

RESOLUTION NO. 212-67

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARCATA
PLACING THE UTILITY USERS TAX MEASURE
ON THE BALLOT FOR THE ELECTION TO BE HELD NOVEMBER 8, 2022**

WHEREAS, the City's general fund is used to fund such essential governmental services as police, public works, parks and recreation, and other essential services provided by the City to its citizens; and

WHEREAS, beginning in 1990 the State of California significantly reduced the tax revenues available to the City for general fund purposes; and

WHEREAS, in 1993 the City Council, by unanimous vote, adopted a three percent (3%) utility users tax to partially offset the City's general fund revenue loss and permit the City to maintain essential government services, which was approved by a majority of the voters of the City of Arcata in 1996, 2000, 2004, 2008, and most recently in 2016, terminating on November 30, 2024; and

WHEREAS, the California Public Utilities Commission (CPUC) establishes baseline quantities for average residential electricity use measured in daily allowances of kilowatt hours (kWh) of electric power, which is determined by billing rate structure, service territory, season, and heating source type that can be billed at a lower rate ("Baseline Allowance"), and has determined that electricity use in excess of 600% over the Baseline Allowance serves no residential purposes; and

WHEREAS, the CPUC provides extra allowances of electricity at the lowest rate for residential customers who rely on life support equipment, or those who have life threatening illnesses or compromised immune systems ("Medical Baseline"); and

WHEREAS, the CPUC also allows residences with a permanently installed electric heating system (e.g., an electric heat pump) to be provided an all-electric Baseline Allowance that is 92% higher than residences without a permanently installed electric heating system under the basic electric Baseline Allowance;

WHEREAS, electricity use in excess of 600% over the Baseline Allowance is three (3) times higher than the average residential electrical usage in Arcata;

WHEREAS, in 2012, a majority of the voters of the City of Arcata adopted a forty-five percent (45%) utility users tax on residential electric customers whose electricity exceeds 600% over the established Baseline Allowance, terminating November 30, 2024; and

WHEREAS, a higher utility users tax on excessive electricity use supports the City's Community Greenhouse Gas Reduction Plan, which identifies energy efficiency as one of seven action areas in which to obtain reductions in greenhouse gas emissions, including implementation of measures to conserve or reduce electrical energy use such as encouraging adjustments to personal behavior and living patterns so that less energy is required for daily needs; and

WHEREAS, adoption of the higher utility users tax rate on excessive electricity use in 2012 was based in part on analyses showing that from 2000 to 2006, residential sector electricity use in Arcata increased by 30% (24% per capita) or 9,236,897 kilowatt-hours (kWh) per year; and

WHEREAS, a higher utility users tax on excessive electricity use as well as the promotion of additional energy efficiency measures within the City, have resulted in the reduction of residential electric energy use by 9.3% from 2014 levels;

WHEREAS, out of 9,177 residential electricity meters in Arcata in 2021, between 31 and 58 meters per month exceeded 600% over the Baseline Allowance using on average 3,284 kWh each, or 1,792,692 kWh total generating 1,400 tons of carbon dioxide emissions; and

WHEREAS, for fiscal year 2022-2023, the three percent (3%) utility users tax is expected to generate approximately Eight Hundred and Eighty Thousand Dollars (\$880,000) and the forty-five percent (45%) above Baseline Allowance utility users tax on excessive electricity usage is expected to generate One Hundred Sixty Five Thousand Dollars (\$165,000); and

WHEREAS, continued revenue from the 3% utility users beyond its November 30, 2024, termination date will allow the City to fund police, public works, parks and recreation, and other essential government services without drastically reducing such services to the detriment of its citizens; and

WHEREAS, continuation of the forty-five percent (45%) utility users tax on excessive electric usage beyond its November 30, 2024, termination date will further the City's Community Greenhouse Gas Reduction Plan goals by reducing greenhouse gas emissions, promoting energy efficiency, and allow the City to continue to fund essential governmental services.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Arcata hereby places the following question before the voters of Arcata at the election to be held November 8, 2022:

“Shall the City of Arcata continue to impose a three percent (3%) utility users tax on the ordinary use of utility services in the City, including gas, electric, water, wastewater, and communications services; and, continue to impose an electricity users tax at the rate of 45% on residential customers whose electricity usage exceeds 600% over the established Baseline Allowance with a sole exemption for households receiving an extended Medical Baseline from the electricity service supplier; automatically terminating in 14 years on November 30, 2036?”

BE IT FURTHER RESOLVED, that upon approval of the foregoing question by a majority vote of the electorate, the City shall adopt the following utility users tax attached hereto and incorporated herein, and shall direct the City Clerk to codify said tax by repealing and replacing Article 1.5 of Chapter 5, Title II, Sections 2625-2645, of the Arcata Municipal Code with said duly approved tax.

This Resolution shall be effective upon its adoption.

Dated: May 18, 2022

ATTEST:


Bridget Derry
City Clerk, City of Arcata

APPROVED:


Jim Salas
Mayor, City of Arcata

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of Resolution No. 212-67, passed and adopted at a regular meeting of the City Council of the City of Arcata, County of Humboldt, State of California, held on the 18th day of May, 2022, by the following vote:

AYES: **ATKINS-SALAZAR, SCHAEFER, MATTHEWS**

NOES: **NONE**

ABSENT: **WATSON**

ABSTENTIONS: **NONE**



Bridget Dory

City Clerk, City of Arcata

TITLE II - ADMINISTRATION
CHAPTER 5 - TAXATION
ARTICLE 1.5 - UTILITY USERS TAX
(To be submitted to voters November 8, 2022)

SEC. 2625. Definitions.

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

(a) "Ancillary Telecommunication Service" means services that are associated with or incidental to the provision or delivery of Telecommunication Services, including but not limited to the following services:

- (1) "Conference Bridging Service," which 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," which means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement;
- (3) "Directory Assistance," which means an ancillary service of providing telephone number information and/or address information;
- (4) "Vertical Service," which means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.
- (5) "Voice Mail Service," which means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(b) "Ancillary Video Services" means services associated with or incidental to the provision or delivery of Video Services, search functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of video programming.

(c) "Communication Services" means Telecommunications Services, Ancillary Telecommunication Services, Video Services and Ancillary Video Service.

(d) "Electrical Corporation," "Gas Corporation" and "Telephone Corporation" shall have the same meanings as defined in Sections 218, 222, and 234, respectively, of the California Public Utilities Code, except "Electrical Corporation," and "Gas Corporation" shall also be construed to include any municipality, public agency or Person engaged in the selling or supplying of electrical power or Gas to a Service User.

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

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

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

(h) "Non-utility Service Supplier" shall mean:

- (1) A Service Supplier, other than an Electric Corporation serving within the City, which generates electrical energy in capacities of at least 50 kilowatts for its own use or for sale to others; and a supplier of electric distribution services to all or a significant portion of the City, including but not limited to any publicly-owned electric utility, investor owned utility, cogenerator, distributed generation provider, exempt wholesale generator, municipal utility district, federal power marketing agency, or other supplier or seller of electricity;
- (2) An electric service provider (ESP), electricity broker, marketer, aggregator, pool operator; or
- (3) A Gas supplier other than a Gas Corporation that sells or supplies Gas or supplemental services to users within the City, including but not limited to an aggregator, marketer, broker, other than a supplier of Gas distribution services to all or a significant portion of the City.

(i) "Person" shall mean any domestic or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, limited liability company, cooperative, club, Massachusetts business or common law trust, society, individuals, local, state or federal government agency.

(j) "Place of Primary Use" shall mean the street address where the customer's use of Communication Service primarily occurs, generally, the residential street address or the primary business address of the customer.

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

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

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

(n) "Service Address" shall mean the residential street address or the business street address of the service user. For a Telecommunications or Video Service User, "Service Address" means either:

- (1) The location of the Service User's telecommunication or video equipment from which the communication originates or terminates, regardless of where the communication is billed or paid; or
- (2) If the location in paragraph (1) of this definition is unknown (e.g., Mobile Telecommunications Service or VoIP service), the Service Address shall mean the location of the Service User's place of primary use.

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

(o) "Service Supplier" shall mean any Person that provides Communication, electric, Gas, water or wastewater Services to a user of such services within the City. The term shall include any Person required to collect or self-impose and remit a tax as imposed by this Article, including its billing agent.

(p) "Service User" shall mean any Person who uses utility services within the City's boundaries for which a tax is imposed by this Article. For metered utilities, each metered service shall be treated as a single Service User for that particular utility. For non-metered service, each address of service usage shall be treated as a single Service User for that particular utility.

(q) "Tax Administrator" shall mean the Finance Director of the City of Arcata.

(r) "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. 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 are functionally integrated with telecommunication services. "Telecommunications Services" include but are not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: Ancillary Telecommunication Services; intrastate, interstate, and international Telecommunication Services; Mobile Telecommunications Service; Prepaid Telecommunication Service; Post-paid Telecommunication Service; Private Telecommunication Service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers call in to pre-recorded or live service).

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

(t) "Video Services," which means any and all services related to the providing or delivering of Video Programming (including origination programming and programming using Internet protocol, e.g., IP-TV and IP-Video) using one or more channels by a Video Service Supplier, regardless of the technology used to deliver or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes data, Telecommunication Services, or interactive Communication Services,

which are functionally integrated with Video Services.

(u) "Video Service Supplier" means any Person, company, or Service Supplier which provides or sells one or more channels or Video Programming, or provides or sells the capability to receive one or more channels of Video Programming, including any communications that are ancillary, necessary or common to the use and enjoyment of the Video Programming, to or from a business or residential address in the City, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not the public rights-of-way are utilized in the delivery of the Video Programming or communications. A "Video Service Supplier" includes, but is not limited to, multichannel Video Programming distributors [as defined in 47 U.S.C.A. section 552(13)]; open video systems (OVS) suppliers; and suppliers of cable television; master antenna television; satellite master antenna television; multichannel multipoint distribution services (MMDS); video services using internet protocol (e.g., IP-TV and IP-video, which provide, among other things, broadcasting and video on demand); direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of Video Programming or communications (including two-way communications), whatever their technology.

SEC. 2626. Exemptions.

(a) Nothing in this Article 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.

(b) The City Council may, by ordinance or resolution, establish one or more classes of Persons or one or more classes of utility service otherwise subject to payment of a tax imposed by this Article and provide that such classes of Persons or service shall be exempt, in whole or in part from such tax.

(c) Service users who receive Low Income Rate Assistance (LIRA) from a Gas and/or Electric Corporation are exempt from paying electricity and Gas utility users taxes as imposed by this Article. As used herein, Low Income Rate Assistance is defined as a monthly discount given by a Gas and/or Electric Corporation to eligible low income customers on their Gas and electricity charges.

(d) The use of utility services by the City, other local government agencies, state agencies, federal agencies, public schools and state universities is exempt from the levy of taxes imposed by this Article.

(e) Service users who receive "universal lifeline service" from a Telephone Corporation are exempt from paying the utility users tax as provided in this Article on the basic telephone service. As used herein, "universal lifeline service" is identified as a monthly discount on the basic service charge given by a Telephone Corporation to eligible low income customers on their basic telephone service.

(f) It is the responsibility of any Person who claims a tax exemption under the provisions of this Article to notify the Tax Administrator and provide sufficient proof of such exempt status.

SEC. 2627. Communication Users Tax.

(a) There is hereby imposed a tax upon every Person in the City using Communication Services. The tax imposed by this section shall be at the rate of three percent (3%) of the charges made for such Communication Services. The tax shall be collected from the Service User by the Communication Services supplier or its billing agent. There is a rebuttable presumption that the tax on Communication Services, which are billed to a billing or service address within the City's boundaries, are used, in whole or in part within the City, and such services are subject to taxation under this Article. If the billing address of the Service User is different from the Service Address, the Service Address of the service user shall be used.

(b) Notwithstanding subdivision (a), the tax on charges for Post-paid Communication Service is sourced to the origination point of the communication signal as first identified by either (i) the Service Supplier's communication system, or (ii) information received by the seller of the service from the Service Supplier, where the system used to transport such signals is not that of the seller. The tax on charges for Prepaid Communication Service is sourced to the location associated with the service number.

(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. 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 can identify, by verifiable data, non-taxable charges based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles. The Service Supplier has the burden of proving the proper apportionment of taxable and non-taxable charges.

(d) Charges for Communication Services shall apply to all services, components and items that are (i) necessary for or common to the receipt, use or enjoyment of Communication Services; or (ii) currently are or historically have been included in a single or bundled rate for Communication Service by a local distribution company to a class of retailer customers. The terms "charges" shall include, but not be limited to, charges for the following:

- (1) Franchise fees and access fees (PEG);
- (2) Initial installation of equipment necessary for provision and receipt of Communication Services;
- (3) Late fees, collection fees, bad debt recoveries, and return check fees;
- (4) Activation fees, reactivation fees, and reconnection fees;
- (5) All Video Programming services (e.g., basic services, premium services, audio services, video games, pay-per view services, on demand programming);
- (6) Ancillary programming services (e.g., electronic program guide services, search functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of the video programming);
- (7) Equipment leases (e.g., converters, remote devices); and
- (8) Service calls, service protection plans, name changes, changes of services, and special services.

(e) As used in this section, the term "charges" shall not include:

(1) Charges for any type of service or equipment furnished by a Service Supplier subject to public utility regulation 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;

(2) Charges for services paid for by inserting coins in coin-operated telephones except that where such coin-operated telephone 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; and

(3) Private mobile radio service. For purposes of this Article "private mobile radio service" is a radio Communication Service which is not a commercial mobile service. A "mobile service" means a radio Communication Service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio Communication Services, (B) a mobile service which provides a regularly

interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding. A "commercial mobile service" is a "mobile service" that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public.

(f) To prevent actual multi-jurisdictional taxation of Communication Services subject to tax under this section, any Service User, upon proof to the tax administrator that the Service User has previously paid the same tax in another state or city on such Communication Services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city; provided, however, the amount of credit shall not exceed the tax owed to the City under this section. For purposes of establishing sufficient legal nexus for the imposition and collection of utility users' tax on charges for Communication Services pursuant to this chapter, "minimum contacts" shall be construed broadly in favor of the imposition and collection of the utility users' tax to the fullest extent permitted by California and federal law, and as it may change from time to time.

(g) The tax on Communication Services imposed by this section shall be collected from the Service User by the Service Supplier. The amount of tax collected in one (1) Month shall be remitted to the tax administrator on or before the last day of the following month; and must be received by the tax administrator on or before the last day of the following month.

SEC. 2628. Electricity Users Tax.

(a) There is hereby imposed a tax on the use of electrical energy supplied by a Service Supplier or a Non-utility Service Supplier which is used within the City's boundaries, unless the Service User is exempt from paying the tax under section 2626 of this Article. The tax imposed by this section shall be at the rate of three percent (3%) 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 User. The tax shall be paid by the Person responsible for paying for such service, and shall be collected from the service user by the service supplier or Non-utility Service Supplier, or its billing agent. An Electrical Corporation using electrical energy within the City's boundaries is exempt from paying the taxes imposed by this section.

(b) The tax applicable to electrical energy provided by a Non-utility Service Supplier shall be determined by applying the tax rate to the equivalent charge 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 Service Suppliers shall install, maintain and use an appropriate utility-type metering system which will enable compliance with this section.

(c) As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the Service User in exchange for the electricity services. 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 can identify, by verifiable data, non-taxable charges based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles. The Service Supplier has the burden of proving the proper apportionment of taxable and non-taxable charges.

(d) As used in this section, "charges" shall apply to all services, components, and items that are

(i) necessary for or common to the receipt, use, or enjoyment of electrical service; 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. The term "charges" shall include but is not limited to the following charges:

- (1) Energy charges;
- (2) Distribution or transmission charges;
- (3) Metering charges;
- (4) Stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar minimum charges for services;
- (5) Customer charges, late charges, service establishment or reestablishment charges, demand charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees or surcharges which are necessary for or common to the receipt, use, or enjoyment of electric service; and
- (6) all other charges, fees, surcharges 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.

(e) As used in this section, the term "use of electrical energy" shall not be construed to mean the use of such energy by a storage battery; provided, however, that the term shall include the receipt of such energy for the charging of storage batteries. Nor shall the words "use of electrical energy" be construed to mean the receipt of such energy by an Electrical Corporation or a governmental agency at a point within the City for resale.

(f) The tax imposed in this section shall be collected from the Person responsible for paying for the electrical energy service by the Person selling such electrical energy. The amount of tax collected in one Month shall be remitted to the Tax Administrator on or before the last day of the following month.

SEC. 2628.5. Excessive Residential Electricity Users Tax.

(a) When a Residential Customer's electrical energy use exceeds six hundred percent (600%) of the Baseline Allowance, the tax imposed pursuant to Section 2628 shall be imposed at the rate of forty-five (45%) of the total charges made for electrical energy, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the Service User. The tax shall be paid by the Person responsible for the paying for such service, and shall be collected from the Service User by the Service Supplier or Non-utility Service Supplier, or its billing agent.

(b) The following words whenever used in this Section 2628.5 shall be construed as defined in this sub-Section 2628(b):

(1) "Baseline Allowance" shall mean the rate structure mandated by the California Legislature and approved by the California Public Utilities Commission that insures all Residential Customers of an electricity Service Supplier are provided a minimum necessary quantity of electricity at the lowest possible cost.

(2) "Residential Customer" shall mean the class of Service Supplier customers whose dwellings are single-family units, multi-family units, mobilehomes or other similar living establishments, such as Residential Dwelling Units or Residential Hotels, provided that 50% or more of the annual energy use on the meter is for residential end-uses.

(3) "Residential Dwelling Unit" shall mean a room or group of rooms, such as a house, a flat, or an apartment, which provides complete family living facilities in which the occupant(s) normally cooks meals, eats, sleeps, and carries on the household operations incidental to domestic life.

(4) "Residential Hotel" means a hotel establishment which provides lodging as a primary or permanent residence and has at least 50 percent of the units or rooms leased for a minimum period of one month and said units are occupied for nine months of the year, excluding those establishments such as guest or resort hotels, resort motels or resort ranches, tourist camps, recreational vehicle parks, half-way houses, rooming houses, boarding houses, dormitories, rest homes, military barracks, or a house, apartment, flat or any residential unit which is used as a residence by a single family or group of persons.

(c) All provisions contained in this Article 1.5, *Utility Users Tax*, of Chapter 5, *Taxation*, Title II, *Administration*, of the Arcata Municipal Code shall apply to this Section 2628.5 except as expressly stated otherwise in this Section 2628.5. In the event of conflict between this Section 2628.5 and other provisions in Article 1.5, this Section 2628.5 shall control.

(d) Exemptions: Service Users who rely on life support equipment, or those who have life threatening illnesses or compromised immune systems, and therefore receive an extended Medical Baseline Allowance from an Electrical Corporation, are exempt from paying the tax imposed by this Section 2628.5 upon application to the City Manager or his or her designee.

(e) Service Users subject to the tax imposed by this Section 2628.5 are not eligible for the exemption found at Section 2626(c) for Service Users receiving low income rate assistance.

(f) Service Users subject to the tax imposed by this Section 2628.5 may not apply the tax levied pursuant to this Section 2628.5 toward the maximum amount of tax as otherwise authorized in Section 2632.

SEC. 2629. Gas Users Tax.

(a) There is hereby imposed a tax upon the use of Gas supplied by a Service Supplier or Non-utility Service Supplier which is transported through mains or pipes or by mobile transport, and which is used within the City's boundaries, unless the Service User is exempt from paying the tax under section 2626 of this Article. The tax imposed by this section shall be at the rate of three percent (3%) of the charges made for the Gas and shall be paid by the Person responsible for paying for such service. A Gas Corporation using Gas within the City's boundaries is exempt from paying the tax imposed by this section.

(b) The tax applicable to Gas or Gas transportation provided by Non-utility Service Suppliers shall be determined by applying the tax rate to the equivalent charges the Service User would have incurred if the Gas or Gas transportation had been provided by the Gas Corporation franchised by the City. Rate schedules for this purpose shall be available from the City. Non-utility Service Suppliers shall install, maintain and use an appropriate utility-type metering system which will enable compliance with this section.

(c) As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the Service User in exchange for the Gas service. 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 can identify, by verifiable data, non-taxable charges based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles. The Service Supplier has the burden of proving the proper apportionment of taxable and non-taxable charges.

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

- (1) The commodity charges for purchased gas, or the cost of Gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of gas), which is delivered through mains or pipes;
- (2) Gas transportation charges (including interstate charges to the extent not included in commodity charges);
- (3) Capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, annual and monthly charges, and other charges, fees or surcharges which are necessary for or common to the receipt, use, or enjoyment of Gas service; and
- (4) 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.

(e) As used in this section, "charges" shall not include: (1) charges made for Gas which is to be resold and delivered through mains and pipes; (2) charges made for Gas used in the propulsion of a motor vehicle, as authorized in the Vehicle Code of the State of California; or (3) charges made for Gas used in the generation of electrical energy by a public utility or a governmental agency.

(f) The tax imposed in this section shall be collected from the Person responsible for paying for the Gas service by the Person selling the Gas. The amount collected in one Month shall be remitted to the Tax Administrator on or before the last day of the following month.

SEC. 2630. Water Users Tax.

(a) There is hereby imposed a tax upon the use of water supplied by the City which is delivered through mains or pipes to a service user located within the City's boundaries, unless the Service User is exempt from paying the tax under section 2626 of this Article. The tax imposed by this section shall be at the rate of three percent (3%) of the charges made for such water and shall be paid by the Person responsible for paying for such water service.

(b) There shall be excluded from the tax imposed in this section charges made for water which is to be resold and delivered through mains or pipes.

(c) As used in this section, "charges" shall include monthly service and usage fees, and shall not include connection or installation fees or charges.

(d) The tax imposed in this section shall be collected from the Person paying for such water service by the City. The amount collected in one Month shall be remitted to the Tax Administrator on or before the last day of the following month.

SEC. 2631. Wastewater Collection System Users Tax.

(a) There is hereby imposed a tax upon the use of the City's wastewater collection system, unless the Service User is exempt from paying the tax under section 2626 of this Article. The tax imposed by this section shall be at the rate of three percent (3%) of the charges made for such service and shall be paid

by the Person responsible for paying for such wastewater collection service.

(b) As used in this section, "charges" shall include monthly service and usage fees, and shall not include connection or installation fees or charges.

(c) The tax imposed in this section shall be collected from the Person responsible for paying for such wastewater collection service by the City. The amount collected in one Month shall be remitted to the Tax Administrator on or before the last day of the following month.

SEC. 2632. Maximum Amount of Tax.

(a) The taxes levied in this Article shall be limited for each service user to a combined total utility users tax of \$1,809.00 per fiscal year. This amount shall be subject to an adjustment each fiscal year, beginning on July 1, 2022, based on the Consumer Price Index (CPI) – All Urban Consumers, U.S. All Items, 1982-84 = 100 (CUUROOOOSAO), Annual from prior calendar year.

(b) Persons who use a particular utility service at a single location, but have more than one meter for such service may combine service usage from all meters at that location to compute the maximum tax. Such Persons shall apply to the Tax Administrator for treatment in accordance with this section.

(c) It shall be the responsibility of the Person responsible for paying the tax imposed by this Article to present to the Tax Administrator sufficient evidence to prove that combined taxes levied under this Article reach or exceed \$1,809.00 per fiscal year, as adjusted by CPI, for a particular service user. Sufficient evidence includes billing receipts or other proof as determined appropriate by the Tax Administrator.

(d) Once the Tax Administrator has determined that the total utility users tax for a particular service user has reached or exceeded the limitation described in this section, the City will inform the service suppliers and thereafter bill the Person responsible for paying the tax imposed by this Article directly on a quarterly basis for the \$1,809.00 per fiscal year, as adjusted by CPI, combined tax.

(e) It is the responsibility of the Person responsible for paying the tax imposed by this Article to notify the Tax Administrator if service usage for a particular service user drops below such levels that the tax limitation imposed in this section is no longer appropriate.

SEC. 2633. Remittance of Tax.

Taxes collected from a Person responsible for paying the tax imposed by this Article which are not remitted to the Tax Administrator on or before the due dates provided in this Article are delinquent. Should the due date occur on a weekend or legal holiday, the return may be postmarked on the first regular working day following a Saturday/Sunday, or legal holiday.

SEC. 2634 Effects of Commingling Nontaxable Items With Taxable Items.

If any one or more nontaxable items are bundled or billed together with one or more taxable items (as provided for by the Article) under a single charge on a customer's bill, the entire single charge shall be deemed taxable unless, upon the written request of the customer, the service supplier can reasonably identify the nontaxable component of the single charge based upon one or more of the following methodologies, as elected by the tax administrator:

(a) The average industry charges for the individual nontaxable items included in the entire single charge;

(b) The amount of the entire single charge less the average industry charges for the individual taxable items in the entire single charge; or

(c) The Service Supplier's books and records that are kept in the regular course of business, which must be consistent with generally accepted accounting principles.

SEC. 2635 Substantial Nexus/Minimum Contacts.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Article, "substantial nexus" 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 Service (including VoIP) used by a Person with a Service Address in the City, which service is capable of terminating a call to another Person or the general telephone network, shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for the purposes of imposing a tax, or establishing a duty to collect and remit a tax under this Article.

SEC. 2636. Actions to Collect.

Any tax and/or penalty required to be paid by a Service User under the provisions of this Article shall be deemed a debt owed by the Person responsible for paying the tax imposed by this Article to the City. Any such tax collected from a Person responsible for paying the tax imposed by this Article which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the Service Supplier. Any Person owing money to the City under the provisions of this ordinance shall be liable to an action brought in the name of the City for the recovery of such amount.

SEC. 2637. Duty to Collect - Procedures.

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

(a) The tax shall be collected insofar as practicable at the same time as and along with the charges made in accordance with the regular billing practices of the Service Supplier. Except in those cases where a Person responsible for paying for services pays the full amount of said charges but does not pay any portion of a tax imposed by this Article, if the amount paid is less than the full amount of the charge and the tax which has accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid.

(b) The duty to collect the tax from a Person responsible for paying the tax imposed by this Article shall commence with the beginning of the first full regular billing period applicable to that Person who starts on or after the operative date of this ordinance. Where a Person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

SEC. 2638. 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 Article.

(b) The Tax Administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this Article for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. This administrative ruling shall be consistent with and shall not impose a new tax, or increase an existing tax without voter approval if such administrative ruling is (1)

consistent with the existing tax ordinance language; and, (2) merely reflects a change in, clarification to, or new rendition of (i) the definition, interpretation, or application of substantial nexus by a court of competent jurisdiction or by preemptive state or federal law, for purposes of taxation; or, (ii) the sourcing of taxable transactions based upon industry custom and practice, which furthers administrative efficiency and minimizes multi-jurisdictional taxation. A copy of such rules and regulations shall be on file in the Tax Administrator's office. The Tax Administrator may, from time to time, issue and disseminate to service suppliers, which are subject to the tax collection requirements of this Article, such administrative ruling identifying those services, or charges therefor that are subject to the tax of this Article.

(c) The Tax Administrator may make administrative agreements to vary the strict requirements of this Article so that collection of any tax imposed herein may be made in conformance with the billing procedures of a particular Service Supplier so long as said agreements result in collection of the tax in conformance with the general purpose and scope of this resolution. 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 ordinance. The Tax Administrator shall provide the Service Supplier with the name of any Person who the Tax Administrator determines is exempt from the tax imposed hereby, together with the address and account number to which service is supplied to any such exempt Person. 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.

(e) The Tax Administrator shall provide notice to all Service Suppliers at least ninety (90) days prior to any annexation or other change in the City's boundaries. Said notice shall set forth the revised boundaries by street and address, along with a copy of the final annexation order from the Local Area Formation Commission (LAFCO).

(f) The Tax Administrator may, from time to time, survey Service Suppliers to identify the various unbundled billing components of service that they may commonly provide to residential and commercial/industrial customers in the City, and the charges therefore, including those items that are mandated by state or federal regulatory agencies as a condition of providing such service. The Tax Administrator, thereafter, may issue and disseminate to such service suppliers an administrative ruling identifying those components and items which are: (1) necessary for or common to the receipt, use or enjoyment of service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of this Article.

(g) Notwithstanding any provision in this Article to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this Article, or require prospective application of the tax, if the noncollection occurred in good faith. In determining whether the noncollection was in good faith, the Tax Administrator shall take into consideration industry practice or other precedents. The Tax Administrator may also participate with other public agencies collecting utility users taxes in conducting coordinated compliance reviews with the goal of achieving administrative efficiency and uniform tax application determinations, where possible. To encourage full disclosure and ongoing cooperation on annual compliance reviews, the Tax Administrator, and his or her agents, may enter into prospective agreements with the tax-collecting service providers regarding any changes pertaining to the taxation of services or charges that were previously deemed by the service provider, in good faith and without gross negligence, to be nontaxable. In determining whether the noncollection was in good faith and without gross negligence, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedents.

SEC. 2638.5 Penalties

(a) Taxes collected from a Service User which are not remitted to the Tax Administrator on or before the due dates provided in this Article are delinquent. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a Service Supplier in satisfaction of its obligations under this subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on the following business day. Any tax billed to a Service User but not paid to the Service Supplier shall not be deemed an obligation of the Service Supplier unless such tax is thereafter paid to the Service Supplier.

(b) In addition to remitting the amount of the tax, any Service Supplier who fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the customer's billing) or fails to remit any tax imposed by this Article within the time required, or any Service User who fails to remit the tax, shall pay a penalty of ten percent (10%) of the amount of the tax, per month or fraction thereof, from the first day of delinquency until the date of payment. The total amount of the penalties provided for in this subsection shall not exceed fifty percent (50%) of the total amount of the tax due.

(c) If the Tax Administrator determines that the nonpayment by any Service Supplier or Service User of any remittance due under this Article is due to fraud or gross negligence, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated above.

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

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

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

SEC. 2639. Collection of Tax by Tax Administrator.

(a) Whenever the Tax Administrator determines that a Person responsible for paying the taxes imposed by this Article has deliberately withheld the amount of the tax owed from the amounts remitted to a service supplier for a period of four (4) or more billing periods, or that a Person responsible for paying the taxes imposed by this Article has refused to pay the amount of tax to such Person, the Tax Administrator may relieve such Service Supplier of the obligation to collect such taxes due under this Article from certain named Persons for specific billing periods.

(b) The Service Supplier shall provide the City with a report of the amounts refused along with the names and addresses of the Service Users refusing to pay the tax.

(c) The Tax Administrator shall notify the Person responsible for paying the taxes imposed by this Article that the Tax Administrator 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 Person responsible for paying the taxes imposed by this Article by handing it to him or her personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to such Person at the address to which billing was made by the service supplier; or, should such Person's address change, to the last known address.

(d) If a Service User fails to remit the tax to the Tax Administrator within fifteen (15) days from the date of the service of the notice upon such Service User in accordance with subsection (c) herein, 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, but not less than Five Dollars (\$5.00). The penalty shall become part of the tax herein required to be paid.

SEC. 2640. Records.

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

SEC. 2641. Refunds.

(a) A Service Supplier who has collected any amount of tax illegally, erroneously, or more than once may refund such amount to the Person responsible for paying such tax and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns, providing such credit is claimed in a return dated no later than three (3) years from the date of overpayment.

(b) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the City under this Article, it may be refunded to a Service Supplier or Service User by the City, provided a claim in writing, therefore, stating under penalty of perjury the specified grounds upon which the claim is founded, is filed with the Tax Administrator within one (1) year of the date of payment. The claim shall be on forms furnished by the Tax Administrator. No refund shall be paid under the provisions of this Section unless the claimant establishes his right thereto by written records, and, in the case of a Person responsible for paying the taxes imposed by this Article, that such Person has been unable to obtain a refund or adjustment from the service supplier who collected the tax. Nothing herein shall permit the filing of a refund claim on behalf of a group of a class or group of taxpayers. The filing of a written claim is a prerequisite to any suit thereon. Any action brought against the City pursuant to this section shall be subject to the provisions of the Government Code sections 945.6 and 946.

(c) 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 a Service User for past utility services, the taxes paid pursuant to this Article on the amount of such refunded charges may also be refunded to such Service User by the Service Suppliers, and the Service Supplier can claim credit for such refunded taxes against the amount which is due upon any monthly returns. In the event this Article is repealed, the amounts of any refundable taxes will be borne by the City.

SEC. 2642. Termination of Tax.

(a) The levy of taxes as provided in this Article shall expire on November 30, 2036. The use of utility services thereafter shall no longer be subject to a utility users taxes.

(b) The termination of the levy of taxes on November 30, 2036, shall not terminate the obligation to pay taxes levied on services used prior to such date. Taxes levied prior to such date shall remain a debt payable to the City. All provisions in this Article, except those relating to the levy of taxes, shall continue with full force and effect after such date.

SEC. 2643. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase

of this Article or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance 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 or more section, subsection, subdivision, paragraph, sentence, clause or phrases be declared unconstitutional.

SEC. 2644. Limitation on Actions. Any action to challenge the validity or legality of any provision of this resolution on any grounds whatsoever including, without limitation, the proceedings by which it was adopted, any substantive provision or any other defect shall be brought by court action commenced within ninety (90) days of the date of adoption of this resolution.

SEC. 2645. Operative Date. All taxes levied by this ordinance are to be used for the usual and current general fund expenses of the City. This ordinance will go into effect on December 1, 2022, provided it is ratified by a majority of the electorate at the November 8, 2022, general election. In such event, the then existing provisions of Article 1.5, *Utility Users Tax*, Chapter 5, *Taxation*, Title II, *Administration* of the Arcata Municipal Code shall be repealed and replace in their entirety with the provisions of this Article 1.5, *Utility Users Tax*, Chapter 5, *Taxation*, Title II, *Administration*.