

# VOTER'S PAMPHLET

## MEASURES, ANALYSES AND ARGUMENTS

(whichever is applicable to your ballot)

Arguments in support of, or in opposition to, the proposed laws are the opinions of the authors.

### CITY OF SANTA CRUZ

**H** To preserve the safety and quality of life of the City of Santa Cruz through City services—including law enforcement, fire protection, emergency medical response, park maintenance and youth programs—and to ensure that all taxpayers are treated fairly, shall the City's existing utility users tax be broadened to include changes in technology and laws, and increased by 1.5%, while including protections for low-income residents and seniors, and ensuring that all funds remain local?

### FULL TEXT OF BALLOT MEASURE H

#### ORDINANCE NO. 2010-

#### AN ORDINANCE OF THE CITY OF SANTA CRUZ, CALIFORNIA AMENDING CHAPTER 3.29 OF TITLE 3 WITH RESPECT TO AN ELECTRIC, GAS, COMMUNICATION, WATER, SEWER, AND WASTE DISPOSAL USERS TAX.

#### THE PEOPLE OF THE CITY OF SANTA CRUZ, CALIFORNIA DO ORDAIN AS FOLLOWS:

SECTION 1. Chapter 3.29 of Title 3 of the Santa Cruz Municipal Code is hereby amended, and it shall read as follows:

#### Chapter 3.29 Utility Users Tax

- 3.29.010 Short title.
- 3.29.020 Definitions.
- 3.29.030 Constitutional, Statutory, and Other Exemptions.
- 3.29.040 Communication users tax.
- 3.29.050 Electricity users tax.
- 3.29.060 Gas users tax.
- 3.29.070 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity.
- 3.29.080 Water users tax.
- 3.29.090 Sewer users tax.
- 3.29.100 Refuse and trash collection and disposal service users tax.
- 3.29.110 Incentives for Energy and Water Conservation.
- 3.29.120 Bundling taxable items with non-taxable items.
- 3.29.130 Substantial Nexus/Minimum Contacts.
- 3.29.140 Collection of tax.
- 3.29.150 Reporting and remitting.
- 3.29.160 Rules, regulations and administrative agreements.
- 3.29.170 Penalties—Service suppliers/service users.
- 3.29.180 Actions to collect.
- 3.29.190 Deficiency determination and assessment—Tax application errors.
- 3.29.200 Failure to pay tax—Administrative remedy.
- 3.29.210 Appeal.
- 3.29.220 Records.
- 3.29.230 Refunds.
- 3.29.240 No Injunction/Writ of Mandate.
- 3.29.250 Notice of changes to ordinance.
- 3.29.260 Effect of state and federal reference—Authorization.
- 3.29.270 Remedies cumulative.
- 3.29.280 Interaction with prior tax.

#### 3.29.010 SHORT TITLE.

This chapter shall be known as the "Utility Users Tax Ordinance of the City of Santa Cruz."

(Ord. 84-50 § 1, 1984; Ord. 84-45 § 1, 1984).

#### 3.29.020 DEFINITIONS.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

(a) "Ancillary telecommunication services" means services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to the following services:

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

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

(3) "Directory assistance" means an ancillary service of providing telephone number information, and/or address information.

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

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

(b) "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.

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

(d) "City" shall mean the city of Santa Cruz.

(e) "Communication services" means: "telecommunications services," "ancillary telecommunication services," "video services" and "ancillary video services."

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

(g) "Mobile telecommunications service" has the meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations thereunder.

(h) "Month" shall mean a calendar month.

(i) "Nonresidential person" shall mean any service user who is not a residential person.

(j) "Non-Utility Service Supplier" means:

(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 is not 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, pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; or

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

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(k) "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.

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

(m) "Place of primary use" means the street address representative of where the customer's use of the communications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

(n) "Post-paid telecommunication service" means the telecommunication service obtained by making a payment on a communication-by-communication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.

(o) "Prepaid telecommunication service" means the right to access telecommunication services, which must be paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(p) "Private telecommunication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points (e.g., the location where the customer either inputs or receives the communications).

(q) "Nonresidential person" shall refer to a business or commercial entity that does not receive gas or electric service pursuant to a residential rate tariff by the local gas and electricity distribution company.

(r) "Service address" means the residential street address or the business street address of the service user. For a telecommunication or video service user, "service address" means either:

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

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

(3) For prepaid telecommunication service, "service address" means the location associated with the service number or, if not known, the point of sale of the services.

(s) "Service supplier" shall mean any entity or person, including the City, required to collect and remit a tax imposed by this chapter.

(t) "Service user" shall mean a person required to pay a tax imposed by this chapter.

(u) "State" shall mean the State of California.

(v) "Streamlined Sales and Use Tax Agreement" means the multi-state agreement commonly known and referred to as the Streamlined Sales and Use Tax Agreement, as it is amended from time to time.

(w) "Tax Administrator" shall be the Finance Director, or his or her designee.

(x) "Telecommunications service" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used. The term "telecommunications services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as Voice over Internet Protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that is functionally integrated with "telecommunication services." "Telecommunications services" include, but are not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; intrastate, interstate, and international telecommunication services; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to pre-recorded or live service).

(y) "Electrical corporation" and "gas corporation" shall have the same meanings as defined in Sections 218 and 222, respectively, of the Public Utilities Code of the State of California.

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

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

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

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

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

# VOTER'S PAMPHLET

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

### 3.29.030 CONSTITUTIONAL, STATUTORY, AND OTHER EXEMPTIONS.

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

(b) Any service user that is exempt pursuant to subsection (a) from any tax imposed by this chapter pursuant shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a state or federal agency or subdivision (such as a public school district or a community college district) with a commonly recognized name for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts declared under penalty of perjury which qualify the applicant for an exemption and shall include the names of all utility service suppliers serving that service user. If deemed exempt by the Tax Administrator such service user shall give the Tax Administrator timely written notice of any change in utility service suppliers so that the Tax Administrator can properly notify the new utility service supplier of the service user's tax-exempt status. A service user that fails to comply with this Section shall not be entitled to a refund of utility user's taxes collected and remitted to the Tax Administrator from such service user as a result of such non-compliance. The decision of the Tax Administrator maybe appealed pursuant to Section 3.29.210 of this chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 3.29.210 of this chapter is a prerequisite to a suit thereon.

(c) The City Council may, by resolution, establish one or more classes of persons or one or more classes of utility service otherwise subject to payment of a tax imposed by this chapter 3.29 and provide that such classes of persons or service shall be exempt, in whole or in part from such tax for a specified period of time.

(d) Any nonresidential person, other than a service supplier, with combined electric and gas bills amounting to \$100,000.00 or more annually will receive a rebate from taxes for such use. Rebates shall be made as follows:

(1) All utility user taxes paid in excess of \$8,500 will be refunded to service users with electric and gas bills which jointly total between \$100,000.00 and \$166,999.00 for the twelve-month period.

(2) Such service users will receive a forty percent rebate of the utility user taxes on electric and gas bills in excess of \$167,000.00 for the twelve-month period.

(3) The rebate will be prorated for such service users with twelve-month periods that include both tax rates seven percent and 8.5 percent.

The nonresidential service user shall substantiate eligibility for the tax rebate by submitting copies of all electric and gas bills as soon as the combined electric and gas bills reach \$100,000.00 for each twelve-month period. The twelve-month period is established when such service user first applies for the rebate. Rebates will not be made until the combined electric and gas bills are in excess of \$100,000.00 for the twelve-month period. Such service users shall advise the City each month of any rebate due by submitting a copy of each month's electric and gas bills to the city finance department when the combined electric and gas bills are in excess of \$100,000.00 for the twelve-month period.

### 3.29.040 COMMUNICATION USERS TAX.

(a) There is hereby imposed a tax upon every person in the City using communication services. The tax imposed by this Section shall be at the rate of eight and one-half percent (8.5%) percent of the charges made for such services and shall be collected from the service user by the communication services supplier or its

billing agent. There is a rebuttable presumption that communication services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this Section. There is also a rebuttable presumption that prepaid telecommunication services sold within the City are used, in whole or in part, within the City and are therefore subject to taxation under this Section. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this Section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the communication services.

(b) "Mobile telecommunications service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124). The Tax Administrator may issue and disseminate to communication service suppliers, which are subject to the tax collection requirements of this Section, sourcing rules for the taxation of other communication services, including but not limited to post-paid communication services, prepaid communication services, VoIP, and private communication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation (e.g., Streamlined Sales and Use Tax Agreement).

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

(d) As used in this Section, the term "telecommunication services" shall include, but is not limited to, charges for: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory, administrative and other cost recovery charges; local number portability charges; and text and instant messaging. "Telecommunication services" shall not include digital downloads that are not "ancillary telecommunication services," such as music, ringtones, games, and similar digital products.

(e) Charges for communication services (video) shall include, but are not limited to, charges for the following:

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

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

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

(4) Activation fees, reactivation fees, and reconnection fees;

(5) Video programming and video services;

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

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

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

(f) To prevent actual multi-jurisdictional taxation of communication 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 communication 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.

# VOTER'S PAMPHLET

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(g)The tax on communication services imposed by this Section shall be collected from the service user by the service supplier. 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 (20th) day of the following month.

### 3.29.050 ELECTRICITY USERS TAX.

(a)There is hereby imposed a tax upon every person, other than an electrical corporation or gas corporation, in the City using electricity. The tax imposed by this section shall be at the rate of eight and one-half percent (8.5%) percent of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service users that are provided by a service supplier or non-utility service supplier to a service user.

(b)As used in this section, 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)Stand-by, reserves, firming, ramping, voltage support, regulation, emergency or other similar minimum charges for services.

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

(6)Charges, fees, or surcharges for electric 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.

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

(d)The Tax Administrator may, from time to time, survey the electric service suppliers in the City to identify the various unbundled billing components of the electric retail service that are being offered to customers within the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items that are: (1) necessary for or common to the receipt, use and enjoyment of electric service; or (2) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

(e)As used in this Section the term "using electricity" shall not include the storage of such energy by a person in a battery owned or possessed by him for use in an automobile or other machinery or device apart from the premises upon which the energy was received; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries.

(f)The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 3.29.070 of this chapter. All other taxes on charges for

electricity imposed by this Section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month provided that such person shall submit an adjusted payment or request for credit as appropriate within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

### 3.29.060 GAS USERS TAX.

(a)There is hereby imposed a tax upon every person, other than a gas corporation or an electrical corporation, in the City using gas that is delivered through a distribution system or by mobile transport. The tax imposed by this section shall be at the rate of eight and one-half percent (8.5%) percent of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas, and shall apply shall apply to all uses of gas, including but not limited to, heating, electricity generation, or 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 for or common to the receipt, use, or enjoyment of gas service; or, (2) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, 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, trunk-line, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system or by mobile transportation.

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

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

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

(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.

(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 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 for or common to the receipt use or enjoyment of gas service, or, (2) currently

# VOTER'S PAMPHLET

## MEASURES, ANALYSES AND ARGUMENTS

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are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

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

(f) The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 3.29.070 of this chapter. All other taxes on charges for gas imposed by this Section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month provided that such person shall submit an adjusted payment or request for credit as appropriate within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

### 3.29.070 COLLECTION OF TAX FROM SERVICE USERS RECEIVING DIRECT PURCHASE OF GAS OR ELECTRICITY.

(a) Any service user subject to the tax imposed by Sections 3.29.050 or 3.29.060 that produces gas or electricity for self-use, that receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this chapter, or that, for any other reason, is not having the full tax collected and remitted by its service supplier, a non-utility service supplier, or its billing agent on the use of gas or electricity, including any related supplemental services, in the City, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) 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 non-utility 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. The rate schedule for this purpose shall be available from the City.

### 3.29.080 WATER USERS TAX.

(a) There is imposed a tax upon every person using water in the City which is transported and delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of eight and one-half percent (8.5%) percent of the charges made for such water.

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

(1) Water commodity charges (potable and non-potable);

(2) Distribution or transmission charges;

(3) Metering charges;

(4) Customer charges, late charges, service establishment or reestablishment charges, franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees and surcharges which are necessary for or common to the receipt, use or enjoyment of water service; and,

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

(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 water services.

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

(e) There shall be excluded from the base on which the tax imposed in this section is computed charges made for water which is to be resold and delivered through a pipeline distribution system; and charges made by a municipal water department, public utility or a city or municipal water district for water used and consumed by such department, public utility or water district in the conduct of the business of such department, utility or district. The tax on water service imposed by this section shall be collected from the service user by the water service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

### 3.29.090 SEWER USERS TAX.

(a) There is hereby imposed a tax upon every person in the City using sewer services within the City. The tax imposed by this section shall be at the rate of eight and one-half percent (8.5%) percent of the charges made for such sewer service. The tax shall be paid by the person using such sewer service.

(b) As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of sewer service; or, ii) currently are or historically have been included in a single or bundled rate for sewer service to retail customers. The term "charges" shall include, but is not limited to, the following charges: customer charges, late charges, service establishment or reestablishment charges, annual and monthly charges, and other charges, fees and surcharges which are necessary for or common to the receipt, use or enjoyment of sewer service; and, charges, fees, or surcharges for sewer services or programs, which are mandated by the City, a state or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

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

### 3.29.100 REFUSE AND TRASH COLLECTION AND DISPOSAL SERVICE USERS TAX.

# VOTER'S PAMPHLET

## MEASURES, ANALYSES AND ARGUMENTS

(whichever is applicable to your ballot)

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(a) There is imposed a tax upon every person using refuse collection and disposal services provided by a refuse collector in the City. There is also imposed a tax upon every person in the City that delivers refuse directly to a transfer station or disposes of trash or refuse at any City-owned landfill. The tax imposed by this section shall be at the rate of eight and one-half percent (8.5%) percent of the City's fee for the collection and disposal of refuse imposed by this code and shall be in addition to and not a replacement of said fee. The tax shall be paid by the person using such refuse and trash collection or disposal service.

(b) As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of refuse collection and disposal services; or, ii) currently are or historically have been included in a single or bundled rate for refuse collection and disposal services to retail customers. The term "charges" shall include, but is not limited to, the following charges: customer charges, late charges, service establishment or reestablishment charges, annual and monthly charges, and other charges, fees and surcharges which are necessary for or common to the receipt, use or enjoyment of refuse collection and disposal services; and, charges, fees, or surcharges for refuse collection and disposal services or programs, which are mandated by the City, a state or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(c) The tax imposed upon every person in the City that delivers refuse directly to a transfer station or city-owned landfill shall be collected from the service user by the operator of the transfer station. The transport station or City-owned landfill operator shall not collect the tax from any person who shows proof, in a form deemed satisfactory by the tax administrator, that the person's place of primary use is outside the City's jurisdiction. The amount of tax collected by the transfer station or City-owned landfill operator in one month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the twentieth (20th) day of the following month.

(d) The tax on imposed by this section on every person in the City using refuse collection and disposal services provided by the refuse collector shall be collected from the service user by the refuse collector or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

### 3.29.110 INCENTIVES FOR ENERGY AND WATER CONSERVATION.

The City may adopt appropriate tax incentives and rebates to encourage the reduction of gas, electricity and water usage in the City through efficiency and conservation, and to encourage the reduction or mitigation of greenhouse gases. In creating such tax incentives and rebates, the City may consult with the electric, gas and water service providers and local conservation and environmental organizations to achieve effective programs that are easily administered. The City may adopt, modify, discontinue and/or create new tax incentives and rebates from time to time, without obtaining voter approval. The Tax Administrator may adopt rules and forms for implementing such tax incentives and rebates.

### 3.29.120 BUNDLING TAXABLE ITEMS WITH NON-TAXABLE 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 non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation of the taxable and non-taxable services.

### 3.29.130 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" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any telecommunication service (including VoIP) 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: The service supplier: 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, 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 services that are subject to a tax under this chapter.

### 3.29.140 COLLECTION OF TAX.

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 insofar as practicable at the same time as and along with the collection of charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 3.29.170 shall apply.

(2) The duty of a service supplier to collect tax from a service user shall commence with the beginning of the first regular billing period applicable to that service user where all charges normally included in such regular billing are subject to the provisions of this chapter. Where a service user receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

(Ord. 84-50 § 1, 1984; Ord. 84-45 § 1, 1984).

### 3.29.150 REPORTING AND REMITTING.

Each service supplier shall, on or before the last day of each month, or at the close of any reporting period which may be established by the Tax Administrator, make a return to the Tax Administrator on forms approved by or provided by the City. The return shall state the amount of taxes billed by the service supplier during the preceding month. 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. At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Administrator. Returns and remittances 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. 93-37 § 3, 1993; Ord. 84-50 § 1, 1984; Ord. 84-45 § 1, 1984).

### 3.29.160 RULES, REGULATIONS AND ADMINISTRATIVE AGREEMENTS.

(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.

# VOTER'S PAMPHLET

## MEASURES, ANALYSES AND ARGUMENTS

(whichever is applicable to your ballot)

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(b)The Tax Administrator shall have power to adopt rules and regulations not inconsistent with the provisions of this chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the tax herein imposed; and a copy of such rules and regulations shall be on file and available for public examination in the Tax Administrator's office. Failure or refusal to comply with any rules and regulations promulgated under this section shall be deemed a violation of this chapter. 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 the strict requirements of this chapter and thereby so that: (1) the collection of any tax imposed herein may be made in conformance with the billing procedures of a particular service supplier so long as said agreements result in 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 agreement shall be on file with the Tax Administrator.

(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 of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 3.29.190 of this chapter 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 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 forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of 75/100ths 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)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, or require prospective application of the tax, if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration industry practice or other precedents. The Tax Administrator may also participate with other UUT public agencies in conducting coordinated compliance reviews with the goal of achieving administrative efficiency and uniform tax application determinations, where possible. To encourage full disclosure and on-going cooperation on annual compliance reviews, the Tax Administrator, and his or her agents, may enter into perspective agreements with the tax-collecting service providers regarding any changes pertaining to the taxation of services or charges that were previously deemed by the service provider, in good faith and without gross negligence, to be non-taxable. In determining whether the non-collection was in good faith and without gross negligence, the Tax Administrator shall

take into consideration the uniqueness of the product or service, industry practice or other precedence.

(Ord. 84-50 § 1, 1984; Ord. 84-45 § 1, 1984).

### 3.29.170 PENALTIES—SERVICE SUPPLIERS/SERVICE USERS.

(a)Taxes collected from a service user which are not remitted to the Tax Administrator on or before the due dates provided in this chapter are delinquent. 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. Any tax billed to a service user but not paid to the service supplier shall not be deemed an obligation of the service supplier unless such tax is thereafter paid to the service supplier.

(b)In addition to remitting the amount of the tax, any service supplier who 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 any tax imposed by this chapter within the time required, or any service user who fails to remit the tax, shall pay a penalty of ten (10%) percent of the amount of the tax, per month or fraction thereof, from the first day of delinquency until the date of payment. The total amount of the penalties provided for in this subsection shall not exceed fifty percent of the total amount of the tax due.

(c)If the Tax Administrator determines that the nonpayment by any service supplier or service user of any remittance due under this chapter is due to fraud or gross negligence, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated above.

(d)Every penalty imposed under the provisions of this section shall become a part of the tax required to be remitted.

(e)In addition to the penalties imposed, a service supplier or service user who fails to remit any tax imposed by this chapter shall pay interest at the rate of one and one-half (1.5%) percent per month or fraction thereof on the amount of tax, exclusive of penalties, from the first day of the month following the month for which the amount or any portion thereof should have been returned until the date of payment.

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

(Ord. 93-37 § 3, 1993; Ord. 84-50 § 1, 1984; Ord. 84-45 § 1, 1984).

### 3.29.180 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 attorneys' fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under 11 U.S.C.A. Section 507(a)(8)(C). Service suppliers who seek to collect charges for service in bankruptcy proceedings shall also include in any such claim the amount of taxes due the City for those services, unless the Tax Administrator determines that such duty is in conflict with any federal or state law, rule, or regulation or that such action would be administratively impractical.

(Ord. 84-50 § 1, 1984; Ord. 84-45 § 1, 1984).

# VOTER'S PAMPHLET

## MEASURES, ANALYSES AND ARGUMENTS

(whichever is applicable to your ballot)

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### 3.29.190 DEFICIENCY DETERMINATION AND ASSESSMENT—TAX APPLICATION ERRORS.

(a)The Tax Administrator shall make a deficiency determination if he or she determines that any service user or service supplier 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 or entity allegedly owing the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of 75/100ths 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 fourteen (14) calendar days after the date of service of such notice, the person or entity allegedly owing the tax may request in writing to the Tax Administrator a hearing on the matter.

(c)If the person or entity allegedly owing the tax 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 such person or entity requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

(d)At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person or entity owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.29.180 of this chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 3.29.180 of this chapter is a prerequisite to a suit thereon.

(e)Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of 75/100ths 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 section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

### 3.29.200 FAILURE TO PAY TAX—ADMINISTRATIVE REMEDY.

(a)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 chapter, and submit the list to the Tax Administrator with each monthly tax return. Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed from the amounts remitted to a service supplier, or that a service user has failed to pay the amount of the tax for a period of four or more billing periods, or whenever the Tax Administrator deems it in the best interest of the City, he may relieve the service supplier of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods. To the extent 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. 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 ten percent (10%) of the total tax that is owed, and shall pay interest at the rate of 75/100ths (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 service user that the City has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be personally served on the service user or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the service supplier, or, should address have changed, to the last user's last known address.

(d)If a service user fails to remit the tax to the Tax Administrator within fifteen (15) days from the date of the service of the notice upon him, which shall be the date of mailing if service is not accomplished in person, a penalty of twenty-five (25%) percent of the amount of the tax set forth in the notice shall be imposed, but not less than five (5) dollars. The penalty shall become part of the tax herein required to be paid.

(Ord. 84-50 § 1, 1984; Ord. 84-45 § 1, 1984).

### 3.29.210 APPEAL.

Any delinquent service user aggrieved by any decision of the Tax Administrator with respect to the amount of unpaid tax, interest and penalties, if any, may appeal to the City Council by filing notice of appeal with the city clerk pursuant to Section 1.16.030 within fifteen (15) days of the serving or mailing of the determination of the tax due. The City Council shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to the service user's last known place of address. The findings of the City Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice. The city clerk shall send a notice of the Council's final determination to the service provider.

(Ord. 84-50 § 1, 1984; Ord. 84-45 § 1, 1984).

### 3.29.220 RECORDS.

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

(b)The City through the City Council 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 non-disclosure 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.

(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

# VOTER'S PAMPHLET

## MEASURES, ANALYSES AND ARGUMENTS

(whichever is applicable to your ballot)

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the tax to the City; and (2) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

(e) If any person subject to record-keeping under this section unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of five hundred dollars 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.

### 3.29.230 REFUNDS.

(a) If the amount of any tax paid is in excess of the maximum amount payable under this chapter, the Tax Administrator shall refund the amount overpaid to the service user within sixty (60) days after the service user has established his entitlement to such refund, provided that no refunds under this subsection need be made more frequently than quarter-annually.

(b) 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 from a service user or service supplier provided that no refund shall be paid under the provisions of this Section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the Tax Administrator within one (1) year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. 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 subsection. It is the intent of the City Council that the one year written claim requirement of this subsection be given retroactive effect; provided, however, that any claims which arose prior to the commencement of the one-year claims period of this subsection, and which are not otherwise barred by a then applicable statute of limitations or claims procedure, must be filed with the Tax Collector as provided in this subsection within ninety (90) days following the effective date of this chapter.

(c) The Tax Administrator, where the claim is within his or her settlement authority as established by chapter or by resolution of the City Council from time to time, or the City Council where the claim is in excess of that amount, shall act upon the refund claim within forty-five (45) calendar days of the initial receipt of the refund claim. Said decision shall be final. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the forty-five (45) calendar day period, the claim shall be deemed to have been rejected by the Tax Administrator/City Council on the forty-fifth (45th) day. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in Government Code Section 913.

(d) The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon. Any action brought against the City pursuant to this Section shall be subject to the provisions of Government Code Sections 945.6 and 946.

(e) Notwithstanding subsections (a) through (d) above, 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: (1) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; (2) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, (3) in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded

by the service supplier to the service user in an amount equal to the requested credit.

### 3.29.240 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.

### 3.29.250 NOTICE OF CHANGES TO ORDINANCE.

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 California Public Utilities Code Section 799.

### 3.29.260 EFFECT OF STATE AND FEDERAL REFERENCE—AUTHORIZATION.

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

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 changes in 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.

### 3.29.270 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.

### 3.29.280 INTERACTION WITH PRIOR TAX.

(a) Collection of Tax by Service Providers. Service providers shall begin to collect the tax imposed by this amended Chapter 3.29 as soon as feasible after the effective date of the chapter, but in no event later than permitted by Section 799 of the California Public Utilities Code.

(b) Satisfaction of Tax Obligation by Service Users. Prior to April 1, 2011, any person who pays the tax levied pursuant to chapter 3.29 of this Code, as it existed prior to its amendment as provided herein, with respect to any charge for a service shall be deemed to have satisfied his or her obligation to pay the tax levied pursuant to chapter 3.29 as amended herein, with respect to that charge. The intent of this paragraph is to prevent the imposition of multiple taxes upon a single utility charge during the transition period from the prior Utility Users Tax ordinance to the amended Utility Users Tax ordinance (which transition period ends April 1, 2011) and to permit service providers or other persons with an obligation to remit the tax hereunder, during that transition period, to satisfy their collection obligations by collecting either tax.

(c) In the event that a final court order should determine that the election enacting this chapter 3.29 (as amended herein) is invalid for whatever reason, or that any tax imposed under this chapter 3.29 (as amended herein) is invalid in whole or in part, then the taxes imposed under chapter 3.29 of this Code, as it existed prior to

# VOTER'S PAMPHLET

## MEASURES, ANALYSES AND ARGUMENTS

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its amendment as provided herein, shall automatically continue to apply with respect to any service for which the tax levied pursuant to this chapter has been determined to be invalid. Such automatic continuation shall be effective beginning as of the first date of service (or billing date) for which the tax imposed by this chapter is not valid. However, in the event of an invalidation, any tax (other than a tax that is ordered refunded by the court or is otherwise refunded by the City) paid by a person with respect to a service and calculated pursuant to this chapter 3.29 (as amended herein) shall be deemed to satisfy the tax imposed under chapter 3.29, as it existed prior to its amendment as provided herein, on that service, so long as the tax is paid with respect to a service provided no later than six months subsequent to the date on which the final court order is published.

**SECTION 2.** Effective Date. This chapter shall become effective immediately upon the date that this Ordinance is confirmed and approved by the voters of the City of Santa Cruz at the Election of November 2, 2010.

**SECTION 3.** Amendment or Repeal. Chapter 3.29 of the Municipal Code may be repealed or amended by the City Council without a vote of the people. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance. The People of the City of Santa Cruz affirm that the following actions shall not constitute an increase of the rate of a tax:

1. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of the tax;
2. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance.
3. The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Ordinance); and
4. The collection of the tax imposed by this Ordinance, even if the City had, for some period of time, failed to collect the tax.

**SECTION 4.** Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The people hereby declares that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

**SECTION 5.** Ratification of Prior Tax. The voters of the City of Santa Cruz hereby ratify and approve the past collection of the Utility Users Tax under chapter 3.29 of the Municipal Code as it existed prior to the effective date of this Ordinance.

**SECTION 6.** Execution. The Mayor of the City Council is hereby authorized to attest to the adoption of this Ordinance by the voters of the City by signing where indicated below.

### IMPARTIAL ANALYSIS BY CITY ATTORNEY MEASURE H

Pursuant to Chapter 3.29 of the Santa Cruz Municipal Code, since 1984 City residents have paid a utility users tax on telephone, electricity, gas, cable television, water, sewer, and trash collection service. The current tax rate is 7% of the amount charged for each of these services. If this measure is adopted by the voters, the tax rate would increase to 8.5%. The 8.5% tax rate could not be increased without voter approval.

Post 1984 technology has rendered the City's telephone tax less effective in taxing communication services that have to a significant extent replaced traditional telephone service during this period. Unless precluded by federal law, this measure would update the City's existing telephone tax to apply to all types of telecommunication, video communication, text messaging, and paging services in addition to the telephone, cellular telephone and voice over internet protocol ("VOIP") services which are already taxed. This measure does not apply to digital downloads (e.g., games, ringtones, music and books).

Federal court decisions in other states have recently created a concern as to whether the City's ordinance, as currently written, can be properly applied to long distance, cellular, VOIP and bundled telephone services. Should an adverse decision be reached that is controlling in California, the revenues collected from the City's current telephone tax might be substantially reduced. This measure would revise the current ordinance language so as to address this concern and thereby strengthen the ordinance, thus serving to protect the City from such a potentially adverse ruling.

The current ordinance contains a limited exemption in connection with its gas and electricity tax only; the first \$34 paid each month for this utility by certain low income individuals is tax exempt. This measure would authorize the City Council to extend tax exemptions to other economically vulnerable residents including senior citizens and would allow the City Council to apply such exemptions to other utilities taxed under the ordinance besides gas and electricity.

This measure pertains to a general tax meaning that all new tax revenue would be deposited in the City's General Fund and be available to the City to pay for the provision of general municipal services to City residents including police, fire, emergency medical response, parks and recreation, and youth services.

This measure requires a simple majority "yes" vote for approval.

s/ John Barisone  
City Attorney

### FISCAL IMPACT STATEMENT BY CITY FINANCE DIRECTOR MEASURE H

The proposed increase in the City of Santa Cruz Utility Users Tax, if approved by voters, will increase the existing rate by 1.5% (from 7% to 8.5%) and will broaden the tax to apply to situations where there have been changes in technology and laws. The tax will be first charged, and thereafter collected, by communications, electricity, gas, water, sewer, and refuse utilities beginning on February 1, 2011. The tax will be charged and collected on all subsequent utility bills. The tax ordinance will have no retroactive effect and will be applied prospectively commencing on February 1, 2011. The tax increase will produce approximately \$700,000 more for the City of Santa Cruz during fiscal year 2010-2011 and approximately \$1.8 million more for each year thereafter, less reductions for any exemptions that the City Council of the City of Santa Cruz may establish by resolution for: 1) one or more classes of persons; or 2) one or more classes of utility service otherwise subject to payment of the tax. It is projected that the total tax, including the proposed increase, will amount to approximately \$10.2 million per year. Revenues generated could be used by the City of Santa Cruz for any public purpose, but it is intended by the City Council that the tax revenues would be used to preserve the safety and quality of life of the City of Santa Cruz through City services—including law enforcement, fire protection, emergency medical response, park maintenance and youth programs.

s/ Jack Dilles, Finance Director  
City of Santa Cruz

# VOTER'S PAMPHLET

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### ARGUMENT IN FAVOR OF MEASURE H

**Santa Cruz needs Measure H** to ensure that public safety services – police, fire and emergency response – are fully staffed to meet community needs.

This is a challenging time for Santa Cruz, with serious public safety concerns affecting all areas of our City. **Santa Cruz residents have made it clear: Safety is a community priority.**

**We need fully staffed police and fire services for safety in our neighborhoods, downtown, business districts, parks and schools.**

The City has struggled to fund basic services over the past decade. It understands the need to continually reexamine City services and how they're provided. It has already eliminated over 100 positions, cut millions of dollars and streamlined operations. It has proactively taken steps to increase the tax base, and employee pensions are being reviewed ... but revenue shortfalls persist.

**Police and fire services account for nearly 2/3 of the City's General Fund expenses** and they, too, have suffered cuts. This year, several public safety positions were funded by temporary grants – but these positions cannot be sustained if revenues do not keep up with costs.

**Measure H will provide stable funding for public safety.** It will make a real difference!

Measure H calls for a modest increase in the City's existing utility tax, and updates the ordinance to reflect modern technology so all residents are treated fairly. The added cost to a typical household will be about \$5/month, with **exemptions for low-income residents and seniors.**

The City Council has pledged that Measure H revenues will fight crime and gangs plaguing our community ... and **all Measure H revenue will stay here in the local Santa Cruz economy.**

**Our community faces a stark choice:** we can risk cuts in public safety or we can take action. Join us making safety a priority for Santa Cruz.

#### Vote YES on H.

s/ June Hoffman

Co-owner, Hoffman's Bistro  
Past President, Downtown Association

s/ Rick Martinez

Deputy Chief, Santa Cruz Police Department

s/ Michael Bethke

Neighborhood Advocate

s/ Neal Coonerty

3rd District Supervisor, Santa Cruz County

### REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE H

**VOTE "NO" on Measure H**—It will increase all of our utility taxes **FOREVER!**

- **NO ACCOUNTABILITY:** Over **21% permanent increase** will be going to the **General Fund**. Measure H rewards failed leadership and the **City Utility Tax amount will keep escalating as our utility bills grow.**
- **NO TRUST:** Council Members gave priority to funding highly-paid employees—**instead of adequately funding our Public Safety.**

**164 City of Santa Cruz workers were paid over \$100,000 last year alone!**

**Examples of City of Santa Cruz payment by position in 2009 are:**

<b>\$ 214,921.37</b> —Fire Battalion Chief	<b>\$ 205,749.54</b> —City Manager
<b>\$ 200,013.73</b> —Chief of Police	<b>\$ 183,913.15</b> —Fire Division Chief
<b>\$ 182,273.21</b> —Asst. City Manager	<b>\$ 180,736.53</b> —Deputy Police Chief
<b>\$ 176,144.39</b> —Public Works Director	<b>\$ 175,901.87</b> —Water Dept. Director
<b>\$ 164,356.15</b> —Parks & Rec. Director	<b>\$ 162,871.89</b> —Redevelopment Dir.
<b>\$ 159,420.75</b> —Police Sergeant	<b>\$ 158,216.53</b> —Human Resource Dir.
<b>\$ 158,031.86</b> —Planning Director	<b>\$ 154,042.59</b> —IT Director

**The above pay-table excludes taxpayer-funded pension benefits!**

There are still no credible guarantees that any of the increased utility taxes will be used to reform this problem. **Can we trust them again?**

- **NO "FAIR" TREATMENT:** Measure H will tax a growing number of new & future technologies. Some of these include, mobile phones, pagers, future types of TV, self-generated electricity (like solar panels), and even certain emergency and essential medical alert services!
- **NO EXEMPTIONS:** Contrary to the Ballot Question, there are no exemptions in this Ordinance for **Senior Citizens. Read it carefully...**  
**Low-income residents are not exempted either!**

Visit: [www.keepsantacruzsafe.com](http://www.keepsantacruzsafe.com) for more information or call 430-2053.

**VOTE "NO" on Measure H**

s/ Bernice Robertson

Community Volunteer, Jefferson Award Receiptent

s/ Sean Patrick Tario

Co-Founder, Santa Cruz Geeks

s/ Gina Locatelli

Downtown Business Owner, Past President, Boys & Girls Club of Santa Cruz

s/ Aldo Giacchino

Westside Community Activist

Senior Coaliton

s/ Tom Walsh, Executive Director

# VOTER'S PAMPHLET

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### ARGUMENT AGAINST MEASURE H

#### VOTE "NO" on Measure H

- **NO Real Guarantee**...increased City Utility Taxes would be for the "General Fund" and legally do not have to be spent on our unmet Public Safety needs.
- **NO Sunset Clause**...the 8.5% utility tax rate will be with local residents **forever**. The City of Santa Cruz imposes one of the highest utility tax rates in the State.
- **NO Senior Citizen Exemption**...despite statements to the contrary, there is no Senior Citizen and/or Disabled Person relief from this regressive utility tax.
- **NO** not "all taxpayers treated fairly"...High-end Corporate utility users are given huge rebates annually, and UCSC doesn't pay for its fair share of utility tax either.
- **NO Government Pension Reform**...will the over **21% increase** in all city utility taxes really be used for additional pay, pension and employee benefits?

#### **Do you Trust future City Councils to not squander these precious utility tax funds?**

This is the worst possible time to hike taxes. In the past, the City Council has been reckless in not adequately allocating sufficient funding for public safety. There are still no binding guarantees that the increased utility tax funds will be used as promised.

#### **Why is there no written definition of "seniors" in the proposed utility tax ordinance?**

With prices continuing to rise in this bad economy, and no official increase in Social Security, fixed-income Senior Citizens would be unfairly penalized. Disabled, low-income and needy folks are most at risk in our community with this regressive tax increase.

#### **Save over 21% on all your utility bills. Please think of our most vulnerable citizens first.**

#### VOTE "NO" on Measure H

#### **Thank you.**

- s/ Kevin Moon  
5th Generation Santa Cruzan  
Senior Coalition  
s/ William "Bill" Prouty, Board Member  
s/ Helen Lynch  
34-year Eastside Santa Cruz Resident  
s/ John A. Mancini  
Trustee, Santa Cruz Law Library  
s/ Robert Antonio Vallerga  
Disabled Senior, USAF Veteran

### REBUTTAL TO ARGUMENT AGAINST MEASURE H

Don't be misled by opponents who are pursuing a political agenda without regard for our community's safety.

It's a shame the opponents dress themselves up as protectors of needy residents...and then play word games to mislead you. It's a bigger shame that they ignore **our immediate need to take on gangs and violence**.

**Violence and crime in Santa Cruz deserve serious attention** – not political games.

**YES - Measure H is about public safety.** This measure pays for eight new police officers to patrol our neighborhoods and downtown, and for related prevention programs.

**YES - There are provisions for two ways to "sunset" this measure.** The tax rate can be lowered by vote of the City Council at any properly noticed meeting. And citizens of the community can act to repeal or lower the tax at any election.

**YES - There will be senior and low-income exemptions to the tax.** The opponents got it backwards. Currently, seniors aren't exempted from utilities taxes. Passing Measure H is the only way that all seniors can get this break.

**YES - Taxpayers are treated fairly.** Under State law, the City cannot charge this tax to UCSC or any other public school.

**YES - Reductions have been made, but now our safety is at stake.** The City has eliminated more than 100 positions and is dealing with pension costs. Today, our safety is the issue.

For about \$5 a month, your family can put more police on our streets.

#### **Vote YES for public safety and a healthier community.**

- s/ George "Bud" Winslow  
Past President, Seniors Council  
s/ Karen Darling  
Retired Innkeeper  
Past President, Democratic Women's Club  
s/ Peggy Dolgenos  
Local Technology Business Owner  
s/ Emily Reilly  
former Mayor of Santa Cruz  
s/ Jeremy Neuner  
Co-founder, NextSpace