RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE SUBMITTING TO CITY VOTERS AT THE NOVEMBER 8, 2016, GENERAL MUNICIPAL ELECTION AN ORDINANCE AMENDING CHAPTER 3.12 (UTILITY USERS TAX) OF TITLE 3 (REVENUE AND FINANCE) OF THE SUNNYVALE MUNICIPAL CODE TO MODERNIZE THE UTLITY USERS TAX; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS; AND SETTING PRIORITIES FOR BALLOT ARGUMENTS

WHEREAS, the City of Sunnyvale's ("City") long term economic health is dependent on a diverse revenue base, including locally-enacted and generated funds not subject to seizure by the State; and

WHEREAS, since 1969 similar to the practices in approximately 150 other California cities, the residents of the City of Sunnyvale have paid a utility user tax ("UUT") on telephone communications services among other utilities; and

WHEREAS, the telecommunications portion of the total UUT has steadily declined in recent years due in large part to new technology that is not captured under the existing ordinance, and revenue is currently approximately $1.5 million annually; and

WHEREAS, telephone communication advances over the past two decades mean that the City must update its UUT to match today's technology, including definitions for new telecommunications technologies, ensuring that all taxpayers regardless of technology used are treated the same and paying their fair share; and

WHEREAS, the telecommunications users tax component of the UUT is an important revenue source and preserving that revenue will ensure that the City can preserve its long-term financial stability, while supporting essential City services including fire protection, 911 rapid emergency response and crime prevention, maintenance of City parks, open space, and neighborhood streets, and continue to provide the programs that residents expect and deserve; and

WHEREAS, the measure will safeguard local revenues already being received for local needs, cannot be taken away by the State, and will continue to be subject to published budget reports and independent annual audits; and

WHEREAS, the measure does not create a new tax or increase the tax rate, but simply updates an outdated ordinance as described; and

WHEREAS, the proposed ordinance, attached hereto and incorporated herein by reference as Exhibit "A" (the "Ordinance"), would modernize the telecommunications portion of the UUT; and

WHEREAS, a general municipal election for November 8, 2016 has been called by Resolution No. 754-16, adopted on June 14, 2016; and

WHEREAS, pursuant to Government Code Section 53724 and Election Code Section 9222, the City Council desires to submit the Ordinance to the voters of the City at the election on November 8, 2016.

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

1. FINDINGS. The City Council finds and determines that each of the findings set forth above are true and correct.

2. ORDINANCE. At the November 8, 2016 General Municipal Election called by previous action of this Council, there shall be submitted to the qualified voters of the City of Sunnyvale an ordinance amending Chapter 3.12 of the Sunnyvale Municipal Code to update the utility users tax. The text of the ordinance is attached to and incorporated into this resolution as Exhibit A. The full text of the ordinance shall be posted on the web site of the City of Sunnyvale and available for review at the Sunnyvale City Clerk's Office during normal business hours.

3. MEASURE: The City Council hereby submits to the voters of the City, at the General Municipal Election called for November 8, 2016, the following measure:

MEASURE __	
SUNNYVALE ESSENTIAL SERVICES PROTECTION MEASURE. To maintain Sunnyvale's financial stability without increasing the existing 2% tax rate, and fund essential City services including police, fire and 911 emergency response, and pothole, street, sidewalk, and neighborhood park maintenance/repairs, shall Sunnyvale modernize its existing utility users tax to treat telecommunication taxpayers equally regardless of technology used, providing approximately $1,500,000 annually on an ongoing basis, until ended by voters, with independent audits, and all funds used locally?	YES NO

4. ADOPTION OF MEASURE. In the event a majority of the electors voting on the measure set forth above vote in favor thereof, the Sunnyvale Municipal Code shall be amended to read as set forth in Exhibit "A," attached hereto and incorporated herein, effective upon the date of filing.

5. NOTICE AND CONDUCT OF ELECTION. Notice of the time and place of holding the election is given, and the City Clerk hereby is authorized, instructed and directed to coordinate with the County of Santa Clara Registrar of Voters to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election. In all other particulars not described in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

6. CONSOLIDATION REQUEST. Pursuant to the requirements of Part 3 (Consolidation of Elections; §§10400 et seq.) of Division 10 of the Elections Code, and in recognition of Resolution 754-16, adopted on June 14, 2016, calling a General Municipal Election to be held on Tuesday, November 8, 2016, the City Council hereby requests the governing body of any other political subdivision, or any officer otherwise authorized by law, to partially or completely consolidate the submission of the amendment of the ordinance described in this resolution with any other elections which may be called for the same date, and to further provide that, upon consolidation, the consolidated election shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots opened and returned, returns canvassed, and all other proceedings in connection with the election shall be regulated and done by any body or official authorized to perform such functions and canvass the returns of the elections; and that this City Council consents to such consolidation.

7. REQUEST FOR COUNTY SERVICES. Pursuant to Section 10002 of the California Elections Code, the City Council hereby requests the Board of Supervisors of the County of Santa Clara to permit the Registrar of Voters to render services to the City of Sunnyvale relating to the conduct of Sunnyvale's Special Municipal Election to be held on Tuesday, November 8, 2016. Services shall be of the type normally performed by the Registrar of Voters in assisting the clerks of municipalities in the conduct of elections including, but not limited to, those certain services set forth in Section 4 hereof.

8. ELECTION COSTS. Subject to the approval of the Board of Supervisors of the foregoing requests, the City Clerk is hereby authorized to engage the services of the Registrar of Voters of the County of Santa Clara to aid in the conduct of the election. The City Director of Finance is authorized and directed to pay the costs of services, provided that no payment shall be made for services which the Registrar of Voters is otherwise required by law to perform.

9. BALLOT AND REBUTTAL ARGUMENTS FOR MEASURE. Primary and rebuttal arguments for the measure may be filed consistent with Elections Code Section 9282, et seq.

10. BALLOT ARGUMENT FOR MEASURE. The Council hereby selects the following course of action regarding arguments in favor of the measure [Council to select one of the following concurrent with adoption of resolution]:

a. Authorizes the City Council as a body to submit a written argument for the measure, and in the event an argument is filed against the measure, a rebuttal argument.:

b. Authorizes __[#]___ member(s) of the City Council to submit a written argument for the measure:_[one or more name(s)]_. At [Name(s)] discretion, the

argument may also be signed by other members of the City Council, bona fide associations, or individual voters who are eligible to vote on the measure. In the event that an argument is filed against the measure [Name(s)] is also authorized to submit a rebuttal argument on behalf of the City Council, which, at [Name(s)] discretion, may also be signed by members of the City Council, bona fide associations, or individual voters who are eligible to vote on the measure. Signatures on the rebuttal argument may be different from those who signed the primary argument.

OR

c. Takes no action with regard to authorizing the Council, or member or members of the Council to submit a written argument for the measure; in which case the City Clerk shall select an argument against the measure in accordance with the priority order set forth in Elections Code section 9287.

11. IMPARTIAL ANALYSIS. Pursuant to Elections Code Section 9280, the City Council hereby directs the City Attorney to prepare an impartial analysis of the measure.

12. TRANSMITTAL OF RESOLUTION. The City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors, the County Registrar of Voters and the County Clerk of the County of Santa Clara.

13. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, that this ordinance does not constitute a "project" with the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15378(b)(4) and 15378(b)(5) in that it is a fiscal and governmental organizational or administrative activity that will not result in direct or indirect changes in the environment .and does not involve any commitment to any specific project which may result in a potential significant impact on the environment

Adopted by the City Council at a regular meeting held on _____, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

_____
City Clerk
(SEAL)

APPROVED:

_____
Mayor

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT "A" TO
RESOLUTION NO. _____

PROPOSED AMENDMENT TO THE
SUNNYVALE MUNICIPAL CODE

The City Council of the City of Sunnyvale, on its own motion, submits to the Electors the following amendment to the Sunnyvale Municipal Code. The City Council has called a consolidated general election for the purpose of voting on the amendment to be held on November 8, 2016.

The proposed amendment to the Municipal Code follows the statement of the measure. The provisions of the Municipal Code proposed to be deleted are printed as ~~strike-out~~ type, no changes are printed as [Text unchanged], new numbering are printed as [Renumbered] and the new provisions are printed as underlined type.

CITY OF SUNNYVALE MEASURE ___

SUNNYVALE ESSENTIAL SERVICES PROTECTION MEASURE. To maintain Sunnyvale's financial stability without increasing the existing 2% tax rate, and fund essential City services including police, fire and 911 emergency response, and pothole, street, sidewalk, and neighborhood park maintenance/repairs, shall Sunnyvale modernize its existing utility users tax to treat telecommunication taxpayers equally regardless of technology used, providing approximately $1,500,000 annually on an ongoing basis, until ended by voters, with independent audits, and all funds used locally?

YES _____
NO _____

If Measure __ carries, Chapter 3.12 of the Sunnyvale Municipal Code shall be amended to read as follows:

Chapter 3.12.

UTILITY USERS TAX

3.12.010. Title.
3.12.020. Adoption—Charter authority.
3.12.030. Definitions.
3.12.040. Exemptions.
~~3.12.050. Conflicts.~~
3.12.~~060~~050. Taxes—Effective date. [Renumbered]
3.12.~~070~~060. ~~Telephone users tax—Imposition—Rate—Charges.~~Telecommunication users tax.
~~3.12.080. Telephone users tax—Exemptions and exclusions.~~
~~3.12.090. Telephone users tax—Collection.~~
~~3.12.100. Telecommunication user tax—Credit for multi-jurisdictional~~

~~taxation.~~

3.12.~~110~~070. Electricity users tax—Imposition—Rate. [Renumbered]

3.12.~~120~~080. Electricity users tax—Exclusions. [Renumbered]

3.12.~~130~~090. Electricity users tax—Collection. [Renumbered]

3.12.~~140~~100. Gas users tax—Imposition—Rate. [Renumbered]

3.12.~~150~~110. Gas users tax—Exclusions. [Renumbered]

3.12.~~160~~120. Gas users tax—Collection. [Renumbered]

3.12.130. Effect of Commingling Taxable Items with Nontaxable Items

3.12.140. Substantial Nexus/Minimum Contacts.

~~**3.12.170. Collection of Tax—Suit by city.**~~

3.12.~~180~~150. Collection of Tax—Duty—Procedures. [Renumbered]

3.12.160. Collection Penalties; Service Suppliers or Self-Collectors.

3.12.~~190~~170. ~~Collection of tax—Administrative regulations~~Additional Powers and Duties of Tax Administrator.

~~**3.12.200. Delinquent taxes—When delinquent.**~~

~~**3.12.210. Delinquent taxes—Service supplier—Penalty.**~~

~~**3.12.220. Delinquent taxes—Service supplier—Fraud—Penalty.**~~

~~**3.12.230. Delinquent taxes—Service supplier—Interest.**~~

~~**3.12.240. Delinquent taxes—Service supplier—Penalty and interest part of tax.**~~

~~**3.12.250. Delinquent taxes—Service user—Penalty.**~~

~~**3.12.260. Delinquent taxes—Service user—Fraud—Penalty.**~~

~~**3.12.270. Delinquent taxes—Service user—Interest.**~~

~~**3.12.280. Delinquent taxes—Service user—Penalty and interest part of tax.**~~

~~**3.12.290. Delinquent taxes—Service user—Penalties and interest collected by city.**~~

3.12.180. Deficiency Determination and Assessment; Tax Application Errors.

3.12.190. Administrative Remedy; Non-paying Service Users.

3.12.200. Actions to Collect.

~~**3.12.300. Failure to collect and report tax—Determination of tax by collector—Notice.**~~

~~**3.12.310. Failure to collect and report tax—Determination of tax—Hearing application—Notice.**~~

~~**3.12.320. Failure to collect and report tax—Determination of tax after hearing—Notice—When due.**~~

~~**3.12.330. Failure to collect and report tax—Collection of taxes from service user by city—Conditions—Notice.**~~

3.12.~~340~~210. Appeals—~~Who may appeal~~.

~~**3.12.350. Appeals—Hearing—Notice.**~~

~~**3.12.360. Appeals—Hearing—Determination.**~~

~~**3.12.370. Appeals—Hearing—Penalties suspended.**~~

3.12.~~380~~220. Records—Retention period—Access. [Renumbered]

3.12.~~390~~230. Refunds—~~Claim—Filing period~~/Credits. [Renumbered]

~~**3.12.400. Refunds—Service supplier refund.**~~

~~**3.12.410. Refunds—Service user refund.**~~

~~**3.12.420. Refunds—Claim—Proof required.**~~

3.12.240. No Injunction/Writ of Mandate.

3.12.250. Remedies Cumulative.

3.12.260. Notice of Changes to Ordinance.

3.12.270. Future Amendment to Cited Statute.

3.12.280. Annual Rate Review and Independent Audit of Tax Collection, Exemption, Remittance and Expenditure.

3.12.290. No Increase in Tax Percentage of Change in Methodology Without Voter Approval; Amendment or Repeal.

3.12.010. Title.

[Text unchanged.]

3.12.020. Adoption—Charter authority.

[Text unchanged]

3.12.030. Definitions.

Except where the context otherwise requires, the definitions contained in this section shall govern the construction of this chapter. The word "may" is always directory and discretionary and not mandatory; the word "shall" is always mandatory and not directory or discretionary.

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

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

(b) "Detailed telecommunications" billing service shall mean an ancillary service of separately stated information pertaining to individual calls on a customer's billing statement.

(c) "Directory assistance" shall mean an ancillary service of providing telephone number information, and/or address information.

(d) "Vertical service" shall mean an ancillary service that is offered in connection with one (1) or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

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

(2) "Billing address" shall mean the mailing address of the service

user where the service provider submits invoices or bills for payment by the service users.

(3) "City" means the city of Sunnyvale, California, including all of the territory and jurisdiction thereof as presently constituted, and any and all of the same which shall later come into existence by any manner or means whatsoever.

~~(2)~~(4) "Collector" means the director of finance or designee of the city of Sunnyvale.

~~(3)~~(5) "Director" means the director of finance of the city of Sunnyvale.

~~(4) "Intrastate telecommunication" means all telecommunications regardless of routing that either (i) originate in the city and terminate in the state, or (ii) originate in the state and terminate in the city, where, in either instance, a billing address for the telecommunication service user is in the city.~~

(~~5~~6) "Large commercial/agricultural ratepayer" shall mean electric customers who have a maximum peak demand equal to or greater than twenty kilowatts.

(~~6~~7) "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.

(8) "Person" means any natural person, firm, all domestic, nonprofit and foreign corporation~~s~~;~~,~~ firm; association;~~s,~~ syndicate~~s~~,; joint venture~~s~~,; joint stock company; club~~s~~,; trust: Massachusetts or common law trust;~~s,~~ estate~~s~~,; partnership of any kind;, limited liability company;~~,~~ cooperative~~,~~; society~~ies~~,; and any officer, agent, receiver, trustee, guardian or other appointed representative thereof; joint power agency, municipal district or municipal corporation, other than the City.

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

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

(11) "Prepaid telecommunication service" shall mean the right to access telecommunication services, which must be paid for in advance and which enables the origination of communications using an access number or

authorization code, whether manually or electronically dialed, and shall include "prepaid mobile telephony services" as defined in Revenue and Taxation Code Section 42004(k).

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

(~~7~~13) "Residential/small commercial ratepayer" shall mean electric customers who have a maximum peak demand of less than twenty kilowatts.

(14) Service address shall mean the residential street address or the business street address of the service user. For a telecommunications service user, "service address" means either:

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

(b) If the location in paragraph a. of this definition is unknown (e.g., mobile telecommunications service or VoIP service), the service address shall mean the location of the service user's place of primary use.

(c) For prepaid telecommunication service, "service address" means the point of sale of the services where the point of sale is within the City, or if unknown, the known address of the service user (e.g., billing address or location associated with the service number), which locations shall be presumed to be the place of primary use.

(~~8~~15) "Service supplier" means any person including the City, who provides or sells telecommunication, electric, or gas service to a user of such services within the City. The term shall include any person required to collect, or self-collect under this chapter, and remit a tax as imposed by this chapter, including its billing agent in the case of electric or gas suppliers. ~~required to collect a tax under the provisions of this chapter.~~

(~~9~~16) "Service user" means a person required to pay a tax imposed under the provisions of this chapter.

(~~10~~17) "Tax administrator" means the director of finance or designee of the city of Sunnyvale.

(1118) ~~"Telephone communication~~ "Telecommunication services" means ~~"communication services" as defined in Sections 4251 and 4252 of the Internal Revenue Code and the regulations thereunder, as those Sections were interpreted by the Internal Revenue Service before May 25, 2006, and shall include any telephonic quality communication that is interconnected to a public switched network, and shall include, without limitation, transmissions (including but not limited to, voice, telegraph, teletypewriter, data, facsimile, video or text) by electronic, radio, or similar means through "interconnected service" with the "public switched network," as these terms are commonly used in the Federal Communications Act, 47 U.S.C.A. Section 332(d) and the regulations of the Federal Communications Commission, whether such transmission occurs by wire, cable, fiber-optic, light wave, laser, microwave, radio wave, including, but not limited to cellular service, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service telecommunications (see 47 U.S.C.A. Section 332(c)(8)(C)(i), regardless of the radio spectrum used, switching facilities, satellite or any other similar facilities.~~ the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used, and includes broadband service (e.g., digital subscriber line (DSL), fiber optic, coaxial cable, and wireless broadband, including Wi-Fi, WiMAX, and Wireless MESH) to the extent federal and/or state law permits taxation of such broadband services, now or in the future. The term "telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over internet protocol (VoIP) services or is classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data service that is functionally integrated with "telecommunication services". Telecommunications services include, but is not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; intrastate, interstate and international telecommunication services; all forms of VoIP service; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to prerecorded or live service).

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

(20) "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.

(21) "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.

3.12.040. Exemptions.

~~Nothing contained in this chapter shall be construed as imposing a tax upon the city, or any person when imposition of such tax upon that person would be in violation of the Constitution of the United States or that of the state of California.~~ (a) The taxes imposed by this chapter shall not apply to:

(1) Any person or service if imposition of such tax upon that person or service would be in violation of a Federal or State statute or the Constitution of the State of California, or the Constitution of the United States; or

(2) The City, and the State of California and its subdivisions.

(b) Any service user that is exempt from the tax imposed by this chapter pursuant to subsection (a) of this Section shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a State or Federal agency or subdivision with a commonly recognized name for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in service suppliers so that the Tax Administrator can properly notify the new service supplier of the service user's tax exempt status. A service user that fails to apply and obtain an exemption pursuant to this Section 3.12.040 shall not be entitled to a refund of a users tax collected and remitted to the Tax Administrator from such service user as a result of such noncompliance.

(c) The decision of the Tax Administrator regarding an exemption application may be appealed pursuant to Section 3.12.210 (Appeals) of this chapter. Filing an application with the Tax Administrator and appeal to the City Manager, or designee, pursuant to Section 3.12.210 is a prerequisite to a suit thereon.

(d) 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 and provide that such classes of persons or service shall be exempt, in whole or in part from such tax for a specified period of time.

~~**3.12.050. Conflicts.** Nothing contained in this chapter is intended to conflict with applicable rules, regulations and tariffs of any service supplier subject to the jurisdiction of the California Public Utilities Commission. In the event of any conflict, the provisions of said rules, regulations and tariffs shall control.~~

3.12.0560. Taxes—Effective date.

[Text unchanged].

~~3.12.070~~3.12.060. ~~Telephone~~ Telecommunication users tax. ~~—Imposition Rate—Charges.~~

(a) There is hereby imposed a tax upon every person in the City~~, other than a telephone corporation,~~ using ~~intrastate~~ telecommunication services in the city. The tax imposed by this section ~~and Sections 3.12.080 through 3.12.100~~ shall be at the rate of two percent of the charges made for ~~intrastate telephone communication~~ such services, and shall be collected from the service user by the ~~telephone communication~~ telecommunication services ~~provider~~ supplier or its billing agent, or as otherwise provided by law. ~~To the extent allowed by law, the tax on intrastate telephone communication services shall apply to a service user if the billing or service address of the service user is within the city's boundaries. If the billing address of the service user is different from the service address, the service address of the service user shall be used.~~ There is a rebuttable presumption that telecommunication services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this section. There is also a rebuttable presumption that prepaid telecommunication services sold within the city are primarily used, in whole or in part, within the City and are therefore subject to taxation under this Section. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunication services.

~~(b) "Telephone communications services" shall not include "private mobile radio service," as defined in Part 20 of the Title 47 of the Code of Federal Regulations, or "private mobile service," as defined in 47 U.S.C.A. Section 332 (d), which is not interconnected to a public switched network. The tax imposed under this chapter shall not be imposed upon any person for using intrastate telephone communication services to the extent that pursuant to Sections 4252 and 4253 of the Internal Revenue Code, the amounts paid for such communication services are exempt from or are not subject to the tax imposed under Section 4251 of the Internal Revenue Code, as those sections were~~

~~interpreted by the Internal Revenue Service prior to May 25, 2006. In the event that the federal excise tax on "communications services" as provided in Sections 4251, 4252, and 4253 of the Internal Revenue Code is subsequently modified, any reference in this Chapter or in any administrative ruling to such law, including any related federal regulations, private letter rulings, case law, and other opinions interpreting these sections, shall refer to that body of law as those sections were interpreted by the Internal Revenue Service prior to May 25, 2006.~~(b) "Mobile telecommunications service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124). The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this section, sourcing rules for the taxation of other telecommunication services, including but not limited to post-paid telecommunication services, prepaid telecommunication services, and private telecommunication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation.

(c) The tax administrator may, from time to time, issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this chapter, an administrative ruling identifying those telecommunication~~s~~ services, or charges for such services, that are subject to taxation under this chapter. These administrative rulings shall implement the intent of the City Council that the telecommunications users tax be imposed on any person who initiates or receives telecommunications without regard to the type of technology that exists on the effective date of this section of which may be developed in the future. The administrative rules shall~~remain in effect unless altered or amended by the tax administrator and these administrative rulings shall continue to be consistent with applicable legal requirements, including any federal excise tax rules, regulations, and laws pertaining to "communications services" as interpreted by the Internal Revenue Service before May 25, 2006~~not impose a new tax, revise an existing tax methodology as stated in this section, or increase an existing tax, except as allowed by California Government Code sections 53750(h)(2)(A).

~~(d) As used in this section, the term "charges" shall also include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunication services including (i) all monthly recurring charges for calling features purchased by the user; (ii) monthly service charges for services including foreign exchange service; (iii) charges for special listings in the white pages of the telephone directory; (iv) charges for non-published (unlisted) numbers; (v) directory assistance charges; (vi) message unit or zone rate charges; (vii) repair charges; and (viii) toll or long distance messages. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service provider can reasonably identify charges not subject to~~

~~the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.(e) As used in this section, the term "charges" shall not, however, include:~~

~~(i) customer deposits;~~

~~(ii) directory (Yellow Pages) advertising;~~

~~(iii) rental or sale of directories, reverse directories;~~

~~(iv) all charges for maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations;~~

~~(v) private line service charges;~~

~~(vi) PBX charges (excluding trunk charges);~~

~~(vii) all charges made for Universal Life Line services; and~~

~~(viii) services paid for by inserting coins in coin-operated telephones.~~ (d) As used in this Section, the term "telecommunication services" shall include, but is not limited to, charges for: connection, reconnection, termination or early termination charges; movement or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; fees, charges or surcharges, which are imposed by any state or federal agency or law (whether such fees, charges or surcharges are imposed on the service supplier or the customer); local number portability charges; and text and instant messaging. "Telecommunication services" shall not include digital downloads that are not "ancillary telecommunication services," such as music, ringtones, games, and similar digital products.

(e) To prevent actual multi-jurisdictional taxation of telecommunication services subject to tax under this section, any service user, upon proof to the Tax Administrator that the service user has previously paid the same tax in another state or city on such telecommunication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other State or City; provided, however, the amount of credit shall not exceed the tax owed to the City under this section.

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

~~3.12.080. Telephone users tax—Exemptions and exclusions.~~

~~Notwithstanding the provisions of Section 3.12.070, the tax imposed under Sections 3.12.070 through 3.12.100 shall not be imposed upon any person for using telecommunication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under Section 4251 of the Internal Revenue Code, as that Section was interpreted by the Internal~~

~~Revenue Service before May 25, 2006, or under Part 20 (commencing with Section 41001) of Division 2 of the California Revenue and Taxation Code, and the regulations thereunder, except for the following charges, which are taxable under this section:~~

~~(a) Charges to a service user by a hotel or motel for intrastate telecommunication services used in the city when such charges are incidental to the right of occupancy in such hotel or motel. Collection of the tax shall be the responsibility of the hotel or motel; and~~

~~(b) Charges to a service user in the city by a telecommunication services provider, including but not limited to an alternative or nontraditional telephone service provider, a private communication service provider, or a competitive access provider, for providing intrastate telecommunication services used in the city.~~

~~**3.12.090. Telephone users tax—Collection.**~~

~~The tax imposed in this section and Sections 3.12.070 through 3.12.090 shall be collected from the service user by the person providing the intrastate telephone communication services. The amount of tax collected in one month shall be remitted to the collector on or before the last day of the following month.~~

~~**3.12.100. Telecommunication user tax—Credit for multi-jurisdictional taxation.**~~

~~To prevent actual multi-jurisdictional taxation of intrastate telecommunication services subject to tax under Sections 3.12.060 through 3.12.090, any service user, upon proof to the collector that the service user has previously paid the same tax in another city on such intrastate telecommunication service, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other city; provided, however, the amount of credit shall not exceed the tax owed to the city under Sections 3.12.060 through 3.12.090. (Ord. 2688-01 § 6).~~

~~3.12.110~~3.12.070. Electricity users tax—Imposition—Rate.

[Renumbered; text unchanged]

~~3.12.120~~3.12.080. Electricity users tax—Exclusions.

[Renumbered; text unchanged]

~~3.12.130~~3.12.090. Electricity users tax—Collection.

[Renumbered; text unchanged]

~~3.12.140~~3.12.100. Gas users tax—Imposition—Rate.

[Renumbered; text unchanged]

~~3.12.150~~3.12.110. Gas users tax—Exclusions.

[Renumbered; text unchanged]

~~3.12.160~~3.12.120. Gas users tax—Collection.

[Renumbered; text unchanged]

3.12.130. Effect of Commingling Taxable Items with Nontaxable Items.

If any non-taxable service charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier is able to establish reasonable values for the portions of the combined charge that are nontaxable and taxable. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, the service supplier shall assign reasonable values for the taxable and non-taxable services. In assigning reasonable values for taxable and non-taxable services under this Section 3.12.130, the service supplier may use reasonable and verifiable standards, as approved by the Tax Administrator, such as: (i) the books and records kept in the regular course of business and in accordance with generally accepted accounting principles (not created and maintained for tax purposes); (ii) the market value of such taxable and non-taxable services when offered on a stand-alone basis by the supplier or its competitors; or (iii) other similar evidence of value. The service supplier has the burden of proving to the satisfaction of the Tax Administrator the reasonable valuation and proper apportionment of taxable and non-taxable charges under this Section 3.12.130.

3.12.140. Substantial Nexus/Minimum Contacts.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Article, "substantial nexus", "substantial economic presence", and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by State and Federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any telecommunication service (including VoIP) used by a person with a service address in the City shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this Chapter. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the City, directly or through an agent, affiliate or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents, affiliates or other representatives; solicits business in the City on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the City or distributed from a location with the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of utility services that are subject to a tax under this Chapter (e.g., an

affiliated person or independent contractor engaging in activities in the City that inure to the benefit of the service supplier in its development or maintenance of a market for its services in the City, including by directly or indirectly referring potential customers, whether by a link on an internet website or otherwise, to the service supplier).

~~**3.12.170. Collection of Tax—Suit by city.** 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 collector shall be deemed a debt owed to the city by the person required to collect and remit. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount.~~

~~3.12.180~~3.12.150. Collection of Tax—Duty—Procedures. ~~The duty to collect and remit the taxes imposed by this chapter shall be performed as follows:~~

~~(a) The tax shall be collected insofar as practicable at the same time as and along with the charges made in accordance with regular billing practice of the service supplier. Except in those cases where a service user pays the full amount of said charges but does not pay any portion of a tax imposed by this chapter, or where a service user has notified a service supplier that he is refusing to pay a tax imposed by this chapter which the supplier is required to collect, if the amount paid by a service user is less than the full amount of the charge and tax which has accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid.~~

~~(b) The duty to collect tax from a service user shall commence with the beginning of the first regular billing period applicable to that person which starts on or after the operative date of this chapter. Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.~~

(a) Collection by Service Suppliers. The duty of service suppliers to collect and remit the taxes imposed by the provisions of this chapter shall be performed as follows:

(1) The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax that was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 3.12.190 (Administrative Remedy) shall apply.

(2) The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this chapter. Where a person receives more than one (1) billing, one (1) or more being for different periods than another, the

duty to collect shall arise separately for each billing period.

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

3.12.160. Collection Penalties; Service Suppliers or Self-Collectors.

(a) Taxes collected from a service user are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this Section shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on the following business day.

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

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

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

(e) Notwithstanding the foregoing, the Tax Administrator may, in his

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

~~3.12.190~~3.12.170. ~~Collection of tax—Administrative regulations~~Additional Powers and Duties of the Tax Administrator. ~~The director may make administrative agreements to vary the strict requirements of this chapter so that collection of any tax imposed herein may be made in conformance with the billing procedures of a particular service supplier so long as the overall result of said agreements results in collection of tax in conformance with the general purpose and scope of this chapter. A copy of each such agreement shall be on file and available for public examination in the director's office.~~

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

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

(c) Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this chapter and thereby; (1) conform to the billing procedures of a particular service supplier so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter; or, (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and are voidable by the Tax Administrator or the City at any time.

(d) The Tax Administrator may conduct an audit, to ensure proper

compliance with the requirements of this chapter, of any person required to collect and/or remit a tax pursuant to this chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period or review shall not exceed a period of three (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 3.12.180 (Deficiency Determination and Assessment; Tax Application Errors) for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to be a rebuttable presumption of correctness.

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

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

(g) The City may compromise a claim filed pursuant to this chapter consistent with the provisions of the City Charter and section 2.04.030 of the Sunnyvale Municipal Code.

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

negligence, to be non-taxable. In determining whether the non-collection was in good faith and without gross negligence, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, and whether the disclosure was voluntarily made by the service provider or its agent.

~~**3.12.200. Delinquent taxes—When delinquent.** Taxes collected from a service user which are not remitted to the collector on or before the due dates provided in this chapter are delinquent.~~

~~**3.12.210. Delinquent taxes—Service supplier—Penalty.** In addition to remitting the amount of the tax, any service supplier who fails to remit any tax imposed by this chapter within the time required and upon five days written notice to the service supplier of its failure to remit, shall pay a penalty of ten percent of the amount of the tax which shall be added on the last day of each month following the date on which remittance was due until the tax and penalties are remitted. Provided, however, that the total amount of the monthly penalties shall not exceed the total amount of the tax due.~~

~~**3.12.220. Delinquent taxes—Service supplier—Fraud—Penalty.** If the collector determines that the nonpayment by any service supplier of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in Section 3.12.210.~~

~~**3.12.230. Delinquent taxes—Service supplier—Interest.** In addition to the penalties imposed by Sections 3.12.210 and 3.12.220, any service supplier who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month, or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.~~

~~**3.12.240. Delinquent taxes—Service supplier—Penalty and interest part of tax.** Every penalty imposed upon a service supplier and such interest as accrues, under the provisions of Sections 3.12.210 to 3.12.230, inclusive, shall become a part of the tax required to be remitted.~~

~~**3.12.250. Delinquent taxes—Service user—Penalty.** In addition to paying the amount of the tax, any service user who fails to pay any tax imposed by this chapter within thirty days of the date of the receipt of notice of the amount of tax due from the service supplier shall pay a penalty of ten percent of the amount of the tax which shall be added on the last day of each month following the date on which payment was due until the tax and penalties are paid. Provided, however, that the total amount of the monthly penalties shall not exceed the total amount of the tax due.~~

~~**3.12.260. Delinquent taxes—Service user—Fraud—Penalty.** If the collector~~

~~determines that the nonpayment by any service user of any tax imposed by this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in Section 3.12.250.~~

~~3.12.270. Delinquent taxes—Service user—Interest.~~

~~In addition to the penalties imposed by Sections 3.12.250 and 3.12.260, any service user who fails to pay any tax imposed by this chapter, shall pay interest at the rate of one percent per month, or fraction thereof, exclusive of penalties, from the date on which the remittance first became delinquent until paid, and a collection charge of ten dollars for each delinquent account.~~

~~3.12.280. Delinquent taxes—Service user—Penalty and interest part of tax.~~

~~Every penalty imposed, and such interest as accrues upon a service user, under the provisions of Sections 3.12.250 to 3.12.270, inclusive, shall become a part of the tax required to be paid.~~

~~3.12.290. Delinquent taxes—Service user—Penalties and interest collected by city.~~

~~The penalties, interest, and collection charges imposed in Sections 3.12.250 to 3.12.270, inclusive, shall not be collected by the service supplier, but by the city.~~

~~3.12.300. Failure to collect and report tax—Determination of tax by collector—Notice.~~

~~If any service supplier fails to make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this chapter, the collector shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the collector shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any service supplier who has failed or refused to make such report and remittance, he shall proceed to determine and assess against such service supplier the tax, interest and penalties provided for by this chapter. In case such determination is made, the collector shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the service supplier so assessed at his last known place of address.~~

~~3.12.310. Failure to collect and report tax—Determination of tax—Hearing application—Notice.~~

~~The service supplier may within ten days after the serving or mailing of the notice referred to in Section 3.12.300 make application in writing to the collector for a hearing on the amount assessed. If application by the service supplier for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the collector shall become final and conclusive and immediately due and payable. If such application is made, the collector shall give not less than five days written notice in the manner prescribed herein to the service supplier to show cause at a time and place fixed in the notice why the~~

~~amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the service supplier may appear and offer evidence why such specified tax, interest and penalties should not be so fixed.~~

~~**3.12.320. Failure to collect and report tax—Determination of tax after hearing—Notice—When due.**~~

~~After a hearing on the amount of tax assessed, the collector shall determine the proper tax to be remitted, and shall thereafter give written notice to the service supplier in the manner prescribed above of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in this chapter.~~

~~**3.12.330. Failure to collect and report tax—Collection of taxes from service user by city—Conditions—Notice.**~~

~~Whenever the collector determines that a service user has deliberately withheld the amount of any tax imposed on him by the provisions of this chapter from the amounts remitted to a service supplier required to collect the tax, or that a service user has failed to pay the amount of the tax to such service supplier for a period of four or more billing periods, or whenever the collector deems it in the best interest of the city, he may relieve such service supplier of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods. The collector shall notify the service user that he has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes, plus any penalty imposed and such interest as may be due pursuant to the provisions of Sections 3.12.200 through 3.12.290. The notice shall be served on the service user by handing it to him personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the service supplier required to collect the tax; or, should the service user have changed his address, to his last known address.~~

3.12.180. Deficiency Determination and Assessment; Tax Application Errors.

(a) The Tax Administrator may make a deficiency determination if he or she determines that any person required to pay or collect taxes pursuant to the provisions of this chapter has failed to pay, collect, and/or remit the proper amount of tax by improperly applying or failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3.12.180 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

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

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

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

(d) At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to the person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.12.210 (Appeals). Filing an application with the Tax Administrator and appeal to the City Manager, or designee, pursuant to Section 3.12.210 (Appeals) 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 up to fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of up to seventy-five one-hundredths percent (0.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this chapter shall commence from the date of delinquency as provided in this subsection (e).

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

3.12.190. Administrative Remedy; Non-paying Service Users.

(a) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the

amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this Section 3.12.190 from certain named service users for specific billing periods. Whenever the service user has failed to pay the amount of tax owed for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Section 3.12.190. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3.12.190 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 up to fifteen (15%) percent of the total tax that is owed, and shall pay interest at the rate of up to three-quarters of one (3/4%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

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

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

3.12.200. 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 in an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this chapter, along with any collection costs incurred by the City as a result of the person's noncompliance with this chapter, including, but not limited to, reasonable attorney's fees. In the event that a service user or service supplier owing a tax under this chapter files bankruptcy, then such debt to the City shall be deemed an unsecured priority excise tax

obligation under 11 U.S.C.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.

~~Any person aggrieved by any decision of the collector pursuant to this chapter may appeal to the collector by filing a notice of appeal with the director within fifteen days of the serving or mailing of the decision.~~

~~3.12.350. Appeals—Hearing—Notice.~~

~~The director shall fix a time and place for hearing such appeal. The director shall give notice thereof in writing to such person by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to such person at his last known place of address.~~

~~3.12.360. Appeals—Hearing—Determination.~~

~~The director shall have authority to determine all questions raised on such appeal at the time of the hearing. No determination so made by the director shall conflict with any substantive provision of this chapter.~~

~~3.12.370. Appeals—Hearing—Penalties suspended.~~

3.12.~~340~~210. Appeals—~~Who may appeal~~.

No penalty provided for in this chapter shall be imposed after the filing of an appeal or prior to the completion of the hearing on the appeal and the making of a determination on the subject of the appeal by the director.

(a) The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 3.12.230 (Refunds)), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.12.230), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. [See Government Code Section 935(b)]. To the extent allowed by law, nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

(b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.12.230), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

(c) The matter shall be scheduled for hearing before an independent

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

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

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

3.12.~~380~~220. Records—Retention period—Access.

~~It shall be the duty of every service supplier required to collect and remit to the city any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as such service supplier may have been required to collect and remit to the city, which records the collector shall have the right to inspect at all reasonable times.~~

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

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

excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.

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

(d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: (1) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and, (2) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, 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 chapter unreasonably denies the Tax Administrator, or the Tax Administrator's designated representative, access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, the Tax Administrator may impose a penalty of five hundred ($500.00) dollars on such person for each day following: i) the initial date that the person refuses to provide such access; or, ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this chapter.

~~**3.12.390. Refunds/ Claim Filing period.**~~

~~Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the city under this chapter, it may be refunded as provided in this section and Sections 3.12.400 through 3.12.420 provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the collector within three years of the date of payment. The claim shall be on forms furnished by the collector.~~

~~**3.12.400. Refunds Service supplier refund.**~~

~~A service supplier may claim a refund or take as credit against taxes collected and remitted an amount overpaid, paid more than once, or erroneously or illegally collected or received, when it is established in a manner prescribed by the~~

~~collector that the person from whom the tax has been collected was not a service user.~~

~~**3.12.410. Refunds—Service user refund.**~~

~~Any service user may obtain a refund of taxes overpaid, or paid more than once, or erroneously or illegally collected or received by the city by filing a claim in the manner provided in Section 3.12.390, but only when the service user having paid the tax to the service supplier establishes to the satisfaction of the collector that the service user has been unable to obtain a refund from the service supplier who collected the tax.~~

~~**3.12.420. Refunds—Claim—Proof required.**~~

~~No refund shall be paid under the provisions of Sections 3.12.390 through 3.12.410 unless the claimant establishes his or her right thereto by written records showing entitlement thereto.~~

3.12.~~390~~230. Refunds/Credits~~—Claim—Filing period~~.

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

(a) The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this chapter, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the Tax Administrator within one (1) year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. To the extent allowed by law, nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim under penalty of perjury as provided by this Section 3.12.230.

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

(c) Notwithstanding the notice provisions of subsection (a) of this Section 3.12.230, the Tax Administrator may, at his or her discretion, give written

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

3.12.240. 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.

3.12.250. 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 (1) or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

3.12.260. 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 Public Utilities Code Section 799.

3.12.270. Future Amendment to Cited Statute.

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

3.12.280. Annual Rate Review and Independent Audit of Tax Collection, Exemption, Remittance and Expenditure.

The City shall annually verify that the taxes owed under this section have

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

3.12.290. No Increase in Tax Percentage or Change in Methodology Without Voter Approval; Amendment or Repeal.

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

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

(b) An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as such interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance;

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

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