

Utility Users Tax Ordinance

City of Gilroy, CA

Chapter 26B

UTILITY USERS TAX

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ARTICLE I. GENERAL PROVISIONS

Sec. 26B.1 Title.

This chapter shall be known as the "Utility Users Tax Ordinance of the City of Gilroy. (Ord. No. 927, Section 1, 7 19 71)

Sec. 26B.2 Adoption; charter authority.

This chapter is adopted pursuant to the powers of the City of Gilroy as a charter city as provided in Article II, Section 200, of the City Charter, and as authorized by Section 6 of Article XI of the Constitution of the State of California. (Ord. No. 927, Section 1, 7 19 71)

Sec. 26B.3 Definitions.

Except where the context otherwise requires, the definitions contained in this section shall govern the construction of this Chapter. The word "may" is always directory and discretionary and not mandatory; the word "shall" is always mandatory and not directory or discretionary. City. "City" shall mean the City of Gilroy, California, including all of the territory and jurisdiction thereof as presently constituted, and any and all of the same which shall later come into existence by any manner or means whatsoever.

Tax Collector. "Tax Collector" shall mean the director of finance, or his/her designee, of the City of Gilroy.

Electrical Corporation Gas Corporation and Telephone Corporation.

"Electrical Corporation", "Gas Corporation" and "Telephone Corporation" shall have the same meanings as defined in Sections 218, 222, 234, respectively, of the Public Utilities Code of the State of California.

Month. "Month" shall mean a calendar month.

Non-utility Supplier. "Non-utility Supplier" shall mean: (1) a Service Supplier, other than a provider of electric distribution services to all or a significant portion of the City, which generates electricity in capacities of 50 kilowatts or more, for its own use or for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity; (2) an energy service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than 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 provider 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.

Person. "Person" shall mean all domestic and foreign corporations, associations, syndicates, joint stock companies, partnerships of every kind, joint ventures, clubs, Massachusetts business or common law trusts, societies, and individuals, and shall include a municipal corporation.

Service Supplier. "Service Supplier" shall mean any entity or person that provides telephone communications, electric, gas, or video service to a user of such services within the City. The term shall include any entity or person required to collect or self-collect and remit a tax as imposed by this chapter, including its billing agent. Service User. "Service User" shall mean a person required to pay a tax imposed under the provisions of this chapter. (Ord. No. 927, Section 1, 7-19-71)

Video Service Provider. "Video Service Provider" shall mean any person, company, or service which provides one or more channels of video programming or communications (including the leasing of channel access to provide such video programming or communication) to or from an address in the City, including to or from a business, home, condominium, or apartment, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or communications. A "Video Service Provider" includes, but is not limited to, multichannel video programming distributors [as defined in 47 U.S.C. Section 552(12)], open video systems (OVS) providers, providers of cable television, master antenna television, satellite master antenna television, multichannel multipoint distribution services, direct broadcast satellite (to the extent allowed by federal law), and other providers of video programming or communications (including two-way communications), whatever their technology.

Video Services. "Video Services" shall mean any and all services related to the providing of video programming (including origination programming), communications (including two-way communications), regardless of the content of the video programming or communications, and shall include the leasing of channel access (e.g., home shopping) to the extent that the Service User is subject to an additional direct or indirect charge for programming or communications over the leased channel. "Video Services" shall not include services for which a tax is paid under section

26B.7 of this Chapter.

Sec. 26B.4. Exemptions.

The taxes imposed by this chapter shall not apply to:

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

Any Service User believing itself exempt from the taxes imposed by this chapter pursuant to subsection (a), other than state and federal agencies or their subdivisions with commonly recognized names, shall file an application with the Tax Collector for the exemption. Such application shall be made upon a form supplied by the Tax Collector and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all utility services providers serving that Service User. If constitutionally exempt, such Service User shall give the Tax Collector timely written notice of any change in utility service providers so that the Tax Collector 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 Collector, a Service Supplier or Non-utility Supplier, or their billing agents, shall provide a list of the names and addresses of those customers which, according to their billing records, are deemed exempt from the utility users tax.

Sec. 26B.5 Conflicts.

Nothing contained in this Chapter is intended to conflict with applicable rules, regulations and tariffs of any Service Supplier OR Non-utility Supplier subject to the jurisdiction of the California Public Utilities Commission. In the event of any conflict, the provisions of said rules, regulations and tariffs shall control. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.6. Tax; effective date.

The taxes imposed by this chapter shall become operative November 1, 1971. (Ord. No. 927, Section 1, 7-19-71)

ARTICLE II. TELEPHONE USERS TAX.

Sec. 26B.7. Tax imposed.

(a) There is hereby imposed a tax upon every person in the City, other than a telephone corporation, using intrastate telephone communication services in the City. The tax imposed by this article shall be at the rate of five (5) percent of the charges made for such services, and shall be paid by the person paying for such services. (Ord. No. 927, Section 1, 7-19-71)

(b) Except as otherwise provided herein, the words "telephone communication services" shall mean "communications services" as defined in Sections 4251 and 4252 of the Internal Revenue Code, and the regulations thereunder, regardless of the means of technology used to provide such services. "Telephone communication service" shall not include "private mobile radio service" [as defined in Part 20 of Title 47 of the Code of Federal Regulations], which is not interconnected with the public switched network.

(c) To prevent actual multi-jurisdictional taxation of telephone communication services subject to tax under this section, any Service User, upon proof to the Tax Collector that the Service User has previously paid the same tax in another state or city on such telephone communication service, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city, provided, however, the amount of credit shall not exceed the tax owed to the City under this section. For purposes of establishing sufficient nexus for the imposition and collection of utility users' tax on charges for telephone communication services pursuant to this Chapter, "minimum contacts" shall be construed broadly in favor of imposition and collection of the utility users' tax to the fullest extent permitted by California and federal law, and as it may change from time to time.

Sec. 26B.8. Exemptions.

Notwithstanding the provisions of Section 26B.7 the tax imposed under this Article shall not be imposed upon any person for using intrastate telephone communication services to the extent that, pursuant to Section 4252 and 4253 of the Internal Revenue code, the amounts paid for such services are exempt from or not subject to the tax imposed under Section 4251 of the Internal Revenue Code. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.9. Exclusions.

As used in this article, the term "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due.

Sec. 26B.10. Tax collection.

The tax imposed in this article shall be collected from the Service User by the person providing the intrastate telephone communication services. The amount of tax collected in one month shall be remitted to the Tax Collector on or before the last day of the following month; or at the option of the person required to collect or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the customer(s), which must be received by the Tax Collector on or before the last day of the following month. The actual tax shall be calculated and paid within a reasonable time, with an appropriate adjustment for the payment of the estimated tax. (Ord. No. 927, Section 1, 7-19-71)

ARTICLE III. ELECTRICITY USERS TAX.

Sec. 26B.11. Tax imposed.

(a) There is hereby imposed a tax upon every person in the City, other than an electrical or gas corporation, using electricity in the City. The tax imposed by this section shall be at the rate of five (5%) percent of the charges made for such electricity, and for any supplemental services or other associated activities directly related and/or necessary for the provision of electricity to the end-user, which are provided by a Service Supplier or Non-utility Supplier to a Service User. The tax shall be paid by the person paying for such electricity or supplemental services. (Ord. No. 927, Section 1, 7-19-71)

(b) "Charges", as used in this section, shall include: (1) energy charges; (2) distribution and transmission charges; (3) metering charges; (4) stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar services minimum charges for services; (5) customer charges, service charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, standard investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, franchise fee, franchise surcharge; and (6) all other annual and monthly charges or surcharges for electricity services or programs, which are authorized by the City Council, California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges appear on a bundled or line item basis on the customer billing.

"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.

Sec. 26B.12. Exclusions.

As used in this Article, the words "using electrical energy" shall not be construed to mean:

(a) The storage of such energy by a person in a battery owned or possessed by him for use in an automobile or other machinery or device apart from the premises upon which the energy was received; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; or

(b) the mere receiving of such energy by an electrical corporation or a government agency at a point within the City for resale. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.13. Tax: collection.

(a) The tax imposed in this Article shall be collected from the Service User by any electricity Service Supplier or Non-utility Supplier or its billing agent. The amount of tax collected in one month shall be remitted to the Tax Collector on or before the last day of the following month; or, at the option of the person required to collect or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the customer(s) of the Service Supplier, which must be received by the Tax Collector on or before the last day of the following month. The actual tax shall be calculated and paid within a reasonable time, with an appropriate adjustment for the payment of estimated tax. (Ord. No. 927, Section 1, 7-19-71)

(b) Any service User subject to the tax imposed by Section 26B.11, which produces electricity for self-use, or which receives electricity directly from a Non-utility Supplier not under the jurisdiction of this ordinance, or which otherwise is not having the full tax due on the use of electricity in the City that is directly billed and collected by the Service Supplier or its billing agent, shall report said fact to the Tax Collector and shall remit the tax due directly to the Tax Collector within thirty (30) days of such use. In lieu of paying said actual tax, the Service User may, at its option, remit to the Tax Collector within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the Service Supplier using similar amounts of electricity, provided that the Service User shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Collector, may be applied against any subsequent tax bill that becomes due.

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

ARTICLE IV. GAS USERS TAX.

Sec. 26B.14. Tax imposed.

There is hereby imposed a tax upon every person in the City, other than a gas corporation or an electric corporation, using gas in the City which is delivered through mains or pipes. The tax imposed by this Article shall be at the rate of five (5) percent of the charges made for such gas, and for any supplemental services or other associated activities directly related and/or necessary for the provision of gas to the end-user, which are provided by a Service Supplier or Non-utility Supplier to a Service User. The tax shall be paid by the person paying for such gas or supplemental services. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.15. Exclusions.

As used in this article, the term "charges" shall not include (1) charges made for gas which is to be resold and delivered through mains and pipes; (2) charges made for gas used in the production of electricity by a cogenerator, an electric corporation, a public agency that supplies or sells electricity, or an exempt wholesale generator; (3) charges made by a gas public utility or gas used and consumed in the course of its public utility business; and (4) charges made for gas used in the propulsion of a motor vehicle, as authorized in the Vehicle Code of the State of California. The term "using gas" shall not be construed to mean the mere receiving of such gas by a gas corporation or governmental agency at a point within the City for resale. (Ord. No. 927, Section 1, 7-19-71; Ord. No. 83-20, Section 1, 11-7-83)

Sec. 26B.16. Tax collection.

(a) The tax imposed in this article shall be collected from the Service User by any gas Service Supplier or Non-utility Supplier or its billing agent. The amount collected in one month shall be remitted to the Tax Collector on or before the last day of the following month; or, at the option of the person required to collect or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the customer(s) of the Service Supplier, which must be received by the Tax Collector on or before the last day of the following month. The actual tax shall be calculated and paid within a reasonable time, with an appropriate adjustment for the payment of the estimated tax. (Ord. No. 927, Section 1, 7-19-71)

(b) Any Service User subject to the tax imposed by Section 26B.14, which produces gas for self-use, or which receives gas directly from a Non-utility Supplier not under the jurisdiction of this ordinance, or which otherwise is not having the full tax due on the use of gas in the City that is directly billed and collected by the Service Supplier or its billing agent, shall report said fact to the Tax Collector and shall remit the tax due directly to the Tax Collector within thirty (30) days of such use. In lieu of paying said actual tax, the Service User may, at its option, remit to the Tax Collector within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the pattern payment of similar customers of the Service Supplier using similar amounts of gas, provided that the Service User shall submit an

adjusted payment of request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Collector, may be applied against any subsequent tax bill that becomes due.

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

ARTICLE IVA. STEAM USERS TAX

Sec. 26B.16.1. Tax imposed.

There is hereby imposed a tax upon every person in the City using steam or hot water delivered through pipes or mains as an industrial energy resource in the City. The tax imposed by this article shall be at the rate of five (5) per cent of the charges made for such steam or hot water, including minimum charges for service, and shall be paid by the person paying for such steam or hot water. (Ord. No. 83-20, Section 1, 11-7-83)

Sec. 26B.16.2 Tax collection.

The tax imposed in this article shall be collected from the Service User by the person selling steam or hot water heat. The amount collected in one month shall be remitted to the Tax Collector on or before the last day of the following month. (Ord. No. 83-20, Section 1, 11-7-83)

ARTICLE V. VIDEO SERVICES USERS TAX

Sec. 26B.17. Tax imposed.

There is hereby imposed a tax upon every person in the City using video services in the City. The tax imposed by this article shall be at the rate of five (5) per cent of the charges made for such service and shall be paid by the person paying for such service. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.18. Tax collection.

The tax imposed in this article shall be collected from the Service User by any Video Services Provider, its billing agent, or a reseller of such services. The amount of tax collected in one month shall be remitted to the Tax Collector on or before the last day of the following month. (Ord. No.927, Section 1, 7-19-71)

ARTICLE VI. COLLECTION OF TAX.

Sec. 26B.19. Suit by City.

Any tax required to be paid by a Service User under the provisions of this chapter shall be deemed a debt owed by the Service User to the City. Any such tax collected from a Service User which has not been remitted to the Tax Collector shall be deemed a debt owed to the City by the person required to collect and remit. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount. (Ord. No. 927, Section 1, 7-19-71) Sec. 26B.20. Duty to collect; procedures.

The duty to collect and remit the taxes imposed by 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 regular billing practice of the Service Supplier or Non-utility Supplier. Except in those cases where a service user pays the full amount of said charges but does not pay any portion of a tax imposed by this chapter, or where a Service User has notified a Service Supplier or Non-utility Supplier that he is refusing to pay a tax imposed by this chapter which said Service Supplier or Non-utility Supplier is required to collect, if the amount paid by a Service User is less than the full amount of the charge and tax which has 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 or Non-utility Supplier of his refusal to pay the tax imposed on said energy charges, the Service Supplier or Non-utility Supplier shall provide the City with amounts refused and/or unpaid along with the names and addresses of the Service Users not paying the tax imposed under the provisions of this ordinance.

(b) The duty to collect tax from a Service User shall commence with the beginning of the first regular billing period applicable to that person which starts on or after the operative date 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. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.21. Administrative agreements.

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

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

(c) The Tax Collector may make administrative agreements to vary from the strict requirements of this chapter so that collection of any tax imposed herein may be made in conformance with the billing procedures of a particular Service Supplier, Non-utility Supplier (or Service User subject to Sections 26B.13 or 26B.16) so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter. A copy of each such agreement shall be on file in the Tax Collector's office.

(d) The Tax Collector, or his designee, shall employ any reasonable means, including the Internet, of providing prompt written notice to all Service Suppliers and Non-utility Suppliers of any change in the City's boundaries following any annexation or other change in the City's boundaries. (Ord. No.927, Section 1, 7-19-71)

ARTICLE VII. DELINQUENT TAXES

Sec. 26B.22. Taxes; when delinquent.

Taxes collected from a Service User which are not remitted to the Tax Collector on or before the due dates provided in this chapter are delinquent. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.23. Service Supplier; penalty.

In addition to remitting the amount of the tax, any Service Supplier or Non-utility Supplier who fails to remit any tax imposed by this chapter within the time required and upon five (5) days' written notice to the Service Supplier or Non-utility Supplier of its failure to remit, shall pay a penalty of ten percent (10%) of the amount of the tax which shall be added on the last day of each month following the date on which remittance was due until the tax and penalties are remitted. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.24. Service supplier, fraud; penalty.

If the Tax Collector determines that the non-payment by any Service Supplier or Non-utility Supplier of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalty imposed by Section 26B.24. (Ord. No. 927, Section 1, 7-19-71)

26B.25. Service Supplier; interest.

In addition to the penalties imposed by Section 26B.23 and 26B.24, any Service Supplier or Non-utility Supplier who fails to remit any tax imposed by this chapter shall pay interest at the rate of eighteen (18) percent per annum. The interest shall be calculated per month or fraction thereof, on the amount of the tax and penalties, from the date on which the remittance first became delinquent until paid. (Ord. No. 99-12, Exh. 8, 9-7-99; Ord. No. 2004-06, § IV(2), 5-3-04)

Sec. 26B.26. Service Supplier; penalty and interest part of tax.

Every penalty imposed upon a Service Supplier or Non-utility Supplier and such interest as accrues, under the provisions of Section 26B.24 to 26B.26, inclusive, shall become a part of the tax required to be remitted. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.27. Service User; penalty,

In addition to paying the amount of the tax, any Service User who fails to pay any tax imposed by this chapter within sixty (60) days of the date of the receipt of notice of the amount of tax due from the Service Supplier shall pay a penalty of ten percent (10%) of the amount of the tax which shall be added on the last day of each month following the date on which payment was due until the tax and penalties are paid. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.28. Service User; fraud; penalty.

If the Tax Collector determines that the non-payment by any Service User of any tax imposed by this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalty imposed by Section 26B.28. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.29. Service User interest.

In addition to the penalties imposed by Sections 26B.27. and 26B.28., any Service User who fails to remit any tax imposed by this chapter shall pay interest at the rate of eighteen (18) percent per annum. The interest shall be calculated per month or fraction thereof, on the amount of the and penalties, from the date on which the remittance first became delinquent until paid, and a collection charge of ten dollars (\$10.00) shall be added for each delinquent account. (Ord. No. 99-12, Exh. 8, 9-7-99; Ord. No. 2004-06, § IV(5), 5-3-04)

Sec. 26B.30. Service User; Penalty and interest part of tax.

Every penalty imposed upon a Service Supplier and such interest as accrues, under the provisions of Sections 26B.28. to 26B.30, inclusive, shall become a part of the tax required to be paid. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.31. Service User; penalties and interest collected by City.

The penalties, interest, and collection charges imposed in sections 26B.28 to 26B.30, inclusive, shall not be collected by the Service Supplier, but by the City. (Ord. No. 927, Section 1, 7-19-71)

ARTICLE VIII. FAILURE TO COLLECT AND REPORT TAX,

Sec. 26B.32. Determination of tax by Tax Collector; notice.

If any Service Supplier or Non-utility Supplier shall fail to make, within the time provided in this chapter any report and remittance of said tax or any portion thereof required by this chapter, the Tax Collector shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Tax Collector shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any Service Supplier or Non-utility Supplier who has failed or refused to make such report and remittance, he shall proceed to determine and assess against such Service Supplier or Non-utility Supplier the tax, interest and penalties provided for by this chapter. In case such determination is made, the Tax Collector shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the Service Supplier or Non-utility Supplier so assessed at his last known place of address. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.33. Hearing on determination of tax; application; notice

The Service Supplier or Non-utility Supplier may within ten (10) days after the serving or mailing of the notice referred to in Section 26B.33 make application in writing to the Tax Collector for a hearing on the amount assessed. If application by the Service Supplier or Non-utility Supplier for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Tax Collector shall become final and conclusive and immediately due and payable. If such application is made, the Collector shall give not less than ten (10) days' written notice in the manner prescribed herein to the Service Supplier or Non-utility Supplier to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the Service Supplier or Non-utility Supplier may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.34. Determination of tax following hearing; notice; when due.

After a hearing on the amount of tax assessed, the Tax Collector shall determine the proper tax to be remitted, and shall thereafter give written notice to the Service Supplier or Non-utility Supplier in the manner prescribed above of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days of the date of notice of determination unless an appeal is taken as provided in this chapter. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.35. Collection of taxes from Service User by City; Conditions; notice.

Whenever the Tax Collector determines that a Service User has deliberately withheld the amount of any tax imposed on him by the provisions of this chapter from the amounts remitted to a Service Supplier or Non-utility Supplier required to collect the tax, or that a Service User has failed to pay the amount of the tax to such Service Supplier or Non-utility Supplier for a period of four (4) or more billing periods, or whenever the Tax Collector deems it in the best interest of the City, he may relieve such Service Supplier or Non-utility Supplier of the obligation to collect taxes due under this chapter from certain named Service Users for specified billing periods. The Tax Collector shall notify the Service User that he has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes, plus any penalty imposed and such interest as may be due pursuant to the provisions of Article VIII of this chapter. The notice shall be given to the Service User by depositing the notice in the United States mail, postage prepaid thereon, addressed to the Service User at the address to which billing was made by the Service Supplier or Non-utility Supplier required to collect the tax; or, should the Service User have changed his address, to his last known address. (Ord. No. 927, Section 1, 7-19-71)

ARTICLE IX, APPEALS.

Sec. 26B.36. Who may appeal.

Any person aggrieved by any decision of the Tax Collector pursuant to this chapter may appeal to the City Clerk by filing a notice of appeal with the City Clerk within fifteen (15) days of the serving or mailing of the decision. (Ord. No. 927, Section 1, 7-19-71) Sec. 26B.37. Hearing; notice. The City Clerk shall fix a time and place for hearing such appeal. The City Clerk shall give notice thereof in writing to such person by serving it personally or by depositing it in the United States Mail, postage prepaid, addressed to such person at his last known place of address. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.38. Hearing; determination.

The City Council shall have authority to determine all questions raised on such appeal at the time of the hearing. No determination so made by the City Council shall conflict with any substantive provision of this chapter. (Ord. No. 927, Section 1, 7-19-71) Sec. 26B.39. Hearing; penalties suspended. No penalty provided for in this chapter shall be imposed after the filing of an appeal or prior to the completion of the hearing on the appeal and the making of a determination on the subject of the appeal by the City Council. (Ord. No. 927, Section 1, 7-19-71)

ARTICLE X. RECORDS

Sec. 26B.40. Retention Period; access.

It shall be the duty of every Service Supplier and Non-utility Supplier required to collect and remit to the City any tax imposed by this chapter to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax that such Service Supplier or Non-utility Supplier may have been required to collect and remit to the City, which records the Tax Collector shall have the right to inspect at all reasonable times. (Ord. No. 927, Section 1, 7-19-71)

ARTICLE XI. REFUNDS.

Sec. 26B.41. Claim; filing period.

Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded as provided in this section: (Ord. No. 927, Section 1, 7-19-71)

(a) The Tax Collector may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Collector under this chapter, provided that no refund shall be paid under the provisions of this section unless the claimant has submitted a written claim to the Tax Collector within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers. The submission of a written claim, which is acted upon by the City Council, shall be a prerequisite to a suit thereon. (See Government Code Section 935). The City Council shall act upon the refund claim within the time period set forth in Government Code Section 912.4. If the City Council fails or refuses to act on a refund claim within the time prescribed by Government Code Section 912.4, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in Government Code Section 912.4. It is the intent of the City Council that the one year written claim requirement of this subsection be given retroactive effect; provided, however, that any claims which arose prior to the commencement of the one year claims period of this subsection, and which are not otherwise barred by a then applicable statute of limitations or claims procedure, must be filed with the Tax Collector as provided in this subsection within ninety (90) days following the effective date of this ordinance.

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

Sec. 26B.42. Service Supplier; refund.

A Service Supplier or Non-utility Supplier may claim a refund or take as credit against taxes collected and remitted an amount overpaid, paid more than once, or erroneously or illegally collected or received in the manner provided in section 26B.42, but only when it is established in a manner prescribed by the Tax Collector that the person from whom the tax has been collected was not a Service User. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.43. Service User; refund.

Any Service User may obtain a refund of taxes overpaid, or paid more than once, or erroneously or illegally collected or received by the City by filing a claim in the manner provided in Section 26B.42, but only when the Service User having paid the tax to the Service Supplier or Non-utility Supplier establishes to the satisfaction of the Tax Collector that the Service User has been unable to obtain a refund from the Service Supplier or Non-utility Supplier who collected the tax. (Ord. No. 927, Section 1, 7-19-71)

Sec. 26B.44. Claim: proof required.

No refund shall be paid under the provisions of this article unless the claimant establishes his right thereto by written records showing entitlement thereto. (Ord. No. 927, Section 1, 7-19-71)

ARTICLE XII. SEVERABILITY

Sec. 26B.45. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, such decision, and decision not to enforce such shall not affect the validity of the remaining portion of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

ARTICLE XIII. NOTICE OF CHANGES TO ORDINANCE

Sec. 26B.46. Notice of Changes to Tax

If a tax under this chapter is added, repealed, increased, reduced, or the tax base is changed, the Tax Collector shall follow the notice requirements of the Public Utilities Code Section 799. Prior to the effective date of the change, the Service Supplier or Non-utility Supplier shall provide the Tax Collector with a copy of any written procedures describing the information that the Service Supplier or Non-utility Supplier needs to implement the change. If the Service Supplier or Non-utility Supplier fails to provide such written instructions, the Tax Collector, or its agent, shall send, by first class mail, a copy of the change to all collectors and remitters of the City's utility users taxes according to the latest payment records of the Tax Collector.