

CITY OF ALAMEDA RESOLUTION NO. ____

CALLING AN ELECTION TO BE CONSOLIDATED WITH THE CITY'S NEXT GENERAL MUNICIPAL ELECTION ON NOVEMBER 8, 2016, AND SUBMITTING TO THE VOTERS AT THAT ELECTION A MEASURE, THE UTILITY MODERNIZATION ACT, THAT PROPOSES TO AMEND THE CITY CHARTER BY AMENDING SECTION 12-6 TO REAFFIRM ALAMEDA MUNICIPAL POWER'S ANNUAL GENERAL FUND TRANSFER AND AMENDING THE ALAMEDA MUNICIPAL CODE BY REPEALING CHAPTER 3-59 AND REPLACING IT WITH A MODERNIZED UTILITY USERS TAX ORDINANCE

WHEREAS, the health, safety and general welfare of the City of Alameda depend on maintaining existing levels of police protection, fire protection, street maintenance, and parks and recreation services for Alameda residents; and

WHEREAS, the City relies upon its General Fund to finance the public services described above; and

WHEREAS, approximately fifteen percent of the City's General Fund revenues come from an annual transfer from the Alameda Municipal Power Authority ("AMP"), the City's electrical utility, to the City (known as the "AMP transfer") and from the collection of the City's Utility Users Tax; and

WHEREAS, the laws regarding the AMP transfer and the Utility Users Tax should be updated and modernized in order to reflect new and evolving technologies and to ensure all taxpayers are treated equally; and

WHEREAS, these laws can be updated and modernized without increasing tax rates or electric charges to taxpayers; and

WHEREAS, the California Constitution requires that these changes be submitted to the qualified voters of the City and approved by a majority vote at an election consolidated with a regularly scheduled municipal election; and

WHEREAS, pursuant to California Elections Code sections 9222 and 9255, the City Council may submit to the qualified voters of the City a measure proposing amendments to the City Charter and Municipal Code as set forth in the Utility Modernization Act; and

WHEREAS, the City intends to hold a General Municipal Election on November 8, 2016; and

WHEREAS, the City Council desires to submit to the qualified voters of the City the Utility Modernization Act that proposes to amend the City Charter by amending section 12-6 and the Municipal Code by repealing Chapter 3-59 and replacing it with an updated Utility Users Tax Ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALAMEDA THAT:

SECTION 1. Calling the Election. Pursuant to the California Constitution, article XIIC, section 2(b) and California Elections Code section 10403, the City Council hereby calls an election to be consolidated with the General Municipal Election and the statewide general election on November 8, 2016, for the purpose of submitting the Utility Modernization Act to a vote of the qualified voters of the City of Alameda, and hereby requests the Board of Supervisors of the County of Alameda to consolidate this election with the November 8, 2016, statewide general election to be held on that date. The Consolidated General Municipal Election shall be held and conducted in the manner prescribed by California Elections Code section 10418.

SECTION 2: Submission of Measure to the Voters. Pursuant to Elections Code sections 9222, 9255, 10201, and 10403, the City Council hereby orders the measure known as the Utility Modernization Act to be submitted to the qualified voters of the City of Alameda at the next General Municipal Election on November 8, 2016. The full text of the Utility Modernization Act that shall be voted on is attached hereto as Exhibit A.

SECTION 3. Ballot Question. The City Council, pursuant to California Elections Code sections 13247 and 10403, and California Constitution article XIIC, section 2(b), hereby orders that the abbreviated form of the measure as it shall appear on the ballot is as follows:

<p>City of Alameda Ballot Measure: To maintain funding for essential services, such as police, fire, parks and libraries, without raising tax rates or electric charges, shall the City of Alameda amend its Charter to reaffirm the continuous annual transfer of approximately \$3.7 million from Alameda Municipal Power to the City, adjust future transfer amounts for inflation, and modernize the existing Utility Users Tax ordinance to reflect new and evolving technologies so that all taxpayers are treated equally regardless of technology?</p>

SECTION 4. Impartial Analysis by City Attorney. The City Clerk is hereby directed to transmit a copy of the measure attached hereto as Exhibit A to the City Attorney, who shall prepare an impartial analysis of the measure in accordance with California Elections Code section 9280. The City Attorney shall issue the impartial analysis within ten (10) days of receipt of the measure from the Clerk.

SECTION 5. Written Arguments by Council. Pursuant to California Elections Code sections 9282 and 9285 and City of Alameda Resolution 12317, the City Council, or any members of the City Council authorized by the City Council, shall file the direct argument in favor of the measure and rebuttal arguments. Pursuant to California Elections Code

section 9285(b), the City Council hereby permits rebuttal arguments if arguments have been filed in favor of or against the measure.

SECTION 6. City Clerk. The City Clerk is hereby directed to file a certified copy of this resolution with the Alameda County Clerk of the Board of Supervisors and the County Registrar of Voters in sufficient time so that the measure may be included in the November 8, 2016 Consolidated General Municipal Election ballot. The City Clerk is hereby directed to perform all other acts that are required for submitting the measure to be voted on at the November 8, 2016 Consolidated General Municipal election;

SECTION 7. Notice. Notice of the time and place of the election on these proposed City Charter and Municipal Code amendments is hereby given, and the City Clerk is authorized, instructed and directed to give further or additional notice of the calling of the Consolidated General Municipal Election, in the time, form and manner as required by law.

SECTION 8. Majority Vote. This measure proposes a general tax and shall be approved if a majority (50% +1) of those voting on the measure approve it.

SECTION 9. Effective Date. This Resolution shall become effective upon its adoption.

THE ALAMEDA UTILITY MODERNIZATION ACT

The people of the City of Alameda do ordain as follows:

SECTION 1. Title.

This measure shall be known and may be cited as “The Alameda Utility Modernization Act.”

SECTION 2. Purpose and Intent.

In enacting this measure, the people of the City of Alameda find and declare as follows:

- (a) The health, safety, and general welfare of the City of Alameda depend on maintaining existing levels of police and fire protection, street maintenance, and parks and recreation services for Alameda residents.
- (b) The City relies upon its General Fund to finance the public services described above.
- (c) Approximately fifteen percent (15 %) of the City’s General fund revenues come from an annual “General Fund” transfer from the Alameda Municipal Power Authority (“AMP”), the City’s electrical utility, to the City and from the collection of the City’s Utility Users Tax.
- (d) The laws regarding the AMP transfer and the Utility Users Tax need to be updated and modernized in order to reflect new and evolving technologies and practices.
- (e) Every year since 1914, AMP has transferred money to the General Fund of the City to help support city services under a provision of the City Charter that has not been updated since 1937.
- (f) Since 2009, the amount of the General Fund transfer has been \$2.8 million each year. From 2001-2008 it was \$2,500,000 each year; in years prior to 2001 the amount varied, including amounts as high as \$3,614,000 in 1995. The City has used these funds to provide essential City services, such as police and fire protection and parks and playgrounds.
- (g) In addition, AMP has provided for the operation and maintenance of street lights in the City at no charge to the City’s General Fund, at a cost of approximately \$900,000 per year. Thus, the total amount of the annual transfer is \$3.7 million in cash and services.
- (h) In October 2015, an AMP ratepayer sued the City in a class action lawsuit, claiming that certain transfers by AMP to the City constitute a “tax” under Proposition

26, which requires voter approval of local taxes. The City is defending the lawsuit, but to avoid uncertainty regarding the annual \$2.8 cash transfer to the City's General Fund and the \$900,000 in in-kind services provided by AMP, and to ensure that the City has the funds necessary to continue to provide essential services to City residents, the City proposes to amend its Charter to confirm that AMP may continue its current practice of transferring approximately \$3.7 million in cash and services to the City on an annual basis, less any applicable tax exemptions.

(i) Because AMP is currently providing these funds and services to the City, this measure will not result in new charges for ratepayers. The Public Utilities Board will continue to set AMP's rates in an amount sufficient to cover the cost of the annual transfer as part of its ordinary rate-setting process. In addition, this measure will not affect other provisions of Alameda law that require AMP to make payments to the City: a 1% "payment in lieu of taxes" that represents the amount that AMP would be charged for property taxes if it were a privately-owned utility, a 1% "return on investment" reflecting a portion of the value to the City of Alameda of owning its own municipal utility, and transfers to reflect AMP's share of City expenses.

(j) This measure will also authorize the Public Utilities Board to adjust the amount of future transfers to account for inflation, so that the City may continue to have sufficient resources to fund essential services and to adopt rates sufficient to cover the costs of the transfer, in addition to the cost of services.

(k) The City's Utility Users Tax Ordinance (the "UUT") is over forty (40) years old, and its provisions have not kept up with changes in technology. The result is that the tax is paid by some consumers but not by others, depending on the technology they use and how their service providers interpret the ordinance. In order to treat all consumers fairly, the ordinance needs to be much more explicit about what it does and does not cover.

(l) Without raising or changing the current 7.5% tax rate, this measure will modernize the UUT to include definitions of telecommunication, video, electric and gas services that reflect current and emerging technologies. It uses industry standard definitions for utility services that are readily familiar to the utility providers who are responsible for collecting the tax from their customers. This will ensure that the 7.5% tax rate is applied fairly and equitably to all consumers, regardless of the technology used.

SECTION 3. Charter Amendment. Section 12-6 of the Charter of the City of Alameda is hereby amended as follows:

Section 12-6.

(a) The Board may retain from earnings of public utilities under its management and control in each fiscal year after payment of bond interest and sinking fund requirements and operating expenses exclusive of depreciation, a sum equal to ten percent of the

investment in Fixed Capital in Service of such utilities at the beginning of such fiscal year, as a reserve for contingencies, replacements, renewals, additions and improvements; provided, however, that when the amount of Working Capital (Current Accrued Assets less Current Accrued Liabilities) at the end of such fiscal year shall be equivalent to or in excess of twenty-five percent of the Fixed Capital in Service as of the same date if an amount equal to five percent of Fixed Capital in Service at the beginning of the fiscal year were retained, then and in such event the sum retained for the fiscal year shall be reduced to five percent of the Fixed Capital in Service at the beginning of the fiscal year.

~~All earnings of such utilities for the fiscal year in excess of said payments and retainments shall be transferred by the Board to the General Fund of the City, unless the Council prior to the end of the fiscal year shall authorize the Board to retain for said reserves a larger percentage than above set forth. For the purpose of carrying out the provisions of this section the Board prior to the first day of each fiscal year shall make an estimate of the amount to be earned in the fiscal year in excess of said payments and retainments and said excess amount as estimated shall be transferred to the General Fund of the City quarterly or as mutually agreed upon between the Board and the Council. Any balance of such excess amount for the fiscal year shall be transferred by the Board to the General Fund of the City within thirty days of receipt of the annual audit.~~

(b) Effective July 1, 2017, and each year thereafter, Alameda Municipal Power shall make an annual transfer to the City, in the amount of \$3,700,000, plus an adjustment for inflation and minus any deduction for the amount of any exemptions granted by the Public Utilities Board pursuant to subdivision (d), in 12 equal monthly installments.

(c) The Public Utilities Board is hereby authorized to fix rates in an amount sufficient to cover the cost of the annual transfer as part of its authority to fix rates for the services of all utilities and business enterprises under its control and management. The Public Utilities Board shall direct Alameda Municipal Power to collect the amount of the annual transfer from Alameda Municipal Power ratepayers, except for exempt ratepayers, by including an amount proportionate to the amount paid by the ratepayer as a percentage of the total revenue collected by Alameda Municipal Power, within each rate, fee, or other charge.

(d) To determine the amount of the annual transfer, the Public Utilities Board shall, on an annual basis: (i) determine whether any ratepayers are exempt from the annual transfer pursuant to local, state, or federal law and deduct the amount of the exemptions from \$3,700,000, and (ii) adjust the amount of the transfer each year for inflation based on the Consumer Price Index for All Urban Consumers for the San Francisco Bay Area, published by the Bureau of Labor Statistics of the United States Department of Labor, or any successor to that index.

SECTION 4. Utility Users Tax. Section 3-59 of Division IX of Article II of Chapter III of the Alameda Municipal Code is hereby repealed and new Section 3-59 is added to read as follows:

~~3-59.1 - Title.~~

~~This section shall be known as the "Utility Users Tax Ordinance of the City of Alameda".~~

~~3-59.2 - Definitions.~~

~~As used in this section:~~

~~Electrical corporation, gas corporation, telephone corporation, and water corporation shall have the same meanings as defined in Sections 218, 222, 234, and 241, respectively, of the Public Utilities Code of the State of California, as the sections existed on October 1, 1969; provided, however, that water corporation shall have the additional meaning as defined in Section 11503 of the Code, as said section existed on the same date.~~

~~Month shall mean a calendar month.~~

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

~~Service supplier shall mean a person required to collect and remit a tax imposed by this section.~~

~~Service user shall mean a person required to pay a tax imposed by this section.~~

~~Tax Administrator shall mean the Treasurer and Tax Collector of the City of Alameda.~~

~~3-59.3 - Exemptions, City, Constitutional.~~

~~Nothing in this section shall be construed as imposing a tax upon the City, or upon any person when 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.~~

~~3-59.4 - Telephone Users Tax.~~

- ~~a. Tax Imposed. There is hereby imposed a tax upon every person in the City, other than a telephone, a municipal, or a water corporation, using intrastate, interstate, and/or international telephone communication services in the City. The tax imposed by this subsection shall be at the rate of seven and one-half (7.5%)~~

~~percent of all the charges made for such services and shall be paid by the person paying for such services.~~

~~b. *Exempt Services.* As used in this subsection 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.~~

~~c. *Collection of Tax.* The tax imposed in this subsection shall be collected from the service user by the person providing the intrastate, interstate and/or international telephone communication services. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month.~~

~~d. *Exemption.* Alameda residents whose gross annual house income meets guidelines for low income designation for lifeline rate are eligible for an exemption from two percent (2%) of the Telephone Utility Users Tax. Application for this exemption must be filed with the City of Alameda.~~

~~3-59.5 Electricity Users Tax.~~

~~a. *Tax Imposed.* There is hereby imposed a tax upon every person in the City, other than an electrical, or a water, or a gas, or a municipal corporation, using electrical energy in the City. The tax imposed by this subsection shall be at the rate of seven and one-half (7.5%) percent of all the charges made for such energy and shall be paid by the person paying for such energy. Charges as used in this subsection shall include charges made for (1) metered energy, and (2) minimum charges, for service, including customer charges, service charges, demand charges, standby charges and annual and monthly charges.~~

~~b. *Exempt Uses.* As used in this subsection, the term using electrical energy shall not be construed to mean the storage of such energy by a person in a battery owned or possessed by him/her 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; nor shall the term include the mere receiving of such energy by an electrical corporation or a governmental agency at a point within the City for resale to service users.~~

~~c. *Collection of Tax.* The tax imposed in this subsection shall be collected from the service user by the person supplying such energy. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month.~~

- d. ~~*Exemption.* Alameda residents whose gross annual household income meets guidelines for low income designation or seniors (62+) are eligible for an exemption from two percent (2%) of the Electricity Utility Users Tax. Application for this exemption must be filed with the City of Alameda.~~

~~3-59.6 - Gas Users Tax.~~

- a. ~~*Tax Imposed.* There is hereby imposed a tax upon every person in the City, other than a gas, or a water, or an electrical, or a municipal corporation, using in the City gas which is delivered through mains or pipes. The tax imposed by this subsection shall be at the rate of seven and one-half (7.5%) percent of all the charges made for such gas, including minimum charges for service, and shall be paid by the person paying for such gas.~~
- b. ~~*Excluded Charges.* There shall be excluded from the base on which the tax is imposed by this subsection is computed charges made for gas which is to be resold and delivered through mains or pipes; charges made for gas sold for use in the generation of electrical energy by a public utility or a governmental agency; and charges made by a gas public utility for gas used and consumed in the conduct of the business of gas public utilities.~~
- c. ~~*Collection of Tax.* The tax imposed in this subsection shall be collected from the service user by the person selling such gas. The amount collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month.~~
- d. ~~*Exemption.* Alameda residents whose gross annual household income meets guidelines for low income designation or seniors (62+) are eligible for an exemption from two percent (2%) of the Gas Utility Users Tax. Application for this exemption must be filed with the City of Alameda.~~

~~3-59.7 - RESERVED.~~

~~3-59.8 - Cable Television Users Tax.~~

- a. ~~*Tax Imposed.* There is hereby imposed a tax upon every person in the City, other than a gas, or a water, or an electrical, or a municipal corporation, in the City paying for cable television service. The tax imposed by this subsection shall be at the rate of seven and one-half (7.5%) percent of the charges made for such service and shall be paid by the person paying for the service.~~
- b. ~~*Collection of Tax.* The tax imposed in this section shall be collected from the service user by the person furnishing the cable television service. The amount collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month.~~

- c. ~~Exemption.~~ Alameda residents whose gross annual household income meets guidelines for low income designation or seniors (62+) are eligible for an exemption from two percent (2%) of the Cable Television Utility Users Tax. Application for this exemption must be filed with the City of Alameda.

~~3-59.9 - Actions to Collect.~~

~~Any tax required to be paid by a service user under the provisions of this section shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit. Any person owing money to the City under the provisions of this section shall be liable to an action brought in the name of the City for the recovery of such amount.~~

~~3-59.10 - Duty to Collect; Procedures.~~

~~The duty to collect and remit the taxes imposed by this section 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. Except in those cases where a service user pays the full amount of the charges but does not pay any portion of a tax imposed by this section, or where a service user has notified a service supplier that he/she is refusing to pay a tax imposed by this section which the service 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.~~
- 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 section. Where a person receives more than one (1) billing, one (1) or more being for different periods than another, the duty to collect shall arise separately for each billing period.~~

~~3-59.11 - Administrative Agreements.~~

~~The Tax Administrator may make administrative agreements to vary the strict requirements of this section so that collection of any tax imposed herein may be made in conformance with the billing procedures of a particular service supplier so long as the over all result of the agreements results in collection of the tax in conformance with the general purpose and scope of this section. A copy of each such agreement shall be on file and available for public examination in the Tax Administrator's office.~~

~~3-59.12 - Interest and Penalty.~~

- ~~a. Taxes collected from a service user which are not remitted to the Tax Administrator on or before the due dates provided in this section are delinquent.~~
- ~~b. Interest and penalties for delinquency in remittance of any tax collected and not remitted shall be assessed as follows:~~
- ~~1. Any service supplier who fails to remit any tax imposed by this section within ten (10) days after receipt of written notice from the City of such failure shall pay a penalty of ten (10%) percent of the amount of the tax.~~
 - ~~2. If the Tax Administrator determines that the nonpayment of any remittance due under this section is due to fraud, a penalty of twenty-five (25%) percent of the amount of the tax shall be added thereto in addition to the penalty stated in subparagraph 1. of this paragraph b.~~
 - ~~3. In addition to the penalties imposed in this paragraph b., any service supplier who fails to remit any tax imposed by this section, shall pay interest at the rate of one and one-half percent (1 ½%) percent per month, or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.~~
 - ~~4. Every penalty imposed upon a service supplier, and such interest as accrues, under the provisions of this paragraph b. shall become a part of the tax required to be remitted.~~
- ~~c. Failure by a service user to pay any tax herein imposed shall result in the following interest and penalties on the service user:~~
- ~~1. Any service user who fails to pay any tax imposed by this section within one hundred and twenty (120) 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 (10%) percent of the amount of the tax.~~
 - ~~2. Any service user who fails to pay any delinquent remittance on or before a period of one hundred and eighty (180) days of the date of the receipt of notice of the amount of tax due from the service supplier shall pay a second delinquency penalty of ten (10%) percent of the amount of the tax in addition to the amount of the tax and the ten (10%) percent first imposed.~~
 - ~~3. In addition to the penalties imposed in this paragraph c., any service user who fails to pay any tax imposed by this section, shall pay interest at the rate of eighteen (18%) percent per annum, exclusive of penalties, from the date on which the remittance first became delinquent until paid, and a collection charge of ten (\$10.00) dollars for each delinquent account.~~

~~4. Every penalty imposed upon a service user, and such interest as accrues, under the provisions of this paragraph c. shall become a part of the tax required to be paid.~~

~~5. The penalties, interest, and collection charges imposed in this paragraph c. shall not be collected by the service supplier, but shall be determined and collected by the City as set forth in subsection 3-59.12.~~

~~3-59.13 - Refusal to Collect and Report Tax; Determination by Tax Administrator.~~

~~If any service supplier shall refuse to make within the time provided in this section, any report and remittance of the tax or any portion thereof required by this section, the Tax Administrator shall proceed in such manner as he/she may deem best to obtain facts and information on which to base his/her estimate of the tax due. As soon as the Tax Administrator shall procure such facts and information as he/she is able to obtain upon which to base the assessment of any tax imposed by this section and payable by any service supplier who has refused to make such report and remittance, he/she shall proceed to determine and assess against such service supplier the tax, interest and penalties provided for by this section. In case such determination is made, the Tax Administrator 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 so assessed at his/her last known place of address. Such 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. If application by the service supplier for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Tax Administrator shall become final and conclusive and immediately due and payable. If such application is made, the Tax Administrator shall give not less than five (5) days written notice in the manner prescribed herein to the service supplier to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the service supplier may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the Tax Administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the service 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 unless an appeal is taken as provided in subsection 3-59.15.~~

~~3-59.14 - Assessment; Administrative Remedy.~~

~~Whenever the Tax Administrator determines that a service user has knowingly withheld the amount of any tax imposed on him/her by the provisions of this section 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 four (4) or more billing periods, or whenever the Tax Administrator deems it in the best interest of the City, he/she may relieve such service supplier of the obligation to~~

~~collect taxes due under this section from certain named service users for specified billing periods. The Tax Administrator shall notify the service user that he/she 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 subsection 3-59.1(c) hereof. The notice shall be served on the service user by handing it to him/her personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the service supplier required to collect the tax; or, should the service user have changed his/her address, to his/her last known address.~~

~~3-59.15 – Appeals.~~

~~Any person aggrieved by any decision of the Tax Administrator pursuant to subsection 3-59.11 or 3-59.12 may appeal to the City Council by filing a notice of appeal with the City Clerk within fifteen (15) days of the serving or mailing of such decision. The Council shall fix a time and place for hearing the appeal, and the City Clerk shall give notice in writing to such person at his/her last known place of address. Any amount found to be due shall be immediately due and payable upon the service of the notice.~~

~~3-59.16 – Records.~~

~~It shall be the duty of every service supplier required to collect and remit to the City any tax imposed by this section 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 such service supplier may have been required to collect and remit to the City, which records the Tax Administrator shall have the right to inspect at all reasonable times.~~

~~3-59.17 – Refunds.~~

- ~~a. — *Filing Claim.* 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 section it may be refunded as provided in paragraphs (b) and (c) of this subsection provided a claim in writing therefor, stating under penalty or perjury the specific grounds upon which the claim is founded, if filed with the Tax Administrator within one (1) year of the date of payment. The claim shall be on forms furnished by the Tax Administrator.~~
- ~~b. — *Refund to Service Supplier.* A service 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, when it is established that the person from whom the tax has been collected was not a service user.~~
- ~~c. — *Refund to Service User.* 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 paragraph (a) of this subsection, but only~~

~~when the service user having paid the tax to the service supplier establishes to the satisfaction of the Tax Administrator that the service user has been unable to obtain a refund from the service supplier who collected the tax.~~

~~d. *Proof Required.* No refund shall be paid under the provisions of this subsection unless the claimant establishes his/her right thereto by written records.~~

~~3-59.18 - Penalties for Violations; Unlawful Acts.~~

~~Any person violating any of the provisions of this section or any person willfully refusing to pay any tax hereunder shall be guilty of a misdemeanor and shall be punishable therefor in the manner provided in Section 1-5 of this Code.~~

CITY OF ALAMEDA ORDINANCE

AMENDING THE ALAMEDA MUNICIPAL CODE BY REPEALING SECTION 3-59 (UTILITY USERS TAX) IN ITS ENTIRETY AND REPLACING IT WITH A NEW SECTION 3-59 (UTILITY USERS TAX)

BE IT ORDAINED by the People of the City of Alameda as follows:

UTILITY USER TAX

3-59.1 - Title and Purpose.

This Article shall be known as the Utility Tax Ordinance for the City. This Article is enacted solely to raise revenue for the general governmental purposes of the City. All of the proceeds from the tax imposed by this Article shall be placed in the City's General Fund and used for the usual and current expenses of the City.

3-59.2 - Definitions.

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

Ancillary telecommunication services shall mean services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to the following services:

- a. *Conference bridging service* shall mean 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.

- b. *Detailed telecommunications billing service* shall mean an ancillary service of separately stated information pertaining to individual calls on a customer's billing statement.
- c. *Directory assistance* shall mean an ancillary service of providing telephone number information, and/or address information.
- d. *Vertical service* shall mean an ancillary service that is offered in connection with one (1) 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.
- e. *Voice mail service* shall mean 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.

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

Billing address shall mean the mailing address of the service user where the service provider submits invoices or bills for payment by the service users.

City shall mean the City of Alameda.

City Manager shall mean the City Manager, or his or her authorized representative.

Gas shall mean natural or manufactured gas or any alternative hydrocarbon fuel, which may be substituted therefore.

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 there under.

Month shall mean a calendar month.

Non-utility service supplier shall mean:

- a. 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 not be limited to any publicly-owned electric utility, investor-owned utility,

cogenerator, distributed generation provider, municipal utility district, Federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

- b. An electric service provider (ESP), electricity broker, marketer, aggregator (including a community choice 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
- c. 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.

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.

Person shall mean, without limitation, any domestic, non-profit or foreign corporation; firm; association; syndicate; joint stock company; partnership of any kind; limited liability company; joint venture; club; trust: Massachusetts business or common law trust; estate; society; cooperative; receiver, trustee, guardian or other representative appointed by order of any court; any natural individual; joint power agency, municipal district or municipal corporation, other than the City.

Place of primary use shall mean the street address representative of where the customer’s use of the telecommunications or video service primarily occurs, which must be the residential street address or the primary business street address of the customer.

Post-paid telecommunication service shall mean 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.

Prepaid 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, and shall include “*prepaid mobile telephony services*” as defined in *Revenue and Taxation Code Section 42004(k)*.

Private telecommunication service shall mean 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).

Service address shall mean the residential street address or the business street address of the service user. For a telecommunications or video service user, “service address” means either:

- a. The location of the service user’s telecommunication or video equipment from which the communication originates or terminates, regardless of where the communication is billed or paid; or,
- b. If the location in paragraph a. of this definition is unknown (e.g., mobile telecommunications service or VoIP service), the service address shall mean the location of the service user’s place of primary use.

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.

Service supplier shall mean any person, including the City, who provides or sells telecommunication, video, electric, or gas service to a user of such services within the City. The term shall include any person required to collect, or self-collect under Section 3-59.8 hereof, and remit a tax as imposed by this Section 3-59, including its billing agent in the case of electric or gas suppliers.

Service user shall mean a person required to pay a tax imposed by this Section 3-59.

State shall mean the State of California.

Tax Administrator shall mean the Finance Director, or his or her authorized representative.

Telecommunications services shall mean the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used, and includes broadband service (*e.g.*, digital subscriber line (DSL), fiber optic, coaxial cable, and wireless broadband, including Wi-Fi, WiMAX, and Wireless MESH) to the extent federal and/or state law permits taxation of such broadband services, now or in the future. The term “telecommunications service” 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 service is referred to as voice over internet protocol (VoIP) service or is

classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data service that is functionally integrated with “telecommunication services.” Telecommunications services includes, but is 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; all forms of VoIP service; 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 prerecorded or live service).

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

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

Video service supplier means any person, company, or service which provides or sells video programming, or provides or sells the capability to receive video programming, including any communications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the City, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or communications. A “video service supplier” includes, but is not limited to, multichannel video programming distributors (as defined in 47 U.S.C.A. Section 522(13)); open video systems (OVS) suppliers; and suppliers of cable television; master antenna television; satellite master antenna television; multichannel multipoint distribution services (MMDS); video services using internet protocol [e.g., IP-TV, IP-Video and over-the-top TV (OTT), which provide, among other things, broadcasting and video on demand], direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video services (including two-way communications), whatever their technology.

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

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.

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

3-59.3 - Constitutional, Statutory, Senior and Low Income Exemptions.

- a. The taxes imposed by this Section 3-59 shall not apply to:
 1. Any person or service if imposition of such tax upon that person or service would be in violation of a Federal or State statute or the Constitution of the State of California, or the Constitution of the United States;
 2. The City, and the State of California and its subdivisions
- b. Alameda residents whose gross annual household income meets guidelines for low income designation as established, and as adjusted, by resolution of the City Council, or seniors who are 65 years old or older, are eligible for an exemption from two percent (2%) of the tax rates imposed by this Section 3-59.
- c. Any service user that is exempt from the tax (or a portion thereof) imposed by this Section 3-59 pursuant to subsection (a) or (b) of this Section shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a State or Federal agency or subdivision with a commonly recognized name. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in service suppliers so that the Tax Administrator can properly notify the new service supplier of the service user’s tax exempt status. A service user that fails to apply and obtain an exemption pursuant to this Section 3-59.3 shall not be entitled to a refund of a users tax collected and remitted to the Tax Administrator from such service user as a result of such noncompliance.

- d. The decision of the Tax Administrator regarding an exemption application may be appealed pursuant to Section 3-59.20 hereof. Filing an application with the Tax Administrator and appeal to the City Manager, or designee, pursuant to Section 3-59.20 hereof is a prerequisite to a suit thereon.
- e. The City Council may, by resolution, establish one or more classes of persons or one or more classes of utility service otherwise subject to payment of a tax imposed by this Section 3-59 and provide that such classes of persons or service shall be exempt, in whole or in part from such tax for a specified period of time.

3-59.4 - 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 seven and one-half (7.5%) percent of the charges made for such services and shall be collected from the service user by the telecommunication services supplier or its billing agent, or as otherwise provided by law. 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 primarily 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 section, sourcing rules for the taxation of other telecommunication services, including but not limited to post-paid telecommunication services, prepaid telecommunication services, and private telecommunication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation.
- c. The Tax Administrator may issue and disseminate to telecommunication service suppliers who are subject to the tax collection requirements of this section an administrative ruling identifying those telecommunication services, or charges therefore, that are subject to the tax of paragraph a. above. This administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this section, or increase an existing tax, except as allowed by *California Government Code Section 53750(h)(2)(A)*.

d. As used in this Section, the term “telecommunication services” shall include, but is not limited to, charges for: connection, reconnection, termination or early termination charges; 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; fees, charges or surcharges, which are mandated by any state or federal agency or 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.

e. To prevent actual multi-jurisdictional taxation of telecommunication services subject to tax under this section, any service user, upon proof to the Tax Administrator that the service user has previously paid the same tax in another state or 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.

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

3-59.5 - Video Users Tax.

a. There is hereby imposed a tax upon every person in the City using video services from a video provider. The tax imposed by this subsection shall be at the rate of seven and one-half (7.5%) percent of the charges made for such services, and shall be collected from the service user by the video service supplier or its billing agent. There is a rebuttable presumption that video services which are billed to a billing or service address in the City are used, in whole or in part, within the City’s boundaries, and such services are subject to taxation under this Article. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax.

b. As used in this section, the term “charges” shall include, but is not limited to, charges for the following:

- (1) charges, fees or surcharges, which are mandated by any state or federal agency or law; franchise fees and access fees (PEG); whether such charges, fees or surcharges are imposed on the service supplier or the customer);

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

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

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

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

3-59.6 - Electricity Users Tax.

a. There is hereby imposed a tax upon every person using electricity in the City. The tax imposed by this Section shall be at the rate of seven and one-half (7.5%) percent of the charges made for such electricity and for any supplemental services 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) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term “charges” shall include, but is not limited to, the following charges:

1. Energy charges;
2. Distribution or transmission charges;
3. Metering charges;
4. Standby, reserves, firming, voltage support, regulation, emergency, or other similar charges for supplemental services to self-generation service users;
5. Customer charges, late charges, service establishment or reestablishment charges, termination or early termination 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, in lieu franchise fees or General Fund transfers, municipal surcharges (*Public Utilities Code Section 6350 et seq.*), annual and monthly charges (including minimum 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, which are mandated by any state or federal agency or law, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.

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

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

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

f. The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this Section 3-59 shall be collected and remitted in the manner set forth in Section 3-59.8 hereof. All other taxes on charges for electricity imposed by this Section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that 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.

3-59.7 - Gas Users Tax.

a. There is hereby imposed a tax upon every person using gas in the City which is delivered through a pipeline distribution system or by mobile transport. The tax imposed by this section shall be at the rate of seven and one-half (7.5%) percent of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent, and shall apply to all uses of gas, including but not limited to, heating, electric generation by a non-public utility, and the use of gas as a component of a manufactured product.

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 providers cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;
4. Capacity or demand charges, late charges, service establishment or reestablishment charges, termination or early termination charges, marketing charges, administrative charges, transition charges, customer charges, minimum charges, franchise fees or in lieu franchise fees, municipal surcharges (*Public Utilities Code Section 6350 et seq.*), annual and monthly charges (including minimum monthly charges), and other charges, fees and surcharges which are necessary to or common for the receipt, use and enjoyment of gas service; and,
5. Charges, fees, or surcharges, which are mandated by any state or federal agency or law, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.

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

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

e. As used in this Section, the term “using gas” shall not be construed to include the mere receiving of such gas by a gas public utility or governmental agency at a point within the City for resale.

f. The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this Section 3-59 shall be collected and remitted in the manner set forth in Section 3-59.8 hereof. All other taxes on charges for gas imposed by this Section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that 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.

3-59.8 - Collection of Tax From Service Users Receiving Direct Purchase of Gas or Electricity.

a. Any service user subject to the tax imposed by Sections 3-59.6 or 3-59.7 hereof, which produces gas or electricity for self-use; which receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this Section 3-59; or which, for any other reason, is not having the full tax collected and remitted by its service supplier, a non-utility service supplier, or its billing agent on the use of gas or electricity in the City, including any related supplemental services, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days for 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 nonutility service supplier and provide, subject to audit, invoices, books of account, or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental

services, had been provided by the service supplier that is the primary supplier of gas or electricity within the City.

3-59.9 - Effect of Commingling Taxable Items with Nontaxable Items.

If any non-taxable service 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 is able to establish reasonable values for the portions of the combined charge that are nontaxable and taxable. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, the service supplier shall assign reasonable values for the taxable and non-taxable services. In assigning reasonable values for taxable and non-taxable services under this Section 3-6.911, the service supplier may use reasonable and verifiable standards such as: (i) the books and records kept in the regular course of business and in accordance with generally accepted accounting principles (not created and maintained for tax purposes); (ii) the market value of such taxable and non-taxable services when offered on a stand-alone basis by the supplier or its competitors; or (iii) other similar evidence of value. The service supplier has the burden of proving to the satisfaction of the Tax Administrator the reasonable valuation and proper apportionment of taxable and non-taxable charges under this Section.

3-59.10 - Substantial Nexus/Minimum Contacts.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Article, “substantial nexus,” “substantial economic presence,” 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) or video service used by a person with a service address in the City 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, affiliates or other representatives; solicits business in the City on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the City or distributed from a location within the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier’s ability to establish and maintain a market in the City for the provision of utility services that are subject to a tax under this Article (e.g., an affiliated person or independent contractor

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, including by directly or indirectly referring potential customers, whether by a link on an internet website or otherwise, to the service supplier).

3-59.11 - Duty to Collect; Procedures.

a. *Collection by Service Suppliers.* The duty of service suppliers to collect and remit the taxes imposed by the provisions of this Section 3-59 shall be performed as follows:

1. The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax that was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 3-59.15 shall apply.
2. The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this Section 3-59. Where a person receives more than one (1) billing, one (1) or more being for different periods than another, the duty to collect shall arise separately for each billing period.

b. *Filing Return and Payment.* Each person required by this Section 3-59 to remit a tax shall file a return with the Tax Administrator, on forms approved by the Tax Administrator, on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this Section 3-59. Returns are due immediately upon cessation of business for any reason. Pursuant to *Revenue and Tax Code Section 7284.6*, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information that is exempt from the disclosure provisions of the Public Records Act.

3-59.12 - Collection Penalties; Service Suppliers or Self-Collectors.

a. Taxes collected from a service user, or owed by a service user subject to Section 3-59.8 hereof, are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the

weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this Section shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on the following business day.

b. If the person required to collect and/or remit the utility users tax fails to collect the tax (by failing to properly assess the tax on one (1) or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, or, in the case of a service user that fails to properly self-collect and remit the tax under Section 3-59.8 hereof on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen (15%) percent of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of and 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first become delinquent, until paid.

c. The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes pursuant to the provisions of this Section 3-59 for fraud or gross negligence in reporting or remitting at the rate of fifteen (15%) percent of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

d. For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid.

e. Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates and/or penalty and interest provisions of this section to be consistent with any uniform standards or procedures that are mutually agreed upon by UUT public agencies, or otherwise legally established, to create a UUT central payment location or mechanism.

3-59.13 - Deficiency Determination and Assessment; Tax Application Errors.

a. The Tax Administrator may make a deficiency determination if he or she determines that any person required to pay or collect taxes pursuant to the provisions of this Section 3-59 has failed to pay, collect, and/or remit the proper amount of tax by improperly applying or failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3-59.13 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

b. The Tax Administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of seventy-five one-hundredths percent (0.75%)

per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) calendar days after the date of service of such notice, the person may send a request in writing to the Tax Administrator asking for a hearing on the matter.

c. If the person fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the City. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

d. At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to the person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3-59.19. Filing an application with the Tax Administrator and appeal to the City Manager, or designee, pursuant to Section 3-59.19 is a prerequisite to a suit thereon.

e. Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of seventy-five one-hundredths percent (0.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Section 3-59 shall commence from the date of delinquency as provided in this subsection (e).

f. All notices under this Section 3-59 may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

3-59.14 - Administrative Remedy; Non-paying Service Users.

a. Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the

best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this Section 3-59.14 from certain named service users for specific billing periods. Whenever the service user has failed to pay the amount of tax owed for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Section 3-59.14. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3-59.14 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

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

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

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

3-59.15 - Actions to Collect.

Any tax required to be paid by a service user under the provisions of this Section 3-59 shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the City under the provisions of this Section 3-59 shall be liable in an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this Section 3-59, along with any collection costs incurred by the City as a result of the person's noncompliance with this Section 3-59, including, but not limited to, reasonable attorney's fees. In the event that a service user or service supplier owing a tax under this Section 3-59 files bankruptcy, then such debt to the City shall be deemed an unsecured priority excise tax obligation under *11 U.S.C.A. Section 507(a)(8)(C)*. Service suppliers who seek to collect charges for service in bankruptcy proceedings shall also include in any such claim the amount of taxes due the City for those services, unless the Tax Administrator determines that such duty is in conflict with any federal or state law, rule, or regulation or that such action would be administratively impractical.

3-59.16 - Additional Powers and Duties of the Tax Administrator.

- a. The Tax Administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this Section 3-59.
- b. The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this Section 3-59 for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. The administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this Section 3-59, or increase an existing tax, except as allowed by *California Government Code Section 53750(h)(2)*. A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office. To the extent that the Tax Administrator determines that the tax imposed under this Section 3-59 shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of *Government Code Section 53750* or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of *Government Code Section 53750* and the City does not waive or abrogate its ability to impose the utility users tax in full as a result of promulgating administrative rulings or entering into agreements.
- c. Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this Section 3-59 and thereby; (1) conform to the billing procedures of a particular service supplier (or service user subject to Section 3-59.08 hereof) so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this Section 3-59; or, (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. Copies of each such agreement shall be on file in the Tax Administrator's office, and are voidable by the Tax Administrator or the City at any time.
- d. To ensure proper compliance with the requirements of this Section 3-59, the Tax Administrator may conduct an audit of any person required to collect and/or remit a tax pursuant to this Section 3-59. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period or review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 3-59.14 for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Section 3-59, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to be a rebuttable presumption of correctness.

e. Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Section 3-59 for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of three-quarters of one (3/4%) percent per month, prorated for any portion thereof.

f. The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this Section 3-59.

g. The Tax Administrator, with the written approval of the City Attorney, may compromise a claim pursuant to this Section 3-59 where the portion of the claim proposed to be released is equal to or less than fifteen thousand dollars (\$15,000.00); and, with the approval of the City Attorney and the City Council, may compromise such a claim where the portion proposed to be released is greater than fifteen thousand dollars (\$15,000.00).

h. Notwithstanding any provision in this Section 3-59 to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this Section 3-59 if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, or whether the person offers to voluntarily disclose its tax liability. The Tax Administrator may also participate with other utility users tax public agencies in conducting coordinated compliance reviews with the goal of achieving administrative efficiency and uniform tax application determinations, where possible. To encourage voluntary full disclosure and on-going cooperation on tax collection and remittance, the Tax Administrator, and his or her agents, may enter into agreements with the tax-collecting service providers and grant prospective only relief on any changes regarding the taxation of services or charges that were previously deemed by the service provider, in good faith and without gross negligence, to be non-taxable. In determining whether the non-collection was in good faith and without gross negligence, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, and whether the disclosure was voluntarily made by the service provider or its agent.

3-59.17 - Records.

a. It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this Section 3-59 to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax that such person may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at a reasonable time.

b. The Tax Administrator 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 Section 3-59, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the City on or before the due date, provided that such person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.

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

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

e. If any person subject to record-keeping under this Section 3-59 unreasonably denies the Tax Administrator, or the Tax Administrator's designated representative, access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, the Tax Administrator may impose a penalty of five hundred (\$500.00) dollars on such person for each day following: (i) the initial date that the person refuses to provide such access; or, (ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Section 3-59.

3-59.18 - Refunds/Credits.

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 Section 3-59, it may be refunded or credited as provided in this Section:

a. The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Section 3-59, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the Tax Administrator within one (1) 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. To the extent allowed by law, nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim under penalty of perjury as provided by this Section 3-59.19.

b. The submission of a written claim, which is acted upon by the City Council, shall be a prerequisite to a suit thereon. (*See Section 935 of the California Government Code.*) The Tax Administrator, or the City Council where the claim is in excess of fifteen thousand (\$15,000.00) dollars shall act upon the refund claim within the time period set forth in *Government Code Section 912.4*. If the City Council fails or refuses to act on a refund claim within the time prescribed by *Government Section 912.4*, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in *Government Code Section 912.4*. The Tax Administrator shall give notice of the action in a form that substantially complies with that set forth in *Government Code Section 913*.

c. Notwithstanding the notice provisions of subsection (a) of this Section 3-59.19, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this Section 3-59, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator, provided that, prior to taking such credit by the service supplier: (1) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; (2) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, (3) in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

3-59.19 - Appeals.

a. The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 3-59.18 hereof), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3-59.18 hereof), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section.

Compliance with this section shall be a prerequisite to a suit thereon. [See *Government Code Section 935(b)*.] To the extent allowed by law, nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

b. If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3-59.18 hereof), deficiency determination, assessment, or administrative ruling of the Tax Administrator, he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

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

d. Based upon the submission of such evidence and the review of the City's files, the independent hearing officer shall issue a written notice and order upholding, modifying, or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with *Code of Civil Procedure Section 1094.6*.

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

3-59.20 - No Injunction/Writ of Mandate.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this Section 3-59 of any tax or any amount of tax required to be collected and/or remitted.

3-59.21 - Remedies Cumulative.

All remedies and penalties prescribed by this Section 3-59 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 (1) or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Section 3-59.

3-59.22 - Notice of Changes to Ordinance.

If a tax under this Section 3-59 is added, repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of *Public Utilities Code Section 799*.

3-59.23 - Future Amendment to Cited Statute.

Unless specifically provided otherwise, any reference to a State or Federal statute in this Section 3-59 shall mean such statute as it may be amended from time to time. To the extent that the City's authorization to collect or impose any tax imposed under this Section 3-59 is expanded or limited as a result of an amendment or new enactment of a State or Federal law, no amendment or modification of this Section 3-59 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 Section 3-59.

3-59.24 - Rate Review and Audit of Tax Collection, Exemption, Remittance and Expenditure.

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

3-59.25 - No Increase in Tax Percentage or Change in Methodology Without Voter Approval; Amendment or Repeal.

This Section 3-59 of the Alameda Municipal Code may be repealed or amended by the City Council without a vote of the People. However, as required by *Chapter XIII C of the California Constitution*, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance, provided however, the following actions shall not constitute an increase of the rate of a tax:

- a. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of the tax;

- b. An 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 Ordinance;
- c. The establishment a class of persons that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Ordinance); and
- d. The collection of the tax imposed by this ordinance, even if the City had, for some period of time, failed to collect the tax.

SECTION 5. Execution.

The Mayor is hereby authorized to attest to the adoption of this Ordinance by signing where indicated below.

I hereby certify that the foregoing ordinance was PASSED, APPROVED and ADOPTED by the people of the City of Alameda voting on the 8th day of November, 2016.

MAYOR OF THE CITY OF ALAMEDA

ATTEST:

LARA WEISIGER, CITY CLERK

SECTION 6. Commencement of Collection of Tax.

Service providers shall begin to collect the tax imposed by this amended code as soon as feasible after the effective date of this code, but in no event later than permitted by *Section 799* of the *California Public Utilities Code*.

SECTION 7. Ratification of Prior Tax.

The People of the City of Alameda hereby ratify and approve the past collection of the Utility Users' Tax Section 3-59 of Division IX of the City of Alameda Municipal Code, as it existed prior to the effective date of this amended Ordinance.

SECTION 8. Conflicting Law.

If this initiative measure and another measure addressing utility taxes or transfers appear on the same ballot, and a majority of the voters vote in favor of both measures but this measure receives more votes than the other measure, this measure alone shall become valid, binding, and adopted in its entirety, and the other measure shall be null and void in its entirety. If a majority of the voters vote in favor of both measures but this measure receives fewer votes than the other measure, only those provisions of the other measure that are in direct and irreconcilable conflict with the provisions of this measure shall control, and all other provisions of this measure shall become valid, binding, and adopted. The voters expressly declare this to be their intent, regardless of any contrary language in any other ballot measure.

SECTION 9. Severability.

This initiative measure shall be interpreted and applied so as to be consistent with all federal, state, and local laws, rules, and regulations. If any provision of this Act or part thereof, or any application thereof, is for any reason held to be invalid or unconstitutional, the remaining sections and applications shall not be affected but shall remain in full force and effect, and to this end, the provisions of this initiative measure are severable.

SECTION 10. Effective Date.

This Ordinance shall be deemed adopted upon the date that the vote is declared by the City Council and shall go into effect ten (10) days after that date, as provided in section 9217 of the California Elections Code.

If the voters vote in favor of the charter amendment it shall be deemed to be ratified, but shall not take effect until accepted and filed by the Secretary of State pursuant to Section 34460.

* * * * *

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 5th day of July 2016, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the seal of said City this 6th day of July 2016.

Lara Weisiger, City Clerk
City of Alameda

Approved as to form:

Janet C. Kern, City Attorney
City of Alameda