

RESOLUTION NO. NS-

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SANTA CRUZ CONFIRMING AND APPROVING THE CANVASS OF BALLOTS
AND RETURNS FOR THE CITY OF SANTA CRUZ GENERAL MUNICIPAL ELECTION
HELD ON NOVEMBER 2, 2010 AND DECLARING THE RESULTS

WHEREAS, Resolution No. NS-28,249 was adopted on August 3, 2010 calling for a General Municipal Election in the City of Santa Cruz for the purpose of electing three Councilmembers to the City of Santa Cruz City Council, and for consideration of one ballot measure;

WHEREAS, on November 2, 2010, the election so called and ordered was held in accordance with law and the votes were counted; and

WHEREAS, the County Clerk has certified the results of the election to this Council and this Council has canvassed the returns of said election.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Santa Cruz that it hereby certifies the following:

1. The General Municipal Election referred to above was held in the City of Santa Cruz on November 2, 2010.
2. The certified canvass of returns is set forth in Exhibit "A," attached herein.
3. Votes were cast for the candidates for the office of Santa Cruz City Councilmember as follows:

Name of Candidate	Total number of votes for each candidate
Lynn Robinson	11,238
David Terrazas	10,503
Gus Ceballos	810
Hilary Bryant	11,666
David Foster	4,109
Ron Pomerantz	6,713
Steven Pleich	1,248
Kevin Moon	5,319

4. The three candidates receiving the highest number of votes for the office of Santa Cruz City Councilmember for full four-year terms were Hilary Bryant, Lynn Robinson, and David Terrazas. These three candidates are hereby declared elected.

5. At the regular Municipal election held on November 2, 2010, a proposal for one ballot measure ordinance with respect to Amending Chapter 3.29 of Title 3 with respect to an Electric, Gas, Communication, Water, Sewer, and Waste Disposal Users Tax was submitted to the voters and votes were cast for and against the measure as follows:

RESOLUTION NO. NS-

MEASURE H

Yes	13,942
No	8,096

More than a majority of all the votes cast at the regular Municipal Election were in favor of the ballot measure. The ballot measure is declared adopted.

PASSED AND ADOPTED this 14th day of December, 2010 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

Certification of the Votes Cast

State of California }
County of Santa Cruz } **SS.**

I, Gail L. Pellerin, County Clerk of the County of Santa Cruz, do hereby certify that the following is a full, true and correct statement of the results of the official canvass of the returns of the November 2, 2010 Statewide General Election held in the County of Santa Cruz.

I hereby set my hand and official seal this 30th day of November, 2010.



Gail L. Pellerin

Gail L. Pellerin
Santa Cruz County Clerk



County of Santa Cruz

COUNTY CLERK / ELECTIONS

701 OCEAN STREET, ROOM 210, SANTA CRUZ, CA 95060-4076
831-454-2060 TOLL-FREE: 866-282-5900 FAX: 831 454-2445 TDD: 831-454-2123
E-MAIL: gail.pellerin@co.santa-cruz.ca.us
Web Sites: www.scco clerk.com & www.votescount.com

GAIL L. PELLERIN, COUNTY CLERK

November 30, 2010

INFORMATION REGARDING THE STATEMENT OF VOTE

This Statement of Vote is prepared and issued pursuant to Elections Code Section 15372 - 15374.

HOW RESULTS ARE COMPILED

The Statement of Vote reports shows results by "consolidated" voting precinct for each contest on the ballot. There were 242 consolidated voting precincts in this election – 143 were assigned to a polling location and 99 were assigned to vote all mail ballot due to a limited number of voters in that unique ballot type in that area of the county. A key to the consolidated voting precincts is provided in the "Voting/Absentee/Regular Precinct Cross Reference" provided in this booklet. There were 80 different ballot types in this election.

The Statement of the Vote also reports the vote-by-mail "absentee" results by "consolidated" voting precinct. Vote-by-mail results are listed by voting precinct number which is followed by the words "Vote By Mail/Absentee." This category includes permanent vote-by-mail voters, mail ballot voters, voters who request to vote by mail, or voters who vote early (using paper ballots or touchscreen) at the County Elections Office or Watsonville City Clerk's Office. Voters who reside in an all-mail ballot precinct, but voted on the touchscreen, have their votes tallied in the precinct count versus the vote-by-mail count due to the fact that touchscreens were set up for precinct operations.

Following the precinct by precinct report, total results for the Precincts and Vote-by-Mail/Absentee are provided, plus grand totals by Congressional District, State Senate Districts, State Assembly District, Supervisorial Districts, cities, local school and special districts, and the unincorporated area of the county where the contest was on the ballot.

The "Registration" column shows the total registration for the consolidated voting precinct. Voter registration information is current as of the last day to register to vote in the election (15 days prior to the election). Late arriving, but eligible, voter registration affidavits are not included in the registration figures. Further, provisional ballots cast on Election Day and voters who are on the Inactive Voter File but cast ballots on Election Day are votes that are reflected in the Ballots Cast column, but are not accounted for in the Registration column. The "Ballots Cast" column shows total ballots cast either in the precinct or vote-by-mail. In some cases provisional ballots for mail ballot precincts were incorrectly counted into the precinct numbers when they should have been added to the vote-by-mail totals.

OTHER REPORTS INCLUDED

Three election result summaries are included: The Final Official Results; the Vote-by-Mail ballots counted election night; and the Semi-Official Election Night Results.

Vote-By-Mail ballot statistical reports are provided showing the total number of ballots issued by voting precinct and the method of issuing, and then the total number of ballots returned by voting precinct. These statistics do not reflect votes cast by confidential voters in Santa Cruz County, nor do they reflect provisional ballots cast by voters in all-mail ballot precincts; nor do they reflect ballots that are voided during ballot inspection due to the voter signing his/her ballot, writing their initials or writing any other identifying mark on the ballot. Pursuant to the Uniform Vote Count Standards provided by the Secretary of State, such ballots are void and are not counted.

The Provisional Ballot Report shows how many voters voted by provisional ballot, how many of those were counted in its entirety, how many were not counted, the total number of ballots that were partially counted, and the breakdown of reasons why ballots were not counted. California law allows voters who vote a ballot from another precinct to have their votes remade for those contests in which they are eligible to vote.

A report showing the registration by District broken down by political party is also provided. Finally, there is a list of the 143 polling places established in the November election indicating which registration precincts were consolidated to form the voting precinct. For each election, the county's registration precincts are consolidated into voting precincts. The number of voting precincts is related to the number of various unique ballot types there are in the county for the particular election.

The key to registration precincts is: 1st digit = supervisorial district' 2nd digit = city, where 1 = Santa Cruz, 2 = Capitola, 3 = Watsonville, 4= Scotts Valley and 0 = unincorporated; 3rd digit designates the council district in Watsonville. The 4th digit is random.

The last final reports outline our "Canvass Activities.

COST AND INFORMATION

Bound copies of this Statement of Vote may be purchased for \$25 or individual pages for 50 cents per page.

If you have any questions concerning any portion of this Statement of Vote or need additional copies, please contact the Santa Cruz County Elections Department, 701 Ocean St., Room 210, Santa Cruz, CA, 95060; phone 831-454-2060; FAX 831-454-2445; Toll-Free 1-866-282-5900; website www.votescount.com

SANTA CRUZ COUNTY Statement of Vote
SCRUZ_20101102_E

NON PARTISAN MEMBER, CITY COUNCIL SANTA CRUZ VF 3												
100039	Registration	Ballots Cast	Turnout (%)	LYNN ROBINSON	DAVID TERRAZAS	GUS CEBALLOS	HILARY BRYANT	DAVID FOSTER	RON POMERANTZ	STEVEN PLEICH	KEVIN MOON	
Pct 1101 1101	1562	572	36.62	270	258	15	290	62	124	21	226	
Pct 1101 - Vote By Mail / Absente	1562	553	35.40	281	257	20	315	64	100	14	243	
Pct 1113 1113	765	211	27.58	105	82	2	102	25	47	7	68	
Pct 1113 - Vote By Mail / Absente	765	342	44.71	211	178	10	209	30	54	10	134	
Pct 3101 3101	1365	490	35.90	220	233	13	237	72	121	32	115	
Pct 3101 - Vote By Mail / Absente	1365	424	31.06	224	247	13	220	58	109	12	93	
Pct 3102 3102	898	320	35.63	167	172	13	190	47	92	17	52	
Pct 3102 - Vote By Mail / Absente	898	269	29.96	155	153	16	155	50	70	14	46	
Pct 3103 3103	1547	542	35.04	239	247	15	270	65	136	18	106	
Pct 3103 - Vote By Mail / Absente	1547	424	27.41	247	232	12	252	72	108	14	90	
Pct 3105 3105	1115	425	38.12	240	245	14	241	88	99	14	63	
Pct 3105 - Vote By Mail / Absente	1115	340	30.49	209	211	11	240	45	56	12	75	
Pct 3107 3107	1336	527	39.45	260	243	21	256	114	146	23	82	
Pct 3107 - Vote By Mail / Absente	1336	353	26.42	208	197	12	211	67	92	7	70	
Pct 3113 3113	1355	459	33.87	195	205	14	221	71	131	18	112	
Pct 3113 - Vote By Mail / Absente	1355	446	32.92	213	226	20	228	64	127	27	128	
Pct 3114 3114	1208	421	34.85	190	169	18	173	104	168	21	73	
Pct 3114 - Vote By Mail / Absente	1208	320	26.49	178	147	14	164	72	102	19	62	
Pct 3115 3115	1205	469	38.92	219	189	3	218	92	177	13	77	
Pct 3115 - Vote By Mail / Absente	1205	380	31.54	207	188	14	203	69	129	22	67	
Pct 3116 3116	1299	498	38.34	210	199	9	204	135	185	18	71	
Pct 3116 - Vote By Mail / Absente	1299	319	24.56	144	150	8	155	86	117	15	45	
Pct 3119 3119	1112	444	39.93	166	153	24	177	91	109	40	82	
Pct 3119 - Vote By Mail / Absente	1112	246	22.12	130	120	9	121	41	61	14	49	
Pct 3121 3121	1506	516	34.26	189	186	24	217	80	161	31	85	
Pct 3121 - Vote By Mail / Absente	1506	293	19.46	116	126	18	124	66	88	24	59	
Pct 3123 3123	1271	404	31.79	172	147	13	163	75	130	36	71	
Pct 3123 - Vote By Mail / Absente	1271	299	23.52	137	120	15	130	52	113	22	65	
Pct 3125 3125	1189	457	38.44	238	232	10	237	76	132	17	92	
Pct 3125 - Vote By Mail / Absente	1189	390	32.80	215	195	19	228	55	102	23	93	
Pct 3128 3128	1248	467	37.42	238	242	15	269	77	147	10	70	
Pct 3128 - Vote By Mail / Absente	1248	378	30.29	202	185	9	209	72	130	15	80	
Pct 3140 3140	1134	422	37.21	247	249	9	258	48	81	14	82	
Pct 3140 - Vote By Mail / Absente	1134	439	38.71	278	281	7	307	57	65	17	95	
Pct 3145 3145	1108	476	42.96	214	176	14	238	76	137	32	118	
Pct 3145 - Vote By Mail / Absente	1108	293	26.44	161	119	10	145	60	97	12	64	
Pct 3146 3146	907	382	42.12	189	174	11	173	71	111	21	74	
Pct 3146 - Vote By Mail / Absente	907	232	25.58	104	99	11	113	65	71	20	42	
Pct 3150 3150	1250	419	33.52	195	173	14	214	63	109	15	112	
Pct 3150 - Vote By Mail / Absente	1250	426	34.08	226	216	7	251	81	88	18	124	
Pct 3153 3153	1229	475	38.65	201	183	21	194	96	132	32	105	
Pct 3153 - Vote By Mail / Absente	1229	345	28.07	166	131	7	182	63	97	15	86	
Pct 3154 3154	0	0	0.00	0	0	0	0	0	0	0	0	
Pct 3154 - Vote By Mail / Absente	0	0	0.00	0	0	0	0	0	0	0	0	
Pct 3156 3156	666	287	43.09	119	115	6	115	62	108	14	49	
Pct 3156 - Vote By Mail / Absente	666	133	19.97	56	42	5	59	31	39	2	37	
Pct 3158 3158	726	288	39.67	154	112	5	147	44	82	14	66	
Pct 3158 - Vote By Mail / Absente	726	195	26.86	88	73	8	89	40	56	6	59	
Pct 3160 3160	1049	357	34.03	80	110	20	110	41	93	31	61	
Pct 3160 - Vote By Mail / Absente	1049	54	5.15	21	15	3	17	12	19	4	9	
Pct 3161 3161	374	136	36.36	28	37	3	44	10	42	9	28	
Pct 3161 - Vote By Mail / Absente	374	25	6.68	15	8	3	8	1	5	2	8	
Pct 3163 3163	694	207	29.83	40	52	9	62	15	53	11	38	
Pct 3163 - Vote By Mail / Absente	694	26	3.75	8	5	2	5	3	7	1	5	
Pct 3165 3165	1117	399	35.72	70	80	14	93	32	94	19	59	
Pct 3165 - Vote By Mail / Absente	1117	39	3.49	9	11	2	16	3	11	5	5	
Pct 3169 3169	583	217	37.22	51	54	3	79	27	58	13	26	
Pct 3169 - Vote By Mail / Absente	583	31	5.32	14	15	2	12	4	9	3	4	
Pct 3171 3171	1118	483	43.20	244	200	12	251	89	138	37	127	
Pct 3171 - Vote By Mail / Absente	1118	335	29.96	172	134	9	168	67	97	9	104	
Pct 3178 3178	1603	568	35.43	210	195	22	210	104	162	43	120	

SANTA CRUZ COUNTY Statement of Vote
SANTA CRUZ 20101 02_E

NON PARTISAN MEMBER, CITY COUNCIL SANTA CRUZ VF 3														
100039	Registration	Ballots Cast	Turnout (%)	LYNN ROBINSON	DAVID TERRAZAS	GUS CEBALLOS	HILARY BRYANT	DAVID FOSTER	RON POMERANTZ	STEVEN PLEICH	KEVIN MOON			
Pct 3178 - Vote By Mail / Absentee	1603	334	20.84	152	144	21	160	66	99	28	78			
Pct 5101 - 5101	1179	364	30.97	163	138	14	141	72	103	37	75			
Pct 5101 - Vote By Mail / Absentee	1179	331	28.07	160	135	14	157	71	80	24	88			
Pct 5108 - 5108	1144	359	31.38	142	133	14	131	71	117	27	80			
Pct 5108 - Vote By Mail / Absentee	1144	293	25.61	134	117	8	127	46	96	9	69			
Pct 5109 - 5109	887	343	38.67	130	111	10	143	59	111	31	72			
Pct 5109 - Vote By Mail / Absentee	887	214	24.13	101	88	17	112	31	58	15	53			
Pct 5110 - 5110	1108	423	38.18	200	173	12	210	68	118	24	120			
Pct 5110 - Vote By Mail / Absentee	1108	348	31.41	176	155	8	184	53	92	10	109			
Pct 5162 - 5162	642	234	36.45	70	69	8	70	37	70	19	19			
Pct 5162 - Vote By Mail / Absentee	642	104	16.20	55	47	2	42	33	36	5	7			
Precinct Totals	38499	14061	36.52	6065	5736	444	6348	2359	4024	779	2676			
Vote By Mail / Absentee Reporting	38499	9973	25.90	5173	4767	366	5316	1750	2689	469	2443			
Grand Totals	38499	24034	62.43	11238	10503	810	11666	4109	6713	1248	5319			
CALIFORNIA	38499	24034	62.43	11238	10503	810	11666	4109	6713	1248	5319			
17th Congressional Dist	38499	24034	62.43	11238	10503	810	11666	4109	6713	1248	5319			
11th Senatorial District	38499	24034	62.43	11238	10503	810	11666	4109	6713	1248	5319			
27th Assembly District	38499	24034	62.43	11238	10503	810	11666	4109	6713	1248	5319			
State Board of Equal. District 1	38499	24034	62.43	11238	10503	810	11666	4109	6713	1248	5319			
Supervisor District 1	2327	1678	72.11	867	775	47	916	181	325	52	671			
Supervisor District 3	31212	19343	61.97	9040	8562	656	9433	3387	5498	995	3956			
Supervisor District 5	4960	3013	60.75	1331	1168	107	1317	541	890	201	692			
Santa Cruz	38499	24034	62.43	11238	10503	810	11666	4109	6713	1248	5319			
County Board of Ed	38499	24034	62.43	11238	10503	810	11666	4109	6713	1248	5319			
City of Santa Cruz	38499	24034	62.43	11238	10503	810	11666	4109	6713	1248	5319			

SANTA CRUZ COUNTY Statement of Vote
SCRUZ_20101102_E

140061		NON PARTISAN H-SANTA CRUZ CITY UTILITY TAX													
		Registration	Ballots Cast	Turnout (%)		YES	NO								
Pct 1101	1101	1562	572	36.62		286	256								
Pct 1101	- Vote By Mail / Absente	1562	553	35.40		244	288								
Pct 1113	1113	765	211	27.58		93	101								
Pct 1113	- Vote By Mail / Absente	765	342	44.71		122	204								
Pct 3101	3101	1365	490	35.90		298	149								
Pct 3101	- Vote By Mail / Absente	1365	424	31.06		243	153								
Pct 3102	3102	898	320	35.63		199	101								
Pct 3102	- Vote By Mail / Absente	898	269	29.96		160	93								
Pct 3103	3103	1547	542	35.04		315	175								
Pct 3103	- Vote By Mail / Absente	1547	424	27.41		232	176								
Pct 3105	3105	1115	425	38.12		268	134								
Pct 3105	- Vote By Mail / Absente	1115	340	30.49		178	152								
Pct 3107	3107	1336	527	39.45		314	173								
Pct 3107	- Vote By Mail / Absente	1336	353	26.42		190	137								
Pct 3113	3113	1355	459	33.87		282	140								
Pct 3113	- Vote By Mail / Absente	1355	446	32.92		243	183								
Pct 3114	3114	1208	421	34.85		282	108								
Pct 3114	- Vote By Mail / Absente	1208	320	26.49		190	111								
Pct 3115	3115	1205	469	38.92		293	129								
Pct 3115	- Vote By Mail / Absente	1205	380	31.54		217	133								
Pct 3116	3116	1299	498	38.34		318	138								
Pct 3116	- Vote By Mail / Absente	1299	319	24.56		204	96								
Pct 3119	3119	1112	444	39.93		276	117								
Pct 3119	- Vote By Mail / Absente	1112	246	22.12		150	77								
Pct 3121	3121	1506	516	34.26		325	133								
Pct 3121	- Vote By Mail / Absente	1506	293	19.46		177	87								
Pct 3123	3123	1271	404	31.79		254	107								
Pct 3123	- Vote By Mail / Absente	1271	299	23.52		178	91								
Pct 3125	3125	1189	457	38.44		271	151								
Pct 3125	- Vote By Mail / Absente	1189	390	32.80		194	173								
Pct 3128	3128	1248	467	37.42		283	158								
Pct 3128	- Vote By Mail / Absente	1248	378	30.29		222	137								
Pct 3140	3140	1134	422	37.21		255	144								
Pct 3140	- Vote By Mail / Absente	1134	439	38.71		195	218								
Pct 3145	3145	1108	476	42.96		305	126								
Pct 3145	- Vote By Mail / Absente	1108	293	26.44		179	101								
Pct 3146	3146	907	382	42.12		238	113								
Pct 3146	- Vote By Mail / Absente	907	232	25.58		132	88								
Pct 3150	3150	1250	419	33.52		266	124								
Pct 3150	- Vote By Mail / Absente	1250	426	34.08		220	185								
Pct 3153	3153	1229	475	38.65		278	149								
Pct 3153	- Vote By Mail / Absente	1229	345	28.07		192	130								
Pct 3154	3154	0	0	0.00		0	0								
Pct 3154	- Vote By Mail / Absente	0	0	0.00		0	0								
Pct 3156	3156	666	287	43.09		192	74								
Pct 3156	- Vote By Mail / Absente	666	133	19.97		74	53								
Pct 3158	3158	726	288	39.67		174	95								
Pct 3158	- Vote By Mail / Absente	726	195	26.86		97	80								
Pct 3160	3160	1049	357	34.03		216	69								
Pct 3160	- Vote By Mail / Absente	1049	54	5.15		35	9								
Pct 3161	3161	374	136	36.36		83	22								
Pct 3161	- Vote By Mail / Absente	374	25	6.68		14	5								
Pct 3163	3163	694	207	29.83		131	33								
Pct 3163	- Vote By Mail / Absente	694	26	3.75		13	4								
Pct 3165	3165	1117	399	35.72		229	69								
Pct 3165	- Vote By Mail / Absente	1117	39	3.49		22	4								
Pct 3169	3169	583	217	37.22		127	43								
Pct 3169	- Vote By Mail / Absente	583	31	5.32		19	8								
Pct 3171	3171	1118	483	43.20		278	174								
Pct 3171	- Vote By Mail / Absente	1118	335	29.96		177	146								
Pct 3178	3178	1603	568	35.43		337	163								

140061	NON PARTISAN H-SANTA CRUZ CITY UTILITY TAX													
	Registration	Ballots Cast	Turnout (%)		YES	NO								
Pct 3178 - Vote By Mail / Absente	1603	334	20.84		191	107								
Pct 5101 5101	1179	384	30.87		219	113								
Pct 5101 - Vote By Mail / Absente	1179	331	28.07		201	107								
Pct 5108 5108	1144	359	31.38		235	94								
Pct 5108 - Vote By Mail / Absente	1144	293	25.61		186	109								
Pct 5109 5109	887	343	38.67		194	116								
Pct 5109 - Vote By Mail / Absente	887	214	24.13		118	83								
Pct 5110 5110	1108	423	38.18		241	158								
Pct 5110 - Vote By Mail / Absente	1108	348	31.41		180	159								
Pct 5162 5162	642	234	36.45		142	41								
Pct 5162 - Vote By Mail / Absente	642	104	16.20		76	19								
Precinct Totals	38499	14061	36.52		8497	4190								
Vote By Mail / Absentee Reporting	38499	9873	25.90		5445	3808								
Grand Totals	38499	24034	62.43		13942	8096								
CALIFORNIA	38499	24034	62.43		13942	8096								
17th Congressional Dist	38499	24034	62.43		13942	8096								
11th Senatorial District	38499	24034	62.43		13942	8096								
27th Assembly District	38499	24034	62.43		13942	8096								
State Board of Equal District 1	38499	24034	62.43		13942	8096								
Supervisor District 1	2327	1678	72.11		745	849								
Supervisor District 3	31212	19343	61.97		11425	6248								
Supervisor District 5	4960	3013	60.75		1772	999								
Santa Cruz	38499	24034	62.43		13942	8096								
County Board of Ed	38499	24034	62.43		13942	8096								
City of Santa Cruz	38499	24034	62.43		13942	8096								

ORDINANCE NO. 2010-25

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.
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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.
- (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.

(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 noncompliance. 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.
- (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 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.

(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 CONSERATION.

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.

(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).

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 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 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 XIIC 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.

PASSED AND ADOPED by a majority vote of the electorate of the City of Santa Cruz at the November 2, 2010 Election.

APPROVED: _____
Mayor

ATTEST: _____
City Clerk