



WS 3

DATE: February 24, 2009

TO: Mayor and City Council

FROM: City Manager

SUBJECT: **Work Session:**

Future Financial Projections/Possible Responses
Review of Budget Education Efforts
Review of Ballot Measure Survey Results
Review of Ballot Language for a Proposed UUT (Draft)
Review of Sample UUT Ordinance

RECOMMENDATION

That the Council hears the report and provides staff direction on possible next steps related to addressing the City's current financial and service delivery crisis and the implications for the community.

SUMMARY

The City has been diligent in its efforts to manage its finances to ensure ongoing service delivery to the community. However, recent economic conditions, combined with the fundamental structural failure of how local governments in California are funded, have created a crisis never previously experienced.

While a number of significant actions have been taken over the past 16 months to manage the impacts of the current economic situation and resultant budgetary impacts, staff is proposing a possible tax revenue measure be placed on a June special election ballot for voter consideration. It is critical to give the community the opportunity to voice its opinion on the matter as to whether the community chooses to have levels of service severely reduced and, in some cases, eliminated, or, alternatively, tax itself to maintain current service levels and perhaps enhance them in the future when other revenues return to historical levels as anticipated in the next 3-5 years.

BACKGROUND

We have faced several major budget challenges over the past year. The first challenge was the result of California's early entry into the foreclosure avalanche that cut real estate activity in half, and reduced our Real Property Transfer Tax (RPTT) revenue an even greater amount in fiscal year

ending June 30, 2008. Last year's decline of approximately 60% in this single revenue source was responsible for over two-thirds of last year's budget deficit, and required the use of reserves last year of approximately \$7 million. (RPTT revenue has continued its decline this year and will be off another 30% this current fiscal year). This revenue source will have decreased from \$9.7 million to a projected \$2.5 million next fiscal year.

A second wave of negative economic news has since washed over our budget picture, with a full-blown economic recession taking form. The credit market failure, further foreclosures, commercial failures, and growing unemployment have slowed not only the housing market, but now have broadened to the overall level of economic activity. National retail sales overall are down to their lowest level in 16 years; auto sales are down to their lowest level in decades; major retail firms such as Mervyns and Circuit City have closed and home values in Hayward are down 40% or more in many neighborhoods.

These negative trends have diminished our revenues significantly and continue to do so. As you will hear during the Mid-Year Budget Update, we are projecting revenues to come in \$5 million short of even our conservative estimates for the remainder of this fiscal year. This figure is on top of the \$14 million deficit facing us as we entered the year. In total, the deficit for this year would have topped \$19 million if we had done nothing last spring; and the City's General Fund reserves would be completely depleted in the first quarter of FY2010 (September 30, 2009).

Fortunately, Council had the foresight to balance this year's projected budget through the use of other one-time monies, as well as aggressive cost-cutting that resulted in savings at the end of this year of over \$10 million. While some of these savings are short-term, they have been critical to our ability to balance the immediate deficits. Actions taken this past year include:

- Concessions of COLAs from Police, Fire, and Unrepresented Management
- Mandatory Unpaid Holiday Furloughs and closing of City facilities and services
- Elimination of 50 positions (non-sworn)
- Further negotiations with bargaining groups to reduce costs
- Cost cutting measures resulting in \$3 million in cost reductions

DISCUSSION

Staff has worked diligently to manage the current fiscal crisis while trying to focus current essential service levels in support of Council's overriding priorities of Public Safety and Cleanliness. Actions taken previously, such as the reduction of 50 General Fund positions (approximately 15% of our public safety work force), employee salary concessions, and efficiency measures have resulted in an approximate 10% reduction in General Fund costs over the past 16 months. These actions have diminished service levels in a number of program areas within the organization, but Council's priorities continue to be supported to the fullest extent possible.

The current fiscal crisis comes on the heels of a previous, albeit less severe, economic downturn from 2002-2004. Revenues were impacted significantly, and employees at that time agreed to no cost-of-living increases for two years to help the City through those difficult financial times. Our

employees have a pattern of acknowledging the big picture and pitching in as necessary. In addition, significant staffing reductions were made in key departments, including sworn police officers and firefighters. Those positions have never been reinstated, and our community has felt the impact of those reductions in our ability to respond to increasing demands for service. (Attachment A.)

In managing these financial and service challenges, major strain has been placed on our internal support departments and their ability to support a productive organization. In order to continue service levels and support of Council priorities, internal services such as Technology Services, Finance, Human Resources, and Fleet Maintenance were reduced below minimum required staffing.

Despite the organization's creativity and nimbleness in responding to these recent challenges, our ability to proactively respond to further deterioration in our revenues is rapidly diminishing. Continued work with our bargaining groups has been very positive and further concessions will result in additional operational savings in the coming year. These savings actions will likely include employee furloughs for non-24/7 operations and the closing of services one or more days a month. Whatever combination of concessions is realized, balancing this against operational savings is essential to a healthy organization. Our employees are to be commended for stepping up to the challenges and cooperating to find solutions to our current fiscal crisis, and for working diligently and positively to provide services in a very resource-constrained environment.

However, concessions won't be enough to stave off the impacts of the current fiscal crisis. After having cut approximately 10% in costs, the budget still relies on one-time monies to maintain balance. The current two-year budget has depended on significant one-time monies from other non-General Fund resources that will soon be exhausted. This was manageable when it was believed this was to be a 12-24 month economic downturn, consistent with previous downturns. Our mid-year budget recommendation presented tonight includes again use of one-time assets to help stem the impacts of a cracking revenue picture. We are buying ourselves time to develop a more sustainable solution.

These budget problems have been brewing on the sales tax and RPTT side of the ledger for two years now, while we haven't yet seen the impacts of either the State's financial mess or the full brunt of the housing market meltdown (e.g., the negative impact on Property Tax revenue in the coming years.) The big shoes have yet to drop, and we have exhausted most all reasonable means to balance the budget while trying to maintain essential public services.

Further Deterioration Expected in FY2010

One of the harsh realities of California local governmental finance is a greater and greater dependence on sales taxes as a means of financing local services. Over the past 30 years, since the implementation of Proposition 13, this dependence has increased, while at the same time, the California economy has transformed itself from an industrial economy to a service/information-based economy. While some have dubbed the "fiscalization of land use" a major concern, this controversy has bubbled over for years. It is true that local government revenues have become much more affected by the cyclical nature of the retail economy. Real estate, while also experiencing swings (most severely this past two years) typically is less volatile than the retail

marketplace. What makes this current downturn unique in recent history is the combined retail AND real estate meltdowns affecting both of the top two revenue sources for most all local governments in California (i.e., sales taxes and property-based taxes).

One of our greatest challenges in planning municipal service delivery for our community is that our services are generally in higher demand when our revenue bases are eroding. This inverted cycle repeats every few years and results in a lack of progress in many key service areas, as we expand and contract in a reactionary manner, robbing our ability to be intentional about service level maintenance and even improvement, so necessary for the enhancement of the quality of life for our businesses and residents alike.

Local government in California typically depends on three or four major revenue sources to fund general local government services. These typical revenues as they apply to the City of Hayward are presented below, in basic order of dependability.

- ❖ *Property taxes:* Staff is closely watching the effects of the housing and financial markets. While the decline in Real Property Transfer Tax (RPTT) of over 60% has been more immediate, there is almost a year lag between the date the assessed valuation on real property is established and the date we receive funds. Although the inventory of homes for sale in Hayward has dropped from 21 months in December of 2007 to an inventory of 3 months in December of 2008, we know that there will be a significant down-turn in assessed valuation of residential property for next year. For example, in a year, the median sale price of home has declined from \$440K to \$275K in December of 2008. The volume of foreclosed homes has dramatically impacted the valuation of homes. The impact of the decreased valuations due to reduced sales prices, combined with property owners requests for reassessments and the County Assessors initiated reassessments due to the down turn in property values, will not be felt until next year. Staff is also concerned with possible future delinquencies due to non-payment of property taxes.

While it is extremely difficult to estimate the impacts of these combined factors, a moderate estimate in falling property tax revenues would be a 5% reduction from FY2009 levels, which would equate to a \$2.0 million drop next fiscal year. A more pessimistic estimate would put the drop at 10%, or \$4.0 million in decreased revenues. It is likely we will see something in between these two estimates. Longer term, we expect it will take a number of years for valuations to return to current year levels, in what could be a 7-10 year recovery for real estate values.

- ❖ *Sales Tax:* In the current year, we have revised our projections downward to reflect an overall 8% decrease in sales tax revenues. While this is somewhat “dramatic” in scale, sales taxes have been staying relatively flat for the past ten years. Losses of significant sales tax generators, specifically auto dealerships, have been somewhat offset by other retailers coming into the community, but overall trends have shown little or no growth for several years. This indicates a real need for a stronger emphasis on business development, which is a stated Council priority. Future development efforts should continue a balance between residential and retail development. An example of such an effort will be the upcoming

Mission Corridor Specific Plan, which will need to evaluate how best to plan for retail uses along the corridor north of Harder Road to the city limits.

As stated above, sales tax revenues are a primary means of financing local services. Sales taxes, however, are extremely susceptible to economic downturns, which seem to be occurring on a shorter business cycle in the past 10 years. The ability for local government to do a better job of financial planning is severely inhibited by dependence on this volatile revenue source.

Having our revenue base decreased in this current year, we are expecting a further 6-8% decline next year. This number could go higher if unemployment continues to climb and further retail closures occur. A 7% decline in sales tax revenue equates to an additional revenue decline of approximately \$2.0 million in FY2010. This, combined with the decrease of \$2.3 million this current year, puts our two year drop in revenues at \$4.3 million below original FY2010 projections.

- ❖ *Real Property Transfer Tax (RPTT)*: The most volatile of tax revenues, it has dropped from a high of nearly \$10 million just two years ago to a projected \$3.3 million this current fiscal year. While there are indications those property sales volumes are stabilizing and perhaps increasing, values are half of what they were just a year ago. I would expect this revenue to decline further next year, and stay at a base level of \$2.5 million for the next several years as the real estate market stays depressed. If and when this revenue begins to recover, I will recommend to Council that any revenues realized above a yet to be determined base level either be put into reserves and/or be allocated for one-time capital expenditures. This revenue should not be relied upon for general operating expenditures in the future once a reasonable base level is established.
- ❖ *Other Revenues*: Council recently adopted policy providing for full cost recovery in many service areas that are not considered of general benefit. An example of such fees includes development services fees. Activity in many of these service areas has fallen below expectation due to the economic downturn. This current year we are \$650,000 below projections in development fees. I expect that trend to continue into next year and likely into FY2011.

In total, of these more significant revenue sources, I am expecting an additional \$10-\$12 million deficit for next fiscal year that will need to be reconciled prior to our presenting Council with our proposed adjusted budget for FY2010. To put the magnitude of such reductions in perspective, such reductions equate to elimination of 60+ police officers (a third of our sworn force) or closure of three fire stations (a third of the Fire Department). Such reductions will severely impact the City's ability to serve the community even at very minimal service levels.

Solutions/Actions

As indicated earlier in this report, the organization has taken swift and decisive action to keep a balance budget through these difficult times. Consistent with Council's overriding priorities, no

reductions to sworn staffing levels have been made, despite the fact that public safety budgets comprise nearly 75% of our General Fund budget. While a number of efficiency measures have resulted in savings, and we continue to look for ways to serve more efficiently, the fact is we are a people business. Nearly 80% of our General Fund expenditures are on people, so to realize savings to any significant degree requires reduction in personnel costs.

There are two basic ways to reduce personnel costs:

1. Reduce the cost of the employee's compensation packages
2. Reduce the number of employees within the workforce

In the past 16 months, we have done both. As indicated above, 50 non-sworn positions were eliminated to reduce personnel costs by approximately \$5 million annually. Also, employees contractual compensation increases were frozen by our police, fire and unrepresented employees, realizing \$2 million in savings in the current year and additional savings over the next three years. The recent holiday furlough resulted in almost \$1 million in savings (\$600,000 of it in the General Fund). We continue to work with our employee groups to find creative ways to reduce immediate personnel costs.

I see no possible way for the organization to absorb additional personnel reductions in the General Fund without eliminating services. Service levels in our General Fund departments are at a "minimal maintenance" level now with most having significantly lower staffing levels than they did 15 years ago.

There are several options on the expenditure side of the equation that we need to consider to address our budget deficit, some immediate, some longer term.

In Progress/Ongoing

- Furloughs be implemented to reduce salary costs
- Comprehensive review of vehicle and other fleet assignments and equipment related costs
- Evaluation of any possible capital equipment or land sales (one time monies) that could help support the General Fund short-term
- Continued restrictions on the purchase of non-mission critical supplies and services
- Continued restriction on recruitment and hiring, with City Manager approval required prior to any hiring
- Working with all departments to eliminate all non-minimum staffing required overtime
- Continued work with bargaining groups to reduce costs

Intermediate (implement by April 1, 2009)

- Employees agreeing to salary and/or benefit concessions for next Fiscal Year (COLA freeze, extended furloughs, reduced work weeks, etc.)

Longer Term (possibly implement in FY2010)

An analysis of various General Fund and Enterprise Fund operations for possible future privatization or alternative service delivery that results in new General Fund revenues or savings

- Water/Sewer/Airport Operations
- Street Sweeping/Facilities/Landscape/Fleet
- Legal Services
- Jail Services
- Technology Services

Because of these projections, staff began work early this year on our FY2010 budget adjustments. Each department was asked to develop five percent and ten percent reduction plans. These plans are still being developed. Elements of these plans will come forward as part of the FY2010 budget adoption process. Below is a summary by department of some of the possible cuts or revenue ideas necessary to reach the deficit elimination goal for next year.

It is unlikely any one solution will resolve the large projected deficit. Below are some examples by department of likely recommended service level reductions that would need to be implemented by July 1, 2009 in order to reconcile projected revenue deficits in the coming fiscal year.

These are ideas developed by the various departments, and as they are quick to point out, these are not recommendations, as they are each hard pressed to recommend reduced service levels. Rather, these are *possibilities* upon which I can build recommendations to Council. These recommendations will come forward with the FY2010 budget process in May and June. Council is not being asked to take any action on these ideas at this point, but they are presented as context for Council as to what will likely be presented in the future.

- *Fire Department:* Elimination of vacant Assistant Fire Marshall Position. Eliminate vacant Training Officer Position. Closure of fire station(s).
- *Police Department:* Reduce overtime (already implemented). Cut Traffic Bureau by five sworn positions (vacant). Eliminate Southland Mall position. Eliminate AICo Narcotics Team sworn positions (2). Eliminate sworn Property Crimes Detective positions (2). Eliminate Street Narcotics Team (five sworn). Eliminate School Resource Officers (five sworn). Eliminate Youth & Family Services Bureau (12 non-sworn).
- *City Attorney:* Eliminate Rent Review Program. Reduce Law Library Expenses. Eliminate Staff Attorney position.
- *City Clerk:* Reduce part-time secretary position to half-time.
- *City Manager:* Reduce dues and publications. Charge portions of staff time to Redevelopment Agency budget.

- *Mayor/Council:* Reduce dues and publications. Reduce community promotions funding. Reduce office support budget.
- *Development Services:* Eliminate support position in Planning. Accelerate fee increases to 100% recovery.
- *Finance and Human Resources:* Eliminate Human Resources Director position. Eliminate annual employee breakfast (already done this year). Charge Finance Director Position to RDA and Worker Compensation Fund as appropriate.
- *Library & Neighborhood Services:* Reduce Library operating days from six to five days per week. Eliminate three page positions and reclassify downward vacant positions. Transfer General Fund positions to grant funding wherever possible. Shift staff support costs to other funding sources wherever possible. Reduce KHCG budget. Accelerate fee increases to 100%.
- *Maintenance Services:* Close Centennial Hall. Reduce preventative maintenance services. Reduce various repairs. Reduce fleet purchasing of aging fleet. Freeze vacant position (Groundskeeper).
- *Public Works:* Increase Gas Tax transfer. Increase franchise fees in water, wastewater, solid waste and storm water to generate additional revenues. Reduce maintenance. Reduce supplies.
- *Technology Services:* Reduce training. Reduce maintenance. Reduce supplies.

Employee Concessions: What is NOT included here are also reduced service hours through possible employee furloughs or other bargaining unit concessions. Additional concessions from our employee groups will be essential to our ability to meet the \$10 million reduction scenario and will likely include reduce hours being available to the public.

The longer term ideas indicated above are being researched by the appropriate departments. The goal is to have sufficient analysis completed by June of this year to determine whether additional effort is warranted to pursue any of these possibilities. To meet the necessary expenditure reduction of \$10 million for next fiscal year, serious impacts to our public safety services will create the largest negative community impact. Other service level reductions may be more palatable to the community, but will certainly impact certain interests in our community that may be unacceptable. Our ability to support operations through our internal service departments will be severely negatively impacted; and the organization will have little or no ability to maintain and/or improve essential technology. The community is certainly at a fork in the road as to which direction it wishes to go in terms of services and maintenance of quality of life.

Possible Revenue Measure

As indicated above, the organization has worked diligently over the past 16 months to stay ahead of the financial meltdown to maintain essential services. Staff will always present Council with a timely and balanced budget. However, if we continue with our current approaches and level of available resources, there will be an inevitable and unavoidable significant deterioration of services. While this is certainly an option, it is also a defining moment for the community as to what we wish to become.

An alternative to continued cuts and service level reductions is to pursue additional reliable revenue sources. One such effort came in the form of an updated fee study, completed last year and implemented by Council to ensure that “non general services” are not being subsidized by the General Fund of the City. This should, over time, assist the overall health of the General Fund by ensuring that specific services not providing general benefit to the community are self funded to the extent possible.

The Council Budget & Finance Committee has been looking at these issues for some months now, including evaluating the possibility of taking this significant question to the voters of the community to determine which direction to head: reduction of essential services or additional revenue to maintain service levels. A process was initiated back in December to determine the feasibility of going to the voters with a possible revenue measure, specifically a Utility Users Tax (UUT) to help fund general fund services and maintain essential services. The process of evaluation has included as significant outreach to the community to gather feedback on this possibility.

Why a Utility Users Tax (UUT)?

The UUT may be imposed by a city on the consumption of utility services, including (but not limited to) electricity, gas, water, sewer, telephone (including cell phone and long distance), sanitation, and cable television. The rate of the tax and the use of its revenues are determined by the local agency. A UUT may be imposed as a special tax, earmarked for a specific purpose, or a general tax to be used for a variety of municipal service needs at the discretion of the City Council. The tax is levied by the City, collected by the utility as a part of its regular billing procedure, and then remitted to the city. Statewide, city and county utility user taxes generate about \$2 billion per year.

Other taxes were considered by the Budget & Finance Committee and staff before arriving at the recommendation to consider a UUT. These other taxes included a straight parcel tax, an increase in the RPTT, an increase in the local sales tax, and others. Staff selected the UUT as the best alternative for several reasons.

First and foremost, it is applied across a wide base of taxpayers including property owners, renters, businesses, and industrial sites: all users of the utilities being taxed; it is not targeted at one group or another such as a parcel tax might be levied only on property owners. Second, it is a local tax that is applied locally and collected at the local level, thereby assuring that the revenue is not hijacked by the State and remains local. Third, it is based on consumption giving

taxpayers some control over what they pay based on their own usage; and it is a tax applied to the use of limited resources for which Council has already determined the need to conserve (i.e., gas and electricity). Fourth, it is a stable tax that maintains its relative revenue stream throughout economic swings in either direction. Thus the City can better plan over our desired 10-year planning horizon without fear of radical and unpredictable swings in vital revenue (either up or down) such as the City has experienced over the last 10 years related to RPTT. And fifth, it is a tax common to municipalities throughout California, including Alameda County. As of September 2008, 146 cities and 4 counties in California levy a UUT; and seven cities in Alameda County along with the Unincorporated County of Alameda.

PUBLIC CONTACT

Outreach and Communication Process

The Council Budget and Finance Committee, along with staff and our communication consultants, have been engaging in strategic community conversations around the issues of City revenues and further erosion of service delivery levels. The purpose of these conversations has been to explain our current situation in FY 2009, and the continuing decline in our ability to deliver critical services in FY 2010. The conversations have also been exploratory in nature seeking input and guidance from key community leaders on options, alternatives, and difficult choices the community will face.

The City Manager and staff have made, and continue to make, presentations at as many community meetings as possible helping residents and businesses to understand the financial circumstances of the City and the current and future impacts on service delivery levels. In all these presentations, staff has been dedicated to educating the audience, defining possible alternatives, and listening to feedback from the participants.

The City sent out mailers to 29,709 households seeking input from residents in the community about their priorities for maintaining service. In addition, we sent out nearly 10,000 emails seeking input. We have had a phenomenal response of almost 1,800 returned cards and over 300 returned emails, all identifying priorities, and many expressing detailed opinions and perspectives on the current economic situation of the City.

Led by the Budget and Finance Committee members and supported by the communication consultant, a group of volunteers has also been walking neighborhoods and phoning residents to make certain that we reach out to the broadest possible spectrum of our community. At least 60 volunteers participated over three weekends in making about 1,000 direct community contacts, and talking with 700 residents via phone.

Results of the Outreach Process

Staff is still in the process of synthesizing the full scope of all the information received through the above outreach and communication processes. However, some general impressions already evident are important to note for this discussion, and are consistent with the results of a just recently

completed field poll on which Council will receive a presentation at this work session (Attachment B):

1. While generally understanding of the need to stabilize the City's revenue, many respondents wanted to be assured that the City had taken all possible steps to reduce costs and streamline service delivery BEFORE asking voters to approve any new taxes. After hearing about the responsible steps the City has taken to date, many respondents indicated that they would then be much more receptive to approving a new tax.
2. There was a parallel issue of some resentment that the City would seek additional revenue (taxes) from residents and businesses in such stressful economic times. However, as with Item #1, once it was explained what steps the City has taken already to reduce costs and target resources, what sacrifices employees have already made, and what choices voters would face if the economic condition of the City worsened, respondents were more understanding and supportive of generating new revenue.
3. A third, initial contrary response was that of "balance the budget like the rest of us" and a tendency to paint the City with the same negative brush used to express resentment for the State's behavior to producing a balanced budget. Again, after understanding that the City must and always has adopted a balanced budget by June 30th each year; and that the City will again do that in FY 2010 regardless of the outcome of any ballot measure, respondents were more understanding of the distinct differences between state and local governments, and that putting a measure on the ballot was a matter of presenting choices to voters.
4. A UUT was generally viewed as an equitable way to increase revenue as it is based on consumption of utilities across all types of residents and businesses.
5. A sunset provision is highly desirable, such that the tax is not approved in perpetuity; and that there is some regular accountability to voters.
6. Many respondents wanted some clear assurances that the new revenue would go to fund essential services, which were often identified as police and fire services, maintaining neighborhood appearance, providing services to assist young people to avoid gang membership and related behavior; and street maintenance and repair, including sidewalks and street lighting.
7. There was a strong expression of wanting to make certain that any new revenue stayed focused on the local level providing local services, and not be vulnerable to being "grabbed" by the State.

Anecdotally, the responses gathered from all the community outreach and communication efforts is a perceived majority support of a UUT, particularly if some critical factors are built into the administering Ordinance such as a sunset clause, accountability, a low-income exemption, guarantees of the revenue staying local and funding local services, and assurances that at least the current levels of public safety services will be maintained. These results are very consistent with the scientific polling results that will be presented to Council at this work session. (Attachment B.)

Recommendation

Based on the above described feedback received in the outreach process, balanced with the projected financial needs of the organization to sustain at least the current essential service levels,

staff recommends that Council goes forward with seeking voter approval for implementing a UUT through a special election in 2009 and resulting implementing Ordinance as follows:

1. Set the UUT tax rate at 5.5%, which is equivalent to the lowest rate in Alameda County and at least 2% lower than the highest rate.
2. Apply UUT tax to gas, electric, video services, and telecommunications (e.g., wired and wireless telephone), regardless of the technological or market method of delivery; and do not apply it to water, sewer, or garbage.
3. Include in the Ordinance an exemption or rebate for low income households and taxpayers, which applies to households or individuals (depending on the specific utility) at or below 80% Area Median Income (AMI) and/or already eligible for utility Lifeline Service. This exemption would be administered consistent with already existing processes within the City (e.g., as currently applied to water customers); or by the utility collecting the tax contingent upon the customer being qualified for Lifeline Service according to the criteria of each specific utility provider.
4. Provide for a ten-year sunset provision such that the UUT tax ends in ten (10) years unless reenacted by the voters.
5. A sample UUT Ordinance from another municipal jurisdiction is attached as Attachment C for Council's reference.

Following is suggested draft ballot language for Council's consideration:

“To prevent severe cuts to Hayward city services including: maintaining firefighters, paramedics, fire stations, and neighborhood police patrols; protecting emergency response times; and preserving youth/anti-gang programs, disaster preparedness, and job/economic development services; shall the City of Hayward adopt an ordinance enacting a Utility Users Tax of 5.5% on gas, electricity, video, and telecommunications services, for 10 years only, with exemptions available for low-income/lifeline users; all money dedicated to preserving Hayward city services?”¹

FISCAL IMPACT

Based on the recommended rate of 5.5%, staff expects to derive \$13,200,000 per year in General Fund revenues if Council decides to move forward with such a measure and a majority of voters voting in a special election approve such a measure. There is no reliable way to identify the exact revenue that the City of Hayward will derive from this tax. Every city is unique with its own blend of residential, commercial, and industrial utility users; and with its own level of adaptation to technology.

However, there are reliable models based on historical experiences across a wide variety of municipalities in California, which is what staff used to make the revenue projections for this tax. Therefore, assuming some reasonable margin of error, the projected \$13,200,000 provides a small assurance that we will actually reach the needed annual revenue, while still leaving the City at the

¹ Word count: 75 words with “City of Hayward” counting as one word, and “job/economic” counting as 2 words, and “youth/anti-gang” and “low-income/lifeline” counting as 3 words each.

lowest UUT rate in the County. In addition, there is still no clear picture of what action or actions the State may take with regards to local revenue.

Revenue generation is projected to occur in the following proportions from the assumed levels of utility usage:

UTILITY		%	\$
Electric		53%	\$6,996,000
Telecommunications		33%	\$4,356,000
	Landlines	13%	\$1,716,000
	Wireless (Mobile)	20%	\$2,640,000
Gas		10%	\$1,320,000
Video		4%	\$528,000
Totals		100%	\$13,200,000

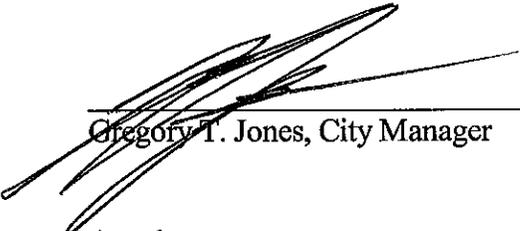
The cost of a Special Election will range from \$285,665 - \$399,931 (\$5-\$7/registered voter) for an election the City conducts on its own; to \$171,399 to \$285,665 (\$3-\$5/registered voter) if we combine with the State of California. The cost for an all mail election would be approximately \$142,833. The most likely scenario at this point in time will be combining with the State, although it is still uncertain if that will be May 19, 2009 or June 8, 2009.

NEXT STEPS

If Council decides to move forward to place a ballot measure in front of the voters of the City of Hayward, the March 3, 2009 Council becomes a critical meeting. Per existing State law, in order to hold the Special Election and to put the specified measure on the ballot seeking a simple majority to pass, the Council must declare a financial emergency in the City. This will be done via Council action adopting a Resolution to that effect.

The following table outlines the additional steps needed to prepare for a June 2, 2009 Special Election. If the State proceeds with a Special Election on May 19th as reported in the State budget adoption process, the following steps will all move up in time, beginning with the need for Council to take action either within 88 days of the date specified by the State or within four (4) days of the Governor's proclamation setting the date for the Statewide Special Election if that Declaration occurs within the 88-day period.

<u>DATE</u>	<u>ACTION</u>	<u>WHO</u>	<u>HOW</u>
March 3	Declare a fiscal emergency	Council	Approve a unanimous Resolution at regularly scheduled Council meeting
	Call for a Special Election and place measure on ballot.	Council (Public Hearing)	Approve a Resolution at regularly scheduled Council meeting.
	Approve 75-word ballot measure language. (Draft is included above in this report.)	Council	Approve a Resolution at regularly scheduled Council meeting
	Request consolidation with County and the services of Registrar of Voters; determine participation in written arguments; direct the City Attorney to develop the impartial analysis (500 word limit) describing the revenue measure; and if the Council desires, direct staff to prepare any additional report on the effect of the measure.	Council	Approve a Resolution at regularly scheduled Council meeting
March 6	Last day to publish "Notice of Measure"	City Clerk	
March 7	Submit Notice of Special Election for publication in newspaper, including dates for direct and rebuttal arguments; post notice of deadline for filing. (EC 9286)	City Clerk	
March 10	Last day to withdraw measure from the ballot. (E-83; EC9605)	City Clerk at Council direction	Approve a Resolution at regular Council meeting. (Deadline for removing is 3/11)
March 17	Direct arguments for or against measure are due to the City (EC 9282, 9286)	City Clerk	Responsible parties submit to City Clerk in form and format as specified by the Clerk and City Attorney. (EC 9287)
	City Attorney's Impartial Analysis due (500 words maximum) (EC 9280)	City Attorney	Submitted to City Clerk in form and format as specified by the Clerk.
March 18-27	10-day public examination period for direct arguments (EC 9295)	City Clerk	
March 27	Rebuttal arguments (if warranted) due (250 word limit) (EC 9285).		It has been Hayward's past practice not to include rebuttals.
June 2	Election		Official canvass is 28 days later.



Gregory T. Jones, City Manager

Attachments:

- Attachment A: Summary: Position Elimination/Freeze Impacts by Departments**
- Attachment B: City of Hayward Revenue Measure Feasibility Survey: Topline Report**
- Attachment C: Sample UUT Ordinance from Moreno Valley**

SUMMARY: POSITION ELIMINATION/FREEZE IMPACTS BY DEPARTMENT

City Manager's Office

Position: Assistant to the City Manager

Significant Impacts: Reduces responsiveness related to ordinance development and implementation (Graffiti, Smoking Ban, Admin Citations, etc.). Decreased interdepartmental work flow coordination on various policy implementations. Previously managed WEB content. Completed various internal and external reporting functions. Handled press releases. Supported various community events (MLK, Veteran's Day Parade, Volunteers, etc.). Service levels deteriorating.

How Managed? Work distributed to City Manager, Assistant City Manager and other departments.

Position: Director of Community & Economic Development

Significant Impacts: Department functions divided among two departments. New Department of Development Services has Building Division and Planning Division. RDA and Economic Development relocated to City Manager's Office. Some community relations activities impacted. Additional effort on internal coordination needed related to certain projects.

How Managed? Economic Development reports to City Manager. RDA reports to Assistant City Manager. CMO now staffs additional Council committees (EDC, Downtown, CCIC).

Position: Economic Development Manager

Significant Impacts: Left vacant for first six months of fiscal year to save costs. Moving forward to fill second half of fiscal year. Leaves only one dedicated ED staff member. ED programs and initiatives not being as aggressively pursued as they should be.

How Managed? EDC staffed by City Manager. Direction for program provided by City Manager.

Position: Human Resources Director

Significant Impacts: No leadership of very busy function. Employee/Labor relations experience lacking in department. Limited support and leadership of organizational change/health initiatives. Personnel Commission difficult to manage without executive presence. Staff experiencing high stress levels. Service levels deteriorating.

How Managed? City Manager has taken over primary employee relations role. Interim Finance Director handling day-to-day operations of HR office.

Fire Department

Position: Administrative Analyst II

Significant Impacts: Budget preparation and analysis limited. Provided internal and external reporting related to Operations, Training, and Fairview FD. Statistical tracking reduced.

How Managed? Duties absorbed by Command Staff and larger reliance on Finance Department.

Position: Administrative Clerk II

Significant Impacts: Reduced service to the public. Reduce clerical support, filing, phone answering, typing etc.

How Managed? Duties absorbed by operations.

Technology Services

Position: Senior Information Systems Support Tech

Significant Impacts: Delay in technical support to organization. Loss of productivity due to increased delays in problem resolution. Service levels deteriorating.

How Managed? Calls for service redistributed to Programmer Analyst and/or Information Systems Manager to handle.

Position: Computer Operator

Significant Impacts: No dedicated support for Public Safety Computer Aided Dispatch (CAD) System and other public safety technology. Longer response times for data reports and other technical assistance. Staff experiencing high stress levels. Service levels deteriorating.

How Managed? Absorbed by PD and IS staff.

Police Department

Position: Animal Control Officer

Significant Impacts: Calls for service delayed significantly. Supervisors in field 30-40 hours per week. Customer complaints are up.

How Managed? Two days a week of no field coverage; Patrol having to respond to priority calls. Education efforts stopped. Barking complaints handled in writing only.

Position: Records Clerk (2)

Significant Impacts: Dedicated Message Center closed, now forwarded to Records Clerk on duty. No clerical support for Crimes Analysis. Service levels deteriorating. Dispatch center impacted by taking some general calls.

How Managed? Reduced hours open to public. Closed to public on weekends.

Position: Community Service Officers (4)

Significant Impacts: Down to 21 from 32 in 2004. Jail operations operating at minimum standards. Overtime costs accrue when employee absent. Field office hours of operation limited. Ability to meet Strategic Plan goals eliminated. Reduced interaction with community. Decreased parking enforcement and other quality of life issues.

How Managed? Reduce service levels in Special Operations, Special Victims Unit, Field Offices, and other units.

Position: Crime Scene Technician

Significant Impacts: Significant delays in crime scene processing for burglaries and other property crimes. Crimes against persons take priority and fully tax existing CST staff. Patrol effected. Customer complaints are up.

How Managed? Prioritized services. Property crimes often get little or no crime scene work.

Position: Police Identification Specialist

Significant Impacts: No HPD qualified/credentialed fingerprint examiner. Forensic testing limited. Evidence must be sent to private labs, costly and untimely. Fingerprint collection and matching backlogged. Crime clearance rates impacted. Investigations delayed awaiting testing results.

How Managed? Contract for high profile needs. CSTs handle some limited aspects of this work.

City Clerk

Position: Senior Secretary (Reduce from full-time to .75 time)

Significant Impacts: Codifications delayed. Meeting minutes changed to less detailed action minutes. Records scanning delayed.

How Managed? Work prioritization. Reduction of number of Council meetings to three per month.

Finance Department

Position: Customer Service Clerk (2)

Significant Impacts: Revenue receipts delayed. Billings delayed. Collection efforts reduced. Delays in service at front counter as well as by phone. Customers complaints are up. Staff working under extremely stressful conditions. Service levels deteriorating overall.

How Managed? Allowing more delays in processing. Backlogs increased. Write offs increasing. Reviewing additional allocation of costs to Utilities.

Maintenance Services

Position: Facility Services Worker

Significant Impacts: Reduced maintenance at Centennial Hall facility.

How Managed? Use of other staff, reduced preventative maintenance.

Position: Electrician

Significant Impacts: No back up electrician available. Reduced service levels.

How Managed: Carpenters performing some preventative maintenance (light change outs).

Position: Facilities Lead Worker

Significant Impacts: Reduced service levels. Minimum maintenance performed. No preventative maintenance possible. No interior painting, etc. being performed.

How Managed? Work prioritization.

Position: Mechanic

Significant Impacts: Backlog of preventative maintenance. Operational service levels in field impacted. Cosmetic repairs not done. Degradation of fleet over time.

How Managed? Work prioritization.

Position: Equipment Service Attendant

Significant Impacts: Mechanics doing more intake work, reducing available time for repair work.

How Managed? Work distributed to Mechanics.

Position: Fleet Supervisor

Significant Impacts: Management oversight of mechanics

How Managed? Fleet Manager more involved in day-to-day fleet operations.

Position: Groundskeeper (4)

Significant Impacts: Limited tree trimming services. Limited trunk removals. Response times lengthened significantly. Proactive maintenance eliminated. Reduction in tree trimming estimated to 420 fewer trees being trimmed.

How Managed? Reprioritization of work. Service level reductions.

Position: Senior Secretary (Landscape)

Significant Impacts: Response time to constituent complaints increased from 24 hours to 5 days. Tracking of work/inspections limited.

How Managed? Manager tasked with clerical duties. Other departmental clerical supporting landscape operations.

Position: Landscape Supervisor

Significant Impacts: Inspection delays. Less available supervision to crews.

How Managed: Landscape Manager handling wider range of responsibilities and day-to-day operations.

Library & Neighborhood Services

Position: Administrative Analyst

Significant Impacts: Budget development, management reduced. No support available to program staff, including internal and external reporting requirements.

How Managed? Reprioritization of budget responsibilities, spread among program managers.

Position: Community Preservation Specialist

Significant Impacts: Delay in implementation of Business Corridor Enhancement program to proactively enforce codes along major commercial corridors.

How Managed? Program on hold.

Position: Property Rehabilitation Specialist

Significant Impacts: Provides opportunity evaluate program's relation to community preservation and RDA efforts.

How Managed? Program review being conducted by Social Services Planning Manager.

Position: Library Assistant (.50 time) (2)

Significant Impacts: Backlog in cataloging new materials and material repairs

How Managed? Work spread to Lead and Senior Assistants.

Position: Library Page (.30 time) (2)

Significant Impacts: Materials not being shelved in a timely manner.

How Managed? Work spread to other higher level positions.

Public Works

Position: Senior Transportation Planner

Significant Impacts: Delayed response to community inquiries. Reprioritization of work. Less ability to apply for grant funding. Outside agency involvement limited.

How Managed? Work reprioritized and spread among remaining staff. Some functions stopped.

Position: Senior Secretary

Significant Impacts: Processing of billing and payments to vendors slowed. Answering calls of the public impacted.

How Managed? Reprioritized work. Reduction in service levels.

Position: Assistant Civil Engineer

Significant Impacts: Delayed response to community inquiries. Reprioritization of work. Less ability to apply for grant funding. Outside agency involvement limited.

How Managed? Work reprioritized and spread among remaining staff. Some functions stopped.

Position: Associate Transportation Planner

Significant Impacts: Delayed response to community inquiries. Reprioritization of work. Less ability to apply for grant funding. Outside agency involvement limited.

How Managed? Work reprioritized and spread among remaining staff. Some functions stopped.

Position: Administrative Clerk II

Significant Impacts: Processing of billing and payments to vendors slowed. Answering calls of the public impacted.

How Managed? Reprioritized work. Reduction in service levels.

Position: Real Property Associate

Significant Impacts: Internal service to other operations reduced. Reliance on consultants for project specific work, increasing cycle times for information.

How Managed? Reprioritized work. Reduction in service levels.

Position: Engineering Technician (2)

Significant Impacts: Internal service to other operations reduced. Reliance on consultants for project specific work, increasing cycle times for information.

How Managed? Reprioritized work. Reduction in service levels.

Development Services

Position: Senior Secretary

Significant Impacts: Clerical support services to the Building Division. Impacts various processes within Building Division.

How Managed? Reprioritized work. Reduction in service levels.

Position: Building Inspector (2)

Significant Impacts: Reduced service levels to development community, although work levels are slowing in this function.

How Managed? Reprioritized work. Reduction in service levels.

Position: Senior Building Inspector

Significant Impacts: Lessened supervision of Building Inspectors. Person temporarily in Building Official Role, position remains vacant during interim period.

How Managed? Acting Building Official serving in both roles.

Position: Plan Checker

Significant Impacts: Possibly longer building permit and development processing timeframes.

How Managed? Reprioritized work. Reduction in service levels.

Position: Principal Planner

Significant Impacts: Less supervision in Planning Division, although activities have slowed down and fewer Planning Commission meetings being held. May impact some sustainability initiatives and other project efforts.

How Managed? Incumbent serving as Interim Planning Manager.

Position: Landscape Manager

Significant Impacts: External consultant review required on more complex projects, increasing costs to developer and adding time to process.

How Managed? Incumbent moved to Water Utility to assist in landscape water conservation programming. Still supporting on a limited basis development activities.

Position: Housing Inspector

Significant Impacts: Reduced inspection cycles, more load on remaining inspectors. Less ability to respond to complaints.

How Managed? Workload management, lengthened inspection time frames.

Position: Administrative Clerk

Significant Impacts: Reduced customer service and clerical support for program operations.

How Managed? Spread functions to others, limit some services.

DUE TO THE COLOR OF ATTACHMENT B,
IT HAS BEEN ATTACHED AS A SEPARATE LINK

ORDINANCE NO. 781

AN INITIATIVE ORDINANCE OF THE VOTERS OF THE CITY OF MORENO VALLEY AMENDING CHAPTER 3.26 TO REDUCE THE RATE OF MORENO VALLEY'S EXISTING UTILITY USERS TAX FROM 6% TO 5.75% ON ALL UTILITY SERVICES (ELECTRICITY, GAS, TELECOMMUNICATION, VIDEO, WATER, AND SEWER) AND MODERNIZE THE TELECOMMUNICATIONS SERVICES PROVISIONS TO RESPOND TO CHANGES IN TECHNOLOGY AND FEDERAL LAW SO THAT ALL TELECOMMUNICATIONS AND VIDEO USERS ARE TREATED EQUALLY REGARDLESS OF TECHNOLOGY USED.

THE PEOPLE OF THE CITY OF MORENO VALLEY DO ORDAIN AS FOLLOWS:

SECTION 1: Chapter 3.26 of the Municipal Code is hereby amended, and it shall read as follows:

CHAPTER 3.26

UTILITY USERS' TAX

- 3.26.010 Short Title.
- 3.26.020 Definitions.
- 3.26.030 Constitutional, Statutory, and Other Exemptions.
- 3.26.040 Low Income Exemption.
- 3.26.050 Telecommunication Users Tax
- 3.26.060 Video Users Tax
- 3.26.070 Electricity Users Tax
- 3.26.080 Gas Users Tax
- 3.26.090 Collection of tax from service users receiving direct purchase of gas or electricity.
- 3.26.100 Water Users Tax
- 3.26.110 Sewer Users Tax
- 3.26.120 Bundling Taxable Items with Non-taxable Items
- 3.26.130 Substantial Nexus / Minimum Contacts.
- 3.26.140 Duty to collect--Procedures.
- 3.26.150 Collection Penalties – Service Suppliers.
- 3.26.160 Actions to Collect.
- 3.26.170 Deficiency Determination and Assessment – Tax Application Errors.

- 3.26.180 Administrative Remedy - Non-Paying Service Users.
- 3.26.190 Additional powers and duties of the Tax Administrator.
- 3.26.200 Records.
- 3.26.210 Refunds.
- 3.26.220 Appeals.
- 3.26.230 Notice No Injunction/Writ of Mandate.
- 3.26.240 Notice of Changes to Ordinance.
- 3.26.250 Effect of State and Federal Reference/Authorization.
- 3.26.260 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure.
- 3.26.270 Remedies Cumulative.
- 3.26.280 Interaction with Prior Tax.

3.26.010 Short Title

This chapter shall be known as the "Utility Users' Tax Ordinance" of the City.

3.26.020 Definitions.

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

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

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

(2) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(3) "Directory assistance" means an ancillary service of providing telephone number information, and/or address information.

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

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

(b) "Ancillary video services" means services that are associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, search functions, recording services, interactive services or other communications services that are associated with or incidental to the provision, use or enjoyment of video services.

(c) "Billing Address" shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

(d) "City" shall mean the City of Moreno Valley.

(e) "Gas" shall mean natural or manufactured gas or any alternate fuel which may be substituted therefore currently or in the future.

(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" means:

(1) a service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator (*15 U.S.C. Section 79z-5a*), municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

(2) an electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; or

(3) a gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas or supplemental services to gas users within the City.

(i) "Paging service" means a "telecommunications service" that provides transmission of coded radio signals for the purpose of activating specific pagers or similar reception devices; whether such transmissions include messages and/or sounds.

(j) "Person" shall mean, without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint

venture, limited liability company, corporation (including foreign, domestic, and non-profit), municipal district or municipal corporation (other than the City), cooperative, or receiver, trustee, guardian, or other representative appointed by order of any court, or any other entity.

(k) "Place of Primary Use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, whether the residential street address or the primary business street address of the customer.

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

(m) "Prepaid telecommunication service" means the right to access telecommunication services, which must be paid for in advance and which enables the origination of telecommunications services and that is sold in predetermined units or dollars of which the number declines with use.

(n) "Private telecommunication service" means a telecommunication service that entitles the customer to exclusive or priority use of a telecommunications channel or limited 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.

(o) "Service Address" shall mean the residential street address or the business street address of the service user. For a telecommunication or video service user, "service address" means either:

(1) The location of the service user's 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 subsection (1) of this definition is unknown or mobile (e.g., mobile telecommunications service or VoIP service), the service address shall mean- the location of the service user's place of primary use.

(3) For prepaid telecommunication service, "service address" shall mean the location associated with the service number.

(p) "Service Supplier" shall mean any person and/or the City, that provides any service subject to any tax hereunder, including, without limitation telecommunication, video, electric, gas, water and/or sewer service, to a user of such service within the City.

(q) "Service User" shall mean a person required to pay a tax imposed under the provisions of this Chapter.

(r) "State" shall mean the State of California.

(s) "Streamlined Sales and Use Tax Agreement shall mean the multi-state agreement commonly known and referred to as the Streamlined Sales and Use Tax Agreement, and as it is amended from time to time.

(t) "Tax Administrator" means the Finance Director of the city or his or her designee.

(u) "Telecommunications channel" is a physical or virtual path of telecommunications over which signals are transmitted between or among customer channel termination points (i.e., the location where the customer either inputs or receives the telecommunications)

(v) "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 Telecommunications 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; 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 Telecommunications Commission); 900 service (or any other similar numbers designated by the Federal Telecommunications Commission for services whereby subscribers call in to pre-recorded or live service).

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

(x) "Video Services" means "video programming" and any and all services related to the providing, recording, delivering, use or enjoyment of "video programming" (including origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video) using one or more channels by a "video service supplier", regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes ancillary video services,

data services, “telecommunication services”, or interactive communication services that are functionally integrated with “video services”.

(y) “Video Service Supplier” means any person, company, or service which provides or sells one or more channels of video programming, or provides or sells the capability to receive one or more channels of video programming, including any telecommunications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the City, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or telecommunications. A “video service supplier” includes, but is not limited to, multichannel video programming distributors [as defined in 47 U.S.C.A. Section 522(13)]; open video systems (OVS) suppliers; and suppliers of cable television; master antenna television; satellite master antenna television; multichannel multipoint distribution services (MMDS); video services using internet protocol (e.g., IP-TV and IP-Video, which provide, among other things, broadcasting and video on demand), direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video services (including two-way communications), whatever their technology.

(z) VoIP (voice over internet protocol) means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

(aa) “800 service” means a “telecommunications service” that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800”, “855”, “866”, “877”, and “888” toll-free calling, and includes any subsequent numbers or other designations designated by the Federal Communications Commission for toll free telecommunications services.

(bb) “900 service” means an inbound toll “telecommunications service” purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or a live service. “900 service” does not include the charge for: collection services provided by the seller of the “telecommunications services” to the subscriber, or service or product sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900” service, and includes any subsequent numbers or other designations designated by the Federal Communications Commission for pay for services calls.

3.26.030 Constitutional, statutory, and other exemptions.

(a) Nothing in this Chapter shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such person or service would be in violation of a federal or state statute, the Constitution of the United States or the Constitution of the State.

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

The decision of the Tax Administrator may be appealed pursuant to Section 3.26.220 of this Chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 3.26.220 of this Chapter is a prerequisite to a suit thereon.

3.26.040 Low Income Exemption.

(a) Each household within the City, in respect to which the annual income of such household is less than sixty-five percent (65%) of the median family income for the County of Riverside as most recently established by the United States Department of Housing and Urban Development, is and shall be exempt from each and all of the taxes imposed by this Chapter upon presentation to the Tax Administrator of a written request for such exemption and reasonable proof of qualification for the exemption.

(b) The tax administrator shall, within 60 days of receipt of an application for exemption, determine whether the exemption is granted, and if so, notify the service supplier. The exemption shall apply from the date of the Tax Administrator's determination that the household so qualifies.

(c). The exemption granted to a person pursuant to this section shall become effective on the beginning of the first regular billing period which commences after the tax administrator has notified the service supplier that an exemption has been granted. Upon a showing of hardship by a service supplier, including the City, the Tax Administrator may, as an alternative, implement this Section 3.26.040 by requiring the exempt person to pay the tax and seek a refund under Section 3.26.210. The tax administrator shall provide a refund claim form for this purpose.

3.26.050 Telecommunication Users Tax.

(a) There is hereby imposed a tax upon every person in the City using telecommunication services. The tax imposed by this section shall be at the rate of five and 75/100 percent (5.75%) of the charges made for such services and shall be collected from the service user by the telecommunication services supplier or its billing agent. There is a rebuttable presumption that telecommunication services which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such

services are subject to taxation under this Chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this Section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunication services.

(b) “Mobile Telecommunications Service” shall be sourced in accordance with the sourcing rules set forth in the *Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124)*. The Tax Administrator may issue and disseminate to telecommunication service suppliers which are subject to the tax collection requirements of this Chapter, sourcing rules for the taxation of other telecommunication services, including but not limited to post-paid telecommunication services, and prepaid telecommunication services consistent with federal and state constitutional provisions. In promulgating any sourcing rules hereunder, the Tax Administrator shall take into account but shall not be legally bound by custom and common practice that furthers administrative efficiency and minimizes taxation by more than one state of the same service usage, commonly referred to as multi-jurisdictional taxation. In so doing, the Tax Administrator may refer to and/or rely upon the Streamline Sales and Use Tax Agreement, and/or any other reasonable precedent or resource.

(c) The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those telecommunication services, or charges therefor, that are subject to the tax of subsection (a) above.

(d) As used in this section, charges for telecommunication services included in calculation of the tax shall include, but are not limited to charges for: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features(including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory, administrative and other cost recovery charges; and local number portability charges. “Telecommunication services” shall not include digital downloads that are not “ancillary telecommunications services”, such as books, music, ringtones, games, and similar digital products.

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

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

3.26.060 Video Users Tax.

(a) There is hereby imposed a tax upon every person in the City using video services. The tax imposed by this section shall be at the rate of five and 75/100 percent (5.75%) of the charges made for such services and shall be collected from the service user by the video service supplier or its billing agent. There is a rebuttable presumption that video services which are billed to a billing or service address in the City are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this Chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax.

(b) As used in this section, the term "charges" shall include, but is not limited to, charges for the following:

- (1) regulatory fees and surcharges, franchise fees and access fees (PEG);
- (2) initial installation of equipment necessary for provision and receipt of video services;
- (3) late fees, collection fees, bad debt recoveries, and return check fees;
- (4) activation fees, reactivation fees, and reconnection fees;
- (5) video programming and video services;
- (6) ancillary video programming services (e.g., electronic program guide services, search functions, recording functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of the video services);
- (7) equipment leases (e.g., remote, recording and/or search devices; converters);
and,
- (8) service calls, service protection plans, name changes, changes of services, and special services.

(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 video services.

(c). The Tax Administrator may issue and disseminate to video service suppliers, which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those video services, or charges therefor, that are subject to or not subject to the tax of subsection (a) above.

(d) The tax imposed by this section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video service (e.g., an apartment owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of the video service. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

3.26.070 Electricity Users Tax.

(a) There is hereby imposed a tax upon every person using electricity in the City. The tax imposed by this section shall be at the rate of five and 75/100 percent (5.75%) 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, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

(b) As used in this section, the term “charges” shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. 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 charges for supplemental services to self-generation service users;
- (5) customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees or surcharges which are necessary for or common to the receipt, use or enjoyment of electric service; and,
- (6) charges, fees, or surcharges for electricity services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(c) As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the

service user in exchange for the electricity or services related to the provision of such electricity.

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

(e) As used in this section, the term “using electricity” shall not include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the City for resale.

(f) The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section 3.26.090 of this Chapter. All other taxes on charges for electricity imposed by this section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

3.26.080 Gas Users Tax.

(a) There is hereby imposed a tax upon every person using gas in the City, which is transported and delivered through a pipeline or by mobile transport. The tax imposed by this section shall be at the rate of five and 75/100 percent (5.75%) of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent, and shall apply to all uses of gas, including but not limited to, heating, electricity generation, and the use of gas as a component of a manufactured product.

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

- (1) the commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;
- (2) gas transportation charges (including interstate charges to the extent not included in commodity charges);
- (3) storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;
- (4) capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary for or common to the receipt, use or enjoyment of gas service; and,
- (5) charges, fees, or surcharges for gas services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(c) As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas.

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

(e) There shall be excluded from the calculation of the tax imposed in this section, charges made for gas which is to be resold and delivered through a pipeline distribution system.

(f) The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section 3.26.090 of this Chapter. All other taxes on charges for gas imposed by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator, on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

3.26.090 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity.

(a) Any service user subject to the tax imposed by Section 3.26.070 or by Section 3.26.080 of this Chapter, which produces gas or electricity for self-use; which receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this Chapter; or which, for any other reason, is not having the full tax collected and remitted by its service supplier, a non-utility service supplier, or its billing agent on the use of gas or electricity in the City, including any related supplemental services, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use, based on the charges for, or value of, such gas or electricity, or supplemental services, as provided in subsection (b). In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator in writing, may be applied against any subsequent tax bill that becomes due.

(b) The Tax Administrator may require said service user to identify its non-utility service supplier, and otherwise provide, subject to audit: invoices; books of account; or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may

determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the City. Rate schedules for this purpose shall be available from the City.

3.26.100 Water Users Tax.

- (a) There is imposed a tax upon every person using water in the City which is transported and delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of five and 75/100 percent (5.75%) of the charges made for such water.
- (b) As used in this section, the term “charges” shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of water service; or, ii) currently are or historically have been included in a single or bundled rate for water service by a local distribution company to a class of retail customers. The term “charges” shall include, but is not limited to, the following charges:
 - (1) water commodity charges (potable and non-potable);
 - (2) distribution or transmission charges;
 - (3) metering charges;
 - (4) customer charges, late charges, service establishment or reestablishment charges, franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees and surcharges which are necessary for or common to the receipt, use or enjoyment of water service; and,
 - (5) charges, fees, or surcharges for water services or programs, which are mandated by a water district or a state or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.
- (c) As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the water services.
- (d) The Tax Administrator, from time to time, may survey the water service suppliers in the City to identify the various unbundled billing components of water retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by a water district or a state or federal agency as a condition of providing such water service. The Tax

Administrator, thereafter, may issue and disseminate to such water service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of water service; or, ii) currently are or historically have been included in a single or bundled rate for water service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection A above.

- (e) There shall be excluded from the base on which the tax imposed in this section is computed charges made for water which is to be resold and delivered through a pipeline distribution system; and charges made by a municipal water department, public utility or a city or municipal water district for water used and consumed by such department, public utility or water district in the conduct of the business of such department, utility or district.

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

3.26.110 Sewer Users Tax

(a) There is hereby imposed a tax upon every person in the city using sewer services within the city. The tax imposed by this section shall be at the rate of five and 75/100 percent (5.75%) of the charges made for such sewer service. The tax shall be paid by the person using such sewer service.

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

- (1) customer charges, late charges, service establishment or reestablishment charges, annual and monthly charges, and other charges, fees and surcharges which are necessary for or common to the receipt, use or enjoyment of sewer service; and,
- (2) charges, fees, or surcharges for sewer services or programs, which are mandated by the City, a state or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

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

3.26.120 Bundling Taxable Items with Non-Taxable Items.

If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation of the taxable and non-taxable services.

3.26.130 Substantial Nexus / Minimum Contacts.

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

3.26.140 Duty to Collect--Procedures.

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

(1) The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 3.26.180 shall apply.

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

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

3.26.150 Collection Penalties – Service Suppliers.

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

(b) If the person required to collect and/or remit the utility users' tax fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the

customer's billing) or fails to remit the tax collected on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen (15%) percent of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of and 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

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

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

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

3.26.160 Actions to Collect.

Any tax required to be paid by a service user under the provisions of this Chapter shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the City under the provisions of this Chapter shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this Chapter, along with any collection costs incurred by the City as a result of the person's noncompliance with this Chapter, including, but not limited to, reasonable attorneys fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under *11 U.S.C.A. Section 507(a)(8)(C)*.

3.26.170 Deficiency Determination and Assessment – Tax Application Errors.

(a) The Tax Administrator shall make a deficiency determination if he or she determines that any service supplier or service user required to pay, collect, and/or remit taxes pursuant to the provisions of this Chapter has failed to pay, collect, and/or remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3.26.170 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) The Tax Administrator shall mail a notice of such deficiency determination to the person or entity allegedly owing the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) calendar days after the date of mailing of such notice, the person or entity allegedly owing the tax may file a request in writing with the Tax Administrator for a hearing on the matter.

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

(d) At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person or entity owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.26.220 of this Chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 3.26.220 of this Chapter is a prerequisite to a suit thereon.

(e) Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Chapter shall commence from the date of delinquency as provided in this subsection (e).

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

3.26.180 Administrative Remedy - Non-Paying Service Users.

(a) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this Chapter from certain named service users for specific billing periods. To the extent the service user has failed to pay the amount of tax owed for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Chapter. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3.26.180 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of fifteen percent (15%) of the total tax that is owed, and shall pay interest at the rate of 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

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

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

3.26.190 Additional Powers and Duties of the Tax Administrator.

(a) The Tax Administrator shall have the power and duty to enforce each and all of the provisions of this Chapter.

(b) The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this Chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office. To the extent that the Tax Administrator determines that the tax imposed under this chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in

taxing methodology for purposes of *Government Code Section 53750* or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of *Government Code Section 53750* and the City does not waive or abrogate its ability to impose the utility users' tax in full as a result of promulgating administrative rulings or entering into agreements.

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

(d) The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this Chapter, of any person required to collect and/or remit a tax pursuant to this Chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 3.26.170' of this Chapter for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

(e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Chapter for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of 75/100ths (0.75%) percent per month, prorated for any portion thereof.

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

(g) Notwithstanding any provision in this Chapter to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this Chapter if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration industry practice or other precedence.

Sec.3.26.200 Records.

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

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

(c) The Tax Administrator is authorized to execute a non-disclosure agreement approved by the City Counsel to protect the confidentiality of customer information pursuant to *California Revenue and Tax Code Sections 7284.6 and 7284.7*.

(d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: i) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and, ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City .

(e) If any person subject to record-keeping under this section unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of \$500 on such person for each day following: i) the initial date that the person refuses to provide such access; or, ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Chapter.

3.26.210 Refunds.

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter from a service user or service supplier, it may be refunded as provided in this section:

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

(b) The Tax Administrator, where the claim is within his or her settlement authority as established by ordinance or by resolution of the City Council from time to time, or the City Council where the claim is in excess of that amount, shall act upon the refund claim within forty-five (45) calendar days of the initial receipt of the refund claim. Said decision shall be final. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the forty-five (45) calendar day period, the claim shall be deemed to have been rejected by the Tax Administrator/City Council on the forty-fifth (45th) day. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in *Government Code Section 913*.

(c) The filing of a written claim pursuant to *Government Code Section 935* is a prerequisite to any suit thereon. Any action brought against the City pursuant to this section shall be subject to the provisions of *Government Code Sections 945.6 and 946*.

(d) Notwithstanding the notice provisions of subsection (a) of this Section, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this Chapter, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator, provided that: i) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; ii) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, iii) in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

(e). Notwithstanding subsections (a) through (d) above, a service supplier shall be entitled to take any overpayment as a credit against an underpayment whenever such overpayment has been received by the City within the three (3) years next preceding a deficiency determination or assessment by the Tax Administrator in connection with an audit instituted by the Tax Administrator pursuant to Section 3.26.190(d). A service supplier shall not be entitled to said credit unless it first clearly establishes, to the satisfaction of the Tax Administrator, the right to the credit by written records showing entitlement thereto. Under no circumstances shall an overpayment taken as a credit

against an underpayment pursuant to this subsection qualify a service supplier for a refund to which it would not otherwise be entitled under the one-year written claim requirement of this section.

3.26.220 Appeals.

(a) The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 3.26.210 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.26.210 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. [*See Government Code Section 935(b)*]. Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

(b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.26.210 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within fourteen (14) calendar days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

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

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

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

3.26.230 No Injunction/Writ of Mandate.

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

3.26.240 Notice of changes to ordinance.

If a tax under this Chapter is added repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of *California Public Utilities Code Section 799*.

3.26.250 Effect of State and Federal Reference/Authorization.

Unless specifically provided otherwise, any reference to a state or federal statute in this Chapter shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, repeal thereof, or to any subsequent change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease (as a result of excluding all or a part of a utility service, or charge therefor, from taxation). Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

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

3.26.260 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure.

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

3.26.270 Remedies Cumulative.

All remedies and penalties prescribed by this Chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (*Government Code Section 12650 et seq.*) and the California Unfair Practices Act (*Business and Professions Code Section 17070 et seq.*), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

3.26.280 Interaction with Prior Tax.

(a). **Collection of Tax by Service Providers.** Service providers shall begin to collect the tax imposed by this amended Chapter 3.26 as soon as feasible after the effective date of the Chapter, but in no event later than permitted by *Section 799* of the *California Public Utilities Code*.

(b). **Satisfaction of Tax Obligation by Service Users.** Prior to April 1, 2009, any person who pays the tax levied pursuant to Chapter 3.26 of this Code, as it existed prior to its amendment as provided herein, with respect to any charge for a service shall be deemed to have satisfied his or her obligation to pay the tax levied pursuant to Chapter 3.26 as amended herein, with respect to that charge. The intent of this paragraph is to prevent the imposition of multiple taxes upon a single utility charge during the transition period from the prior Utility Users' Tax ordinance to the amended Utility Users' Tax ordinance (which transition period ends April 1, 2009) and to permit service providers or other persons with an obligation to remit the tax hereunder, during that transition period, to satisfy their collection obligations by collecting either tax.

(c) In the event that a final court order should determine that the election enacting this Chapter 3.26 (as amended herein) is invalid for whatever reason, or that any tax imposed under this Chapter 3.26 (as amended herein) is invalid in whole or in part, then the taxes imposed under Chapter 3.26 of this Code, as it existed prior to its amendment as provided herein, shall automatically continue to apply with respect to any service for which the tax levied pursuant to this Chapter has been determined to be invalid. Such automatic continuation shall be effective beginning as of the first date of service (or billing date) for which the tax imposed by this Chapter is not valid. However, in the event of an invalidation, any tax (other than a tax that is ordered refunded by the court or is otherwise refunded by the City) paid by a person with respect to a service and calculated pursuant to this Chapter 3.26 (as amended herein) shall be deemed to satisfy the tax imposed under Chapter 3.26, as it existed prior to its amendment as provided herein, on that service, so long as the tax is paid with respect to a service provided no later than six months subsequent to the date on which the final court order is published.

SECTION 2. Effective Date. This chapter shall become effective immediately upon the date that this Ordinance is confirmed and approved by the voters of the City of Moreno Valley at the Election of November 4, 2008.

SECTION 3. Amendment or Repeal. Chapter 3.26 of the Municipal Code may be repealed or amended by the City Council without a vote of the people. However, as required by Chapter XIIIIC of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance. The People of the City of Moreno Valley affirm that the following actions shall not constitute an increase of the rate of a tax:

1. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of the tax;
2. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance.
3. The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Ordinance); and
4. The collection of the tax imposed by this Ordinance, even if the City had, for some period of time, failed to collect the tax.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The people hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

SECTION 5. Ratification of Prior Tax. The voters of the City of Moreno Valley hereby ratify and approve the past collection of the Utility Users' Tax under Chapter 3.26 of the Municipal Code as it existed prior to the effective date of this Ordinance.

SECTION 6. Execution. The City Clerk/City Elections Official is hereby authorized to attest to the adoption of this Ordinance by the voters of the City by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the people of the City of Moreno Valley voting on the th day of, 2008.

City Clerk/City Elections Official

APPROVED AS TO FORM:

City Attorney