

**MEASURE**  
**ARTESIA PUBLIC SAFETY, PARKS AND GENERAL CITY SERVICES**  
**ORDINANCE**

**AN ORDINANCE OF THE CITY OF ARTESIA ADOPTING A  
GENERAL PURPOSE UTILITY USER TAX AT A RATE OF 4.9%  
FOR CHARGES MADE FOR CERTAIN UTILITY SERVICES AND  
AMENDING THE ARTESIA MUNICIPAL CODE**

WHEREAS, over the last decade, the State has taken more than \$1.5 million dollars from Artesia to deal with its own budget deficit; and

WHEREAS, effective February 1, 2012, the State eliminated all redevelopment agencies in the state, including the Artesia Redevelopment Agency causing a halt to economic development activities and projects in Artesia; and

WHEREAS, this State takeaway means that approximately \$1.5 million in annual future revenues that the City has relied upon to fund various economic development and revitalization projects has been eliminated, putting into significant jeopardy projects that have been partially completed and which may require City funds to complete; and

WHEREAS, the City's general reserve fund is intended to protect the City in the event of a catastrophe and to provide the City with needed funds to handle unanticipated calamities; and

WHEREAS, contributions to the City's general reserve fund have not been sufficient to meet the City Council's budgetary goals and priorities; and

WHEREAS, between 2008 and 2010, the City cut approximately thirty percent (30%) of its workforce; and

WHEREAS, as a result of a significant reduction in the City's workforce, City staffing resources are insufficient to meet the community's desired level of City services, including rapid 9-1-1 police response, neighborhood patrols, crime and gang prevention services, and youth and senior programs, and to undertake important, vital and long-delayed improvements to the City's infrastructure, such as maintaining and repairing neighborhood streets, sidewalks and roads and fixing potholes; and

WHEREAS, the cost of the most recent contract with the Los Angeles County Sheriff's Department will rise 2.6 percent in Fiscal Year 2014-15; and

WHEREAS, the California Joint Powers Insurance Authority, the City's risk pool insurance provider, recently amended its funding formula, which has resulted in higher premium payments to the City and the City's payment of a large one-time payment to that entity; and

WHEREAS, in 2012, the Los Angeles Regional Water Quality Control Board adopted a new National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permit; and

WHEREAS, costs associated with implementing the myriad of monitoring, reporting and mitigation requirements specified under the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permit are expected to be substantial; and

WHEREAS, the City has incurred as much as \$4,781,131 in liability associated with on-going contributions to retired City employee medical, dental and other retirement benefits; and

WHEREAS, the City's 50-year-old Albert O. Little Community Center has not been upgraded, and the City's infrastructure, including public streets, sidewalks, and facilities, is in need of repairs and improvements; and

WHEREAS, City staff intends to identify additional solutions to further stabilize the City's long-term financial situation, protect community services and identify local funding for local needs that cannot be taken by the State; however, due to increasing costs associated with various liabilities and mandatory expenditures, the City may be required to make additional cuts to vital City services such as public safety, street maintenance and public recreational services; and

WHEREAS, such cuts would have a negative impact upon public safety and the character of the community in Artesia; and

WHEREAS, Artesia needs to have a protected, reliable source of local revenue to prevent severe cuts to vital community services as we cannot rely on Sacramento; and

WHEREAS, the City needs an upgraded community center to house programs for seniors and teens, keeping youth engaged and out of trouble; funds as also needed to repair and repave streets, and increase public safety and 9-1-1 services; and

WHEREAS, the People now find it necessary to establish a tax on utility usage at a rate of 4.9% for charges made for certain utility services so as to provide additional and needed revenue to fund an upgraded community center housing senior and teen programs, maintain and/or improve the City's parks and after-school recreational programs, make repairs to the City's sidewalks, alleys, streets and roads, and provide for enhanced 9-1-1 and public safety services, including crime and gang prevention and police patrols, and to provide general funds for other services provided to the community; and

WHEREAS, this Measure will continue our City's fiscally prudent management approach by requiring independent citizens' oversight, mandatory financial audits, and yearly reports to the community to ensure that all funds are spent as promised for general purposes; and

WHEREAS, this Measure will give Artesia local control over local funds for local needs where no funds can be taken by the State; and

WHEREAS, the People further declare that this tax shall be levied for general purposes and shall be levied only if approved by a majority of the voters voting on this Ordinance at the November 4, 2014 Special Municipal Election.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ARTESIA DO ORDAIN AS FOLLOWS:

**SECTION 1.** The foregoing recitals are true and correct.

**SECTION 2.** The official title of this Ordinance shall be the "Artesia Infrastructure and Services Ordinance."

**SECTION 3.** Article 4 (Utility User Tax) of Chapter 5 (Taxes) of Title 3 (Finance) of the Artesia Municipal Code is hereby amended to read as follows:

**"Article 4. Utility User Tax**

**3-5.401 Title.**

This article shall be known as the "Utility User Tax Ordinance of the City of Artesia."

**3-5.402 Purpose.**

This article is enacted solely to raise revenue for the general governmental purposes of the City of Artesia. 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.

**3-5.403 Definitions.**

Whenever used in this article, the following words and phrases shall be construed as defined in this section.

(a) *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:

(1) *Conference bridging service* shall mean an ancillary telecommunication service that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

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

(3) *Directory assistance* shall mean an ancillary telecommunication service of providing telephone number information and/or address information.

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

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

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

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

(d) *City* shall mean the City of Artesia.

(e) Electrical corporation shall have the meaning and usage as set forth in Public Utilities Code Section 218, as said section existed on January 1, 1969, and shall be construed to include any municipality or franchised agency engaged in the selling or supplying of electrical power to a service user.

(f) *Finance Director* shall mean the finance director of the City.

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

(h) *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. § 124) and the regulations thereunder.

(i) *Month* shall mean a calendar month.

(j) *Non-utility service supplier* shall mean:

(1) A service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include, without limitation, any publicly owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

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

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

(k) *Paging service* shall mean 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.

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

(m) *Place of primary use* shall mean the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

(n) *Post-paid telecommunication service* shall mean the telecommunications 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 that is not associated with the origination or termination of the telecommunications service.

(o) *Prepaid telecommunication service* shall mean the right to access telecommunications services that 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.

(p) *Private telecommunication service* shall mean a telecommunications 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).

(q) *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:

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

(2) If the location in Subsection (q)(1) is unknown (e.g., mobile telecommunications service or VoIP service), the service address means the location of the service user's place of primary use; or

(3) For prepaid telecommunication service, "service address" shall mean 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).

(r) *Service supplier* shall mean any entity or person, including the City, which provides utility service to a user of such service within the City. The term shall include any person required to collect, or self-collect under Section 3-5.407, and remit a tax as imposed by this article, including its billing agent in the case of electric and gas suppliers.

(s) *Service user* shall mean a person required to pay a tax imposed under the provisions of this article.

(t) *State* shall mean the State of California.

(u) *Tax Administrator* shall mean the Finance Director, or his or her designee.

(v) *Telecommunications service* 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, whether or not such information is transmitted through interconnected service with the public switched network, whatever the technology used, whether such transmission, conveyance or routing occurs, without limitation, by analog, digital, broadband, satellite, wire, cable, coaxial cable, fiber-optic, light wave, laser, microwave, wireless, radio wave (including, but not limited to, cellular service, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service – see 47 U.S.C. § 332(c)(7)(C)(i) – regardless of radio spectrum used), switching facilities, satellite or any other technology now existing or developed after the adoption of the ordinance codified in this article.. Telecommunications services include such transmission, conveyance or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing

without regard to whether such services are referred to as voice over Internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that are functionally integrated with telecommunications services. Telecommunications services include, without limitation, the following services, regardless of the manner or basis on which such services are calculated or billed: connection, reconnection, termination, movement or change of telecommunications services; late payment fees; detailed billing; voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory, administrative and other cost recovery charges and surcharges; local number portability charges; central office and custom calling features (including, without limitation, call waiting, call forwarding, caller identification and three-way calling); local number portability; text and instant messaging; ancillary telecommunication services; intrastate, interstate, and international telecommunications services; mobile telecommunications services; prepaid telecommunication services; post-paid telecommunication services; private telecommunication services; paging services; 800 services (or any other toll-free numbers designated by the Federal Communications Commission); 900 services (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to prerecorded or live service); and value-added non-voice data service. Telecommunications services shall not include digital downloads that are not ancillary telecommunication services, such as music, ringtones, games and similar digital products.

(w) *Video programming* shall mean those programming services commonly provided to subscribers by a video service supplier including, without limitation, 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.

(x) *Video services* shall mean video programming and any and all services related to the providing, recording, delivering, use or enjoyment of video programming (including origination programming and programming using Internet protocol, e.g., IP-TV and IP-video) 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, telecommunications services, or interactive communication services that are functionally integrated with video services.

(y) *Video service supplier* shall mean any person, company or service that 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, without limitation, multichannel video programming distributors (as defined in 47 U.S.C. § 522(13)); open video systems (OVS) suppliers; and suppliers of cable

television, master antenna television, and satellite master antenna television; multichannel multipoint distribution services (MMDS); video services using Internet protocol (e.g., IP-TV and IP-video, which provide, among other things, broadcasting and video on demand); suppliers of direct broadcast satellite, to the extent federal law permits taxation of its video services, now or in the future; over-the-top content (OTT) suppliers; and other suppliers of video services (including two-way communications), whatever their technology.

(z) *VoIP* (voice over Internet protocol) shall mean the digital process of making and receiving real-time voice transmissions over any Internet protocol network.

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

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

### **3-5.404 Telecommunications User Tax.**

(a) There is hereby imposed a tax upon every person in the City using telecommunications services, to the extent permitted by state and federal law. The tax imposed by this section shall be at the rate of 4.9% of the charges made for such services and shall be collected from the service user by the telecommunications services supplier or its billing agent, or as otherwise provided by law. The amount of the tax imposed by this section shall be increased annually as of January 1<sup>st</sup> of each year, commencing January 1, 2016, by the percentage change from October 1<sup>st</sup> through September 30<sup>th</sup> of the Consumer Price Index (CPI) for all urban consumers in the Los Angeles, Riverside and Orange County statistical areas, or successor index, as published by the United States Government Bureau of Labor Statistics. All changes shall be rounded to the nearest dollar, with calculations ending in fifty (\$0.50) cents being rounded down. There is a rebuttable presumption that telecommunications 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 telecommunications services sold within the City are used, in whole or in part, within the City and are therefore subject to taxation under this section. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunications 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. § 116 *et seq.*). The Tax Administrator may issue and disseminate to telecommunications service suppliers, which are subject to the tax collection requirements of this article, sourcing rules for the taxation of other telecommunications services, including, without limitation, post-paid telecommunication services, prepaid telecommunication services, VoIP and private communication services; provided, that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation.

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

(d) To prevent actual multi-jurisdictional taxation of telecommunications 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 telecommunications 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.

(e) The tax on telecommunications 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 (20<sup>th</sup>) day of the following month.

### **3-5.405 Electricity User 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 4.9% 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 amount of the tax imposed by this section shall be increased annually as of January 1<sup>st</sup> of each year, commencing January 1, 2016, by the percentage change from October 1<sup>st</sup> through September 30<sup>th</sup> of the Consumer Price Index (CPI) for all urban consumers in the Los Angeles, Riverside and Orange County statistical areas, or successor index, as published by the United States Government Bureau of Labor Statistics. All changes shall be rounded to the nearest dollar, with calculations ending in fifty (\$0.50) cents being rounded down. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent. Notwithstanding the foregoing, the tax shall not apply to any person who qualifies, and has been accepted, for the California Alternate Rates for Energy (CARE) program pursuant to California Public Utilities Code Sections 327 and 739.1 *et seq.*, as it may be amended from time to time. In the event that

the CARE program is repealed or otherwise ceases to exist in a substantially similar form, the exemption granted under this subsection shall automatically terminate.

(b) As used in this section, the term "charges" shall apply to all services, components and items that are: (1) necessary for or common to the receipt, use or enjoyment of electric service; or (2) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term "charges" shall include, without limitation, the following charges:

(1) Energy charges;

(2) Distribution or transmission charges;

(3) Metering charges;

(4) Standby, reserves, firming, ramping, voltage support, regulation, emergency or other similar charges for supplemental services to self-generation service users;

(5) Customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees or surcharges that are necessary for or common to the receipt, use or enjoyment of electric service;

(6) Charges, fees or surcharges for electricity services or programs that are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer and

(7) 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.

(c) 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, commercial and industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items that are: (1) necessary for or common to the receipt, use or enjoyment of electric service; or (2) currently are or historically have been included in a single or bundled rate for electric service by a local

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

(d) As used in this section, the term "using electricity" shall not include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the City for resale.

(e) The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this article shall be collected and remitted in the manner set forth in Section 3-5.407. 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 (20<sup>th</sup>) 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 (20<sup>th</sup>) day of the following month; provided, that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) calendar days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

### **3-5.406 Gas User Tax.**

(a) There is hereby imposed a tax upon every person using gas in the City, which is transported and delivered through a pipeline or by mobile transport. The tax imposed by this section shall be at the rate of 4.9% of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The amount of the tax imposed by this section shall be increase annually as of January 1<sup>st</sup> of each year, commencing January 1, 2016, by the percentage change from October 1<sup>st</sup> through September 30<sup>th</sup> of the Consumer Price Index (CPI) for all urban consumers in the Los Angeles, Riverside and Orange County statistical areas, or successor index, as published by the United States Government Bureau of Labor Statistics. All changes shall be rounded to the nearest dollar, with calculations ending in fifty (\$0.50) cents being rounded down. 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, without limitation, heating, electricity generation and the use of gas as a component of a manufactured product. Notwithstanding the foregoing, the tax shall not apply to any person who qualifies, and has been accepted, for the California Alternate Rates for Energy (CARE) program pursuant to California Public Utilities Code Sections 327 and 739.1 *et seq.*, and as it may be amended from time to time. In the event that the CARE program is repealed or otherwise ceases to exist in a substantially similar form, the exemption granted under this subsection shall automatically terminate.

(b) As used in this section, the term "charges" shall apply to all services, components and items for gas service that are: (1) necessary for or common to the receipt, use or enjoyment of gas service; or (2) currently are or historically have been

included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, without limitation, the following charges:

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

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

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

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

(5) Charges, fees or surcharges for gas services or programs that are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer; and

(6) 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.

(c) 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, commercial and 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 that are: (1) necessary for or common to the receipt, use or enjoyment of gas service; or (2) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of Subsection (a) of this section.

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

(e) The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this article shall be collected and remitted in the manner set forth in Section 3-5.407. All other taxes on charges for gas imposed by this article 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 (20<sup>th</sup>) 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 (20<sup>th</sup>) day of the following month; provided, that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) calendar days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

**3-5.407 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity.**

(a) Any service user subject to the tax imposed by Section 3-5.405 or by Section 3-5.406 of this article, 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 article; 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) calendar days of such use, based on the charges for, or value of, such gas or electricity, or supplemental services, as provided in Subsection (b) of this section. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) calendar days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity; provided, that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) calendar days following each calendar quarter. The credit, if approved by the Tax Administrator in writing, may be applied against any subsequent tax bill that becomes due.

(b) The Tax Administrator may require the service user to identify its non-utility service supplier, and otherwise provide, subject to audit, invoices, books of account or other satisfactory evidence, documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax

Administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the City. Rate schedules for this purpose shall be available from the City.

### **3-5.408 Water User Tax.**

(a) There is imposed a tax upon every person using water in the City that is transported and delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of 4.9% of the charges made for such water. The amount of the tax imposed by this section shall be increased annually as of January 1<sup>st</sup> of each year, commencing January 1, 2016, by the percentage change from October 1<sup>st</sup> through September 30<sup>th</sup> of the Consumer Price Index (CPI) for all urban consumers in the Los Angeles, Riverside and Orange County statistical areas, or successor index, as published by the United States Government Bureau of Labor Statistics. All changes shall be rounded to the nearest dollar, with calculations ending in fifty (\$0.50) cents being rounded down.

(b) As used in this section, the term "charges" shall apply to all services, components and items that are: (1) necessary for or common to the receipt, use or enjoyment of water service; or (2) currently are or historically have been included in a single or bundled rate for water service by a local distribution company to a class of retail customers. The term "charges" shall include, without limitation, the following charges:

- (1) Water commodity charges (potable and nonpotable);
- (2) Distribution or transmission charges;
- (3) Metering charges;
- (4) Customer charges;
- (5) Fire protection services;
- (6) Late charges;
- (7) Service establishment or reestablishment charges;
- (8) Franchise fees;
- (9) Franchise surcharges;
- (10) Annual and monthly charges;
- (11) Other charges, fees and surcharges that are necessary for or common to the receipt, use or enjoyment of water service;

(12) Charges, fees or surcharges for water services or programs, which are mandated by a water district or a state or federal agency, whether or not such charges, fees or surcharges appear on a bundled or line item basis on the customer billing; and

(13) The value of any other services, credits, property of every kind or nature or other consideration provided by the service user in exchange for the water services.

(c) The Tax Administrator, from time to time, may survey the water service suppliers in the City to identify the various unbundled billing components of water retail service that they commonly provide to residential, commercial and industrial customers in the City, and the charges therefor, including those items that are mandated by a water district or a state or federal agency as a condition of providing such water service. The Tax Administrator, thereafter, may issue and disseminate to such water service suppliers an administrative ruling identifying those components and items that are: (1) necessary for or common to the receipt, use or enjoyment of water service; or (2) currently are or historically have been included in a single or bundled rate for water service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of Subsection (a) of this section.

(d) There shall be excluded from the base on which the tax imposed in this section is computed charges made for water that is to be resold and delivered through a pipeline distribution system; and charges made by a municipal water department, public utility or a city or municipal water district for water used and consumed by such department, public utility or water district in the conduct of the business of such department, utility or district.

(e) The tax on water service imposed by this section shall be collected from the service user by the water 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 (20<sup>th</sup>) day of the following month.

### **3-5.409 Video User Tax.**

(a) There is hereby imposed a tax upon every person in the City using video services. The tax imposed by this section shall be at the rate of 4.9% of the charges made for such services and shall be collected from the service user by the video service supplier or its billing agent. The amount of the tax imposed by this section shall be increased annually as of January 1<sup>st</sup> of each year, commencing January 1, 2016, by the percentage change from October 1<sup>st</sup> through September 30<sup>th</sup> of the Consumer Price Index (CPI) for all urban consumers in the Los Angeles, Riverside and Orange County statistical areas, or successor index, as published by the United States Government Bureau of Labor Statistics. All changes shall be rounded to the nearest dollar, with calculations ending in fifty (\$0.50) cents being rounded down. 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, without limitation, charges for the following:

(1) Regulatory fees and surcharges, franchise fees and public, educational and government access fees (PEG);

(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 and reconnection fees;

(5) Video programming and video services;

(6) Ancillary video 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);

(8) Service calls, service protection plans, name changes, changes of services and special services; and

(9) The value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the video services.

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

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

### **3-5.410 Refuse and Trash Collection User Tax.**

(a) There is hereby imposed a tax upon every person in the City using refuse and trash collection services within the City. The tax imposed by this section shall be at the rate of 4.9% of the charges made for such services. The amount of the tax imposed by this section shall be increased annually as of January 1<sup>st</sup> of each year, commencing January 1, 2016, by the percentage change from October 1<sup>st</sup> through September 30<sup>th</sup> of the Consumer Price Index (CPI) for all urban consumers in the Los Angeles, Riverside and Orange County statistical areas, or successor index, as published by the United States Government Bureau of Labor Statistics. All changes shall be rounded to the nearest dollar, with calculations ending in fifty (\$0.50) cents being rounded down.

(b) As used in this section, the term "charges" shall include, without limitation, charges for the following:

(1) Customer charges, late charges, service establishment or reestablishment charges, franchise fees, franchise surcharges, annual and monthly charges and other charges, fees and surcharges that are necessary for or common to the receipt, use or enjoyment of refuse and trash collection service;

(2) Charges, fees or surcharges for refuse and trash services or programs, which are mandated by a state or federal agency, whether or not such charges, fees or surcharges appear on a bundled or line item basis on the customer billing; and

(3) 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 refuse and trash services.

(c) The tax imposed by this section shall be collected from the service user by the refuse and trash collection 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 (20<sup>th</sup>) 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 (20<sup>th</sup>) day of the following month; provided, that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) calendar days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

### **3-5.411 Constitutional and Statutory Exemptions.**

(a) Nothing in this article shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such person or service would be in violation of a federal or state statute, the Constitution of the United States or the Constitution of the State.

(b) Any service user that is exempt from the tax imposed by this article pursuant to Subsection (a) of this section shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a

service user that is a state or federal agency or subdivision with a commonly recognized name for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all 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 comply with this article shall not be entitled to a refund of a utility user tax collected and remitted to the Tax Administrator from such service user as a result of such noncompliance. The decision of the Tax Administrator may be appealed pursuant to Section 3-5.422. Filing an application with the Tax Administrator and appeal to the City Manager, or designee, pursuant to Section 3-5.422 is a prerequisite to a suit thereon.

**3-5.412 Bundling Taxable Items.**

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

**3-5.413 Substantial Nexus/Minimum Contact.**

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this article, "substantial nexus," "substantial economic presence," and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility user 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 telecommunications service (including VoIP) used by a person with a service address in the City, which service is capable of terminating a call to another person on the general telephone network, shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this article. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include, without limitation, 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 with the City or distributed from a location with the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of utility services that are subject to a tax under this article (e.g., an affiliated person engaging in activities in the City that inure to the benefit of the service supplier in its development or maintenance of a market for its services in the City).

### **3-5.414 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 article 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 3-5.416 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 article. Where a service user 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 article to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator, on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected and remitted in accordance with this article. 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.

### **3-5.415 Collection Penalties—Service Suppliers.**

(a) Taxes collected from a service user, or owed by a service user subject to Section 3-5.407, 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 article 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 3-5.407 on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen percent (15%) of the total tax that is delinquent or deficient in the remittance, and shall pay 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 on which the remittance first became delinquent or deficient, 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 article for fraud or gross negligence in reporting or remitting at the rate of fifteen percent (15%) of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

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

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

### **3-5.416 Deficiency Determination and Assessment—Tax Application Errors.**

(a) The Tax Administrator shall make a deficiency determination if he or she determines that any person required to pay or collect taxes pursuant to the provisions of this article has failed to pay, collect and/or remit the proper amount of tax by improperly or failing to apply the tax to one (1) or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute proceedings under this section 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 and 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 request in writing to the Tax Administrator 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) calendar days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

(d) At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3-5.422. Filing an application with the Tax Administrator and appeal to the City Manager, or designee, pursuant to Section 3-5.422 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 (30<sup>th</sup>) 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 article shall commence from the date of delinquency as provided in this Subsection (e).

(f) All notices under this article may be sent by regular mail, postage prepaid, and shall be deemed received on the third (3<sup>rd</sup>) calendar day following the date of mailing, as established by a proof of mailing.

### **3-5.417 Administrative Remedy—Nonpaying Service Users.**

(a) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to

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

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

(c) If the service user fails to remit the tax to the Tax Administrator within fifteen (15) calendar days from the date of receipt of the notice from the Tax Administrator, the service user shall pay, in addition to the tax owed, a delinquency penalty in the sum of twenty-five percent (25%) of the total tax that is owed, but not less than Five Dollars (\$5).

### **3-5.418 Actions to Collect.**

Any tax required to be paid by a service user under the provisions of this article shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user that 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 article shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this article, along with any collection costs incurred by the City as a result of the person's noncompliance with this article, including, without limitation, reasonable attorneys' fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under 11 U.S.C. 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 to 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.

### **3-5.419 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 article.

(b) The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this article 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 article, 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 article 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 user 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 article and thereby: (1) conform to the billing procedures of a particular service supplier so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this article; or (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and is voidable by the Tax Administrator or the City at any time.

(d) The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this article, of any person required to collect and/or remit a tax pursuant to this article. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years 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 3-5.416 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 article, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

(e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this article for a period of not to exceed forty-five (45) calendar days; provided, that the time for filing the required statement has not already passed when the request is received.

(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 article.

(g) Notwithstanding any provision in this article 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 Article 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 user 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 ongoing cooperation on annual compliance reviews, the Tax Administrator, and its agents, may enter into agreements with the tax collecting service providers and grant prospective-only effect 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 may 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.

### **3-5.420 Records.**

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

(b) The City 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 article, 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, are 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 article unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of Five Hundred Dollars (\$500) on such person for each day following: (1) the initial date that the person refuses to provide such access; or (2) 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 article.

### **3-5.421 Refunds.**

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this article from a person or service supplier, it may be refunded as provided in this section as follows:

(a) *Written Claim for Refund.* 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 article from a person or service supplier; provided, that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor or administrator has submitted a written claim to the Tax Administrator within one (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.

(b) *Compliance with Claims Act.* The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon. Any action brought against the City pursuant to this article shall be subject to the provisions of Government Code Sections 945.6 and 946. The Tax Administrator, or the City Council where the claim is in excess of Five Thousand Dollars (\$5,000), shall act upon the refund claim within the time period set forth in Government Code Section 912.4. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the time prescribed by Government Code Section 912.4, the claim shall be deemed to have been

rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in Government Code Section 912.4. The Tax Administrator shall give notice of the action in a form, which substantially complies with that set forth in Government Code Section 913.

(c) *Refunds to Service Suppliers.* Notwithstanding the notice provisions of Subsection (a), 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 article, 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: (1) such credit is claimed in a return dated no later than one (1) 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 have 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.

### **3-5.422 Appeals.**

(a) The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 3-5.421), 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 3-5.421), 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 Cal. Gov. Code, § 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 3-5.421), deficiency determination, assessment or administrative ruling of the Tax Administrator, he or she may appeal to the City Manager, or designee, by filing a notice of appeal with the City Clerk within fourteen (14) calendar days of the date of the decision, deficiency determination, assessment or administrative ruling of the Tax Administrator that 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) calendar days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

(d) Based upon the submission of such evidence and the review of the City's files, the hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) calendar 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) calendar 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.

**3-5.423 No Injunction—Writ of Mandate.**

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

**3-5.424 Remedies Cumulative.**

All remedies and penalties prescribed by this article or which are available under any other provision of law or equity, including, without limitation, the False Claims Act (Cal. Gov. Code, § 12650 *et seq.*) and the California Unfair Practices Act (Cal. Bus. & Prof. Code, § 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 article.

**3-5.425 Notice of Changes to Chapter.**

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

**3-5.426 No Increase in Tax Percentage or Change in Methodology without Voter Approval—Amendment or Repeal.**

This article may be amended by the City Council without a vote of the people. However, as required by Article 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 article or extend the tax to a service that is not included in this article. The people of the City of Artesia affirm that 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 article, 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 article;

(c) The establishment of 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 article);

(d) The collection of the tax imposed by this article, even if the City had, for some period of time, failed to collect the tax; and

(e) The deletion, restoration, relocation, renumbering, amendment or alteration of the provisions of this article and any provision of the Code affected by this article, provided that such action does not establish any new tax or increase any existing tax.

#### **3-5.427 Collection of Tax by Service Providers.**

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

#### **3-5.428 Effect of State and Federal Reference/Authorization.**

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

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

**SECTION 4. Independent Audit.** By no later than December 31<sup>st</sup> of each year, the City shall cause a qualified independent third party auditor to complete an "Artesia Utility User Tax Report." The audit shall employ reasonable, cost-effective steps to

assure compliance, including the use of sampling audits. The Artesia Utility User Tax Report shall review whether the tax owed under Article 4 of Chapter 5 of Title 3 of the Artesia Municipal Code have been properly applied, exempted, collected, remitted, managed and expended in accordance with the requirements of this Ordinance. The audit shall not be required of tax remitters where the cost of the audit may exceed the tax revenues to be reviewed.

**SECTION 5. Citizens Oversight Committee.** There shall be a five-person committee of members of the public to review and report on the revenue and expenditure of funds from the tax adopted by this Ordinance. Within ninety (90) days of the effective date of this Ordinance, the City Council shall adopt a resolution establishing the composition of the committee and defining the scope of its responsibilities. Also within ninety (90) days of the effective date of this Ordinance, the City Council shall appoint at least a quorum of the members of the committee; the Council shall complete the appointment of members of the committee by the end of fiscal year 2014-2015.

**SECTION 6. Amendment.** Notwithstanding California Elections Code Section 9217, without a vote of the People of the City of Artesia, the City Council of the City of Artesia may do any and all of the following: (i) reduce any rates; (ii) increase any rates if it has previously been reduced below such rate; (iii) adjust the rates based on the annual adjustment factor permitted by Sections 3-5.404(a), 3-5.405(a), 3-5.406(a), 3-5.408(a), 3-5.409(a) and 3-5.410(a); (iv) establish of 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 Article 4 of Chapter 5 of Title 3 of the Artesia Municipal Code). In no event shall the City Council of the City of Artesia increase any rates in excess of those rates specified in this Measure without approval by a majority of the voters voting in an election on the increase.

**SECTION 7. Additional Authority Granted to the Artesia City Council.** The City Council of the City Artesia may delete, restore, relocate, renumber, amend or alter any of the provisions of this Ordinance and any provision of the Artesia Municipal Code affected by this Ordinance, provided that such action does not establish any new tax or increase any existing tax.

**SECTION 8. Type of Tax, Rate of Tax, and Method of Collection.** The type of tax to be established is the utility user tax. The rates of taxes are as specified in this Ordinance. The method of collection shall be as specified by Article 4 (Utility User Tax) of Chapter 5 (Taxes) of Title 3 (Finance) of the Artesia Municipal Code.

**SECTION 9. Additional Findings, Including Fiscal Emergency Determination.** The People of the City of Artesia do hereby find as follows:

A. On June 11, 2012, the City Council of the City of Artesia adopted Resolution No. 2345 by unanimous vote declaring the existence of a fiscal emergency. On April 14, 2014, the City Council of the City of Artesia adopted Resolution No. 14-2418 by unanimous vote declaring the continued existence of a fiscal emergency in the City of Artesia. By the adoption of these Resolutions, the City Council satisfied a

requirement in the law that allows this Measure to be placed on the ballot for voters to consider at an election other than one at which council members are elected.

B. The revenue raised by the establishment of the utility user tax shall be used for general governmental purposes and, as such, requires a majority vote of the electorate voting in an election in favor of the tax.

C. The general tax affected by this Ordinance is the utility user tax. The tax shall be collected in accordance with the method set forth in the Artesia Municipal Code.

**SECTION 10.** Intent. In enacting this Ordinance, the People of the City of Artesia do intend as follows:

A. Section 3 of this Ordinance shall establish the rate of various utility user taxes.

B. Section 6 of this Ordinance shall allow the Artesia City Council to do the following without voter approval: (i) reduce any rates; (ii) increase any rates if it has previously been reduced below such rate; (iii) adjust the rates based on the annual adjustment factor permitted by Sections 3-5.404(a), 3-5.405(a), 3-5.406(a), 3-5.408(a), 3-5.409(a) and 3-5.410(a); or (iv) establish of 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 Article 4 of Chapter 5 of Title 3 of the Artesia Municipal Code). In no event shall the City Council of the City of Artesia increase any rates in excess of those rates specified in this Measure, excepting adjustments made pursuant to Sections 3-5.404(a), 3-5.405(a), 3-5.406(a), 3-5.408(a), 3-5.409(a) and 3-5.410(a), without approval by a majority of the voters voting in an election on the increase.

**SECTION 11.** Limitation of Actions. The validity of this Ordinance or of any tax levied pursuant to this Ordinance shall not be contested in any action or proceeding or defense unless such action or proceeding or defense shall have been brought or raised in a court of competent jurisdiction within sixty (60) calendar days from the date of the adoption of this Ordinance. Unless an action or proceeding is commenced or such defense raised within said period, this Ordinance codified and any tax levied pursuant to this Ordinance shall be held valid and in every respect legal and incontestable.

**SECTION 12.** Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The People of the City of Artesia hereby declare that they would have adopted each section, subsection, sentence, clause, phrase or portion of this Ordinance irrespective of the fact that one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unenforceable.

**SECTION 13.** Effective Date. This Ordinance, if approved by a majority of the electorate of the City of Artesia at the Special Municipal Election of November 4,

2014, shall be considered adopted immediately upon the declaration of the results of that election by the City Council of the City of Artesia, and shall be enforceable ten (10) days thereafter.

**SECTION 14.**      Execution. The Mayor is hereby authorized to attest to the adoption of this Ordinance by the voters of the City by signing where indicated below.

I hereby certify that the foregoing ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Artesia voting on the 4<sup>th</sup> day of November, 2014.

\_\_\_\_\_  
TONY LIMA, MAYOR

ATTEST:

\_\_\_\_\_  
GLORIA CONSIDINE, CITY CLERK/CITY TREASURER