

TITLE 3
REVENUE AND FINANCE

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***Editor's note for Chapter 3.29**

Utility Users' Tax was ratified by Claremont voters on March 4, 1997 (Ord 97-01)



TITLE 3
REVENUE AND FINANCE

Chapter 3.04

CAPITAL OUTLAY FUND

Sections:

- 3.04.010 Created.**
- 3.04.020 Taxation for fund--Statutory limitations.**
- 3.04.030 Transfers to fund--Council authority.**
- 3.04.040 Expenditures from fund.**

3.04.010 Created.

Pursuant to the authority granted in Sections 53730 through 53737 of the state Government Code, and subject to the limitations therein stated, a fund is hereby created to provide for capital outlays and to be known and designated as the "capital outlay fund." (Prior code § 2.39)

3.04.020 Taxation for fund--Statutory limitations.

Taxes may be levied upon the taxable property in the city for the raising of moneys for additions to the capital outlay fund, but no levy so made shall exceed the limitation imposed by the general laws of the state upon the right of the city to impose taxes, subject to the increase in such limitation adopted by the voters of the city. (Prior code § 2.40)

3.04.030 Transfers to fund--Council authority.

The city council may from time to time transfer to the capital outlay fund any unencumbered surplus funds remaining on hand in the city at the end of any fiscal year. (Prior code § 2.41)

3.04.040 Expenditures from fund.

The capital outlay fund shall remain inviolate for the making of any capital outlays as may from time to time be designated by the city council, and no money shall be disbursed therefrom except for such a purpose without the consent of the electors as provided in Section 53736 of the state Government Code. (Prior code § 2.42)

Chapter 3.08

SPECIAL GAS TAX STREET IMPROVEMENT FUND

Sections:

- 3.08.010 Created.**
- 3.08.020 Moneys to be paid into fund.**
- 3.08.030 Expenditure restrictions.**

3.08.010 Created.

To comply with the provisions of Sections 180 through 207 of the Streets and Highways Code, there is created in the city treasury a special fund to be known as the "special gas tax street improvement fund." (Prior code § 2.36)

3.08.020 Moneys to be paid into fund.

All moneys received by the city from the state under the provisions of the Streets and Highways Code, Sections 180 to 207, for the acquisition of real property or interests therein for, or the construction, maintenance or improvement of streets or highways, other than state highways, shall be paid into the special gas tax street improvement fund. (Prior code § 2.37)

3.08.030 Expenditure restrictions.

All moneys in the special gas tax street improvement fund shall be expended exclusively for the purposes authorized by, and subject to all of the provisions of the Streets and Highways Code, Sections 180 through 207. (Prior code § 2.38)

Chapter 3.12

SALE OF CITY-OWNED REAL PROPERTY

Sections:

- 3.12.010 Sale authorized when.**
- 3.12.020 Sale at public auction--Terms of sale.**
- 3.12.030 Sale by ordinance authorized when--Procedure.**
- 3.12.040 Resolution directing sale--Bidding procedure.**
- 3.12.050 Employment of promotional agent authorized when.**

3.12.010 Sale authorized when.

Whenever the City Council determines that the disposition of any parcel of real property is for the common benefit of the City's citizens, the City Council may direct City staff to sell, lease or dispose of such property in any manner consistent with state and federal law. (98-1; Prior code §2.43)

3.12.020 Sale at public auction--Terms of sale.

Except as provided in Section 3.12.030, the sale of city-owned real property shall be at public auction, or to the highest responsible bidder after advertisement, and shall be for cash, or upon the following terms: Not less than one-third cash, and the balance in one or more installments falling due not more than five years from the date of sale, with a lien reserved to secure the payment thereof. (Prior code §2.44)

3.12.030 Sale by ordinance authorized when--Procedure.

The city council, when it determines that the public interest or necessity requires the sale, conveyance or exchange of any real property owned by the city, or the quitclaiming by the city of any interest in real property, without notice of sale or advertisement for bids, may, by ordinance adopted by the votes of at least three of the members, authorize the execution of such deed, contract or other instrument as may be necessary to effect such sale, conveyance, exchange or quitclaim at and for a price or consideration and upon the terms and conditions to be specified in such ordinance. (Prior code §2.45)

3.12.040 Resolution directing sale--Bidding procedure.

The sale of any city-owned real property, except as provided by Section 3.12.030, shall be conducted in accordance with the following procedure:

A. The city council, whenever it determines that the public interest or necessity requires the sale of real property owned by the city, or any department thereof, may by resolution adopted by the votes of at least three of its members order the same to be sold. Such resolution shall direct the city clerk to cause notice of the sale of such property to be published for three insertions in one or more weekly newspapers printed, published and circulated in the city and shall specify the terms and conditions upon which the same will be sold, which shall be in conformity with this chapter, and also whether the sale of such property shall be at public auction or to the highest responsible bidder.

B. Bids for such property shall be sealed and filed in the office of the city clerk at or before a time to be specified in the notice of sale. The city clerk shall present all bids received by him to the city council at its next regular meeting after the expiration of the time for the submission of bids. The city council shall thereupon, in public session, open, examine and declare all bids received. At the time of opening the bids, any responsible person may bid for such property a sum exceeding the highest bid by not less than five percent and such bid so made may be raised by any other person until the property shall either be sold or withdrawn from sale. No bid shall be considered unless accompanied by a cash deposit or certified check in an amount not less than ten percent of the amount of such bid as a guarantee that the person making such bid will purchase and pay for such property upon the terms and conditions specified in the notice of sale.

C. The city council may, in its discretion, in all cases where property is offered for sale, reject any or all bids, or withdraw such property from sale at any time should it deem such action to be for the public interest. (Prior code § 2.46)

3.12.050 Employment of promotional agent, authorized when.

The city council, in accordance with the provisions of this chapter, shall have the right, when previously authorized by a three-fifths vote thereof, to employ and pay, on a commission or other basis, an agent to render service in promoting, furthering or negotiating the sale of city-owned real property. (Prior code § 2.47)

Chapter 3.15

BIDDING AND CONTRACTING, AND OTHER PURCHASES OF SUPPLIES, SERVICES AND EQUIPMENT

Sections:

- 3.15.010** **Definitions.**
- 3.15.020** **Purchasing Officer - Position created - Appointment.**
- 3.15.030** **Purchasing Officer - Powers and duties.**
- 3.15.040** **Purchasing policies and procedures.**
- 3.15.050** **Bidding, purchasing and contracting.**
- 3.15.060** **Claremont direct competitive purchasing procedure.**
- 3.15.070** **Claremont informal competitive purchasing procedure.**
- 3.15.080** **Formal competitive purchasing procedure.**
- 3.15.090** **Using alternative purchasing procedures.**

3.15.010 **Definitions.**

Unless otherwise indicated, the following definitions shall apply to all provisions of this chapter:

- A. “Act” means the Uniform Public Construction Cost Accounting Act found at Public Contract Code Section 22000 et seq.
- B. “Alternative purchasing procedure” means purchasing supplies, services or equipment when any of the following situations exist: An emergency; no competitive market; competitive bidding already completed; state purchases; or no bids received.
- C. “Authorized contracting party” means the City official or body provided with authority under this chapter to approve a contract or to make a purchase.
- D. “City manager” means the city manager or person designated by the city manager to perform all or some of the duties prescribed in this chapter.
- E. “Commission” means the California Uniform Construction Cost Accounting Commission created by Division 2, Part 3, Chapter 2, Article 2 of the California Public Contracts Code (commencing at Section 22010).
- F. “Direct competitive purchasing procedure” bidding means quotes shall be obtained and a Pricing Quote Sheet completed. A Vendor Agreement or Letter of Agreement shall be completed when required.
- G. “Emergency” for purposes of public projects shall have that meaning provided in Public Contract Code Sections 22035 and 22050. Emergency for all other purchasing purposes means a situation which makes competitive bidding, either formal or informal, impractical or not in the best interests of the City.
- H. “Facility” shall have that meaning provided in Section 22002(e) of the Act, as that Section may be amended from time to time. In this light, facility shall include any plant, building, structure, ground facility, utility system, subject to the limitation found in Section 3.15.010(O)(4) of this Ordinance, real property, streets and highways, or other public work improvements.
- I. “Formal competitive purchasing procedure” means a procedure which meets the requirements of state and local law, including the Act, this chapter and any policies and procedures approved by the city manager consistent with this chapter. The City Council shall approve plans and specifications for purchases, with the exception of vehicles, of more than seventy-five thousand dollars (\$75,000); the project shall be publicly noticed as required by law so all interested vendors can participate; bid packets may be prepared for purchase by vendors; and, the vendor shall be approved by the City Council based on established criteria.

J. "General Services" mean all services performed by persons not in a professional occupation, including, but not limited to, contract services for park, electrical and computer repair; building, facility and vehicle maintenance; recreation programs; and other similar services which are not professional services.

K. "Informal competitive purchasing procedure" means that at least three (3) bids shall be obtained from a predetermined vendor list and the city manager shall approve final selection.

L. "Maintenance work" shall have that meaning provided in Section 22002(d) of the Act, as that Section may be amended from time to time. In this light, maintenance work shall include, but shall not be limited to, all of the following:

1. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
2. Minor repainting.
3. Street and highway maintenance, including utility patching, skin patching, crack filling, filling of pot holes, slurry sealing, edge grading, street striping, resurfacing of streets and highways at less than one-inch, sign replacement, sidewalk repair and replacement, curb and gutter repair and replacement, and street and traffic light repair and replacement. Maintenance work shall not include striping of a new street or highway.
4. Sewer maintenance, including foaming, video taping, cleaning and manhole restoration.
5. Traffic signal maintenance. Maintenance work shall not include installation of a new traffic signal.
6. Storm drain related maintenance.
7. Landscape maintenance, including mowing, watering, trimming, tree pruning, planting, tree and plant replacement, irrigation and sprinkler system servicing, retrofit and repair, and landscape rehabilitation.
8. Maintenance of facilities, including roof repairs, heating and air conditioning repairs, and electric repairs.
9. Vehicle and equipment maintenance and repairs.
10. Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.

M. "Negotiated contract" shall mean a letter of agreement, vendor agreement, contract, professional services agreement, maintenance services/public works projects agreement or written documentation which details terms and conditions of the purchase.

N. "Professional services" means all services performed by persons in a professional occupation, including, but not limited to, consulting and performance services for accounting, auditing, computer hardware and software support, engineering, architectural, planning, redevelopment, financial, economic, personnel, social services, animal control, legal, management, environmental, cable television, communication and other similar professional functions which may be necessary for the operation of the City.

O. "Public project" shall have that meaning provided in Section 22002(c) of the Act, as that Section may be amended from time to time. In this light, public project shall not include maintenance work. In addition, public project shall include, but shall not be limited to, all of the following:

1. Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.
2. Roof replacements for publicly owned, leased or operated facilities.
3. Painting or repainting of any publicly owned, leased, or operated facility.
4. In the case of a publicly owned utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.

P. "Purchasing officer" means the city manager or his or her designee(s) as provided in Section 3.15.020. Pursuant to Section 3.15.020, the city manager may change his or her designation at any time. (99-11)

3.15.020 Purchasing Officer - Position created - Appointment.

There is established in the office of the city manager the role of a purchasing officer. The purchasing officer shall be the city manager or his or her designee(s). If the city manager designates one or more persons to act in this role, the purchasing officer(s) shall serve at the pleasure of the city manager. The duties of the purchasing officer may be combined with those of any other officer(s) or position(s). (99-11)

3.15.030 Purchasing Officer - Powers and duties.

The purchasing officer, in accordance with the policies set forth in this chapter and in any written procedures approved by the city manager consistent with this chapter, shall have the power to:

- A. Purchase or contract for supplies, services and equipment required by the City.
- B. Negotiate and recommend to the City Council execution of contracts for the purchase of supplies, services and equipment.
- C. Prepare and implement policies and procedures governing the bidding, contracting, purchasing, storing, distribution and disposal of supplies, services and equipment for the City.
- D. Prescribe and maintain such forms as may be reasonably necessary to the implementation of this chapter and any other policies and procedures approved by the city manager consistent with this chapter.
- E. Review the working details, drawings, plans and specifications for any projects or purchases requiring such review in this chapter.
- F. Inspect or supervise the inspection of purchased supplies, services and equipment to ensure conformity with any specifications established or required by the City.
- G. Transfer among departments any supplies, services and equipment not needed by one such department, but which are necessary for the operation of one or more other departments.
- H. Sell any supplies and equipment not needed for public use or that may become unsuitable for their intended use.
- I. Develop and maintain any bidder's list, contractor's list or vendor's catalog file necessary to the operation of this chapter and any other policies and procedures approved by the city manager consistent with this chapter. (99-11)

3.15.040 Purchasing policies and procedures.

A. The City shall secure supplies, services and equipment at the lowest total cost commensurate with the quality and scope needed, and subject to any limitations imposed by state law. Notwithstanding the foregoing, the City shall secure professional services based upon demonstrated competence, professional qualifications and suitability for the project in general. The City may consider cost of professional services if the authorized contracting party determines it to be a relevant factor under the circumstances.

In order to promote the economic health and development of the City, to recognize the amount of sales tax that is returned to the City as a result of the award of a purchase contract for supplies and equipment to a Claremont vendor, to encourage local participation in the procurement process, and to exercise the prudent use of public funds, the City Council may, by minute action, award a bid to a Claremont vendor provided the local bid does not exceed the lowest bid by more than five percent (5%) or Ten Thousand Dollars (\$10,000), whichever is less.

For purposes of this Section, "Claremont vendor" shall mean a local business enterprise whose business address at the point of sale is located within the geographical boundaries of the City and who maintains a valid license or permit to do business in the City. (00-02)

B. The purchasing officer shall develop, for approval by the city manager, such policies and procedures as are necessary to implement the provisions of this chapter. The policies and procedures shall be written and implemented in such a way to encourage open and competitive bidding, provide equal opportunity based on merit, make each selection process free of invidious discrimination, provide for efficient and timely acquisition of needed supplies, services and equipment, and provide effective fiscal controls. (99-11)

C. In purchasing, supplies, services and equipment, the City shall make use of competitive bidding, either direct, formal or informal, whenever required by law, this chapter, or any policies and procedures approved by the city manager consistent with this chapter. (99-11)

D. Direct, formal or informal competitive bidding is not required, for instance, when an “emergency” is declared pursuant to Sections 3.15.090(A) of this chapter. With respect to emergencies involving public projects of \$25,000 or more, however, this waiver of competitive bidding shall last only so long as the emergency exists in the determination of the City Council. (99-11)

3.15.050 Bidding, purchasing and contracting.

A. *\$5,000 or less:* Any purchase of \$5,000 or less may be awarded by the division head responsible for the project by any direct competitive purchasing procedure as defined herein.

B. *\$25,000 or less:* Any purchase of twenty-five thousand dollars (\$25,000) or less may be awarded by the director of the department responsible for the project by any direct competitive purchasing procedure as defined herein.

C. *\$25,001 - \$75,000:* Any purchase of more than twenty-five thousand dollars (\$25,000), but less than or equal to seventy-five thousand dollars (\$75,000) may, except as otherwise provided in this chapter or the Act, be awarded by the city manager pursuant to the informal competitive purchasing procedure set forth in Section 3.15.070. If all bids received are over seventy-five thousand dollars (\$75,000), the City Council may, with the approval of a four-fifths (4/5) vote of those members present, award the contract in an amount not exceeding eighty thousand dollars (\$80,000) to the lowest responsive and responsible bidder, so long as the City Council also determines that the City’s cost estimate for the project was reasonable.

D. *\$75,001 or more:* Any purchase of more than seventy-five thousand dollars (\$75,000) shall, except as otherwise provided in this chapter or the Act, be awarded by the City Council pursuant to the formal competitive purchasing procedure set forth in Section 3.15.080.

E. *City Engineer Approval:* The city engineer shall review and approve the working details, drawings, plans, and specifications prepared for public projects and maintenance work where applicable in the areas of streets, sewer, storm drains, and traffic signals, but not necessarily for parks, buildings, and landscaping, which may affect the engineering design or operation of public improvements and which may bring into question the City’s liability for dangerous conditions of public property.

F. *City Council Approval:* The City Council shall review and approve applicable working details, drawings, plans and specifications prepared for every purchase, with the exception of vehicles, of more than seventy-five thousand dollars (\$75,000).

G. *Purchasing Officer Approval:* The purchasing officer, or his or her designee, shall review and approve all contracts for public projects of five thousand dollars (\$5,000) or more.

H. *Five-Year Term Limitation:* No agreement or contract shall extend for a period of more than five (5) years, including any authorized extensions. (99-11)

3.15.060 Claremont direct competitive purchasing procedure.

A. *Uses of Claremont Direct Competitive Purchasing Procedure:* This direct purchasing procedure shall be used for purchases between \$2,500 and \$25,000. (08-02)

B. At least three (3) vendors shall be contacted to provide informal quotes.

C. The department shall maintain a list of predetermined vendors. (99-11)

3.15.070 Claremont informal competitive purchasing procedure.

A. *Uses of Claremont Informal Competitive Purchasing Procedure:* This informal purchasing procedure shall be used for purchases between \$25,001 and \$75,000.

B. *Contractor/Vendor List:* The department shall maintain a list of qualified contractors.

C. *Distribution of Notice Inviting Informal Bids:* At least three (3) vendors or contractors shall be asked to submit informal bids, and the City shall endeavor to receive informal bids from at least three (3) vendors or contractors. Notices inviting informal bids shall be mailed to the list of qualified contractors and/or trade journals not less than ten (10) days before bids are due.

D. *Contents of Notice Inviting Informal Bids:* When soliciting informal bids, staff shall: (1) describe to the vendor in general terms the project, service or item; (2) advise vendors how to obtain additional information about the project; (3) state the date, time and place for the submission of bids; and (4) include any other information required by state or local law, as determined by the

City Attorney. Informal bids for purchases of more than twenty-five thousand dollars (\$25,000) shall be sealed bids.

E. *Proprietary Projects or Products:* If the director of the using department certifies that, to the best of his or her knowledge, the product or service is proprietary in nature and can be obtained only from a limited number of contractors, and that no equivalent products or services are available, the notice inviting informal bids may be sent exclusively to such vendor(s) or contractor(s).

F. *Contents of Remaining Bid and Contract Documents:* The contents and form of the remaining bid and contract documents shall be approved by the director of the using department, as well as the City Attorney.

G. *City's Authority:* The City may reject any or all bids received, and may waive any minor irregularities in each bid received.

H. *Proposal Submittal:* Contractors shall submit their proposals in writing.

I. *No Bids Received:* If no bids are received, the authorized contracting party may award the contract by any alternative purchasing procedure. (99-11)

3.15.080 Formal competitive purchasing procedure.

A. *Uses of Formal Competitive Purchasing Procedure:* This formal purchasing procedure shall be used for purchases greater than \$75,000 or whenever formal competitive purchasing is otherwise required by this chapter.

B. *Required Process:* The formal competitive purchasing procedure shall comply with all aspects of state and local law governing formal competitive bidding, including, but not limited to, the Public Contract Code, Government Code, Labor Code, resolutions of the City Council as may be adopted from time to time, and policies and procedures as the city manager may approve from time to time.

C. *Distribution of Notice Inviting Formal Bids:* The notice inviting formal bids shall comply with Section 22037 of the Act, as such section may be amended from time to time. For public projects only, the notice inviting formal bids shall also be sent to all construction trade journals specified in Section 22036 of the Act at least thirty (30) calendar days before the date of bid opening. Any other notice as may be deemed proper may also be given for any particular project.

D. *Contents of Notice Inviting Formal Bids:* At a minimum, the notice inviting formal bids shall: (1) describe the project in general terms; (2) state how to obtain more detailed information about the project; (3) state the date, time and place for the submission of sealed bids; and (4) include any other information required by state or local law, as determined by the City Attorney.

E. *Contents of Remaining Bid and Contract Documents:* The contents and form of the remaining bid and contract documents shall be approved by the director of the using department, as well as the City Attorney.

F. *City's Authority:* The City may reject any or all bids received, and may waive any minor irregularities in each bid received.

G. *Proposal Submittal:* Contractors shall submit their proposals in writing.

H. *No Bids Received:* If no bids are received, the authorized contracting party may award the contract by any alternative purchasing procedure. (99-11)

3.15.090 Using alternative purchasing procedures.

For non-Public Projects and other situations provided in this section, an alternative purchasing procedure which results in a negotiated contract, force account, purchase order or any other procedure determined by the authorized contracting party to be in the best interests of the City and in compliance with the City's policies and procedures may be used.

A. *Emergencies:* In situations determined by the city manager to constitute an emergency for a public project pursuant to Section 22035 of the Act and Public Contract Code Section 22050. The City Council hereby delegates to the city manager the power to declare a public emergency and take any directly related and immediate action required by the emergency, up to a total of one hundred thousand dollars (\$100,000), pursuant to Section 22035 of the Act and Public Contract Code Section 22050. Emergency expenditures of more than one hundred thousand dollars (\$100,000) shall first be approved by the City Council. Work shall be performed without the benefit

of competitive purchasing, either formal or informal, only so long as necessary under those sections.

For projects of more than twenty-five thousand dollars (\$25,000), a report on the emergency and work performed shall be provided at the next regular meeting of the City Council, and then at every meeting thereafter required by Section 22050. At such meetings, the City Council shall determine, by a four-fifths (4/5) vote, that there is a need to continue the action without the benefit of informal or formal competitive purchasing in accordance with Section 22035 of the Act and Public Contract Code Section 22050. The City Council shall terminate the emergency action at the earliest possible date that conditions warrant, so that the remainder of the emergency action may be completed pursuant to a formal competitive purchasing procedure.

For projects of twenty-five thousand dollars (\$25,000) or less, the city manager shall determine, on his or her own as the action continues, whether there is a need to continue the action without the benefit of public project informal competitive purchasing. The city manager shall terminate the emergency action at the earliest possible date that conditions warrant, so that the remainder of the emergency action may be completed pursuant to an informal competitive purchasing procedure.

B. *Professional Services:* When purchasing professional services.

C. *Computers:* When purchasing computer software, hardware maintenance services or software maintenance services.

D. *Competitive Bidding Already Completed:* When the authorized contracting party determines that a competitive bid procedure has been conducted by another public agency (e.g. through CMAS or GSA) and the price to the City is equal to or better than the price to that public agency.

E. *State Purchase:* When the purchase is made on behalf of the City by the State Department of General Services.

F. *No Bids Received:* When no bids are received pursuant to either the public project informal competitive purchasing procedure or the formal competitive purchasing procedure.

G. *No Competitive Market:* When the authorized contracting party determines that a competitive market does not exist, such as, but not limited to, with memberships in certain professional organizations, meetings, conventions, some forms of travel, legal advertising and when the needed supplies, services and equipment are proprietary and can only be provided by one source.

H. *Best Interests of the City:* When the City Council, on recommendation of the city manager, determines that an alternative procedure will be in the best interests of the City and the policies set forth in this chapter. (99-11)

Chapter 3.20

DEMANDS AGAINST THE CITY

Sections:

- 3.20.010** **Presentation to Council**
- 3.20.020** **Approval by Council**

3.20.010 **Presentation to Council**

All demands against the City shall be presented in writing at a regular meeting of the city council, fully itemized and verified as just and correct by affidavit of the claimant, or someone on his behalf. (06-02)

3.20.020 **Approval by Council**

All demands shall be presented to the city council as demands for auditing and approval before payment, with the exception of the following claims which may be paid prior to auditing and approval by the city council as authorized by the Government Code of the state. Warrants drawn in payment of demands certified by the director of finance as conforming with the budget approved by ordinance or resolution of the city council need not be audited by the city council before payment. Budgeted demands paid by warrant prior to audit by the city council shall be presented to the city council for ratification and approval at the first meeting after delivery of the warrants. Approval of such warrants shall be made by affirmative vote of at least three members of the council (06-02).

Chapter 3.24

UNIFORM LOCAL SALES AND USE TAX

Sections:

- 3.24.010 Title for citation.**
- 3.24.020 Purpose.**
- 3.24.030 Operative date.**
- 3.24.040 Contract with state.**
- 3.24.050 Sales tax imposed.**
- 3.24.060 Use tax imposed.**
- 3.24.070 Rate.**
- 3.24.080 Place of sale.**
- 3.24.090 Statutory provisions--Adopted.**
- 3.24.100 Statutory provisions--Amendments adopted.**
- 3.24.110 Limitations on adoption of state law.**
- 3.24.120 Permit not required when.**
- 3.24.130 Exclusions and exemptions.**
- 3.24.140 Enjoining collection forbidden.**
- 3.24.150 Alternating applicability of provisions authorized when.**

3.24.010 Title for citation.

This chapter shall be known as the "uniform local sales and use tax ordinance." (Prior code § 21.21)

3.24.020 Purpose.

The city council declares that this chapter is to achieve the following, among other purposes, and directs that the provisions of this chapter be interpreted in order to accomplish these purposes:

- A. To adopt a sales and use tax ordinance which complies with the requirements and limitations contained in Part 1.5 of Division 2 of the Revenue and Taxation Code;
- B. To adopt a sales and use tax ordinance which incorporates provisions identical to those of the Sales and Use Tax Law of the state insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.5 of Division 2 of the Revenue and Taxation Code;
- C. To adopt a sales and use tax ordinance which imposes a tax and provides a measure therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes;
- D. To adopt a sales and use tax ordinance which can be administered in a manner that will, to the degree possible consistent with the provisions of Part 1.5 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting city sales and use taxes and at the same time minimize the burden of recordkeeping upon persons subject to taxation under the provisions of this chapter. (Prior code § 21.24)

3.24.030 Operative date.

This chapter shall be operative on January 1, 1974. (Prior code § 21.23)

3.24.040 Contract with state.

Prior to the operative date cited in Section 3.24.030, this city shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of the sales and use tax ordinance codified in this chapter; provided, that if this city shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the

execution of such a contract rather than the first day of the first calendar quarter following the adoption of the ordinance codified in this chapter. (Prior code § 21.25)

3.24.050 Sales tax imposed.

For the privilege of selling tangible personal property at retail, a tax is imposed upon all retailers in the city at the rate stated in Section 3.24.070 of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in this city on and after the operative date. (Prior code § 21.26)

3.24.060 Use tax imposed.

An excise tax is imposed on the storage, use or consumption in this city of tangible personal property purchased from any retailer on and after the operative date for storage, use or other consumption in this city at the rate stated in Section 3.24.070 of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made. (Prior code § 21.28)

3.24.070 Rate.

The rate of sales and use tax imposed by this chapter shall be one percent. (Prior code § 21.22)

3.24.080 Place of sale.

For the purposes of this chapter, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the state or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization. (Prior code § 21.22)

3.24.090 Statutory provisions--Adopted.

Except as otherwise provided in this chapter and except insofar as they are inconsistent with the provisions of Part 1.5 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 of Division 2 of the Revenue and Taxation Code are adopted and made a part of this chapter as though fully set forth herein. (Prior code § 21.28-1)

3.24.100 Statutory provisions--Amendments adopted.

All subsequent amendments of the Revenue and Taxation Code which relate to the sales and use tax and which are not inconsistent with Part 1.5 of Division 2 of the Revenue and Taxation Code shall automatically become a part of this chapter. (Prior code § 21.28-7)

3.24.110 Limitations on adoption of state law.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, wherever the state is named or referred to as the taxing agency, the name of the city shall be substituted therefor. The substitution, however, shall not be made when the word "state" is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Board of Equalization, the State Treasury, or the State Constitution; the substitution shall not be made when the result of that substitution would require action to be taken by or against the city, or any agency thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this chapter; the substitution shall not be made in those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the state, where the result of the substitution would be to provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the state under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or to impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state

under the provisions of that code; the substitution shall not be made in Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code; and the substitution shall not be made for the word "state" in the phrase "retailer engaged in business in this state" in Section 6203 or in the definition of that phrase in Section 6203. (Prior code § 21.28-2)

3.24.120 Permit not required when.

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional seller's permit shall not be required by this chapter. (Prior code § 21.28-3)

3.24.130 Exclusions and exemptions.

A. The amount subject to tax shall not include any sales or use tax imposed by the state upon a retailer or consumer.

B. The storage, use or other consumption of tangible personal property, the gross receipts from the sale of which have been subject to tax under a sales and use tax ordinance enacted in accordance with Part 1.5 of Division 2 of the Revenue and Taxation Code by any city and county, county, or city in this state shall be exempt from the tax due under this chapter.

C. There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this state, the United States or any foreign government.

D. In addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code, the storage, use or other consumption of tangible personal property purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this state, the United States or any foreign government is exempted from the use tax. (83-9; prior code § 21.28-5)

3.24.140 Enjoining collection forbidden.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the state or this city, or against any officer of the state or this city, to prevent or enjoin the collection under this article, or Part 1.5 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected. (Prior code § 21.28-8)

3.24.150 Alternating applicability of provisions authorized when.

At the time the ordinance codified herein goes into operation, the provisions of Ordinance 550 (as amended by Ordinance 681) shall be suspended and shall not again be of any force or effect until and unless for any reason the State Board of Equalization ceases to perform the functions incident to the administration and operation of the sales and use tax imposed in this chapter; provided, however, that power to adopt the ordinance codified in this chapter, or that the State Board of Equalization is without power to perform the functions incident to the administration and operation of the taxes imposed by the ordinance codified in this chapter, the provisions of Ordinance 550 (as amended by Ordinance 681) shall not be deemed to have been suspended, but shall be deemed to have been in full force and effect at the rate of one percent continuously from and after April 1, 1956. Upon the ceasing of the State Board of Equalization to perform the functions incident to the administration and operation of the taxes imposed by the ordinance codified in this chapter, the provisions of Ordinance 550 (as amended by Ordinance 681) shall again be in full force and effect at the rate of one percent. Nothing in this chapter shall be construed as relieving any person of the obligation to pay to the city any sales and use tax accrued and owing by the reason of the provisions of Ordinance 550 (as amended by Ordinance 681) in force and effect prior to and including March 31, 1956. (Prior code § 21.28-12)

Chapter 3.28

TRANSIENT OCCUPANCY TAX

Sections:

3.28.010	Definitions.
3.28.020	Tax imposed--Amount--Payable where and when.
3.28.030	Exemptions.
3.28.040	Collection--Certain tax-related advertising prohibited.
3.28.050	Transient occupancy registration certificate.
3.28.060	Reports required--Reporting period--Remittance of tax to finance officer.
3.28.070	Recordkeeping--Retention of records--Right of inspection.
3.28.080	Failure to remit tax when due--Penalty.
3.28.090	Failure to collect and report tax--Determination of tax--Notice--Hearing.
3.28.100	Determination of tax--Appeal.
3.28.110	Refunds.
3.28.120	Action by city to collect tax.
3.28.130	Violations.

3.28.010 Definitions.

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

A. "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof.

B. "Occupancy" means the use or possession, or the right to use or possession of, any room or rooms or portion thereof in any hotel for dwelling, lodging or sleeping purposes.

C. "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

D. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

E. "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel, valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

F. "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any individual who exercises or is entitled to occupancy for a period of thirty (30) days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the individual exercising occupancy or another individual or entity. The intent is to tax the individual transient occupying the room. For purposes of this definition, the exercise of or entitlement to occupancy shall be evidenced by any of the following:

- 1) An individual's signature on a hotel registration card or form, a hotel invoice or receipt or any other document associated with an individual's occupancy in a hotel; and/or
- 2) An individual's providing identification to hotel staff as proof of employment, membership or affiliation with any person as defined in Subsection D of this section as a condition of or in connection with exercising occupancy in a hotel.

In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this chapter may be considered. (99-01)

3.28.020 Tax imposed--Amount--Payable where and when.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ten percent of the rent charged by the operator. Such tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the finance officer may require that such tax be paid directly to the city. (84-8)

3.28.030 Exemptions.

A. No tax shall be imposed upon:

1. Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax provided in this chapter;
2. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty;
3. Any federal or state officer or employee when on official business.

B. No exemption shall be granted except upon a claim therefor collected and under penalty of perjury upon a form prescribed by the finance officer. (84-8)

3.28.040 Collection--Certain tax-related advertising prohibited.

Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided. (84-8)

3.28.050 Transient occupancy registration certificate.

Within thirty days after the effective date of this chapter, or within thirty days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register such hotel with the finance officer and obtain from him a transient occupancy registration certificate to be at all times posted in a conspicuous place on the premises. Such certificate shall, among other things, state the following:

A. The name of the operator;

B. The address of the hotel;

C. The date upon which the certificate was issued;

D. "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the finance officer for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the finance officer. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department, or office of this city. This certificate does not constitute a permit." (84-8)

3.28.060 Reports required--Reporting period--Remittance of tax to finance officer.

Each operator shall, on or before the last day of each month file a return to the finance officer on forms provided by him, of the total rents charged for transient occupancies during the preceding calendar month. At the time the return is filed, the full amount of the tax payable to the city shall be remitted to the finance officer. The finance officer may establish longer reporting periods of up to three months for any certificate holder due to seasonal fluctuations in occupancy or as he deems appropriate for administrative efficiency. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall

be held in trust for the account of the city until payment thereof is made to the finance officer. (84-8)

3.28.070 Recordkeeping--Retention of records--Right of inspection.

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the city, which records the finance officer shall have the right to inspect at all reasonable times. (84-8)

3.28.080 Failure to remit tax when due--Penalty.

A. Notwithstanding any other provision of this title, any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten percent of the amount of tax in addition to the amount owed. Such penalty shall be added by the finance officer on the first day of each month after the due date thereof. The amount of such penalty shall in no event exceed fifty percent of the amount due.

B. When the last day of the month in which the tax due falls on a Saturday, Sunday, or a state or national holiday, payment of the tax may be made without penalty on the first working day of the succeeding month. Penalties in such cases shall attach on the second working day of the succeeding month.

C. For the purpose of this chapter, postmarks shall be accepted as the date of payment made, providing that the transmitting envelope contains a post office postmark cancellation not later than the due date, has been sent to the city first class mail, postage prepaid, and has been properly addressed.

D. If the finance officer determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsection A of this section.

E. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid by this chapter. (84-8)

3.28.090 Failure to collect and report tax--Determination of tax--Notice--Hearing.

If any operator fails or refuses to collect such tax and to make, within the time provided in this chapter, any report and remittance of such tax or any portion thereof required by this chapter, the finance officer shall proceed in such manner as he may deem best to obtain facts and information on which to base the estimate of the tax due. As soon as the finance officer procures such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the finance officer shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may, within ten days after the serving or mailing of such notice, make application in writing to the finance officer for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the finance officer shall become final and conclusive and immediately due and payable. If such application is made, the finance officer shall give not less than five days' written notice in the manner prescribed in this section to the operator to show cause at a time and place fixed in such notice why such amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing, the finance officer shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in Section 3.28.110. (84-8)

3.28.100 Determination of tax--Appeal.

Any operator aggrieved by any decision of the finance officer with respect to the amount of such tax, interest and penalties, if any, may appeal to the council by filing a notice of appeal with the finance officer within fifteen days of the serving or mailing of the determination of tax due. The council shall fix a time and place for hearing such appeal, and the finance officer shall give notice in writing to such operator at his last known place of address. The findings of the council shall be final and conclusive and shall be served upon the appellant in the manner prescribed in Section 3.28.100 for service of notice of hearing. Any amount found to be due shall immediately become due and payable upon the service of notice. (84-8 (part))

3.28.110 Refunds.

Any claim for a refund of any tax, interest or penalty collected or received by the city under this Chapter 3.28 shall be presented in accordance with Chapter 1.16 of Title 1 of this code." (96-04; 84-8 (part))

3.28.120 Action by city to collect tax.

Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. 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. (84-8)

3.28.130 Violations.

No operator or other person shall fail or refuse to register as required by this chapter, or to furnish any report required to be made, or shall fail or refuse to furnish a supplemental report or other data required by the finance officer, or shall render a false or fraudulent report or claim. No person who is required to make, render, sign or verify any report or claim shall make any false or fraudulent report or claim with the intent to defeat or evade the determination of any amount due according to this chapter. (89-1 (part); 84-8 (part))

Chapter 3.29

UTILITY USERS' TAX

Sections:

- 3.29.010 Definitions.
- 3.29.020 Constitutional and statutory exemptions.
- 3.29.030 Exemption for low-income households.
- 3.29.040 Application for exemption.
- 3.29.050 Telephone users' tax.
- 3.29.060 Electricity users' tax.
- 3.29.070 Fuel users' tax.
- 3.29.080 Service users receiving direct purchase of fuel or electricity.
- 3.29.090 Water users' tax.
- 3.29.100 Cable television users' tax.
- 3.29.110 Remittance of tax.
- 3.29.120 Actions to collect.
- 3.29.130 Duty to collect--Procedures.
- 3.29.140 Additional power and duties of tax administrator.
- 3.29.150 Service user assessment--Administrative remedy.
- 3.29.160 Records.
- 3.29.170 Refunds.
- 3.29.180 Notice of termination or suspension of utility users' tax.
- 3.29.190 Operative dates.
- 3.29.200 Review.

***Editor's note for Chapter 3.29**

Utility Users' Tax ratified by Claremont voters on March 4, 1997 (97-01)

3.29.010 Definitions.

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

- A. "Person" means any domestic or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, Massachusetts business or common law trust, society, or individual. "Person" shall include both nonprofit and for-profit organizations, and without regard to exemption from real property or income taxes.
- B. "Fuel" means natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor. It shall not include fuel intended for use in motor vehicles and subject to taxation under the state of California motor vehicles fuels tax.
- C. "Telephone corporation," "electrical corporation," "gas corporation," "water corporation," and "cable television corporation" have the same meanings as defined in Sections 234, 218, 222, 241 and 215-5, respectively, of the California Public Utilities Code, except "electrical corporation," "gas corporation," and "water corporation" shall also be construed to include any municipality, public agency or person engaged in the selling or supplying of electrical power or gas or water to a service user.
- D. "Tax administrator" means the city manager, or his designee.
- E. "Service supplier" means any entity required to collect or self-impose and remit a tax as imposed by this chapter.
- F. "Service user" means a person required to pay a tax imposed by this chapter.
- G. "Residence," for the purpose of Section 3.29.030, means an individual dwelling unit, and not group quarters such as a dormitory or health care facility.

H. "Cogenerator" means any corporation or person employing cogeneration technology for producing power from other than a conventional power source for the generation of electricity for self use or sale to others.

I. "Month" means a calendar month.

J. "Nonutility supplier" means a service supplier, other than an electrical corporation franchised to serve the city, which generates electrical energy in capacities of at least fifty kilowatts for its own use or for sale to others; or, a gas supplier other than a gas corporation, that sells or supplies gas to users within the city. (93-4)

3.29.020 Constitutional and statutory exemptions.

A. Nothing in this chapter shall be construed as imposing a tax upon any person when imposition of such tax upon that person would be in violation of the Constitution of the United States or that of the state of California, or of any applicable state or federal law.

B. The tax administrator shall prepare a list of the persons exempt from the provisions of this chapter by virtue of this section and furnish a copy thereof to each service supplier. (93-4)

3.29.030 Exemption for low-income households.

A. The tax imposed by this chapter shall not apply to utilities supplied to the separately metered or billed residence of a service user if: (1) the combined gross income of all members of the service user's residence is less than the amount established for Los Angeles County by the United States Department of Housing and Urban Development for very low-income families for the applicable household size; and (2) such condition is demonstrated to the tax administrator's satisfaction.

B. The income exemption limit provided herein shall be revised annually by the tax administrator to conform to the most current very low-income limits for Los Angeles County for applicable household sizes, as determined by the United States Department of Housing and Urban Development (HUD) with regard to the Public Housing and Section 8 Program.

C. The exemption granted by this section shall not eliminate the duty of the service supplier, nonutility supplier, or person to collect and remit utility users' taxes for exempt persons, or the duty of exempt persons to pay such taxes unless an exemption is applied for and granted in accordance with Section 3.29.040. (93-4)

3.29.040 Application for exemption.

A. Any service user meeting the exemption qualifications of Section 3.29.030 may file an application with the tax administrator for an exemption. Such application shall be made on forms supplied by the tax administrator and shall recite under oath facts which qualify the applicant for an exemption.

B. The tax administrator shall review all such applications, certify qualified applicants as exempt, and notify all affected service suppliers when an exemption is approved, stating the name of the applicant, the address to which exempt service is being supplied, the account number, if any, and such other information as may be necessary for the service supplier to remove the exempt service user from its tax billing procedure. The service supplier shall remove the exempt service user from its tax billing procedure no later than sixty days after receipt of such notice from the tax administrator.

C. Approved exemptions under this section shall not apply retroactively.

D. Except as provided hereinafter, exemptions shall be renewed by the tax administrator as long as the facts supporting the application for exemption continue. An exemption granted shall automatically terminate with any change in the residence of the person exempted, but such person may apply for a new exemption with each change of residence.

E. Any person exempt from the tax shall notify the tax administrator within ten days of any change in fact or circumstance which might cause the person to become ineligible for exemption.

F. Any person knowingly receiving the benefits of this exemption when the basis for such exemption does not exist or ceases to exist, shall be guilty of a misdemeanor.

G. Any service supplier who determines that a new or nonexempt service user is receiving exempt service through a meter or connection previously used by an exempt service user shall immediately notify the tax administrator of such fact; and, the tax administrator shall ascertain

whether or not the provisions of this article have been complied with and, where appropriate, order the service supplier to commence collecting the tax from the nonexempt service user. (93-4)

3.29.050 Telephone users' tax.

A. There is imposed a tax on the amounts paid for any telephone services, by every person in the city using such services other than a gas, electric, cable television, water, or telephone corporation collecting such tax. The tax imposed by this section shall be at the rate of five and one-half percent of the charges for such services, and shall be paid by the person paying for such services.

B. As used in this section, the term "charges" shall not include charges for advertising, nor state or federal taxes separately billed to and payable by the service user; nor shall the term "charges" include charges for services paid for by inserting coins in coin-operated telephones except that where such coin-operated service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due; nor shall the term "charges" include charges for any type of service or equipment furnished by a service supplier subject to public utility regulations during any period in which the same or similar services or equipment are also available for sale or lease from persons other than a service supplier subject to public utility regulation; nor shall the words "telephone communications services" include land mobile service or maritime mobile services as defined in Section 2.1 or Title 47 of the Code of Federal Regulations, as said section existed on January 1, 1970. The term "telephone communication services" refers to that service which provides access to a telephone system and the privilege of telephone quality communication with substantially all persons having telephone stations which are part of such telephone system. The telephone users' tax is intended to, and does, apply to basic monthly charges for cellular telephone service or enhanced specialized mobile radio communication service, when the service use has a billing address in the city.

C. The tax imposed by this section shall be collected from the service user by the person providing the telephone communication services, or the person receiving payment for such services. The amount of the tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month; or, at the option of the person required to collect and remit the tax, an estimated amount of tax collected, measured by the tax bill in the previous month, shall be remitted to the tax administrator on or before the last day of each month with a reconciliation of estimate amount to the actual amount submitted the following month.

D. The tax imposed under the provisions of subsection (A) of this section shall not be imposed upon amounts paid for telephone communication services where imposition of such tax would be in violation of the Constitution of the United States, the United States Code, or the laws of the state of California, or upon toll charges used in the collection and dissemination of news for the public press or on charges for wide-area telephone service used by common carriers in the conduct of their business or on charges which are exempt from taxation under Section 4251 of the Internal Revenue Code pursuant to Subsections (a), (b), (c), (d), (e), (f), (g) and (i) of Section 4253 of the Internal Revenue Code. (95-03 (part); 94-14 (part); 93-4 (part))

3.29.060 Electricity users' tax.

A. There is imposed a tax upon every person in the city using electrical energy in the city other than a gas, electrical, cable television, water, or telephone corporation collecting such tax. The tax imposed by this section shall be at the rate of five and one-half percent of the charges made for such energy by an electrical corporation franchised to serve the city and shall be paid by the person using the energy. The tax applicable to electrical energy provided by a nonutility supplier shall be determined by applying the tax rate to the equivalent charges the service user would have incurred if the energy used had been provided by the electrical corporation franchised by the city. Rate schedules for this purpose shall be available from the city. Non-utility suppliers shall install and maintain an appropriate utility-type metering system which will enable compliance with this section. "Charges," as used in this section, shall include charges made for: (1) metered energy; and (2) minimum charges for service, including customer charges, service charges, demand charges, standby charges, and all other annual and monthly charges, fuel or other cost adjustments authorized by the California Public Utilities Commission or the Federal Energy

Regulatory Commission. "Charges" shall not include state or federal taxes separately billed to and payable by the service user.

B. As used in this section, the term "using electrical energy" shall not be construed to mean the storage of such energy by a person in a battery owned or possessed by him for use in an automobile or other mechanical 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; nor shall the term include electricity used and consumed by an electric utility supplier in the conduct of its business as an electric public utility; nor shall the term include the mere receiving of such energy by an electric public utility or governmental agency at a point within the city for resale; nor shall the term include the use of such energy in the production or distribution of water by a public utility or a government agency; nor shall the term include the use of electricity generated by a cogenerator or a fuel cell for its own use.

C. The tax imposed in this section shall be collected from the service user by the service supplier or nonutility supplier. The tax imposed in this section on use supplied by self-generation or from a nonutility supplier not subject to the jurisdiction of this chapter, shall be collected and remitted to the tax administrator in the manner set forth in Section 3.29.070. The amount of tax collected by a service supplier or a nonutility supplier in one month shall be remitted by United States Mail, to the tax administrator, postmarked on or before the last day of the following month; or, at the option of the person required to collect and remit the tax, an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the customers of the service supplier, shall be remitted by United States Mail to the tax administrator, postmarked on or before the last day of each month, with a reconciliation of estimate amount to the actual amount submitted the following month. Remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers. (93-4(part))

3.29.070 Fuel users' tax.

A. There is imposed a tax upon every person in the city using natural gas and other hydrocarbon fuels, which is transported through the gas pipeline distribution system or by mobile transport, other than a gas, electrical, cable television, water, or telephone corporation collecting such tax. The tax imposed by this section shall be at the rate of five and one-half percent of the amount that will be paid by the person using the fuel. The tax applicable to fuel provided by nonutility suppliers shall be determined by applying the tax rate to the actual charges the service user incurred.

"Charges" as used in this section shall include that billed for: (1) fuel which is delivered through a gas pipeline distribution system or mobile transport; (2) fuel transportation charges; (3) demand charges, service charges, customer charges, annual and monthly charges, and any other charge authorized by the California Public Utilities Commission or Federal Energy Regulatory Commission.

B. There shall be excluded from the base on which the tax imposed in this section is computed: (1) charges for gas which is to be resold and delivered through mains and pipes; (2) charges made for gas sold for use in the generation of electrical energy or for the production or distribution of water by a public utility or governmental agency; (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 that phrase is defined in the Vehicle Code of the state of California, utilizing natural gas; (5) charges related to late payments and returned checks; (6) charges made for gas used by a nonutility supplier to generate electrical energy for its own use or for sale to others provided the electricity so generated is subject to the tax in accordance with Section 3.29.060 of this chapter; and (7) state or federal taxes separately billed to and payable by the service user.

C. The tax imposed in this section shall be collected from the person using the fuel by the person selling or transporting the fuel. A person selling or providing transportation services of natural gas to a user for delivery through mains or pipes shall collect the tax from the user based upon the cost of transporting the fuel. The person selling or transporting the fuel shall, on or before the twentieth of each calendar month, commencing on the twentieth day of the calendar month after the effective date of the ordinance codified in this chapter, make a return to the tax administrator stating the amount of taxes billed during the preceding calendar month. At the time

such returns are filed, the person selling or transporting the gas shall remit tax payments to the tax administrator in accordance with schedules established or approved by the tax administrator. The tax imposed in this section on use supplied by self-production or a nonutility supplier not subject to the jurisdiction of this chapter, shall be collected and remitted to the tax administrator in the manner set forth in Section 3.29.080. (93-4 (part))

3.29.080 Service users receiving direct purchase of fuel or electricity.

A. Notwithstanding any other provision of this chapter, a service user receiving fuel or electricity directly from a nonutility supplier not under the jurisdiction of this chapter, or otherwise not having the full tax due on the use of fuel or electricity within the incorporated limits of the city directly billed and collected by the service supplier shall report the fact to the tax administrator within thirty days of said use and shall directly remit to the city the amount of tax due.

B. The tax administrator may require the service user to provide, subject to audit, filed tax returns or other satisfactory evidence documenting the quantity of fuel or electricity used and the actual price thereof. (93-4 (part))

3.29.090 Water users' tax.

A. There is imposed a tax upon every person in the city using water, which is delivered through mains or pipes, other than gas, electric, cable television, water, or telephone corporations collecting such tax. The tax imposed by this section shall be at the rate of five and one-half percent 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; charges made by a municipal water department, public utility or a city or water district for water used and consumed by such department, utility, or district; state regulatory fees separately billed to and payable by the service user; and city sewer maintenance fees billed by the water corporation.

C. The tax imposed in this section shall be collected from the service user by the person supplying the water. The amount collected in one month shall be remitted to the tax administrator on or before the last day of the following month. (93-4 (part))

3.29.100 Cable television users' tax.

A. There is imposed a tax upon every person in the city using cable television service. The tax imposed by this section shall be at the rate of five and one-half percent of the charges made for such service and shall be paid by the person paying for such service. For purposes of this section, a cable television service shall mean any television signal delivered by cable, microwave or other method of telecommunication for a fee or charge.

B. There shall be excluded from the base of which the tax imposed in this section is computed charges for unreturned equipment, any amount separately billed equal to the franchise fee paid by the cable television corporation to the city, if any, and state or federal taxes separately billed to and payable by the service user.

C. The tax imposed in this section shall be collected from the service user by the person furnishing the cable television service. The amount collected in one month shall be remitted to the tax administrator on or before the last day of the following month. (93-4 (part))

3.29.110 Remittance of tax.

Taxes collected from a service user which are not remitted by the service supplier 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, taxes collected shall not be delinquent if the tax return is postmarked on the first regular working day following a Saturday/Sunday or legal holiday. (93-4 (part))

3.29.120 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, and not remitted to the tax administrator, shall be deemed a debt owed to the city by the person required to

collect and remit. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount. (93-4 (part))

3.29.130 Duty to collect--Procedures.

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

A. Notwithstanding the provisions of Section 3.29.080, the tax shall be collected insofar as practicable at the same time as and along with the charges made in accordance with the regular billing practices of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the utility charge and tax which has accrued for the billing period, such amount and any subsequent payments by a service user shall be applied to the utility charge first until such charge has been fully satisfied. Any remaining balance shall be applied to taxes due. In those cases where a service user has notified the service supplier of his refusal to pay the tax imposed on said utility charges, Section 3.29.150(D) will apply.

B. The duty to collect tax from a service user shall commence with the beginning of the first full regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this chapter. Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing. (93-4 (part))

3.29.140 Additional power and duties of tax administrator.

A. The tax administrator shall have the power and duty, and is directed to enforce each and all of the provisions of this chapter.

B. The tax administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this chapter for the purpose of carrying out and enforcing the payment, collection, and remittance of the taxes herein imposed. A copy of such rules and regulation shall be on file in the tax administrator's office.

C. The tax administrator may make administrative agreements to vary the requirements of this chapter so that collection of any tax imposed here may be made in conformance with the billing procedures of the 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. A copy of each such agreement shall be on file in the tax administrator's office.

D. The tax administrator shall determine the eligibility of any person who asserts a right to exemption from the tax imposed by this chapter. The tax administrator shall notify the service supplier of termination of any person's right to exemption hereunder, or the change of any address to which service is supplied to any exempt person. (93-4 (part))

3.29.150 Service user assessment--Administrative remedy.

A. The tax administrator may make an assessment for taxes not remitted by a person required to remit.

B. Whenever the tax administrator determines that a service user has deliberately withheld the amount of the tax owed from the amounts remitted to a person required to collect the tax, or that a service user has refused to pay the amount of tax to such person, or whenever the tax administrator deems it in the best interest of the city, such person may be relieved of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods.

C. The service supplier shall provide the city with amounts refused and/or unpaid along with the names and addresses of service users neglecting to pay the tax imposed under provision of this chapter. Whenever the service user has failed to pay the amount of tax for a period of two or more billing periods, the service supplier shall be relieved of the obligation to collect the past due taxes, except that the service supplier shall forthwith notify the tax administrator if any payment of the past due tax amount is made by the service user.

D. The tax administrator shall notify the service user that he 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 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 person required to collect the tax; or, should the service user have changed his

address, to his last known address. If a service user fails to remit the tax to the tax administrator within fifteen 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 percent of the amount of the tax set forth in the notice shall be imposed, but not less than twenty dollars. The penalty shall become part of the tax herein required to be paid.

E. If the tax administrator determines that failure to pay the required tax was due to reasonable error, or that the tax due is a minimal amount, the tax administrator may waive all or part of the penalty. (93-4 (part))

3.29.160 Records.

It shall be the duty of every person required to collect and remit to the city the tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of tax as such person may have been liable for remittance to the tax administrator, which records the tax administrator shall have the right to inspect at all reasonable times. (93-4 (part))

3.29.170 Refunds.

Any claim for a refund of any tax, interest or penalty collected or received by the city under this Chapter 3.28 shall be presented in accordance with Chapter 1.16 of Title 1 of this code." (96-04 (part)); 93-4 (part))

3.29.180 Notice of termination or suspension of utility users' tax.

The service supplier shall, upon written notification by the tax administrator, terminate or suspend any billing or collection of utility users' tax commencing with the first full billing period which occurs after the effective date of such notice. (93-4 (part))

3.29.190 Operative dates.

The utility users' tax imposed by this chapter shall be applied to all covered telephone, electricity, fuel, water and cable television charges billed on or after May 1, 1993, or as soon thereafter as the respective utilities are physically and mechanically able to implement the charges but not more than thirty additional days. (93-4 (part))

3.29.200 Review.

The utility users' tax rate shall be reviewed by the city council in conjunction with development of the city's budget; and, a separate public hearing shall be held to receive public comment on the need to continue the tax and the amount of the tax. (93-4 (part))