that has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the Tax Administrator under this chapter, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor or administrator has submitted a written claim, under penalty of perjury, to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax, all in accordance Chapter 3.24 of this Code. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a refund claim on behalf of a class or group of taxpayers.

C. The City Manager, with the written approval of the City Attorney, may compromise a claim pursuant to this chapter where the portion of the claim proposed to be released is less than Ten Thousand Dollars (\$10,000); and, with the approval of the City Attorney and the City Council, may compromise such a claim where the portion proposed to be released is equal to or greater than Ten Thousand Dollars (\$10,000).

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

E. The City Manager, or the City Council where the claim to be released is in excess of Ten Thousand Dollars (\$10,000), 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 City Manager shall give notice of the action in a form that substantially complies with that set forth in Chapter 3.24 of this Code.

F. The filing of a written claim is a prerequisite to any suit thereon. Any action brought against the City pursuant to this section shall be subject to the provisions of Chapter 3.24 of this Code.

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

H. Notwithstanding the claim provisions of subsection (b) of this section, a service supplier that has collected any amount of tax in excess of the amount of tax imposed by this chapter and actually due from a service user (whether due to overpayment or to erroneous or illegal collection of said tax), may refund such amount to the service user, or credit to charges subsequently payable by the service user to the service supplier, and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the Tax Administrator, provided such credit is claimed in a return dated no later than one (1) year from the date of overpayment of erroneous or illegal collection of said tax. The Tax Administrator shall determine the validity of the service user's claim of credit, and the underlying basis for such claim.

I. Notwithstanding the notice provisions of subsection (b) of this section, in the event that a service supplier, or a service user subject to Section [3.20.060](#) hereof, remits a tax to



City in excess of the amount of tax imposed by this Chapter, said service supplier, or service user subject to Section [3.20.060](#) hereof, may claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the Tax Administrator, provided such credit is claimed in a return dated no later than one year from the date of overpayment of said tax. The Tax Administrator shall determine the validity of the service user's claim of credit, and the underlying basis for such claim. (Ord. 1665, §1, 2005)

(1665, Repealed & Replaced, 02/10/2005)

### **3.20.190 Appeals**

A. The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section [3.20.180](#) of this chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section [3.20.180](#) of this chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. [See 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 [3.20.180](#) of this chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

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

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



E. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing. (Ord. 1665, §1, 2005)

(1665, Added, 02/10/2005)

### **3.20.200 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 the 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. (Ord. 1665, §1, 2005)

(1665, Added, 02/10/2005)

### **3.20.210 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. (Ord. 1665, §1, 2005)

(1665, Added, 02/10/2005)

### **3.20.220 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 Public Utilities Code Section 799. Prior to the effective date of the ordinance change, the service supplier shall provide the Tax Administrator with a copy of any written procedures describing the information that the service supplier needs to implement the ordinance change. If the service supplier fails to provide such written instructions, the Tax Administrator, or his or her agent, shall send, by first class mail, a copy of the ordinance change to all collectors and remitters of the City's utility users taxes according to the latest payment re-

cords of the Tax Administrator. (Ord. 1665, §1, 2005)

(1665, Added, 02/10/2005)

### **3.20.230 Future amendment to cited statute.**

Unless specifically provided otherwise, any reference to a state or federal statute in this chapter shall mean such statute as it may be amended from time to time; 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 any 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. (Measure A, § 7, 2009: Ord. 1665 § 1, 2005)

### **3.20.240 Penalties**

Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, or an infraction at the discretion of the City Attorney. (Ord. 1665, §1, 2005)

(1665, Added, 02/10/2005)

### **3.20.250 Operative date.**

The amendments to this chapter shall become effective immediately upon the date that the Measure A ordinance is confirmed and approved by the voters of Gardena at the municipal general election of March 3, 2009. (Measure A, § 8, 2009: Ord. 1665, §1, 2005)

### **3.20.260 Temporary adjustments to amount to be collected.**

The tax rate imposed upon every telephone user, electricity user, gas user, and water user shall be a maximum of five percent, except where any service user or service supplier is made expressly exempt from the utility users' tax by this chapter. However, beginning on December 1, 1987, the amount to be collected from every telephone user, electricity user, gas user and water user in the city shall be calculated at the rate of four percent of the charges made for such service and shall be paid by the person paying for such service. The utility users' tax shall be reviewed annually by the city council, in consultation with the finance committee, and the city council may, by ordinance or resolution, adjust the rate or temporarily suspend all or a portion of the tax, as appropriate to the financial condition of the city. No adjustment to the rate or temporary suspension of the tax shall constitute a decrease in a tax, or an increase in a tax requiring voter approval under California Constitution Article XIII C (Proposition 218); provided, the city council's

action does not increase the tax beyond the maximum rate or methodology set forth in this voter-approved ordinance, Measure A. To the extent that any aspect of a rate adjustment or temporary tax suspension is found to invoke such a requirement under Proposition 218, the entire city council action shall be deemed null and void ab initio, and there shall be no entitlement to adjustment or suspension for any service user. (Measure A, § 9, 2009: Ord. 1665, §1, 2005)