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

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

"City" shall mean the City of Sebastopol.

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

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

"Mobile telecommunications service" shall mean commercial mobile radio service, as defined in 47 CFR Section 20.3 and as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations thereunder.

"Month" shall mean a calendar month.

"Nonutility service supplier" shall mean:

1. A service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include but not be limited to any publicly owned electric utility, investor owned utility, cogenerator, distributed generation provider, exempt wholesale generator (15 U.S.C. Section 79z-5a), municipal utility district, Federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

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

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.

"Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

"Person" shall mean, without limitation, any domestic, nonprofit or foreign corporation; firm; association; syndicate; joint stock company; partnership of any kind; limited liability company; joint venture; club; trust: Massachusetts business or common law trust; estate; society; cooperative; receiver, trustee, guardian or other

customer); local number portability charges; and text and instant messaging. “Telecommunications services” shall not include digital downloads that are not “ancillary telecommunications services,” such as music, ringtones, games, and similar digital products.

E. 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.

F. 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 month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth day of the following month. (Ord. 1072 § 1, 2014)

3.10.050 Video users tax.

A. There is hereby imposed a tax upon every person in the City using video services from a video provider. The tax imposed by this section shall be at the rate of 3.75 percent of the charges made for such services, and shall be collected from the service user by the video service supplier or its billing agent. There is a rebuttable presumption that video services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City’s boundaries, and such services are subject to taxation under this chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax.

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

1. Regulatory fees and surcharges, franchise fees and access fees (PEG) (whether such charges or surcharges are imposed on the service supplier or the customer);

2. Initial installation of equipment necessary for provision and receipt of video services;

3. Late fees, collection fees, bad debt recoveries, and returned check fees;

4. Activation fees, reactivation fees; termination or early termination charges; and reconnection fees;

5. Video programming and video services;

6. Ancillary video programming services (e.g., electronic program guide services, search functions, recording functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of the video services);

7. Equipment leases (e.g., remote, set box, recording and/or search devices; converters); and

8. Service calls, service protection plans, name changes, changes of services, and special services.

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

D. The Tax Administrator may issue and disseminate to video service suppliers, which are subject to the tax collection requirements of this chapter, 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.

E. The tax imposed by this section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video service (e.g., an apartment owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of the video service. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth day of the following month. (Ord. 1072 § 1, 2014)

3.10.060 Electricity users tax.

A. There is hereby imposed a tax upon every person using electricity in the City. The tax imposed by this section shall be at the rate of 3.75 percent of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or nonutility service supplier to a service user. The tax shall be collected from the service user by the service supplier or nonutility service supplier, or its billing agent.

B. As used in this section, the term “charges” shall apply to all services, components and items that are: (1) necessary or common to the receipt, use and enjoyment of electric service; or (2) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term “charges” shall include, but is not limited to, the following charges:

1. Energy charges;

2. Distribution or transmission charges;

3. Metering charges;

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

5. Customer charges, late charges, service establishment or reestablishment charges, termination or early termination charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC),

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. (Ord. 1072 § 1, 2014)

3.10.070 Gas users tax.

A. There is hereby imposed a tax upon every person using gas in the City, which is delivered through a pipeline distribution system or by mobile transport. The tax imposed by this section shall be at the rate of 3.75 percent of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The tax shall be collected from the service user by the service supplier or nonutility service supplier, or its billing agent, and shall apply to all uses of gas, including, but not limited to, heating, electric generation by a nonpublic utility, and the use of gas as a component of a manufactured product.

B. As used in this section, the term "charges" shall apply to all services, components and items for gas service that are: (1) necessary or common to the receipt, use and enjoyment of gas service; or (2) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

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

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

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

4. Capacity or demand charges, late charges, service establishment or reestablishment charges, termination or early termination charges, marketing charges, administrative charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary or common to the receipt, use and enjoyment of gas service; and

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

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

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

E. There shall be excluded from the base on which the tax imposed by this section is computed charges made for gas sold for use in the generation of electrical energy or for the production or distribution of water by a public utility or government agency; and charges made by a gas public utility for gas used and consumed in the conduct of the business of gas public utilities.

F. The tax on gas provided by self-production or by a nonutility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in SMC 3.10.080. All other taxes on charges for gas imposed by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth 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 day of the following month; provided, that the service user shall submit an adjusted payment or request for credit, as appropriate, within 60 days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

G. Notwithstanding the foregoing, the tax imposed under this section shall not apply to any individual 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. (Ord. 1072 § 1, 2014)

3.10.080 Collection of tax from service users receiving direct purchase of gas or electricity.

A. Any service user subject to the tax imposed by SMC 3.10.060 or 3.10.070, which produces gas or electricity for self-use; which receives gas or electricity, including any related supplemental services, directly from a nonutility service supplier not under the jurisdiction of this chapter; or which, for any other reason, is not having the full tax collected and remitted by its service supplier, a nonutility 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 30 days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within 30 days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity; provided, that the service user shall submit an adjusted payment or request for credit, as appropriate, within 60 days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

B. The Tax Administrator may require said service user to identify its nonutility service supplier and provide, subject to audit, invoices, books of account, or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the City. (Ord. 1072 § 1, 2014)

3.10.090 Refuse collection users tax.

A. There is hereby imposed a tax upon every person in the City using refuse collection services provided by the refuse collector. The tax imposed by this section shall be at the rate of 3.75 percent of the charges made for such services.

B. There shall be excluded from the base on which the tax imposed in this section is computed charges made for refuse collection services which are to be resold and delivered through mains or pipes.

C. The Tax Administrator shall, from time to time, survey the refuse collector operators in the City to identify the various billing components of the refuse collection service that is being offered to customers within the City, and the charges therefor, including those items that are mandated by State or Federal regulatory agencies. The Tax Administrator may, thereafter, issue and disseminate to such service suppliers an administrative ruling identifying those components and items that are necessary or common to the receipt, use and enjoyment of

refuse collection service. Charges for such components and items shall be subject to the tax of subsection A of this section.

D. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the thirtieth day of the following month; provided, that the service user shall submit an adjusted payment or request for credit, as appropriate, within 60 days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due. (Ord. 1072 § 1, 2014)

3.10.100 Effect of commingling taxable items with nontaxable items.

If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. If the service supplier offers a combination of taxable and nontaxable services, and the charges are separately stated, then, for taxation purposes, the values assigned the taxable and nontaxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation and apportionment of taxable and nontaxable charges. (Ord. 1072 § 1, 2014)

3.10.110 Substantial nexus/minimum contacts.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this chapter, "substantial nexus," "substantial economic presence," and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by State and Federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any 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 chapter. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the City, directly or through an agent, affiliate or subsidiary, a place of business of any nature; solicits business in the City by employees, independent

contractors, resellers, agents, affiliates or other representatives; solicits business in the City on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the City or distributed from a location within the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of utility services that are subject to a tax under this chapter (e.g., an affiliated person engaging in activities in the City that inure to the benefit of the service supplier in its development or maintenance of a market for its services in the City). (Ord. 1072 § 1, 2014)

3.10.130 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 chapter 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 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, SMC 3.10.160 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 chapter. Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

B. *Filing Return and Payment.* Each person required by this chapter 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 chapter. 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. (Ord. 1072 § 1, 2014)

3.10.140 Collection penalties – Service suppliers or self-collectors.

A. Taxes collected from a service user, or owed by a service user subject to SMC 3.10.080, 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 subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on 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 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 SMC 3.10.080 on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of 15 percent of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of 0.75 percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first become delinquent, until paid.

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

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

E. Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates and/or penalty and interest provisions of this section to be consistent with any uniform standards or procedures that are mutually agreed upon by UUT public agencies, or otherwise legally established, to create a UUT central payment location or mechanism. (Ord. 1072 § 1, 2014)

3.10.150 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 chapter has failed to pay, collect, and/or remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute proceedings under this section 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

0.75 percent 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 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 30 days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least 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 nonassessment) 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 SMC 3.10.210. Filing an application with the Tax Administrator and appeal to the City Manager, or designee, pursuant to SMC 3.10.210 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 day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be 15 percent of the total amount of the assessment, along with interest at the rate of 0.75 percent 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 chapter shall commence from the date of delinquency as provided in this subsection.

F. All notices under this chapter may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing. (Ord. 1072 § 1, 2014)

3.10.160 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 section from certain named service users for specific billing periods. Whenever the service user has failed to pay the amount of tax owed for a period of two or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the

provisions of this section. 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. In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of 15 percent of the total tax that is owed, and shall pay interest at the rate of 0.75 percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

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

D. If the service user fails to remit the tax to the Tax Administrator within 30 days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of 15 percent of the amount of the total tax that is owed. (Ord. 1072 § 1, 2014)

3.10.170 Actions to collect.

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this chapter, along with any collection costs incurred by the City as a result of the person's noncompliance with this chapter, including, but not limited to, reasonable attorney's fees. In the event that a service user or service supplier owing a tax under this chapter files bankruptcy, then such debt to the City shall be deemed an unsecured priority excise tax obligation under 11 U.S.C. Section 507(a)(8)(C). Service suppliers who seek to collect charges for service in bankruptcy proceedings shall also include in any such claim the amount of taxes due the City for those services, unless the Tax Administrator determines that such duty is in conflict with any Federal or State law, rule, or regulation or that such action would be administratively impractical. (Ord. 1072 § 1, 2014)

3.10.180 Additional powers and duties of the Tax Administrator.

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

B. The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. The administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this chapter, or increase an existing tax, except as allowed by California Government Code Section 53750(h)(2). A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office. To the extent that the Tax Administrator determines that the tax imposed under this chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of Government Code Section 53750 or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of Government Code Section 53750 and the City does not waive or abrogate its ability to impose the utility users tax in full as a result of promulgating administrative rulings or entering into agreements.

C. Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this chapter and thereby (1) conform to the billing procedures of a particular service supplier (or service user subject to SMC 3.10.080) so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter; or (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and 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 chapter, of any person required to collect and/or remit a tax pursuant to this chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period or review shall not exceed a period of three years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to SMC 3.10.150 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 chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to be a rebuttable presumption of correctness.

E. Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this chapter for a period of not to exceed 45 days; provided, that the time for filing the required statement has not already passed when the request is received. No penalty

for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of 0.75 percent per month, prorated for any portion thereof.

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

G. The Tax Administrator, with the written approval of the City Attorney, may compromise a claim pursuant to this chapter where the portion of the claim proposed to be released is equal to or less than $4,999; and, with the approval of the City Attorney and the City Council, may compromise such a claim where the portion proposed to be released is greater than $4,999.

H. Notwithstanding any provision in this chapter to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this chapter if the noncollection occurred in good faith. In determining whether the noncollection was in good faith, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, or whether the person offers to voluntarily disclose its tax liability. The Tax Administrator may also participate with other utility users tax public agencies in conducting coordinated compliance reviews with the goal of achieving administrative efficiency and uniform tax application determinations, where possible. To encourage voluntary full disclosure and ongoing cooperation on tax collection and remittance, 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 nontaxable. In determining whether the noncollection was in good faith and without gross negligence, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, and whether the disclosure was voluntarily made by the service provider or its agent. (Ord. 1072 § 1, 2014)

3.10.190 Records.

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

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

to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.

C. The Tax Administrator is authorized to execute a 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 chapter unreasonably denies the Tax Administrator, or the Tax Administrator's designated representative, access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, the Tax Administrator may impose a penalty of $500.00 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 chapter. (Ord. 1072 § 1, 2014)

3.10.200 Refunds/credits.

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

A. The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this chapter; provided, that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. 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. The submission of a written claim, which is acted upon by the City Council, shall be a prerequisite to a suit thereon. (See Section 935 of the California Government Code.) The Tax Administrator, or the City Council where the claim is in excess of $4,999, shall act upon the refund claim within the time period set forth in Government Code Section 912.4. If the City Council fails or refuses to act on a refund claim within the time prescribed by Government Code Section 912.4, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in Government Code Section 912.4. The Tax Administrator shall give notice of the action in a form that substantially complies with that set forth in Government Code Section 913.

C. Notwithstanding the notice provisions of subsection A of this section, 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 chapter, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator; provided, that, prior to taking such credit by the service supplier: (1) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; (2) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and (3) in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit. (Ord. 1072 § 1, 2014)

3.10.210 Appeals.

A. The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to SMC 3.10.200), 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 SMC 3.10.200), deficiency determination, assessment, or administrative ruling of the Tax Administrator shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. (See Government Code Section 935(b).) To the extent allowed by law, nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

B. If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to SMC 3.10.200), deficiency determination, assessment, or administrative ruling of the Tax Administrator, he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within 14 days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

C. The matter shall be scheduled for hearing before an independent hearing officer selected by the City Manager, or designee, no more than 30 days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing,

the appealing party, the Tax Administrator, the City Manager, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

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

E. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing. (Ord. 1072 § 1, 2014)

3.10.220 No injunction/writ of mandate.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected and/or remitted. (Ord. 1072 § 1, 2014)

3.10.230 Remedies cumulative.

All remedies and penalties prescribed by this chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter. (Ord. 1072 § 1, 2014)

3.10.240 Notice of changes to chapter.

If a tax under this chapter is added, repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of Public Utilities Code Section 799. (Ord. 1072 § 1, 2014)

3.10.250 Future amendment to cited statute.

Unless specifically provided otherwise, any reference to a State or Federal statute in this chapter shall mean such statute as it may be amended from time to time. To the extent that the City's authorization to collect or impose any tax imposed under this chapter is expanded or limited as a result of an amendment or new enactment of a State or Federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter. (Ord. 1072 § 1, 2014)

3.10.260 Annual rate review and independent audit of tax collection, exemption, remittance and expenditure.

The City shall annually verify that the taxes owed under this chapter have been properly applied, exempted, collected, and remitted in accordance with this chapter, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed. (Ord. 1072 § 1, 2014)

3.10.270 No increase in tax percentage or change in methodology without voter approval – Amendment or repeal.

This chapter may be repealed or amended by the City Council without a vote of the people. However, as required by Chapter XIIIC of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this chapter; provided, however, the following actions shall not constitute an increase of the rate of a tax:

A. The restoration of the rate of the tax to a rate that is no higher than that set by this chapter, 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 chapter;

C. The establishment a class of persons that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this chapter); and

D. The collection of the tax imposed by this chapter, even if the City had, for some period of time, failed to collect the tax. (Ord. 1072 § 1, 2014)

As approved by the Voters at the November 8, 2022 City Municipal Election