



1 dramatically since the inception of the UUT and communications technology, telephone  
2 calling and marketing plans and state and federal legislation continue to evolve at a rapid  
3 pace;

4  
5 WHEREAS, any increase in rate or modernization and clarification of the UUT to  
6 include current technologies and reflect the realities of the current communications  
7 industry require voter approval under the California Constitution;  
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9  
10 WHEREAS, the revenue generated by even the existing UUT is likely to be lost  
11 over time due to market erosion, changing technology and other factors;  
12

13 WHEREAS, the City desires to modernize its ordinance to treat users of  
14 communications services in a uniform and equitable manner, regardless of the means of  
15 transmission or technology used, so that users of communications services transmitted  
16 by traditional technologies (such as land lines) do not bear a greater tax burden than  
17 users of communications services transmitted via newly developed technologies;  
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19  
20 WHEREAS, the City desires to expand the existing exemption for low income  
21 senior citizens;  
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23  
24 NOW, THEREFORE,  
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1 The People of the City of Sierra Madre do ordain, as follows:  
2

3 **Section 1.** Chapter 3.36 of the Sierra Madre Municipal Code is hereby  
4 amended and replaced to read as follows:  
5

6 **Section 3.36.010 Description and purpose.**  
7

8 This chapter shall be known as the "Utility Users Tax Ordinance." The purpose of  
9 this chapter is to impose a utility users tax as a revenue measure necessary to pay the  
10 usual and current expenses of conducting the municipal government of the city, the  
11 proceeds of which shall be paid into the general fund of the city.  
12

13 **3.36.020 Definitions.**  
14

15 Except where the context otherwise requires, the definitions given in this Section  
16 govern the construction of this Chapter.

17 1. "Ancillary Telecommunications Services" means services that are associated  
18 with or incidental to the provision, use or enjoyment of Telecommunications Services,  
19 including but not limited to the following services:

20 (1) 'Conference Bridging Service' means an ancillary service that  
21 links two or more participants of an audio or video conference call and may  
22 include the provision of a telephone number. Conference Bridging Service  
23 does not include the telecommunications services used to reach the  
24 conference bridge.  
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26 (2) 'Detailed Telecommunications Billing Service' means an  
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1 ancillary service of separately stating information pertaining to individual  
2 calls on a customer's billing statement.

3 (3) 'Directory Assistance' means an ancillary service of providing  
4 telephone number information, and/or address information.

5 (4) 'Vertical Service' means an ancillary service that is offered in  
6 connection with one or more telecommunications services, which offers  
7 advanced calling features that allow customers to identify callers and to  
8 manage multiple calls and call connections, including Conference Bridging  
9 Services.  
10

11 (5) 'Voicemail Service' means an ancillary service that enables  
12 the customer to store, send or receive recorded messages. Voicemail  
13 service does not include any vertical services that the customer may be  
14 required to have in order to utilize the voicemail service.  
15

16 2. "Billing Address" means the mailing address of the Service User where the  
17 Service Supplier submits invoices or bills for payment by the customer.

18 3. "City" means the city of Sierra Madre.

19 4. "Cogenerator" means any Person employing cogeneration technology (as  
20 defined in Section 218.5 of the California Public Utilities Code) for producing power from  
21 other than a conventional power source for the generation of electricity for self-use or  
22 sale to others.  
23

24 5. "Communication Services" means Telecommunications Services and Video  
25 Services.

26 6. "Gas" means natural or manufactured gas or any alternate hydrocarbon fuel  
27

1 which may be substituted therefor.

2 7. "Month" means a calendar month.

3 8. "Nonutility Supplier" means (a) an electricity supplier, other than an electrical  
4 corporation franchised to serve the city, which generates electrical energy in capacities  
5 of at least fifty kilowatts for its own use or for sale to others, including those using  
6 cogeneration or fuel cell technologies; or (b) a gas supplier, other than a gas corporation  
7 franchised to serve the city, that sells or supplies gas to other users within the city.  
8

9 9. "Person" without limitation, any domestic, non-profit or foreign corporation,  
10 firm, association, syndicate, joint-stock company, partnership of any kind, joint venture,  
11 club, trust, limited liability company, business or common-law trust, society, any natural  
12 individual, cooperative, receiver, trustee, guardian or other representative appointed by  
13 order of any court, or any municipal corporation (other than the City).  
14

15 10. "Private Communications Services" means any dedicated Communications  
16 Services that entitle the user to the exclusive or priority use of communications channels.

17 11. "Service Supplier" means any Person or entity required to collect or self-  
18 impose and remit a tax as imposed by this chapter, including any entity or Person that  
19 provides communication, electric, Gas, Video Services or water service to a user of such  
20 services within the City and the billing agent of any such entity.  
21

22 12. "Service User" means a Person required to pay a tax imposed by this  
23 chapter.

24 13. "Tax Administrator" means the city manager or his/her designee.

25 14. "Telecommunications Services" means the transmission, conveyance, or  
26 routing of voice, data, audio, video, or any other information or signals to a point, or  
27

1 between or among points, whatever the technology used, whether or not such  
2 information is transmitted through interconnected service with the public switched  
3 network, or through fiber optic, coaxial cable, power line transmission, broadband, digital  
4 subscriber line or other wireless transmission. The term "Telecommunications Services"  
5 includes such transmission, conveyance, or routing in which computer processing  
6 applications are used to act on the form, code or protocol of the content for purposes of  
7 transmission, conveyance or routing without regard to whether such services are  
8 referred to as voice over internet protocol (VoIP) services or are classified by the Federal  
9 Communications Commission as enhanced or value added, and includes video and/or  
10 data services that is functionally integrated with Telecommunications Services.

11 Telecommunications Services include, but are not limited to the following services,  
12 regardless of the manner or basis on which such services are calculated or billed: central  
13 office and custom calling features (including but not limited to call waiting, call  
14 forwarding, caller identification and three-way calling), local number portability, text  
15 messaging, Ancillary Telecommunication Services; prepaid and post-paid services  
16 (including but not limited to prepaid calling cards); mobile telecommunications service;  
17 Private Communication Service; paging service; and 800 service (or any other toll-free  
18 numbers designated by the Federal Communications Commission). Telecommunication  
19 Service does not include charges for access to the internet or digital downloads, such as  
20 downloads of books, music, ringtones, games and similar digital products.

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23  
24 15. "Telephone Corporation," "Electrical Corporation," "Gas Corporation," and  
25 "Water Corporation," shall have the same meanings as defined in Sections 234, 218,  
26 222, 241, respectively, of the California Public Utilities Code except, "Electrical  
27

1 Corporation,” “Gas Corporation” and “Water Corporation” shall also be construed to  
2 include any municipality or public agency engaged in the selling or supplying of electrical  
3 power or Gas or water to a Service User. “Electrical Corporation” shall include any  
4 organization or municipality or agency engaged in the selling or supplying of electrical  
5 power to a Service User.

6 16. “Video Service Supplier” shall mean any Person, company, or service which  
7 provides one or more channels of video programming or video communications  
8 (including the leasing of channel access to provide such video programming or  
9 communications) to or from an address in the City, including to or from a business,  
10 home, condominium, or apartment, where some fee is paid, whether directly or included  
11 in dues or rental charges for that service, whether or not public rights-of-way are utilized  
12 in the delivery of the video programming or communications. Video Service Supplier  
13 includes, but is not limited to, multichannel video programming distributors [as defined in  
14 47 U.S.C. Section 522(12)], suppliers of cable television, master antenna television,  
15 satellite master antenna television, multichannel multipoint distribution services, direct  
16 broadcast satellite (to the extent allowed by federal law), and other suppliers of video  
17 programming or video communications (including two-way communications), whatever  
18 their technology.  
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21 17. “Video Services” shall mean any and all services related to the supplying of  
22 video programming (including origination programming), communications (including two-  
23 way communications), regardless of the content of the video programming or  
24 communications, and shall include, without limitation, the leasing of channel access  
25 (e.g., home shopping) to the extent that the Service User is subject to an additional  
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1 direct or indirect charge for programming or communications over the leased channel  
2 and ancillary video services, including any service that is associated with or incidental to  
3 the provision or delivery of Video Services, including but not limited to electronic program  
4 guide services, search functions, or other interactive services that are associated with or  
5 incidental to the provision or use of video programming.  
6

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8 **3.36.030 Effect of state and federal authorization.**

9 To the extent that the City's authorization to impose or collect the tax imposed in  
10 this Chapter is expanded or limited as a result of changes in state or federal law, no  
11 amendment or modification of this Chapter shall be required to conform the tax to those  
12 changes, and the tax shall be imposed and collected to the full extent of the City's  
13 authorization up to the full amount of the tax imposed by this Chapter.  
14

15  
16 **3.36.040 Communication Users' Tax.**

17 A. There is hereby imposed a tax upon every Person with a Billing Address or  
18 service address in the City who uses Communication Services, including intrastate,  
19 interstate (including calls to the District of Columbia), and international Communications  
20 Services, to the extent permitted by state and federal law. The tax imposed by this  
21 Section shall be at the rate as established in Section 3.36.180 on the charges made for  
22 Communication Services and shall be collected from the Service User by the Service  
23 Supplier or its billing agent. To the extent allowed by law, the tax on Communication  
24 Services shall apply to a Service User if the Billing Address or service address of the  
25 Service User is within the City's boundaries.  
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1 B. Except as otherwise provided herein, Communication Services shall  
2 include all Communication Service for which there is a charge, regardless of the means  
3 or technology used to provide such services. The tax imposed under Subsection A,  
4 above shall not be imposed upon any Person for using the following Communications  
5 Services:

6 (1) Except with respect to local telephone service, services used in the  
7 collection of news for the public press, or a news ticker service furnishing a  
8 general news service similar to that of the public press or radio broadcasting, or  
9 in the dissemination of news through the public press, or a news ticker service  
10 furnishing a general news service similar to that of the public press or by means  
11 of radio broadcasting, if the charge for such service is billed in writing to such  
12 Person.  
13

14 (2) Services furnished to a public international organization in which the  
15 United States participates pursuant to treaty or Act of Congress, or to the  
16 American National Red Cross.  
17

18 (3) Any toll telephone service which originates within a combat zone  
19 and is from a member of the Armed Forces of the United States performing  
20 service in such combat zone; provided a certificate, setting forth such facts as  
21 the Secretary of the United States Treasury may by regulations prescribe, is  
22 furnished to the Person receiving such payment.  
23

24 (4) No tax shall be imposed under this Section on the amount paid for  
25 any Communications Services to the extent that the amount so paid is for use by  
26 a common carrier, telephone or telegraph company, or radio broadcasting  
27

1 station or network in the conduct of its business.

2 (5) The installation of any instrument, wire, pole, switchboard,  
3 apparatus or equipment as is properly attributable to such installation.

4 (6) Amounts paid by a nonprofit hospital for services furnished to such  
5 organization. For purposes of this exemption, the term "nonprofit hospital"  
6 means a hospital referred to in Section 170(b)(1)(A)(iii) of the Internal Revenue  
7 Code, which is exempt from federal income tax under Section 501(a) of the  
8 Internal Revenue Code.

9  
10 (7) Services or facilities furnished to the government of any state, or  
11 any political subdivision thereof.

12 (8) Services or facilities paid for by a nonprofit educational organization  
13 and furnished to such organization. For purposes of this subsection, the term  
14 "nonprofit educational organization" means an educational organization  
15 described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code, which is  
16 exempt from income tax under Section 501(a) of the same code. The term also  
17 includes a school operated as an activity of an organization described in Section  
18 501(c)(3) of the Internal Revenue Code, which is exempt from income tax under  
19 Section 501(a) of the same code, if such school normally maintains a regular  
20 faculty and curriculum and normally has a regularly enrolled body of pupils or  
21 students in attendance at the place where its educational activities are regularly  
22 carried on.

23  
24 (9) Items otherwise taxed. Only one payment of tax under this Section  
25 shall be required with respect to the tax on any service.  
26  
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1 C. As used in this Section, the term "charges" shall include the value of any  
2 other services, credits, property of every kind or nature, or other consideration provided  
3 by the Service User in exchange for the Communication Services.

4 D. Charges for Video Services that are taxable under this Section include, but  
5 are not limited to, charges for the following:

6 (1) Franchise fees and access fees (PEG), whether designated on the  
7 customer's bill or not;

8 (2) Initial installation of equipment necessary for provision and receipt of  
9 Video Services;

10 (3) All programming services (e.g., basic services, premium services,  
11 audio services, video games, pay-per-view services, and electronic program  
12 guide services);

13 (4) Equipment leases (e.g., converters, remote devices);

14 (5) Service calls, service protection plans, name changes, changes of  
15 service, and special services (e.g., no promotional mail); and

16 (6) The leasing of channel access (e.g., home shopping) to the extent  
17 that the Service User is subject to an additional direct or indirect charge for  
18 programming or communications over the leased channel; provided that, in the  
19 absence of evidence of direct payment by the Service User, the indirect payment  
20 of the Service User(s), which is subject to the tax imposed under this Section,  
21 shall be deemed to be the lease payment to the Video Service Supplier by the  
22 party leasing the channel access.

23 E. The Tax Administrator shall, from time to time, survey the Video Service  
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1 Suppliers in the City to identify the various components of the Video Services that are  
2 being offered to customers within the City, and the charges therefor. The Tax  
3 Administrator may, thereafter, issue and disseminate to such Video Service Suppliers an  
4 administrative ruling identifying those components: i) that are necessary or common to  
5 the receipt, use and enjoyment of Video Services; or, ii) which currently are, or  
6 historically have been, included in a bundled rate for Video Services by a local  
7 distribution company. Charges for such components shall be subject to the tax of  
8 subsection A, above.  
9

10 F. To prevent actual multi-jurisdictional taxation of Communication Services  
11 subject to tax under this Section, any Service User, upon proof to the Tax Administrator  
12 that the Service User owed and has previously paid the same tax in another state or city  
13 on such Communication Services, shall be allowed a credit against the tax imposed to  
14 the extent of the amount of such tax legally imposed in such other state or city; provided,  
15 however, the amount of credit shall not exceed the tax owed to the City under this  
16 Section.  
17

18 G. For purposes of imposing a tax or establishing a duty to collect and remit a  
19 tax under this Chapter, "substantial nexus" and "minimum contacts" shall be construed  
20 broadly in favor of the imposition, collection and/or remittance of the tax to the fullest  
21 extent permitted by state and federal law, and as it may change from time to time by  
22 judicial interpretation or by statutory enactment. Any Communication Services used by a  
23 Person with a service address in the City, shall be subject to a rebuttable presumption  
24 that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or  
25 establishing a duty to collect and remit a tax, under this Chapter. For Communication  
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1 Services for which there is no Billing Address or primary physical location for the  
2 provision of services, the service address shall mean the point of sale of the services.

3 H. The tax on Communication Services imposed by this Section shall be  
4 collected from the Service User by the Service Supplier. In the case of Video Services,  
5 the Service User shall be deemed to be the purchaser of the bulk Video Services (e.g.,  
6 an apartment owner), unless such services are resold to individual users, in which case  
7 the Service User shall be the ultimate purchaser of the Video Services. The amount of  
8 tax collected in one (1) Month shall be remitted to the Tax Administrator, and must be  
9 received by the Tax Administrator on or before the twentieth (20th) day of the following  
10 Month. If a Service Supplier of Communication Services uses a billing agent or billing  
11 aggregator to bill, collect, and/or remit the tax, the Service Supplier shall: i) provide to the  
12 Tax Administrator the name, address and telephone number of each billing agent and  
13 billing aggregator currently authorized by the Service Supplier to bill, collect, and/or remit  
14 the tax to the City; and, ii) upon request of the Tax Administrator, deliver, or effect the  
15 delivery of, any information or records in the possession of such billing agent or billing  
16 aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper  
17 application, calculation, collection and/or remittance of such tax to the City.  
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19

20 I. The Tax Administrator may, from time to time, issue and disseminate to  
21 Service Suppliers, which are subject to the tax collection requirements of this Section, an  
22 administrative ruling identifying those Communication Services that are subject to the tax  
23 of subsection A, above. This administrative ruling shall be consistent with legal nexus  
24 rules, regulations, and laws pertaining to Communication Services. To the extent that  
25 the Tax Administrator determines that the tax imposed under this Section shall not be  
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1 collected in full for any period of time, such a determination falls within the Tax  
2 Administrator's discretion to settle disputes. The Tax Administrator's exercise of  
3 prosecutorial forbearance under this Section does not constitute a change in taxing  
4 methodology for purposes of Government Code Section 53750, and the City does not  
5 waive or abrogate its ability to impose the tax on Communication sServices in full as a  
6 result of issuing such administrative rulings.  
7

### 8 **3.36.050 Electricity Users' Tax.**

9  
10 A. There is hereby imposed a tax upon every Person using electricity or  
11 electrical energy in the City. The tax imposed by this section shall be at the rate as  
12 established in Section 3.36.180 for the charges made for such electricity or energy, and  
13 for any supplemental services or other associated activities directly related to and/or  
14 necessary for the provision of electricity to the Service Users, which are provided by a  
15 Service Supplier to a Service User. The tax applicable to electrical energy provided by a  
16 nonutility supplier shall be determined by applying the tax rate to the equivalent charges  
17 the Service User would have incurred if the energy used had been provided by the  
18 Electrical Corporation franchised by the City. Rate schedules for this purpose shall be  
19 available from the City. Nonutility Suppliers shall install and maintain an appropriate  
20 utility-type metering system which will enable compliance with this Section, or may  
21 arrange another methodology for applying the tax acceptable to the Tax Administrator.  
22

23  
24 B. The tax imposed in this section shall be collected from the Service User by  
25 any energy Service Supplier or Nonutility Supplier. An energy supplier providing  
26 wheeling services for delivery of electricity through its distribution system shall collect the  
27

1 tax from the Service ser based upon the cost of wheeling the electricity. The tax on  
2 energy provided by self-production or by a Nonutility Supplier shall be collected and  
3 remitted in the manner set forth in Section 3.36.080. The amount of tax collected in one  
4 Month shall be remitted to the Tax Administrator, on or before the last day of the  
5 following Month; or, at the option of the Person required to collect or remit the tax, an  
6 estimated amount of tax measured by the tax billed in the previous Month or upon the  
7 payment pattern of the customers of the Service Supplier, shall be remitted.  
8

9 C. As used in this Section, the term "charges" shall include:

10 (1) Energy charges;

11 (2) Distribution or transmission charges;

12 (3) Metering charges;

13 (4) Stand-by, reserves, firming, ramping, voltage support, regulation,  
14 emergency, or other similar minimum charges for services;

15 (5) Customer charges, service establishment or reestablishment  
16 charges, demand charges, fuel or other cost adjustments, power exchange  
17 charges, independent system operator (ISO) charges, stranded investment or  
18 competitive transition charges (CTC), trust transfer, amounts (bond financing  
19 charges), franchise fees, franchise surcharges, which are necessary or common  
20 to the receipt, use and enjoyment of electric service; and,  
21

22 (6) Charges, fees, or surcharges for electric services or programs,  
23 which are mandated by the California Public Utilities Commission or the Federal  
24 Energy Regulatory Commission, whether or not such charges, fees, or  
25 surcharges appear on a bundled or line item basis on the customer billing.  
26  
27

1           (7)    The value of any other services, credits, property of every kind or  
2           nature, or other consideration provided by the Service User in exchange for the  
3           electricity or services related to the provision of such electricity.

4           D.    The Tax Administrator shall, from time to time, survey the electric Service  
5           Suppliers to identify the various unbundled billing components of electric retail service  
6           that they commonly provide to residential and commercial/industrial customers in the  
7           City, and the charges therefor, including those items that are mandated by state or  
8           federal regulatory agencies as a condition of providing such electric service. The Tax  
9           Administrator may, thereafter, issue and disseminate to such electric Service Suppliers  
10          an administrative ruling identifying those components and items which are: i) necessary  
11          or common to the receipt, use and enjoyment of electric service; or, ii) currently, or  
12          historically have been, included in a single or bundled rate for electric service by a local  
13          distribution company to a class of retail customers. Unbundled charges for such  
14          components and items shall be subject to the tax of subsection A, above.  
15  
16

17          E.    As used in this Section, the term "using electricity" shall not include the  
18          mere receiving of such electricity by an electric public utility or governmental agency at a  
19          point within the City for resale.

20          F.    If an electric Service Supplier uses a billing agent or billing aggregator to  
21          bill, collect, and/or remit the tax, the Service Supplier shall: i) provide to the Tax  
22          Administrator the name, address and telephone number of each billing agent and billing  
23          aggregator currently authorized by the Service Supplier to bill, collect, and/or remit the  
24          tax to the City; and, ii) upon request of the Tax Administrator, deliver, or effect the  
25          delivery of, any information or records in the possession of such billing agent or billing  
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1 aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper  
2 application, calculation, collection and/or remittance of such tax to the City.

3  
4 **3.36.060 Tax on cogenerated electricity.**

5 A. Notwithstanding the provisions in Section 3.36.050, the tax imposed on every  
6 Person using cogenerated electrical energy in the City shall be at the rate specified in  
7 Section 3.36.050. The tax applicable to cogenerated electrical energy used on site shall  
8 be determined by applying the tax rate to the equivalent charges the Cogenerator would  
9 have incurred if the energy used had been provided by the Electrical Corporation  
10 franchised by the city.

11  
12 B. The Cogenerator shall install and maintain an appropriate metering system  
13 which will enable compliance with this Section.

14  
15 C. The tax shall be collected and paid by the Cogenerator under Section  
16 3.36.080 if the Cogenerator consumes the energy. If the Cogenerator sells the energy  
17 for consumption in the City, the tax will be imposed by applying the tax rate to the  
18 equivalent charges made for such service the Service User would have incurred if the  
19 energy used had been provided by the Electrical Corporation franchised by the City, and  
20 shall be collected from the Service User by the energy supplier.

21  
22 D. The amount of the tax collected in one Month shall be remitted to the Tax  
23 Administrator on or before the last day of the following Month.

24  
25 **3.36.070 Gas Users Tax.**

26 A. There is imposed a tax upon every Person using Gas in the City which is  
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1 transported through a pipeline distribution system or by mobile transport. The tax  
2 imposed by this Section shall be at the rate as established by Section 3.36.180, for the  
3 charges made for such Gas and shall be paid by the Person using the Gas. The tax  
4 applicable to gas provided by Nonutility Suppliers shall be determined by applying the  
5 tax rate to the equivalent charges the Service User would have incurred if the Gas or  
6 Gas transportation had been provided by the Gas Corporation franchised by the City.

7 “Charges” as used in this section shall include: (1) the charge for Gas which is delivered  
8 through a Gas pipeline distribution system or by mobile transport; (2) Gas transportation,  
9 delivery and storage charges; (3) demand charges, service charges, customer charges,  
10 minimum charges, annual and monthly charges and any other charges authorized by the  
11 California Public Utilities Commission or the Federal Energy Regulatory Commission;  
12 and (4) the value of any other services, credits, property of every kind or nature, or other  
13 consideration provided by the Service User in exchange for the Gas or services related  
14 to the delivery of such Gas.  
15

16  
17 B. There shall be excluded from the tax imposed in this Section:

18 1. Charges made for Gas which is to be resold and delivered through a Gas  
19 pipeline distribution system or mobile transport;

20 2. Charges made for Gas used by a Cogenerator or as the primary fuel in a fuel  
21 cell to generate electricity subject to the tax imposed by Section 3.36.050; and  
22

23 3. Charges made for natural gas used in the propulsion of a motor vehicle, as  
24 that phrase is defined in the Vehicle Code of the state of California.

25 C. Tax imposed in this section shall be collected from the Service User by the  
26 energy service supplier. An energy supplier providing transportation services for delivery  
27

1 of Gas through a pipeline distribution system shall collect the tax from the Service User  
2 based upon the cost of transporting the Gas. The tax on energy provided by self-  
3 production or by a Nonutility Supplier shall be collected and remitted in the manner set  
4 forth in Section 3.36.080. The amount of tax collected in one Month shall be,remitted to  
5 the Tax Administrator, on or before the last day of the following Month; or, at the option  
6 of the Person required to collect or remit the tax, an estimated amount of tax measured  
7 by the tax billed in the previous Month or upon the payment pattern of the customers of  
8 the Service Supplier, shall be remitted.  
9

10 D. The Tax Administrator shall, from time to time, survey the Gas Service  
11 Suppliers to identify the various unbundled billing components of Gas retail service that  
12 they commonly provide to residential and commercial/ industrial customers in the City,  
13 and the charges therefor, including those items that are mandated by state or federal  
14 regulatory agencies as a condition of providing such Gas service. The Tax Administrator  
15 may, thereafter, issue and disseminate to such Gas Service Suppliers an administrative  
16 ruling identifying those components and items which are: i) necessary or common to the  
17 receipt, use and enjoyment of Gas service; or, ii) currently, or historically have been,  
18 included in a single or bundled rate for Gas service by a local distribution company to a  
19 class of retail customers. Unbundled charges for such components and items shall be  
20 subject to the tax of subsection A, above.  
21

22 E. If a Gas Service Supplier uses a billing agent or billing aggregator to bill,  
23 collect, and/or remit the tax, the Service Supplier shall: i) provide to the Tax  
24 Administrator the name, address and telephone number of each billing agent and billing  
25 aggregator currently authorized by the Service Supplier to bill, collect, and/or remit the  
26  
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1 tax to the City; and, ii) upon request of the Tax Administrator, deliver, or effect the  
2 delivery of, any information or records in the possession of such billing agent or billing  
3 aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper  
4 application, calculation, collection and/or remittance of such tax to the City.

5  
6 **3.36.080 Collection of tax from service users receiving direct purchase of**  
7 **gas or electricity.**

8  
9 A. Any Service User subject to the tax imposed by Sections 3.36.050 through  
10 3.36.070, who produces electricity or Gas for self-use or who receives electricity or Gas  
11 directly from a Nonutility Supplier not under the jurisdiction of this Chapter or otherwise  
12 not having the full tax due on the use of Gas or electricity in the City directly billed and  
13 collected by the Service Supplier, shall report said fact to the Tax Administrator and  
14 remit the tax due directly to the City within thirty days of such use.  
15

16 B. The Tax Administrator may require said Service User to identify its Nonutility  
17 Supplier and provide, subject to audit, filed tax returns or other satisfactory evidence  
18 documenting the quantity or electricity or Gas used and the price thereof.  
19

20 **3.36.090 Water and sewer users tax.**

21  
22 A. There is imposed a tax upon every Person in the City using water which is  
23 delivered through mains or pipes or using sewerage or wastewater services. The tax  
24 imposed by this Section shall be at the rate established in Section 3.36.180, for the  
25 charges made for such water and shall be paid by the Person paying for such water,  
26 sewer or wastewater services.  
27

1 B. There shall be excluded from the base on which the tax imposed in this  
2 section is computed, charges made for water which is to be resold and delivered through  
3 mains or pipes.

4 C. The tax imposed in this Section shall be collected from the Service User by  
5 the Person supplying the water or wastewater or sewerage services. The amount  
6 collected in one Month shall be remitted to the Tax Administrator on or before the last  
7 day of the following Month.  
8

9  
10 **3.36.095 Solid waste disposal users tax.**

11 A. There is imposed a tax upon every Person in the City using waste or refuse  
12 collection and disposal services. The tax imposed by this Section shall be at the rate  
13 established in Section 3.36.180, for the charges made for such waste or refuse collection  
14 and disposal services and shall be paid by the Person paying for such refuse collection  
15 services.  
16

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

20 C. The tax imposed in this Section shall be collected from the Service User by  
21 the Person supplying the waste or refuse collection and disposal services. The amount  
22 collected in one Month shall be remitted to the Tax Administrator on or before the last  
23 day of the following Month.  
24

25  
26 **3.36.100 Penalty and interest.**  
27

1           A. Taxes collected from a Service User or owed by a Service User which are not  
2 remitted to the Tax Administrator on or before the due dates provided in this Chapter are  
3 delinquent. If the Person required to collect and/or remit a tax imposed under this  
4 Chapter fails to collect and remit the tax, such taxes are delinquent. Should the due date  
5 occur on a weekend or legal holiday, the return may be made on the first regular working  
6 day following a Saturday, Sunday, or legal holiday.

7           B. Penalties for delinquency in remittance of any tax collected or any deficiency  
8 determination determined by the Tax Administrator shall attach and be paid by the  
9 Person required to collect and remit at the rate of fifteen percent of the total tax collected  
10 or imposed herein.

11           C. The Tax Administrator shall have the power to impose additional penalties  
12 upon any Person required to collect and remit taxes under the provisions of this Chapter  
13 for fraud or negligence in reporting or remitting at the rate of twenty-five percent of the  
14 amount of the tax collected or as recomputed by the Tax Administrator.

15           D. Every penalty imposed under the provisions of this Chapter shall become a  
16 part of the tax required to be remitted.

17           E. In addition to the penalties imposed in this section, any Person required to  
18 collect and/or remit any tax imposed by the provisions of this Chapter who fails to collect  
19 or remit the tax, shall pay interest at the rate of one percent per month, or fraction  
20 thereof, on the amount of the tax, exclusive of penalties, from the date on which the  
21 remittance first became delinquent until paid.  
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25  
26           **3.36.110 Actions to collect.**  
27

1 Any tax required to be paid by a Service User under the provisions of this  
2 Chapter shall be deemed a debt owed by the Service User to the City. Any such tax  
3 collected from a Service User which has not been remitted to the Tax Administrator shall  
4 be deemed a debt owed to the City by the Person required to collect and remit and shall  
5 no longer be a debt of the Service User. In the event that a Service Supplier required to  
6 collect and remit a tax under the provisions of this Chapter fails to do so in whole or in  
7 part, the amount of such unremitted tax shall be deemed a debt owed by the Service  
8 Supplier to the City. Any Person owing money to the City under the provisions of this  
9 Chapter shall be liable to an action brought in the name of the City for the recovery of  
10 such amount, plus any collection costs incurred by the City as a result of the Person's  
11 noncompliance with this Chapter, including, but not limited to, reasonable attorney's  
12 fees.  
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16 **3.36.120 Duty to collect—Procedures.**

17 The duty to collect and remit the taxes imposed by this Chapter shall be  
18 performed as follows:

19 A. Except as otherwise provided by Section 3.36.080 the tax shall be collected  
20 insofar as practicable at the same time as and along with the charges made in  
21 accordance with the regular billing practices of the Service Supplier. Where the amount  
22 paid by a Service User to a Service Supplier is less than the full amount of the utility  
23 charge and tax which has accrued for the billing period, such amount and any  
24 subsequent payments by a Service user shall be applied to the utility charge first until  
25 such charge has been fully satisfied. Any remaining balance shall be applied to taxes  
26  
27

1 due. In those cases where a Service User has notified the Service Supplier of refusal to  
2 pay the tax imposed on said utility charges, Section 3.36.140(C) will apply.

3 B. The duty to collect tax from a Service User shall commence with the  
4 beginning of the first full regular billing period applicable to the Service User where all  
5 charges normally included in such regular billing are subject to the provisions of this  
6 Chapter. Where a Person receives more than one billing, one or more being for different  
7 periods than another, the duty to collect shall arise separately for each billing.  
8

9  
10 **3.36.130 Additional power and duties of Tax Administrator.**

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

13 B. The Tax Administrator may adopt administrative rules and regulations not  
14 inconsistent with provisions of this Chapter for the purpose of carrying out and enforcing  
15 the payment, collection and remittance of the taxes herein imposed. A copy of such  
16 administrative rules and regulations shall be on file in the Tax Administrator's office.  
17

18 C. Upon a proper showing of good cause, the Tax Administrator may make  
19 administrative agreements, with appropriate conditions, to vary from the strict  
20 requirements of this Chapter, and thereby: i) conform to the billing procedures of a  
21 particular Service Supplier or Service User, so long as said agreements result in the  
22 collection of the tax in conformance with the general purpose and scope of this Chapter;  
23 or ii) to avoid a hardship where the administrative costs of collection and remittance  
24 greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the  
25 Tax Administrator's office, and is voidable by the Tax Administrator or the City at any  
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1 time. Such administrative agreements fall within the Tax Administrator's discretion to  
2 settle disputes. The Tax Administrator's exercise of prosecutorial forbearance under this  
3 Chapter does not constitute a change in taxing methodology for purposes of  
4 Government Code Section 53750, and the City does not waive or abrogate its ability to  
5 impose any tax owed under this Chapter in full as a result of entering into such  
6 administrative agreements.

7  
8 D. The Tax Administrator shall be authorized to determine the eligibility of any  
9 Person who asserts a right to exemption from or a refund of a tax imposed by this  
10 Chapter.

11  
12 **3.36.140 Assessment—Administrative remedy.**

13 A. The Tax Administrator may make an assessment for taxes not remitted by  
14 a Person required to remit.

15  
16 B. Whenever the Tax Administrator determines that a Service User has  
17 deliberately withheld the amount of the tax owed by him from the amounts remitted to a  
18 Service Supplier, or that a Service User has failed to pay the amount of the tax for a  
19 period of two (2) or more billing periods, or whenever the Tax Administrator deems it in  
20 the best interest of the City, he or she may relieve the Service Supplier of the obligation  
21 to collect taxes due under this Chapter from certain named Service Users for specified  
22 billing periods. The Service Supplier shall provide the City with the names and  
23 addresses of such Service Users and the amounts of taxes owed under the provisions of  
24 this Chapter.  
25

26 C. The Tax Administrator shall notify the Service User that he or she has  
27

1 assumed responsibility to collect the taxes due for the stated periods and demand  
2 payment of such taxes. The notice shall be served on the Service User by handing it to  
3 him or her personally or by deposit of the notice in the United States mail, postage  
4 prepaid thereon, addressed to the Service User at the address to which billing was made  
5 by the Service Supplier; or should the Service User have changed his or her address, to  
6 his or her last known address. If a Service User fails to remit the tax to the Tax  
7 Administrator within fifteen (15) days from the date of the service of the notice upon him  
8 or her, which shall be the date of mailing if service is not accomplished in person, a  
9 penalty of twenty-five percent (25%) of the amount of the tax set forth in the notice shall  
10 be imposed, along with interest at the rate of three-quarters of one percent ( $\frac{3}{4}\%$ ) per  
11 Month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the  
12 date on which the remittance first became delinquent, until paid, but not less than Five  
13 Dollars (\$5.00).

14  
15  
16 C. The Tax Administrator may make an assessment for taxes not paid or  
17 remitted by a Service User required to pay or remit. A notice of the assessment which  
18 shall refer briefly to the amount of the taxes and penalties imposed and the time and  
19 place when such assessment shall be submitted to the City Council for confirmation or  
20 modification. The Tax Administrator shall mail a copy of such notice to the Service  
21 Supplier and Service User at least ten (10) days prior to the date of the hearing and shall  
22 post such notice for at least five (5) continuous days prior to the date of the hearing in a  
23 conspicuous place freely accessible to the public at large. Any interested party having  
24 any objections may appear and be heard at the hearing provided his or her objection is  
25 filed in writing with the Tax Administrator prior to the time set for the hearing. At the time  
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27

1 fixed for considering said assessment, the City Council shall hear the same together with  
2 any objection filed regarding aforesaid and thereupon may confirm or modify said  
3 assessment by motion.  
4

5 **3.36.150 Records.**

6 A. It shall be the duty of every Person required to collect and/or remit to the  
7 City any tax imposed by this Chapter to keep and preserve, for a period of at least three  
8 (3) years, all records as may be necessary to determine the amount of such tax as he or  
9 she may have been liable for the collection of and remittance to the Tax Administrator,  
10 which records the Tax Administrator, or the Tax Administrator's designated  
11 representative, shall have the right to inspect at all reasonable times.  
12

13 B. If any Person subject to record-keeping under this Section unreasonably  
14 denies the Tax Administrator, or the Tax Administrator's designated representative,  
15 access to such records, the Tax Administrator, or the Tax Administrator's designated  
16 representative, may impose a penalty of five hundred dollars (\$500) on such Person for  
17 each day following the initial date that the Person refuses to provide such access. This  
18 penalty shall be in addition to any other penalty imposed under this Chapter.  
19  
20

21 **3.36.160 Refunds.**

22 A. Whenever the amount of any tax has been overpaid, paid more than once,  
23 or has been erroneously or illegally collected or received by the Tax Administrator under  
24 this Chapter, it may be refunded as provided in this Section.  
25

26 B. The Tax Administrator may refund any tax that has been overpaid, paid  
27

1 more than once, or has been erroneously or illegally collected or received by the Tax  
2 Administrator under this Chapter, provided that no refund shall be paid under the  
3 provisions of this Section unless the claimant or his or her guardian, conservator,  
4 executor or administrator has submitted a written claim to the Tax Administrator within  
5 one year of the overpayment or erroneous or illegal collection of said tax. Such claim  
6 must clearly establish claimant's right to the refund by written records showing  
7 entitlement thereto. Nothing herein shall permit the filing of a claim on behalf of a class  
8 or group of taxpayers. The submission of a written claim, which is acted upon by the  
9 City Council, shall be a prerequisite to a suit thereon. The City Council shall act upon  
10 the refund claim within the time period set forth in Government Code Section 912.4. If  
11 the City Council fails or refuses to act on a refund claim within the time prescribed by  
12 Government Code Section 912.4, the claim shall be deemed to be rejected by the City  
13 Council on the last day of the period within which the City Council was required to act  
14 upon the claim as provided in Government Code Section 912.4.  
15

16  
17 C. It is the intent of the City Council that the one year written claim  
18 requirement of this section be given retroactive effect; provided, however, that any  
19 claims which arose prior to the commencement of the one year claims period of this  
20 Section, and which are not otherwise barred by a then-applicable statute of limitations or  
21 claims procedure, must be filed with the Tax Administrator as provided in this subsection  
22 within ninety (90) days following the effective date of this Section.  
23

24 D. Notwithstanding other provisions of this Section, whenever a Service  
25 Supplier, pursuant to an order of the California Public Utilities Commission or a court of  
26 competent jurisdiction, makes a refund to Service Users of charges for past utility  
27

1 services, the taxes paid pursuant to this Chapter on the amount of such refunded  
2 charges shall also be refunded to Service Users, and the Service Supplier shall be  
3 entitled to claim a credit for such refunded taxes against the amount of tax which is due  
4 upon the next monthly return.

5  
6 **3.36.170 Termination or suspension of utility users tax.**

7 The Service Supplier shall, upon notification, terminate or suspend any utility  
8 user tax commencing with the first full billing period which occurs after the effective date  
9 of such action by the city council.  
10

11  
12 **3.36.180 Utility users tax rate.**

13 (A) The taxes imposed by this Chapter shall be at the rate of eight (8) percent  
14 commencing on July 1, 2008, at the rate of ten (10) percent commencing on July 1,  
15 2009, and at the rate of twelve (12) percent commencing on July 1, 2010, unless a  
16 lesser rate is established by the city council on or before August 1st of any year.  
17

18 (B) Notwithstanding the provisions of subdivision (A) of this Section and unless  
19 otherwise extended by the voters, the tax rate applicable to charges for utilities subject to  
20 tax under this Ordinance shall be diminished to ten (10) percent on June 30, 2014. This  
21 rate shall be subsequently diminished to eight (8) percent on June 30, 2015, and further  
22 diminished to the rate in existence prior to adoption of this ordinance of six (6) percent  
23 on June 30, 2016.  
24

25  
26 **3.36.190 Bundling taxable and non-taxable charges.**  
27

1 If a non-taxable service and a taxable service are billed together under a single  
2 charge, the entire charge shall be deemed taxable unless the Service Supplier or  
3 taxpayer reasonably identifies actual charges not subject to the utility users tax based  
4 upon books and records that are kept in the regular course of business, in a manner  
5 consistent with generally accepted accounting principles. The Service Supplier or  
6 Taxpayer has the burden of proving the proper apportionment of taxable and nontaxable  
7 charges.  
8

9  
10 **3.36.200 Exemptions.**

11 A. Nothing in this Chapter shall be construed as imposing a tax upon:

12 (1) Any Person or service if imposition of such tax upon that Person or  
13 service would be in violation of a federal or California statute, the Constitution of  
14 the United States or the Constitution of the State of California;

15 (2) The City;

16 (3) Any individual who uses any utility subject to tax under this  
17 Ordinance in or upon any premises occupied by a household of which that  
18 individual is a member and that qualifies as "low income" as defined by the U.S.  
19 Department of Housing and Urban Development's annual survey of income limits  
20 for the Public Housing and Section 8 Programs.  
21

22 B. The exemptions granted by this Section shall not eliminate the duty of the  
23 Service Supplier from collecting taxes from such exempt individuals, or the duty of such  
24 exempt individuals from paying such taxes to the Service Supplier; unless an exemption  
25 is applied for by the Service User and granted in accordance with the provisions of this  
26

1 Section.

2 C. Any Service User exempt from the taxes imposed by this Chapter because  
3 of the provisions of subsection A, above, may file an application with the Tax  
4 Administrator for an exemption. Such application shall be made upon a form supplied by  
5 the Tax Administrator; and shall state those facts, declared under oath, which qualify the  
6 applicant for an exemption.

7 D. The Tax Administrator shall review all such applications, and shall certify  
8 as exempt those applicants determined to qualify therefor; and shall notify all Service  
9 Suppliers affected that such exemptions have been approved. For each exemption, the  
10 following information shall be transmitted to the Service Supplier:  
11

- 12 (1) Name of exempt applicant;
- 13 (2) Account number shown on utility bill;
- 14 (3) Address to which exempt service is being supplied; and
- 15 (4) Any other information as may be necessary for the Service Supplier

16 to remove the exempt Service User from its tax billing procedure.  
17

18 E. Upon receipt of such notice, the Service Supplier shall not be required to  
19 continue to bill any further tax imposed by this Chapter from such exempt Service User,  
20 until further notice by the Tax Administrator is given. The Service Supplier shall  
21 eliminate such exempt Service User from its tax billing procedure no later than sixty (60)  
22 days after receipt of such notice from the Tax Administrator.  
23

24 F. All exemptions shall continue and be renewed automatically by the Tax  
25 Administrator, so long as the prerequisite facts supporting the initial qualification for  
26 exemption shall continue; provided, however, that the exemption shall automatically  
27

1 terminate with any change in the service address or residence of the exempt individual;  
2 further provided such individual may nevertheless apply for a new exemption with each  
3 change of address or residence.

4 G. The Tax Administrator shall have the power and right to demand evidence  
5 of continued eligibility of a Service User for exemption under the provisions of this  
6 Section. Such evidence may include, but need not be limited to, copies of business  
7 records, letters or statements from the Social Security Administration, copies of income  
8 tax returns, and such other evidence concerning the Service User or other members of  
9 his or her household as may tend to prove or disprove such eligibility. Failure to provide  
10 such evidence as is within the control of a Service User to so provide, either directly by  
11 him or by his consent or the consent of a member of his or her household when such  
12 evidence is requested of the Service User in writing by the Tax Administrator, shall be  
13 grounds for the immediate discontinuance of the Service User's eligibility for exemption  
14 under the provisions of this Section. Evidence provided to the Tax Administrator upon  
15 request, or voluntarily provided by the Service User without request, may not be used  
16 against such Service User as evidence of violation of the provisions of this Section; such  
17 evidence may only be used as grounds for termination of the exemption herein provided.  
18  
19

20 H. Any individual exempt from the tax shall notify the Tax Administrator within  
21 ten (10) days of any change in fact or circumstance which might disqualify said individual  
22 from receiving such exemption. It shall be a misdemeanor for any Person to knowingly  
23 receive the benefits of the exemptions provided by this Section, when the basis for such  
24 exemption either does not exist or ceases to exist.  
25

26 I. Notwithstanding any of the provisions hereof, any Service Supplier who  
27



1 determines by any means that a new or nonexempt Service User is receiving service  
2 through a meter or connection exempt by virtue of an exemption issued to a previous  
3 user or exempt user of the same meter or connection, such Service Supplier shall  
4 immediately notify the Tax Administrator of such fact; and the Tax Administrator shall  
5 conduct an investigation to ascertain whether or not the provisions of this Section have  
6 been complied with, and where appropriate, order the Service Supplier to commence  
7 collecting the tax from the nonexempt Service User.  
8

9 J. Any individual entitled to be exempt from the taxes imposed by this  
10 Chapter, who used communication, electric, Gas, or water services and paid more than  
11 \$3.00 in such taxes, may, during the calendar year following such payment, apply for a  
12 refund thereof on forms provided by the Tax Administrator. Refund applications shall  
13 contain a declaration of those facts, under oath, which qualify the applicant for a refund,  
14 and shall be accompanied by the customer's bills showing the amount of such taxes  
15 billed by Service Supplier during the preceding calendar year. Refund claims may be  
16 filed by an individual who used communication, electric, Gas, or water services and paid  
17 the taxes prescribed by this Chapter either directly or indirectly to the 'Service User'  
18 rather than the Service Supplier. In the event the applicant has lost or destroyed any  
19 relevant billings or statements showing the amount of tax paid, or if the applicant  
20 indirectly paid such taxes in conjunction with the occupation of premises without  
21 receiving a specific billing therefor from the Service User, the maximum refund shall be  
22 \$48.00, or \$4.00 for each full Month of services received by the applicant, whichever is  
23 less.  
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25  
26 K. If the Tax Administrator determines that an application for exemption is  
27

1 faulty, or that the applicant has failed to truthfully set forth such facts, the application for  
2 the exemption shall be denied in writing to the applicant. The applicant shall thereafter  
3 have a right to file an amended application for exemption; or to appeal the Tax  
4 Administrator's decision to the City Manager within a 10-day period after the mailing date  
5 of the Tax Administrator's rejection. In the case of an appeal, the City Manager shall  
6 review the facts in consultation with the City Attorney, and shall render a final  
7 determination on such appeal.

8  
9 L. Upon request of the Tax Administrator, a Service Supplier, or its billing  
10 agent, shall provide a list of the names and addresses of those customers which,  
11 according to its billing records, are deemed exempt from any tax imposed under this  
12 Chapter.

13  
14 **3.36.210 Reporting and remitting.**

15  
16 Each Person required by this Chapter to remit a tax shall file a return with the  
17 Tax Administrator on forms approved by the Tax Administrator on or before the due  
18 date. The full amount of the tax owed shall be included with the return and filed with the  
19 Tax Administrator. The Tax Administrator is authorized to require such further  
20 information as he or she deems necessary to properly determine if the tax here imposed  
21 is being levied and collected in accordance with this Chapter. Returns and remittances  
22 are due immediately upon cessation of business for any reason. Pursuant to California  
23 Revenue and Taxation Code § 7284.6, the Tax Administrator, and its agents, shall  
24 maintain such filing returns as confidential information, and not subject to the Public  
25 Records Act.  
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**3.36.220 No injunction or 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.

**3.36.230 Oversight Committee.**

A six (6) member citizen oversight committee is hereby established, to be comprised of the City Treasurer plus five (5) members of the public, with each councilmember making one appointment. The oversight committee shall review and make recommendations concerning the audit and appropriate expenditure of the funds collected and/or remitted in accordance with this Chapter.

**Section 3.36.240 Amendment or repeal.**

Taxes imposed by this Chapter may be decreased, repealed or amended by the City Council, but may not be increased without a vote of the people as required in California Constitution Article XIIC and California Government Code Section 53750(h).

**Section 2. Majority Approval.** This Ordinance shall be effective only if approved by a majority of the voters voting thereon (50% + 1) and shall go into effect ten (10) days after the vote is declared by the City Council.

**Section 3. Severability.** If any section, sentence, clause, phrase, or portion

1 of this Ordinance is for any reason held to be invalid or unenforceable by a court of  
2 competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions  
3 of this Ordinance shall nonetheless remain in full force and effect. The people of the City  
4 of Sierra Madre hereby declare that they would have adopted each section, sentence,  
5 clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more  
6 sections, sentences, clauses, phrases, or portions of this Chapter be declared invalid or  
7 unenforceable and, to that end, the provisions of this Ordinance are severable.  
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9 **Section 4. Execution.** The Mayor is hereby authorized to attest to the  
10 adoption of this Ordinance by signing where indicated below.  
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