

Utility Users Tax Code

City of Santa Ana, CA

[Sections shown in *italics* below relate to provisions of Measure AA approved by Santa Ana voters on 11-4-2014. All other sections reflect the pre-existing Utility Users Tax Code still in effect.]

ARTICLE VI.

UTILITY USERS TAX CODE

Sec. 35-151. Short title.

This article shall be known as the "Utility Users Tax Ordinance of the City of Santa Ana." The word "ordinance", "code" or "article" as used in this article shall mean the "Utility Users Tax Ordinance" unless otherwise so indicated.
(Ord. No. NS-2860, § 1, 11-4-14)

Sec. 35-152. Purpose.

This article is required for the purpose of fixing the rate of taxation for the utility users' tax, and for the purpose of providing a tax levy for the usual and current expenses of the City of Santa Ana.
(Ord. No. NS-2860, § 2, 11-4-14)

Sec. 35-153. Definitions.

The following words and phrases whenever used in this article shall be construed as defined in this section, unless otherwise indicated.

- (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 (2) 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 customer.*
- (c) *“City” shall mean the City of Santa Ana.*
- (d) *“Day” shall mean a calendar day.*
- (e) *“Gas” shall mean natural or manufactured gas or any alternate hydrocarbon fuel that may be substituted therefore.*
- (f) *“Mobile telecommunications service” shall mean commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations and 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 provider of electric distribution services to all or a significant portion of the city, which sells or supplies electricity or supplemental services to electricity users within the city; and*

- (3) *a gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the city, which sells or supplies gas or supplemental services to gas users within the city.*
- (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), joint power agency, 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 communication-by-communication 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” (including prepaid mobile telecommunication service) shall mean the right to access telecommunication services, which must be paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed.*
- (n) *“Private telecommunication service” means a telecommunication service that entitles the customer to exclusive or priority use of a communications 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 communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points (i. e., the location where the customer either inputs or receives the communications).*
- (o) *“Service address” means the residential street address or the business street address of the service user. For a telecommunication service user, "service address" means either:*

- (1) *The location of the service user's telecommunication 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 service or VoIP service), the service address means the location of the service user's place of primary use.*
 - (3) *For prepaid telecommunication service, "service address" means the point of sale of the services where the point of sale is within the city, or if unknown, the known address of the service user (e.g., billing address or location associated with the service number), which locations shall be presumed to be the place of primary use.*
- (p) *"Service supplier" shall mean any entity or person, including the city that provides, sells, or resells a utility 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" means the multi-state agreement commonly known and referred to as the Streamlined Sales and Use Tax Agreement, as it is amended from time to time.*
- (t) *"Tax administrator" shall mean the Finance Director, or his or her designee.*
- (u) *"Telecommunications service" 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 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; intrastate, interstate, and international 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 who call in to pre-recorded or live service). The*

term “telecommunication services” shall include, but is 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 or administrative fees, charges or surcharges, including charges or surcharges for programs imposed by state or federal law (whether such charges or surcharges are imposed on the service supplier or the customer); local number portability charges; and text and instant messaging. “Telecommunication services” shall not include digital downloads that are not “ancillary telecommunication services,” such as music, ringtones, games, and similar digital products.

(v) “VoIP (Voice Over Internet Protocol)” means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

(w) “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.

(x) “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.

(Ord. No. NS-2860, § 3, 11-4-14)

Sec. 35-154. Constitutional exemptions.

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

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

(2) The city.

(b) Any service user that is exempt from the taxes imposed by this code pursuant to subsection (a) shall file an application with the tax administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a state or federal agency or subdivision with a commonly recognized name, or is a service user of telephone communication

services that has received a federal excise tax exemption certificate for such service. Said application shall be made upon a form approved by the tax administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all utility service providers 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 providers so that the tax administrator can properly notify the new utility service provider of the service user's tax exempt status. A service user that fails to comply with this section shall not be entitled to a refund of utility users taxes collected and remitted to the tax administrator from such service user as a result of such non-compliance. Upon request of the tax administrator, a service supplier or non-utility service supplier, or its billing agent, shall provide a list of the names and addresses of those customers which, according to its billing records, are deemed exempt from the utility users tax. With respect to a service user of telephone communication service, a service supplier of such telephone communication services doing business in the city shall, upon the request of the tax administrator, provide a copy of the federal exemption for each exempt customer within the city that is served by such service supplier. (Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-155. 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 five and one half percent (5.5%) 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 Section. There is also a rebuttable presumption that prepaid telecommunication services sold within the city are used, in whole or in part, within the city and are therefore subject to taxation under this Section. 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 article, sourcing rules for the taxation of other telecommunication services, including but not limited to post-paid telecommunication services, prepaid telecommunication services, VoIP, and private communication 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). The tax administrator may issue and disseminate to telecommunication service*

suppliers, which are subject to the tax collection requirements of this article, an administrative ruling identifying those telecommunication services, or charges therefore, that are subject to or not subject to the tax of subsection above.

(c) 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 city 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 city; provided, however, the amount of credit shall not exceed the tax owed to the city under this Section.

(d) 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 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.

(Ord. No. NS-2860, § 4, 11-4-14)

Sec. 35-155.1. Bundling 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. 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 and apportionment of taxable and non-taxable charges.

(Ord. No. NS-2860, § 5, 11-4-14)

Sec. 35-155.2. Substantial Nexus/Minimum Contact.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this article, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users' tax to the fullest extent permitted by State and Federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. 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 article. 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 with the city or distributed from a location with 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 utility services that are subject to a tax under this article (e.g., an affiliated person engaging in activities in the city that inure to the benefit of the service supplier in its development or maintenance of a market for its services in the city).

(Ord. No. NS-2860, § 6, 11-4-14)

Sec. 35-156. Electricity users tax.

(a) There is hereby imposed a tax upon every person in the City of Santa Ana using electricity in the city. The tax imposed by this section shall be at the rate of six (6) percent of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

(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) 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 minimum charges for services;
- (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 also include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.

(d) The tax administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electrical 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 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. 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 a non-utility service supplier not under the jurisdiction of this code shall be collected and remitted in the manner set forth in section 35-158 of this code. All other taxes on charges for electricity imposed in 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 on or before the twentieth (20th) day of the following month in accordance with section 35-163 of this code; 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 on or before the twentieth (20th) day of the following month in accordance with section 35-163 of this code.

(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-156.1. Reduction in Rate.

*The Electricity Users Tax imposed under section 35-156 shall be reduced from six (6) percent to five and one half (5½) percent.
(Ord. No. NS-2860, § 7, 11-4-14)*

Sec. 35-157. Gas user tax.

(a) There is hereby imposed a tax upon every person in the City of Santa Ana, other than a gas corporation or electrical corporation, using gas in the city which is delivered through a pipeline distribution system. The tax imposed by this section shall be at a rate of six (6) percent of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas, and shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

(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 provider shall not be required to apply the tax to any charges for gas storage services when the service provider 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 provider and to remit the tax to the appropriate jurisdiction; and,
- (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. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.

(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 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. 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; and
- (3) Charges made by a gas public utility for gas used and consumed in the conduct of the business of gas public utilities.

(f) The tax that is calculated on charges for gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this code shall be collected and remitted in the manner set forth in section 35-158 of this code. All other taxes imposed in 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 on or before the twentieth (20th) day of the following month in accordance with section 35-163 of this code; or, at the option of the person required to collect or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user on or before the twentieth (20th) day of the following month in accordance with section 35-163 of this code.

(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-157.1. Reduction in Rate.

*The Gas User Tax imposed under section 35-157 shall be reduced from six (6) percent to five and one half (5½) percent.
(Ord. No. NS-2860, § 8, 11-4-14)*

Sec. 35-158. Collection of tax from service users receiving direct purchase of gas or electricity.

(a) Any service user subject to the tax imposed by section 35-156 or by section 35-157 of this code, which produces gas or electricity for self-use, or which receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this ordinance, 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, including any related supplemental services, in the city, 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 provider of gas or electricity within the city. Rate schedules for this purpose shall be available from the city.

(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-159. Water user tax.

(a) There is hereby imposed a tax upon every person in the City of Santa Ana using water in the city which is delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of six (6) percent of the charges made for such water and shall be collected from the service user by the service supplier, or its billing agent.

(b) As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary 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" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the water services. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.

(d) There shall be excluded from the base on which the tax imposed in this section is computed charges made for water which is to be resold and delivered through a pipeline distribution system.

(e) The tax on water service imposed by this section shall be collected from the service user by the service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the tax administrator on or before the twentieth (20th) day of the following month in accordance with section 35-163 of this code.

(f) Notwithstanding subsection (e), above, the city, when acting as the service supplier or billing agent, may remit the amount of tax collected to the tax administrator in accordance with any administrative rules established by the tax administrator.
(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-159.1. Reduction in Rate.

The Water User Tax imposed under section 35-159 shall be reduced from six (6) percent to five and one half (5½) percent.
(Ord. No. NS-2860, § 9, 11-4-14)

Sec. 35-160. Decisions on amounts imposed.

If any tax, penalty, or interest charge imposed by this code is for any reason held to be discriminatory or invalid in amount, by the decision of any court of competent jurisdiction, such decision shall not affect the validity of a lesser amount imposed by the tax administrator with the concurrence of the city attorney. The city council hereby declares that it would have imposed a valid utility users tax, penalty, or interest charge of the maximum nondiscriminatory amount permitted by law, up to but not exceeding, the amount provided under this code on the person or persons in question, irrespective of the fact that any one (1) or more of the taxes, penalties, or interest charges imposed herein may be declared discriminatory or invalid in amount.

(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-161. Duty to collect; procedures.

The duty of service suppliers to collect and remit the taxes imposed by this code 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.
- (b) In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, section 35-167(b) of this code shall apply.
- (c) The duty to collect tax from a service user shall commence with the beginning of the first full regular billing period applicable to that person which starts on or after the operative date of this code. Where a person receives more than one (1) billing for different periods, the duty to collect shall arise separately for each billing period.
- (d) Whenever a service supplier negligently fails in its duty to determine and collect the required tax from a service user, any other amount collected by the service supplier from the service user shall then be subject to a constructive trust in the favor of the city for the full amount of the uncollected tax.

(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-162. Duty to remit--Procedures.

(a) Each person required by this code 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 in accordance with section 35-163 of this code. 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 and collected in accordance with this code. Returns are due immediately upon cessation of business for any reason. Pursuant to state Revenue and Taxation Code Section 7284.6 as amended from time to time, the tax administrator, and his or her agents, shall maintain such filing returns as

confidential information not subject to the Public Records Act.

(b) 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.

(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-163. Timely filing and remittance.

Returns and taxes may be filed and remitted by the following means: i) in person, ii) by United States Mail, iii) by express carrier, and iv) by electronic means. Returns filed and/or taxes remitted monthly, and actually received by the tax administrator on or before the due dates provided in this code shall be deemed to be timely filed and/or remitted; otherwise, the taxes are delinquent and subject to the penalties imposed pursuant to section 35-164. Provided, however, that when the last day upon which a return may be filed or a tax remitted falls on a Saturday, Sunday, or city, state, or national holiday, a timely filing and remittance may be made upon the first following working day.

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 code shall be considered timely if the transfer is initiated on or before the due dates provided in this code, and settles into the city's account on the following business day.

(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-164. Penalty and interest; delinquencies and deficiencies in collection and remittance.

(a) *Taxes collected but not remitted by due date--delinquencies in remittance.* If taxes collected by a service supplier from a service user, or self collected by a service user subject to section 35-158 of this code are not remitted to the tax administrator on or before the due dates provided in this code, such taxes shall be delinquent. The tax administrator shall attach a penalty for such delinquencies in remittance at the rate of fifteen (15) percent of the total delinquent amount due.

(b) *Taxes not collected--delinquencies in collection.* If a service supplier required to collect any tax hereunder fails to collect such tax, or, if a service user required to self-collect and remit the tax pursuant to section 35-158 of this code, fails to self collect the tax, the tax administrator shall attach a penalty for such delinquencies in collection at the rate of fifteen (15) percent of the total tax amount that is determined to be due.

(c) *Taxes not fully collected--deficiencies in collection.* If a service supplier required to collect and remit any tax hereunder fails to collect the full amount of the tax, or, if a service user subject to section 35-158 of this code fails to properly self-collect the full amount of the tax, the tax administrator shall attach a penalty for such deficiencies in collection at the rate of fifteen (15) percent of the total tax amount that is determined to be due.

(d) *Taxes not fully remitted--deficiencies in remittance.* If a service supplier required to collect and remit any tax hereunder fails to remit the full amount of the tax collected, or, if a service user subject to section 35-158 of this code fails to properly remit the full amount of the tax self-collected, the tax administrator shall attach a penalty for such deficiencies in remittance at the rate of fifteen (15) percent of the total tax amount that is determined to be due.

(e) *Fraud or gross negligence--additional penalties.* If the tax administrator determines that the nonpayment of any delinquency or deficiency due by any service supplier, or service user required to self-collect and remit the tax pursuant to section 35-158 of this code, is due to fraud or gross negligence, the tax administrator shall have the power to impose additional penalties upon such persons at the rate of fifteen (15) percent of the amount of the remittance due.

(f) *Penalties--maximum amount.* The cumulative amount of all applicable penalties imposed under this code shall not exceed an amount equal to the amount of the tax originally owed.

(g) *Interest--due from date of delinquency.* Any person subject to any penalty imposed hereinabove in this section, shall also pay interest at the rate of three-quarters of one percent (3/4) per month, or any fraction thereof, on the amount subject to penalty, from the date on which the remittance of such amount first became delinquent or deficient until paid.

(h) *Penalties and interest.* All penalties and all interest imposed under this code shall be subject to the same actions to collect and the same provisions for enforcement as the tax imposed by this code.

(i) *Penalties, interest, delinquencies and deficiencies owed.* All penalties and interest imposed under this code together with all delinquencies and deficiencies owed shall be due and payable as of the date of notification which shall be given in the same manner as administrative assessments in accordance with section 35-167 of this code. Any person assessed any amount as delinquency, or deficiency, or penalty, or interest shall have the same right of appeal as provided in the case of administrative assessments in accordance with section 35-167 of this code and shall be governed by the same provisions as set forth therein.
(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-165. Actions to collect.

Any tax, penalty, or interest required to be paid by a service user under the provisions of this code shall be deemed a debt owed by the service user to the city. Any such tax collected from a service user together with any penalties or interest due thereon which have not been

remitted to the tax administrator shall be deemed a debt owed to the city by the service supplier required to collect and remit. The amount of any tax required to be collected from a service user by a service supplier which is held in constructive trust in the favor of the city shall be a debt owed by the service supplier to the city. Any person owing money to the city under the provisions of this code shall be liable to an action brought in the name of the city for the recovery of such amount plus related costs incurred by the city.
(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-166. Tax administrator, ex officio collector of utility users taxes; additional powers and duties of tax administrator, etc.

- (a) The tax administrator shall be ex officio utility users tax collector.
- (b) The tax administrator shall have the power and authority to enforce all of the provisions of this code.
- (c) The tax administrator may adopt administrative rules, regulations, and guidelines, or make administrative agreements consistent with the intent of the provisions of this code for the purpose of administering the provisions herein regarding the payment, collection and remittance of said taxes.
(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-167. Assessment; administrative remedy.

The tax administrator may make an assessment for taxes not collected and/or not remitted or paid by any person required to collect and/or remit or pay.

- (a) *Service supplier or service user--failure to collect and/or remit tax.* If any service supplier, or any service user subject to section 35-158 of this code, (hereinafter "service supplier" in this subsection) required to collect and/or remit the tax imposed by this code shall fail or refuse to collect said tax or to make, within the time provided in this code, any report and remittance of said tax or any portion thereof required by this code, the tax administrator shall make a determination of the tax due (tax, interest and penalties hereinafter "amount assessed" in this subsection). The tax administrator shall give a written notice of the amount assessed by personal service or by depositing it in the United States mail, addressed to the service supplier at the service supplier's last known address. The service supplier may, within ten (10) days after the serving or mailing of such notice, make application in writing to the tax administrator for a hearing on the amount assessed in accordance with section 35-173 of this code. If application by the service supplier for a hearing is not made within the time prescribed, the amount assessed shall become final and immediately due and payable.
- (b) *Service user--failure to pay tax.* Whenever the tax administrator determines that a service user has deliberately withheld the amount of the tax owed by him or her from the amounts remitted to a service supplier required to collect the tax, or that

a service user has failed to pay the amount of the tax to such service supplier for a period of two (2) or more billing periods, or whenever the tax administrator deems it in the best interest of the city, he or she may relieve such service supplier of the obligation to collect taxes due under this code from such service users for specified billing periods. The service supplier shall provide the city with the names, account numbers, billing and service addresses, and other required information of such non-paying service users together with the amounts owed under the provisions of this code and the specified billing periods for which they are owed. The tax administrator shall give written notice to the non-paying service user that he or she has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the service user by personal service or by deposit of the notice in the United States mail, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have changed his address, to his last known address. If a service user fails to remit the tax to the tax administrator within fifteen (15) days from the date of the service of the notice, which shall be the date of mailing if service is not accomplished in person, a penalty of twenty-five (25) percent of the amount of the tax set forth in the notice shall be imposed, but not less than five dollars (\$5.00), 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 on which the remittance first became delinquent until paid.

(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-168. Records.

(a) It shall be the duty of every person required to collect and/or remit to the city any tax imposed by this code to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and remittance to the tax administrator, which records the tax administrator shall have the right to inspect at all reasonable times. 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 code, 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. 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 state Revenue and Taxation Code Sections 7284.6 and 7284.7, as amended from time to time.

(b) The tax administrator may request from any 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 state Public Utilities Code, as amended from time to time.

(c) If any person subject to record-keeping under this section unreasonably denies the tax administrator, or any designated agent of the tax administrator, 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 (\$500.00) on such person for each day following the initial date that the person refuses to provide such access. This penalty shall be in addition to any other penalty imposed by this code.
(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-169. Refunds.

(a) 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 code, it may be refunded as provided in this section. No refund will be considered by the tax administrator for a period in excess of twelve (12) months prior to the date application is received.

(b) The tax administrator may refund any tax that has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the tax administrator under this code, 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 twelve (12) months 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.

(c) The submission of a written claim, which is acted upon by the city, shall be a prerequisite to a suit thereon as provided in accordance with state Government Code Section 935, as amended from time to time. The city shall act upon the refund claim within the time period set forth in state Government Code Section 912.4, as amended from time to time. If the city fails or refuses to act on a refund claim within the time prescribed by state Government Code Section 912.4, the claim shall be deemed to have been rejected by the city on the last day of the period within which the city was required to act upon the claim as provided in state Government Code Section 912.4.

(d) Notwithstanding subsection (b) 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 notice of tax deficiency or assessment by the tax administrator, or during any year for which the service supplier, at the request of the tax administrator, has executed a waiver of the defense of the statute of limitations with regard to any claim the city may have for a utility users tax. 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 12-month written claim requirement of this section.
(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-170. Low income household exemption.

(a) The utility users tax imposed by this code shall not apply to any service user who uses telephone, electric, gas or water services in or upon any premises occupied by such service user, provided the combined gross income of all members of the household in which such user resided was less than the low income household exemption level for the calendar year prior to the fiscal year (July 1 through June 30) for which the exemption provided in this section is applied for. The low income household exemption level shall be established by resolution of the city council.

The exemption granted by this section shall not eliminate the duty of the service supplier to collect taxes from such exempt individual or the duty of such exempt individual to pay such taxes to the service supplier, unless an exemption is applied for by the service user and granted in accordance with the provisions of subsection (b) hereof.

(b) Any service user exempt from the taxes imposed by this code because of the provisions of subsection (a) above may file an application with the tax administrator for an exemption. Such application shall be made upon forms supplied by the tax administrator and shall recite facts under oath which qualify the applicant for an exemption. The tax administrator shall review all such applications and certify as exempt those applicants determined to qualify therefor notify all service suppliers affected that such exemption has been approved, stating the name of the applicant, the address to which such exempt service is being supplied, the account number, 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 not be required to continue to bill any further tax imposed by this code from such exempt service user until further notice by the tax administrator is given. The service supplier shall eliminate such exempt service user from its tax billing procedure upon receipt of such notice from the tax administrator, no later than sixty (60) days after receipt of such notice from the tax administrator.

(c) All exemptions shall be renewed annually by the exempt service user during the renewal period of April 1 through April 30. The tax administrator shall notify all service suppliers by May 31 of exempt service users who did not renew during the annual renewal period. Each service supplier shall include the service users specified in such notice in its tax billing procedure no later than sixty (60) days after receipt of such notice from the tax administrator. Exemptions shall automatically terminate with any change in the service address or residence of the exempt individual; provided such individual may nevertheless apply for a new exemption with each change of address or residence. Any individual exempt from the tax shall notify the tax administrator within ten (10) days of any change in fact or circumstance which might disqualify said individual from receiving such exemption. It shall be a misdemeanor for any person to knowingly receive the benefits of the exemptions provided by this section when the basis for such exemption either does not exist or ceases.

(d) Notwithstanding any of the provisions of this subsection, however, any service supplier who determines by any means that a new or nonexempt service user is receiving service through a meter or connection exempt by virtue of an exemption issued to a previous user or

exempt user of the same meter or connection, such service supplier shall immediately notify the tax administrator of such fact and the tax administrator shall conduct an investigation to ascertain whether or not the provisions of this section have been complied with and, where appropriate, order the service supplier to commence collecting the tax from the nonexempt service user.
(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-171. Violation; misdemeanor; remedies--Cumulative.

(a) Any person violating any of the provisions of this code shall be guilty of a misdemeanor and shall upon conviction be punishable thereafter as provided in section 1-8 of the Santa Ana Municipal Code.

(b) The conviction and fine or imprisonment of any person for violation of this code shall not relieve such person from paying the utility users tax together with any penalty or interest amount due under the terms of this code, nor shall the payment of any utility users tax, or any penalty, or any interest amount due prevent a civil action or criminal prosecution for the violation of any of the provisions of this code. All remedies prescribed hereunder shall be cumulative and the use of one (1) or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.
(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-172. Reserved
(Ord. No. NS-2860, § 10, 11-4-14)

Sec. 35-173. Right to administrative hearing; appeals.

(a) If any service user or service supplier (hereinafter "applicant" in this subsection) is aggrieved by any decision, administrative assessment, or administrative ruling of the tax administrator, or with the failure to grant a refund or exemption as provided for under this code, such applicant may appeal to the tax administrator in writing for an administrative hearing. If application by the applicant for an administrative hearing is not made within the time prescribed, the prior decision of the tax administrator shall become final. If such application is made, the tax administrator shall give at least five (5) days' written notice scheduling a date, time and place for a hearing. Such notice shall be given through personal service or by depositing it in the United States mail, addressed to the applicant's last known address. The applicant may appear before the tax administrator and/or the tax administrator's authorized administrative hearing officer (hereinafter "hearing officer" in this subsection) and offer evidence appealing the tax administrator's decision. After such hearing the "hearing officer" shall make a determination and give written notice to the applicant regarding his or her determination. The determination of the "hearing officer" shall become final and shall render any subsequent appeal null and void and shall further act as a waiver against future action, unless an appeal is taken pursuant to Chapter 3 of the Santa Ana Municipal Code.

(b) A timely request for an administrative hearing and attendance is required in accordance with subsection (a) above shall be a prerequisite for an appeal made pursuant to Chapter 3 of the Santa Ana Municipal Code. The determination of an applicant's appeal made

pursuant to Chapter 3 of the Santa Ana Municipal Code shall be final.
(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-174. Nonpayment of tax--Bar to writ of mandate or other legal or equitable process.

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 code of any tax or any amount of tax required to be collected and/or remitted.

(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-175. Saving clause.

Neither the adoption of this code nor its superseding of any portion of any other code shall in any manner be construed to affect prosecution for violation of any chapter, article, code, or ordinance prior to the effective date hereof, nor be construed as a waiver of any tax or any penal provision applicable to any such violation, and all rights and obligations thereunto appertaining shall continue in full force and effect.

(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-176. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this code or any part thereof is for any reason held to be unconstitutional, such decision, and the decision not to enforce such, shall not affect the validity of the remaining portion of this code or any part thereof. The city council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one (1) or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-177. Notice of changes to utility users tax code.

If a tax under this code is added, repealed, increased, reduced, or the tax base is changed, the tax administrator shall follow the notice requirements of state Public Utilities Code Section 799. Prior to the effective date of the code 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 code change. If the service provider fails to provide such written instructions, the tax administrator, or his or her agent, shall send, by first class mail, a copy of the code change to all collectors and remitters of the city's utility users taxes according to the latest payment records of the tax administrator.

(Ord. No. NS-2436, § 2, 8-4-00)

Sec. 35-178. Effect of State and Federal Reference/Authorization.

Unless specifically provided otherwise, any reference to a State or Federal statute in this article shall mean such statute as it may be amended from time to time, 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 article is expanded or limited as a result of changes in State or Federal law, no amendment or modification of this article 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 article.

(Ord. No. NS-2860, § 11, 11-4-14)

Sec. 35-179. No Increase in Tax Percentage or Change in Methodology Without Voter Approval; Amendment or Repeal.

This article of the Santa Ana 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 article. The People of the City of Santa Ana 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 article, if the city council has acted to reduce the rate of the tax;*
- (2) An administrative or legislative action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as such interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this article;*
- (3) The establishment a class of persons or class of service 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 article); or*
- (4) The collection of the tax imposed by this article, even if the city had, for some period of time, failed to collect the tax.*

(Ord. No. NS-2860 § 12, 11-4-14)

Sec. 35-180. Remedies Cumulative.

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

(Ord. No. NS-2860 § 13, 11-4-14)

Sec. 35-181. Interaction with Prior Tax.

- (a) Collection of Tax by Service Providers. Service providers shall begin to collect the tax imposed by this amended article as soon as feasible after the effective date of this article, 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, 2015, any person who pays the tax levied pursuant to this article, as it existed prior to its amendment as provided herein, 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 this article as amended herein, 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 Code to the amended Utility Users' Tax Ordinance (which transition period ends April 1, 2015) 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) Satisfaction of Tax Obligation by Service Users Paying the Prior Maximum Utility Users Tax. Prior to July 1, 2015, any person who pays the maximum tax amount payable under the utility users tax pursuant to this article, as it existed prior to its amendment as provided herein, shall be deemed to have satisfied his or her obligation to pay the tax levied pursuant to this article as amended herein for the period of July 1, 2014 through June 30, 2015.*
- (d) In the event that a final court order should determine that the election enacting this article (as amended herein) is invalid for whatever reason, or that any tax imposed under this article (as amended herein) is invalid in whole or in part, then the taxes imposed under this article, as it existed prior to its amendment as provided herein, shall automatically continue to apply with respect to any service for which the tax levied pursuant to this article 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 article 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 article (as amended herein) shall be deemed to satisfy the tax imposed under this article, as it existed prior to its amendment as provided herein, 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.

(Ord. No. NS-2860 § 14, 11-4-14)

Sec. 35-182. Ratification of Prior Tax.

The voters of the City of Santa Ana hereby ratify and approve the past collection of the Utility Users Tax as imposed by Chapter 35, Article VI, of the Santa Ana Municipal Code as it existed prior to the effective date of this Ordinance.

(Ord. No. NS-2860 § 15, 11-4-14)

Secs. 35-183—35-199. Reserved.

(Ord. No. NS-2860 § 16, 11-4-14)