MEETING DATE: December 3, 2007

AGENDA ITEM: Adoption of a Resolution of the City Council of the City of Culver City, California, Calling and Giving Notice of the Holding of a General Municipal Election to be Held in said City on Tuesday, April 8, 2008, for the Election of Three Councilmembers; and the Submission of a Measure Relating to Modernization of the Existing Utility Users Tax Ordinance.

ATTACHMENTS

RESOLUTION NO. 2007-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CULVER CITY, CALIFORNIA, CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD IN THE CITY ON TUESDAY, APRIL 8, 2008, FOR THE ELECTION OF THREE COUNCILMEMBERS OF THE CITY AS REQUIRED BY THE PROVISIONS OF THE CHARTER AND SUBMITTING A QUESTION RELATING TO MODERNIZING OF THE CITY'S EXISTING UTILITY USERS' TAX ORDINANCE.

WHEREAS, under the provisions of the Charter of the City of Culver City, California, a General Municipal Election shall be held April 8, 2008; and

WHEREAS, the City Council also desires to submit to the voters at the election a question relating to the modernizing of the City's existing Utility Users' Tax ordinance.

NOW, THEREFORE, the City Council of the City of Culver City, California, DOES HEREBY RESOLVE, as follows:

1. Pursuant to the requirements of the Charter of the City of Culver City, California, there is called and ordered to be held in the City of Culver City, California, on Tuesday, April 8, 2008, a General Municipal Election for the purpose of electing three (3) members of the City Council of the City for full terms of four (4) years.

2. That the City Council, pursuant to its right and authority, does order submitted to the voters at the General Municipal Election the following question:

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UTILITY USERS' TAX MODERNIZATION ORDINANCE. SHALL AN ORDINANCE BE ADOPTED TO MODERNIZE THE CITY'S UTILITY USERS' TAX, AT THE EXISTING RATE: TO PRESERVE FUNDING OF GENERAL CITY SERVICES, SUCH AS POLICE, FIRE, STREETS, TREES, AND PARKS; TO REFLECT TECHNOLOGICAL ADVANCES IN COMMUNICATIONS; TO TREAT TAXPAYERS EQUALLY REGARDLESS OF TECHNOLOGY USED; TO RETAIN EXISTING EXEMPTIONS FOR LOW-INCOME SENIORS AND THE DISABLED; AND TO REQUIRE AN ANNUAL INDEPENDENT AUDIT?	YES NO

3. That the proposed complete text of the modernized Utility Users' Tax ordinance to be submitted to the voters is attached as Exhibit "A" and incorporated herein by reference.

4. That the ballots to be used at the election shall be in the form and content required by law.

5. That the Deputy City Clerk is hereby designated the Elections Official, as defined in Section 320 of the California Elections Code.

6. That the Deputy City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

7. That, pursuant to California Elections Code Section 10242, the polls for the election shall be open at seven o'clock a.m. (7:00 A.M.) of the day of the election and shall remain open continuously from that time until eight o'clock p.m. (8:00 P.M.) of the

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same day when the polls shall be closed, except as provided in Section 14401 of the Elections Code.

8. That pursuant to Elections Code Section 12310, a stipend for services for the persons named as precinct board members is fixed at the sum of seventy-five dollars ($75.00) for each inspector and fifty-five dollars ($55.00) for each clerk for the election. In addition, the sum of twenty-five dollars ($25.00) will be given to each precinct board member to attend a training class. The rental for each polling place, where a charge is made, shall be the sum of twenty-five dollars ($25.00) for the election. When required, the compensation of the custodian of a building shall be twenty-five dollars ($25.00) for the election.

9. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

10. That notice of the time and place of holding the election is given and the Deputy City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

11. The Deputy City Clerk shall certify to the passage and adoption of this Resolution.

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12. The City Council authorizes the Deputy City Clerk to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

APPROVED and ADOPTED this ___day of _______________, 2007.

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ALAN CORLIN, MAYOR
City of Culver City, California

ATTEST:

____
ELA VALLADARES, Deputy City Clerk
A07-00729

APPROVED AS TO FORM:

Carol A Schwab
____
CAROL A. SCHWAB, City Attorney

ORDINANCE NO. 2007-___

AN ORDINANCE OF THE CITY OF CULVER CITY, CALIFORNIA, AMENDING SECTIONS OF CHAPTER 3.08.200, et seq, TITLE 3 OF THE CULVER CITY MUNICIPAL CODE, UTILITY USERS' TAX, TO MODERNIZE THE APPLICATION OF THE UTILITY USERS' TAX.

The People of the City of Culver City do ordain, as follows:

<u>Section 1.</u> Section 3.08.205 of the Culver City Municipal Code is hereby amended to read as follows:

"§ 3.08.205 DEFINITIONS.

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

A. 'Ancillary Telecommunications 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 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) 'Voicemail Service' means an ancillary service that enables the customer to store, send or receive recorded messages. Voicemail service does not include any vertical services that the customer may be required to have in order to utilize the voicemail service.

B. 'Billing Address' means the mailing address of the Service User where the Service Supplier submits invoices or bills for payment by the customer.

C. 'City' means the City of Culver City.

D. 'Communication Services' means Telecommunications Services and Video Services.

E. 'Exempt Wholesale Generator' has the same meaning as set forth in the Federal Power Act (15 U.S.C. Section 79z-5a) and regulations thereunder.

F. 'Gas' means natural or manufactured gas or any alternate hydrocarbon fuel, which may be substituted therefor.

G. 'Month' means calendar month.

H. 'Non-Utility Service Supplier' means the following:

(1) A Service Supplier, other than a provider 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, Exempt Wholesale Generator, 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 provider of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; and

(3) A Gas Service Supplier, aggregator, marketer or broker, other than a provider 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.

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

J. 'Private Communications Services' means any dedicated Communications Services that entitle the user to the exclusive or priority use of communications channels.

K. 'Service Supplier' means any entity or Person that provides communication, electric, Gas, or water service to a user of such services within the City. The term shall include an entity or Person required to collect (or self-collect under § 3.08.222 of this Subchapter) and remit a tax imposed by this Subchapter, including its billing agent in the case of Gas, electric, water and Video Service Suppliers.

L. 'Service User' means any Person required to pay a tax imposed by this Subchapter.

M. 'Tax Administrator' means the Treasurer of the City of Culver City, or his or her authorized representative.

N. 'Telecommunications Services' 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, whether or not such information is transmitted through interconnected service with the public switched network, or through fiber optic, coaxial cable, power line transmission, broadband, digital subscriber line or other wireless transmission. 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 'Telecommunications 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: central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling), local number portability, text messaging, Ancillary Telecommunication services; prepaid and post-paid services (including but not limited to prepaid calling cards); mobile telecommunications service; Private Communication Service; paging service; and 800 service (or any other toll-free numbers designated by the Federal Communications Commission). 'Telecommunication Services' does not include either digital downloads, such as downloads of books, music, ringtones, games and similar digital products, or that portion of cable or video television services subject to a cable or video television franchise fee.

O. 'Electrical Corporation' shall be construed to include any organization or municipality or agency engaged in the selling or supplying of electrical power to a Service User.

P. 'Video Service Supplier' means any Person, company, or service which provides one or more channels of video programming or video communications (including the leasing of channel access to provide such video programming or communications) to or from an address in the City, including to or from a business, home, condominium, or apartment, 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. 'Video Service Supplier' includes, but is not limited to, multichannel video programming distributors [as defined in 47 U.S.C. Section 522(12)], suppliers of cable television, master antenna television, satellite master antenna television, multichannel multipoint distribution services, direct broadcast satellite (to the extent allowed by federal law), and other suppliers of video programming or video communications (including two-way communications), whatever their technology.

Q. 'Video Services' means any and all services related to the supplying of video programming (including origination programming), communications (including two-way communications), regardless of the content of the video programming or communications, and shall include, without limitation, the leasing of channel access (e.g., home shopping) to the extent that the Service User is subject to an additional direct or indirect charge for programming or communications over the leased channel and ancillary video services, including any service that is associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, search functions, or other interactive services that are associated with or incidental to the provision or use of video programming."

Section 2. Section 3.08.210 of the Culver City Municipal Code is hereby amended to read as follows:

"§ 3.08.210 COMMUNICATION USERS' TAX.

A. There is hereby imposed a tax upon every Person with a Billing or Service Address in the City who uses Communication Services, including intrastate, interstate (including calls to the District of Columbia), and international Communications services, to the extent permitted by state and federal law. The tax imposed by this Section shall be at the rate of eleven percent (11%) of the charges made for such Communication Services and shall be collected from the Service User by the Service Supplier or its billing agent. To the extent allowed by law, the tax on Communication Services shall apply to a Service User if the Billing or Service Address of the Service User is within the City's boundaries.

B. Except as otherwise provided herein, Communication Services shall include all Communication Service for which there is a charge, regardless of the means or technology used to provide such services. The tax imposed under Subsection A, above shall not be imposed upon any Person for using the following Communications Services:

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

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

(3) Any toll telephone service which originates within a combat zone and is from a member of the Armed Forces of the United States performing service in such combat zone; provided a certificate, setting forth such facts as

the Secretary of the United States Treasury may by regulations prescribe, is furnished to the Person receiving such payment.

(4) No tax shall be imposed under this Section on the amount paid for any Communications Services to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business.

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

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

(7) Services or facilities furnished to the government of any State, or any political subdivision thereof.

(8) Services or facilities paid for by a nonprofit educational organization and furnished to such organization. For purposes of this subsection, the term NONPROFIT EDUCATIONAL ORGANIZATION means an educational organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code, which is exempt from income tax under Section 501(a) of the same code. The term also includes a school operated as an activity of an organization described in Section 501(c)(3) of the Internal Revenue Code, which is exempt from income tax under Section 501(a) of the same code, if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of

pupils or students in attendance at the place where its educational activities are regularly carried on.

(9) Items otherwise taxed. Only one payment of tax under this Section shall be required with respect to the tax on any service.

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 Communication Services.

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

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

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

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

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

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

(6) The leasing of channel access (e.g., home shopping) to the extent that the Service User is subject to an additional direct or indirect charge for programming or communications over the leased channel; provided that, in the absence of evidence of direct payment by the Service User, the indirect payment of the Service User(s), which is subject to the utility users tax, shall be deemed

to be the lease payment to the Video Service Supplier by the party leasing the channel access.

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

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 owed and 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. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Subchapter, "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 Communication Services used by a Person with a Service Address in the City, shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this Section. For Communication Services for which there is no billing address or primary physical location for the provision of services, the service address shall mean the point of sale of the services.

H. 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 Services, the Service User shall be deemed to be the purchaser of the bulk Video Services (e.g., an apartment owner), unless such services are resold to individual users, in which case the Service User shall be the ultimate purchaser of the Video Services. 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. If a Service Supplier of Communication Services uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the Service Supplier shall: i) 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, ii) 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.

I. The Tax Administrator may, from time to time, issue and disseminate to Service Suppliers, which are subject to the tax collection requirements of this Section, an administrative ruling identifying those Communication Services that are subject to the tax of subsection A, above. This administrative ruling shall be consistent with legal nexus rules, regulations, and laws pertaining to Communication Services. To the extent that the Tax Administrator determines that the tax imposed under this Section shall not be collected in full for any period of time, such a determination falls within the Tax Administrator's discretion to settle disputes. The Tax Administrator's exercise of prosecutorial forbearance under this Subchapter does not constitute a change in taxing methodology for purposes of Government Code Section 53750, and the City does not waive or abrogate its ability to impose the communication users' tax in full as a result of entering into such administrative agreements."

Section 3. Section 3.08.215 of the Culver City Municipal Code is hereby amended to read as follows:

"§ 3.08.215 ELECTRICITY USERS' TAX.

A. There is hereby imposed a tax upon every Person using electricity in the City. The tax imposed by this Section shall be at the rate of eleven percent (11%) 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, which 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:

(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, 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), trust transfer, amounts (bond financing charges), franchise fees, franchise surcharges, which are necessary or common to the receipt, use and 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. The Tax Administrator shall, from time to time, survey the electric Service Suppliers to identify the various unbundled billing components of electric 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 electric service. The Tax Administrator may, thereafter, issue and disseminate to such electric Service Suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use and enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Unbundled charges for such components and items shall be subject to the tax of subsection A, above.

D. 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.

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

F. The tax on electricity provided by a Non-Utility Service Supplier not under the jurisdiction of this Subchapter shall be collected and remitted in the manner set forth in § 3.08.222 of this Subchapter. 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. If an electric Service Supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the Service Supplier shall: i) 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, ii) 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."

Section 4. Section 3.08.220 of the Culver City Municipal Code is hereby amended to read as follows:

"§ 3.08.220 GAS USERS' TAX.

A. There is hereby imposed a tax upon every Person using Gas in the City, which is delivered through a pipeline distribution system. The tax imposed by this Section shall be at the rate of eleven percent (11%) of the charges made for such Gas, including all services related to the storage, transportation and delivery of such Gas.

B. As used in this Section, the CHARGES shall include:

(1) The community charges for purchased Gas, or the cost of Gas owned by the Service User (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such Gas), which is delivered through a Gas pipeline distribution system or by mobile transport;

(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 in 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, 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; and,

(5) Charges, fees, or surcharges for Gas services or programs, which

are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

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

D. 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.

E. There shall be excluded from the base on which the tax is imposed in this Section is computed (1) charges made for Gas which is to be resold and delivered through a pipeline distribution system; (2) charges made for Gas to be used in the generation of electricity by an Electrical Corporation; (3) charges made by a Gas public utility for gas used and consumed in the conduct of the business of Gas public utilities; (4) charges made for Gas used in the propulsion of a motor vehicle, as defined in the

California Vehicle Code, utilizing natural Gas, and (5) charges made for Gas used by a Non-Utility Service Supplier to generate electricity for its own use or for sale to others provided the electricity so generated is subject to the tax in accordance with § 3.08.215 of this Subchapter.

F. The tax that is calculated on charges for Gas provided by self-production or by a Non-Utility Service Supplier not under the jurisdiction of this Subchapter shall be collected and remitted in the manner set forth in § 3.08.222 of this Subchapter. 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. If a Gas Service Supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the Service Supplier shall: i) 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, ii) 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."

Section 5. Section 3.08.222 of the Culver City Municipal Code is hereby

amended to read as follows:

"§ 3.08.222 COLLECTION OF TAX FROM SERVICE USERS RECEIVING DIRECT PURCHASE OF GAS OR ELECTRICITY.

A. Any Service User subject to the tax imposed by §§ 3.08.215 or by 3.08.220 of this Subchapter, which produces Gas or electricity for self-use; which receives Gas or electricity, including any related supplemental services, directly from a Non-Utility Service Supplier not under the jurisdiction of this Subchapter; or which, 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."

Section 6. Section 3.08.225 of the Culver City Municipal Code is hereby amended to read as follows:

"§ 3.08.225 WATER USERS' TAX.

A. There is hereby imposed a tax upon every Person using the City water which is delivered through mains or pipes. The tax imposed by this Section shall be at the rate of eleven percent (11%) of the charges made for such water and shall be paid by the Person paying for such water.

B. 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 mains or pipes; and charges made by a municipal water department, public utility or a county or municipal water district for water used and consumed by such department, utility or district in the conduct of the business of such department, utility or district."

Section 7. Section 3.08.230 of the Culver City Municipal Code is hereby amended to read as follows:

"§ 3.08.230 EFFECT OF STATE AND FEDERAL AUTHORIZATION.

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

Section 8. Section 3.08.232 of the Culver City Municipal Code is hereby added to read as follows:

"§ 3.08.232 BUNDLING TAXABLE AND NON-TAXABLE CHARGES.

If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the Service Supplier or taxpayer reasonably identifies actual charges not subject to the utility users tax based upon books and records that are kept in the regular course of business, in a manner consistent with generally accepted accounting principles."

Section 9. Section 3.08.235 of the Culver City Municipal Code is hereby amended to read as follows:

"§ 3.08.235 EXEMPTIONS.

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

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

(2) The City;

(3) Any individual sixty (60) years of age or older, who uses communication, electric, Gas, or water services; in or upon any premises occupied by such individual; provided the total adjusted gross income of that individual, as used for purposes of the California Personal Income Tax Law, was no more than $18,200 for the most recent completed calendar years; and provided the combined adjusted gross income of all members of the household in

which such individual resided was no more than $21,500; or

(4) Any individual who meets the criterion of disability, as established by the Social Security Administration's Supplemental Security Income Program for the Aged, Blind, and Disabled (Title XVI of the Social Security Act as amended), without regard to the age of such disabled individual.

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

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

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

(1) Name of exempt applicant;

(2) Account number shown on utility bill;

(3) Address to which exempt service is being supplied; and

(4) Any other information as may be necessary for the Service Supplier to remove the exempt Service User from its tax billing procedure.

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

F. All exemptions shall continue and be renewed automatically by the Tax Administrator, so long as the prerequisite facts supporting the initial qualification for exemption shall continue; provided, however, that the exemption shall automatically terminate with any change in the service address or residence of the exempt individual; further provided such individual may nevertheless apply for a new exemption with each change of address or residence.

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

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

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

J. Any individual entitled to be exempt from the taxes imposed by this Subchapter, who used communication, electric, Gas, or water services and paid more than $3.00 in such taxes, may, during the calendar year following such payment, apply for a refund thereof on forms provided by the Tax Administrator. Refund applications shall contain a declaration of those facts, under oath, which qualify the applicant for a refund, and shall be accompanied by the customer's bills showing the amount of such taxes billed by Service Supplier during the preceding calendar year. Refund claims may be filed by an individual who used communication, electric, Gas, or water services and paid the taxes prescribed by this Subchapter either directly or indirectly to the 'Service User' rather than the Service Supplier. In the event the applicant has lost or destroyed any relevant billings or statements showing the amount of tax paid, or if the applicant indirectly paid such taxes in conjunction with the occupation of premises without receiving a specific billing therefor from the Service User, the maximum refund shall be $48.00, or $4.00 for each full month of services received by the applicant, whichever is less.

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

L. Upon request of the Tax Administrator, a Service Supplier, or its billing agent, shall provide a list of the names and addresses of those customers which, according to its billing records, are deemed exempt from the utility users tax."

Section 10. Section 3.08.240 of the Culver City Municipal Code is hereby amended to read as follows:

"§ 3.08.240 COLLECTION OF TAX.

A. The duty of Service Suppliers to collect and remit the taxes imposed by the provisions of this Subchapter shall be performed as follows:

B. 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.

C. The duty to collect tax from a Service User shall commence with the beginning of the first regular billing period applicable to that Person which starts on or after the operative date of this Subchapter. Where a Person receives more than one (1) billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

D. If the amount paid by a Service User to a Service Supplier is less than the full amount of the charge and tax which has accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a Service User has notified the Service Supplier of refusal to pay the tax imposed on said charges, § 3.08.260 of this Subchapter shall apply."

Section 11. Section 3.08.245 of the Culver City Municipal Code is hereby amended to read as follows:

"§ 3.08.245 REPORTING AND REMITTING.

Each Person required by this Subchapter to remit a tax shall file a return with the Tax Administrator on forms approved by the Tax Administrator on or before the due date. The full amount of the tax owed shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such further information as he or she deems necessary to properly determine if the tax here imposed is being levied and collected in accordance with this Subchapter. Returns and remittances are due immediately upon cessation of business for any reason. Pursuant to California Revenue and Taxation Code § 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information, and not subject to the Public Records Act."

Section 12. Section 3.08.250 of the Culver City Municipal Code is hereby

amended to read as follows:

"§ 3.08.250 PENALTY.

A. Taxes collected from a Service User under this Subchapter, or owed by a Service User subject to § 3.08.222 of this Subchapter, which are not remitted to the Tax Administrator on or before the due dates provided in this Subchapter 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.

B. If the Person required to collect and/or remit a utility users tax under this Subchapter fails to collect the tax by failing to properly assess the tax on one or more charges on the customer's billing, such taxes are delinquent.

C. A penalty at the rate of fifteen percent (15%) of the total tax that is delinquent shall be imposed upon the Service Supplier, or the Service User that fails to properly self collect and remit the tax under § 3.08.222 of this Subchapter.

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

E. In addition to any other penalties imposed by this Subchapter, any Person required to collect and/or remit any tax imposed by the provisions of this Subchapter who fails to collect the tax (by failing to properly assess the tax on the customers' billing) or fails to remit the tax collected, or, in the cases of a Service User that fails to properly self-collect and remit the tax under § 3.08.222 of this Subchapter, shall pay interest at the rate of three-quarters of one percent (¾%) per Month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid."

Section 13. Section 3.08.255 of the Culver City Municipal Code is hereby amended to read as follows:

"§ 3.08.255 ACTIONS TO COLLECT.

Any tax required to be paid by a Service User under the provisions of this Subchapter 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. In the event that a Service Supplier required to collect and remit a tax under the provisions of this Subchapter fails to do so in whole or in part, the amount of such unremitted tax shall be deemed a debt owed by the Service Supplier to the City. Any Person owing money to the City under the provisions of this Subchapter shall be liable to an action brought in the name of the City for the recovery of such amount, plus any collection costs incurred by the City as a result of the Person's noncompliance with this Subchapter, including, but not limited to, reasonable attorney's fees."

Section 14. Section 3.08.257 of the Culver City Municipal Code is hereby amended to read as follows:

"§ 3.08.257 ADDITIONAL POWER AND DUTIES OF TAX ADMINISTRATOR.

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

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

C. Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this Subchapter, and thereby: i) conform to the billing procedures of a particular Service Supplier (or Service User subject to § 3.08.222 of this Subchapter) so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this Subchapter; or ii) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and is voidable by the Tax Administrator or the City at any time. Such administrative agreements fall within the Tax Administrator's discretion to settle disputes. The Tax Administrator's exercise of prosecutorial forbearance under this Subchapter does not constitute a change in taxing 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 entering into such administrative agreements.

D. The Tax Administrator shall be authorized to determine the eligibility of any Person who asserts a right to exemption from or a refund of the tax imposed by this Subchapter."

Section 15. Section 3.08.260 of the Culver City Municipal Code is hereby amended to read as follows:

"§ 3.08.260 FAILURE TO PAY TAX; ADMINISTRATIVE REMEDY.

A. Whenever the Tax Administrator determines that a Service User has deliberately withheld the amount of the tax owed by him 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 two (2) or more billing periods, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve the Service Supplier of the obligation to collect taxes due under this Subchapter from certain named Service Users for specified billing periods. 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 Subchapter.

B. The Tax Administrator shall notify the Service User that he or she has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the Service User by handing it to him or her personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the Service User at the address to which billing was made by the Service Supplier; or should the Service User have changed his or her address, to his or her last known address. 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 or her, which shall be the date of mailing if service is not accomplished in person, a penalty of twenty-five percent (25%) of the amount of the tax set forth in the notice shall be imposed, along with interest at the rate of three-quarters of one percent (¾%) per Month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid, but not less than Five Dollars ($5.00).

C. The Tax Administrator may make an assessment for taxes not paid or remitted by a Service User required to pay or remit. A notice of the assessment which shall refer briefly to the amount of the taxes and penalties imposed and the time and place when such assessment shall be submitted to the City Council for confirmation or modification. The Tax Administrator shall mail a copy of such notice to the Service Supplier and Service User at least ten (10) days prior to the date of the hearing and shall post such notice for at least five (5) continuous days prior to the date of the hearing in a conspicuous place freely accessible to the public at large. Any interested party having any objections may appear and be heard at the hearing provided his or her objection is filed in writing with the Tax Administrator prior to the time set for the hearing. At the time fixed for considering said assessment, the City Council shall hear the same together with any objection filed regarding aforesaid and thereupon may confirm or modify said assessment by motion."

Section 16. Section 3.08.265 of the Culver City Municipal Code is hereby amended to read as follows:

"§ 3.08.265 APPEALS.

A. If the Service User or Service Supplier is aggrieved by any decision or administrative ruling of the Tax Administrator, or with the failure to grant a refund or exemption as provided for under this Subchapter, he/she may appeal to a Board of Review comprised of the City Manager, the Community Development Director and the Public Works Director, or their duly authorized designee, by filing a notice of appeal with the Tax Administrator within fourteen (14) days of the decision or administrative ruling that aggrieved the Service User or Service Supplier. The Tax Administrator shall thereupon fix a time and place for a hearing of such appeal. The Tax Administrator shall give notice to such person of the time and place of hearing as herein provided.

B. The notice of appeal filed by the Service User or Service Supplier shall contain the name and address of the Person appealing the action, the decision appealed from and the grounds for the appeal. A defect in the form of the notice does not affect its validity or the right to an appeal. The notice of appeal shall be accompanied by the fee fixed by resolution of the City Council. The notice of appeal shall be served upon the Tax Administrator by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the Tax Administrator. For the purpose of this Section, a service by mail is complete at the time of deposit in the United States mail. Within fifteen (15) days after the date of service, the Person assessed may either apply in writing to the Tax Administrator for a hearing on the assessment or may file a written request that such hearing be waived. If the Person neither requests a hearing upon the assessment nor requests a waiver of hearing within the prescribed time, the Tax Administrator's decision becomes final, and penalties and interest as provided by this Subchapter shall continue to accrue until paid.

C. Waiver of Hearing. If the Person requests that the hearing be waived, the Tax Administrator may either grant such request and notify the person thereof in writing or may, in his or her discretion, deny the request and set the appeal for hearing at the time and in the manner prescribed herein. If the Tax Administrator grants the request for waiver of hearing, the Board of Review shall consider the appeal without conducting a hearing on the matter and issue its written decision within thirty (30) days of the date upon which the Tax Administrator granted the request for waiver of hearing. The decision of the Board of Review shall be served upon the appealing Service User or Service Supplier by a deposit of a copy of the decision in the United States mail, postage prepaid thereon, addressed to such Person.

D. If the Person requests a hearing upon any decision or administrative ruling of the Tax Administrator or if the Tax Administrator denies the request for the waiver of hearing, the Tax Administrator shall cause the matter to be set for hearing before the Board of Review no later than ninety (90) days after the date of the application, or as the case may be, the date of the Tax Administrator's denial of the request for waiver of hearing. Notice of the time and place of the hearing shall be mailed to the Person appealing the decision of the Tax Administrator not later than fifteen (15) days before the date set for hearing and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records required to be produced.

E. At the hearing the Person appealing the decision and the Tax Administrator may submit such evidence as they believe to be relevant to their respective positions. The Board of Review may require the presentation of additional evidence from either the person assessed or from the Tax Administrator, or from both, and may continue the hearing from time to time for the purpose of allowing the presentation of additional evidence. The Board of Review shall issue a written decision within thirty (30) days of the conclusion of the hearing. The decision of the Board of Review shall be served upon the appealing Service User or Service Supplier by a deposit of a copy of the decision in the United States mail, postage prepaid thereon, addressed to such Person.

F. Exception. Within fifteen (15) days from the date of service of the notice of decision of the Board of Review, the Person appealing the decision of the Tax Administrator may file written exceptions to the decision of the Board of Review. Upon filing of written exceptions, the Board of Review may either deny the exceptions or modify its decision, as it deems appropriate. If the Board of Review modifies its decision, it shall cause a written notice of decision as required herein to be given to the Person appealing the decision of the Tax Administrator at the time, and in the manner provided herein. If the Board of Review does not modify its decision within thirty (30) days from the service of said exceptions, the exceptions shall be deemed denied.

G. Effect of delay in administrative proceeding. Failure of the Tax Administrator to set any hearing within the time prescribed herein and failure of the Board of Review to complete any procedure prescribed in this Section within the period stated shall not affect the validity of any proceedings taken hereunder. The City's failure to meet the notice and timing requirements under this Section does not constitute a waiver of the City's rights; nor does such a failure abrogate any decision of the Tax Administrator or the Board of Review.

H. Effect of payment of a tax. Acceptance of any payment upon a tax, the validity of which has not previously been passed upon by the Board of Review, shall not preclude the Tax Administrator from subsequently levying another assessment in any case where the original assessment does not truly reflect the correct tax liability."

Section 17. Section 3.08.267 of the Culver City Municipal Code is hereby adopted to read as follows:

"§ 3.08.267 NO INJUNCTION OR WRIT OF MANDATE.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this Subchapter of any tax or any amount of tax required to be collected and/or remitted."

Section 18. Section 3.08.270 of the Culver City Municipal Code is hereby

amended to read as follows:

"§ 3.08.270 RECORDS.

A. It shall be the duty of every Person required to collect and/or remit to the City any tax imposed by this Subchapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator, or the Tax Administrator's designated representative, shall have the right to inspect at all reasonable times. The Tax Administrator, or the Tax Administrators' designated representative, 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 Taxation Code §§ 7284.6-7284.7.

B. The Tax Administrator, or the Tax Administrators' designated representative, may request from a Person providing transportation or distribution services of Gas or electricity to Service Users within the City, a list of the names, billing and service addresses, quantities of Gas or electricity delivered, and other pertinent information, of its transportation customers within the City pursuant to Section 6354(e) of the California Public Utilities Code.

C. If any Person subject to record-keeping under this Section unreasonably denies the Tax Administrator, or the Tax Administrator's designated representative, access to such records, the Tax Administrator, or the Tax Administrator's designated representative, may impose a penalty of five hundred dollars ($500) on such Person for each day following the initial date that the Person refuses to provide such access. This penalty shall be in addition to any other penalty imposed under this Subchapter."

Section 19. Section 3.08.275 of the Culver City Municipal Code is hereby amended to read as follows:

"§ 3.08.275 REFUNDS.

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

B. The Tax Administrator may refund any tax that has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the Tax Administrator under this Subchapter, provided that no refund shall be paid under the provisions of this Section unless the claimant or his or her guardian, conservator, executor or administrator has submitted a written claim to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers. The submission of a written claim, which is acted upon by the City Council, shall be a prerequisite to a suit thereon. (See Government Code Section 935). The City Council shall act upon the refund claim within the time period set forth in Government Code Section 912.4. If the City Council fails or refuses to act on a refund claim within the time prescribed by Government Code Section 912.4, the claim shall be deemed to be rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in Government Code Section 912.4.

C. 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 Section, and which are not otherwise barred by a then-applicable statute of limitations or claims procedure, must be filed with the Tax Administrator as provided in this subsection within ninety (90) days following the effective date of this Section.

D. Notwithstanding other provisions of this Section, whenever a Service Supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to Service Users of charges for past utility services, the taxes paid pursuant to this Subchapter on the amount of such refunded charges shall also be refunded to Service Users, and the Service Supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly return. In the event this Subchapter is repealed, the amounts of any refundable taxes shall be borne by the City."

Section 20. Section 3.08.278 of the Culver City Municipal Code is hereby added to read as follows:

"§3.08.278 AUDIT OF COMMUNICATIONS USERS' TAX.

The City shall annually verify that the Communications Users' Tax imposed by this Subchapter has been properly collected and remitted in accordance with this Subchapter, and properly expended according to applicable law. The annual verification shall be performed under the direction of the Tax Administrator by a qualified independent third party employing reasonable, cost-effective procedures."

Section 21. Section 3.08.280 of the Culver City Municipal Code is hereby readopted to read as follows:

"Section 3.08.280 SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Subchapter or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Subchapter or any part thereof. The City Council hereby declares that it would have passed each Section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one (1) or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional."

Section 22. Section 3.08.285 of the Culver City Municipal Code is hereby deleted.

Section 23. Section 3.08.287 of the Culver City Municipal Code is hereby added to read as follows:

"§3.08.287. AMENDMENT OR REPEAL.

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

Section 24. Majority Approval. This Ordinance shall be effective only if approved by a majority of the voters voting thereon (50% + 1) and shall go into effect ten (10) days after the vote is declared by the City Council.

Section 25. Severability. If any section, 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 sections, sentences, clauses, phrases, or portions of this Ordinance shall nonetheless remain in full force and effect. The people of the City of Culver City hereby declare that they would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Subchapter be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.

<u>Section 26</u>. Execution. The Mayor is hereby authorized to attest to the adoption of this Ordinance by signing where indicated below.