RESOLUTION NO. 2016-115

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA RECEIVING INFORMATION REGARDING UTILITY USERS TAX AND BUSINESS LICENSE TAX FOR THE CITY OF MARINA AND PROVIDING FURTHER DIRECTION TO CITY STAFF

WHEREAS, for the past several months the City Council has held numerous public meetings regarding possibly placing a ballot measure on the November election regarding approving a Utility User Tax and increasing and updating the current Business License Tax; and

WHEREAS, at the June 7, 2016 City Council meeting, the Council approved an agreement to hire Fairbank, Maslin, Maullin, Metz & Associates (FM3) to perform public opinion research services. The firm was hired to assist the City in better understanding and gauging community interest and to obtain community feedback regarding these two issues and they will be providing survey results; and

WHEREAS, attached is draft ballot language, resolutions, and ordinances for the proposed ballot measures. These are provided for information only and no action needs to be taken on these items until the next City Council meeting on August 3, 2016.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Marina does hereby:

1. Adopt Resolution No. 2016-115, receiving information regarding Utility Users Tax and Business License Tax for the City of Marina, and

2. Direct staff to bring back at our next meeting the information with going forward on the business license tax solely for the November 2016 ballot

PASSED AND ADOPTED by the City Council of the City of Marina at a adjourned regular meeting duly held on the 20th day of July 2016 by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Brown, Morton, O'Connell
NOES, COUNCIL MEMBERS: Delgado
ABSTAIN, COUNCIL MEMBERS: None
ABSENT, COUNCIL MEMBERS: None

_____
Bruce C. Delgado, Mayor

ATTEST:

_____
Anita Sharp, Deputy City Clerk

SAMPLE BALLOT QUESTIONS

Marina Public Safety/ Vital City Services Measure. To provide general city services such as: police patrols; improving 9-1-1/ emergency medical/ fire response times; repairing potholes/ neighborhood streets; maintaining/ improving parks/ senior services; shall the City of Marina enact a utility users' tax of ___% on gas, electricity, refuse, water, sewer, video, telecommunications services, until ended by voters or reduced by City Council, generating approximately $1,000,000 annually, with low-income exemptions, annual reports, independent audits, all funds controlled locally?

Marina Business License Equity/ Update Measure. To provide general city services such as: police; fire; repairing potholes/ streets; improving parks; shall the City of Marina update its 38 year old business license tax rates to between 0.1 to 0.2% of gross receipts depending on business type, so small businesses pay a lower amount than larger businesses, until ended by voters or reduced by City Council, generating approximately $600,000 annually, with annual reports, independent audits, funds controlled locally?

Resolution No. 2016 -____

RESOLUTION ORDERING THAT A UTILITY USER'S TAX MEASURE BE SUBMITTED TO THE VOTERS AT THE NOVEMBER 8, 2016 ELECTION, REQUESTING COUNTY ELECTIONS OFFICIALS TO CONDUCT THE ELECTION, AND REQUESTING CONSOLIDATION OF THE ELECTION

City of Marina

WHEREAS, the City of Marina relies on its general fund to provides vital services within its boundaries; and

WHEREAS, the City requires additional revenues to fund general fund services, such as _____; and

WHEREAS, the City Council desires to place before the voters an ordinance that would increase the rate of the City's Utility User Tax; and

WHEREAS, by prior action, the City Council of the City of Marina has called a general municipal election of the City for November 8, 2016; and

WHEREAS, the November 8, 2016 general municipal election is a regularly scheduled general election for members of the City Council; and

WHEREAS, Government Code Section 53724 and Elections Code Section 9222, authorize the City Council to submit general tax ordinances to the voters; and

WHEREAS, pursuant to Elections Code Section 10002, the City Council may, by resolution, request the Monterey County Board of Supervisors to permit the county elections official to render specified services to the City relating to the conduct of an election; and

WHEREAS, the resolution of the City Council must specify the services requested; and

WHEREAS, pursuant to Elections Code Section 10002, the City must reimburse the County in full for the services performed upon presentation of a bill to the City; and

WHEREAS, pursuant to Elections Code Section 10400, whenever two or more elections, including bond elections, of any legislative or congressional district, public district, city, county, or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, they may be consolidated upon the order of the governing body or bodies or officer or officers calling the elections; and

WHEREAS, pursuant to Elections Code Section 10400, such election for cities and special districts may be either completely or partially consolidated; and

WHEREAS, pursuant to Elections Code Section 10403, whenever an election called by a district, city or other political subdivision for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board requesting the consolidation, and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot. Upon such request, the Board of Supervisors may order the consolidation; and

WHEREAS, the resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election; and

WHEREAS, various district, county, state and other political subdivision elections may be or have been called to be held on November 8, 2016;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED THAT THE City Council hereby orders an election be called and consolidated with the City's general municipal election and any and all elections also called to be held on November 8, 2016, insofar as said elections are to be held in the same territory or in territory that is in part the same as the territory of the City of Marina, and the City of Marina requests the Board of Supervisors of the County of Monterey to order such consolidation under Elections Code Section 10400 and 10403.

BE IT FURTHER RESOLVED AND ORDERED that pursuant to Elections Code Section 10002, the City Council hereby requests the Board of Supervisors to permit the Monterey County Elections Department to provide any and all services necessary for conducting an election and agrees to pay for said services in full, and

BE IT FURTHER RESOLVED AND ORDERED that Monterey County Elections Department shall conduct the election for the following measure to be voted on at the November 8, 2016 election:

[Insert Ballot Question]

YES _____

NO _____

BE IT FURTHER RESOLVED AND ORDERED THAT Monterey County Elections Department is requested to print the full measure text (**Exhibit A**) exactly as filed or indicated on the filed document in the Voter Guide for the November 8, 2016 election. Cost of printing and distribution of the measure text will be paid for by the City of Marina.

In addition, the full measure text will be available at the following web site address: www.ci.marina.ca.us.

BE IT FURTHER RESOLVED AND ORDERED THAT

1. Voter approval requirement is a majority. In the event a majority of the electors voting on the measure vote in favor, the ordinance set forth in Exhibit A is, by such vote, adopted by the people of the City of Marina.

2. Arguments for and against the ballot measure may be filed consistent with Elections Code Section 9282, *et seq.* The last day for submission of direct arguments for or against the ballot measure shall be by 5:00 P.M. on August 18, 2016. Direct arguments shall not exceed three hundred words and shall be signed by not more than five persons.

3. Rebuttals to arguments for and against the ballot measure may be filed. The last day for submission of rebuttal arguments for or against the ballot measure shall be by 5:00 P.M. on August 25, 2016. Rebuttal arguments shall not exceed two hundred-fifty words and shall be signed by not more than five persons; those persons may be different persons than the persons who signed the direct arguments.

4. Pursuant to Election Code Section 9280, the City Council hereby directs the City Attorney to prepare by August 18, 2016, an impartial analysis of the ballot measure

5. _____ is hereby authorized to prepare written arguments in favor of the ballot measure, not to exceed three hundred words, on behalf of the City Council. At _____'s discretion, the argument may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote. In the event an argument is filed against the ballot measure, _____ is also authorized to prepare a rebuttal argument on behalf of the City Council, which may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote.

6. The Deputy City Clerk hereby is designated as the Elections Official and is directed to do all things required by law to effectuate the General Municipal Election and to present the ballot measure submitted herein to the electorate, including, but not limited to, required publications, postings, noticing and filings. Further, the Deputy City Clerk is hereby directed to forward a copy of this resolution to the City Attorney for preparation of impartial analyses of the ballot measure submitted. Pursuant to Election Code section 9285, when the Deputy City Clerk has selected the arguments for and against the ballot measure, which will be printed and distributed to voters, the Deputy City Clerk shall send copies of the arguments in favor of the ballot measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

7. The Deputy City Clerk is hereby directed to submit forthwith a certified copy of this resolution to the Board of Supervisors, to the Registrar of Voters and to the County Clerk of the County of Monterey. The Deputy City Clerk shall certify as to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

8. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Sections 15061(b)(3) and 15378(a), that this resolution is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. This action is further exempt under the definition of "Project" in Section 15378(b)(3) in that it concerns general policy and procedure making. The Council therefore directs that a Notice of Exemption be filed.

PASSED AND ADOPTED by the City Council of the City of Marina this 3rd day of August 2016, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

SIGNED: _____ _____
Bruce C. Delgado, Mayor

ATTEST: _____
Anita Shepherd-Sharp, Deputy City Clerk

EXHIBIT A

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MARINA AMENDING THE CITY'S UTILITY USERS TAX AND AMENDING TITLE 3, CHAPTER 3.14 OF THE MARINA MUNICIPAL CODE

THE PEOPLE OF THE CITY OF MARINA ORDAIN AS FOLLOWS:

Section 1. Title 3, Chapter 3.14 of the Marina Municipal Code is hereby enacted to read as follows:

Chapter 3.14

UTILITY USERS TAX

SECTION:

3.14.010 Title and Purpose
3.14.020 Definitions
3.14.030 Exemptions
3.14.040 Telecommunications Users Tax
3.14.050 Video Users Tax
3.14.060 Electricity Users Tax
3.14.070 Gas Users Tax
3.14.080 Service Users Receiving Direct Purchase of Gas or Electricity
3.14.090 Water Users Tax
3.14.100 Sewer Users Tax
3.14.110 Refuse Users Tax
3.14.120 Effect of Commingling Taxable Items with Nontaxable Items
3.14.130 Substantial Nexus/Minimum Contacts
3.14.140 Duty to Collect—Procedures
3.14.150 Collection Penalties; Service Suppliers or Self-Collectors
3.14.160 Deficiency Determination and Assessment; Tax Application Errors
3.14.170 Administrative remedy—Non-paying service users
3.14.180 Actions to Collect
3.14.190 Additional powers and duties of the Tax Administrator
3.14.200 Records
3.14.210 Refunds
3.14.220 Appeals
3.14.230 No Injunction/Writ of Mandate
3.14.240 Remedies cumulative
3.14.250 Notice of changes to ordinance
3.14.260 Future Amendment to Cited Statute
3.14.270 No Increase in Tax Percentage or Change in Methodology Without Voter Approval; Amendment or Repeal

3.14.010 Title and Purpose.

This article shall be known as the Utility Tax Ordinance for the City. This article is adopted pursuant to the powers of the City as a charter city, as authorized by the Constitution of the State of California, and is adopted as a tax levy to meet the usual current expenses of the City.

3.14.020 Definitions.

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

Ancillary telecommunication services shall mean services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to the following services:

a. *Conference bridging service* shall mean an ancillary service that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

b. *Detailed telecommunications billing service* shall mean an ancillary service of separately stated information pertaining to individual calls on a customer's billing statement.

c. *Directory assistance* shall mean an ancillary service of providing telephone number information, and/or address information.

d. *Vertical service* shall mean an ancillary service that is offered in connection with one (1) 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.

e. *Voice mail service* shall mean 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.

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

Billing address shall mean the mailing address of the service user where the service provider submits invoices or bills for payment by the service users.

City shall mean the City of Marina.

City Manager shall mean the City Manager, or his or her authorized representative.

CPI shall mean the Consumer Price Index for the San Francisco-Oakland-San Jose.

Gas shall mean natural or manufactured gas or any alternative hydrocarbon fuel, which may be substituted therefore.

Mobile telecommunications service shall mean commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, and as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations there under.

Month shall mean a calendar month.

Non-utility service supplier shall mean:

a. 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 not be 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;

b. An electric service provider (ESP), electricity broker, marketer, aggregator (including a community choice aggregator), pool operator, or other electricity supplier other than a provider of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City ; and

c. 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.

Paging service means a “telecommunications service” that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

Person shall mean, without limitation, any domestic, non-profit or foreign corporation; firm; association; syndicate; joint stock company; partnership of any kind; limited liability company; joint venture; club; trust: Massachusetts business or common law trust; estate; society; cooperative; receiver, trustee, guardian or other representative appointed by order of any court; and any natural individual.

Place of primary use shall mean the street address representative of where the customer's

use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

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

Prepaid telecommunication service shall mean the right to access telecommunication services, which must be paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed, and shall include "*prepaid mobile telephony services"* as defined in *Revenue and Taxation Code Section 42004(k)*. .

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

*Service addres*s shall mean the residential street address or the business street address of the service user. For a telecommunications or video service user, "service address" means either:

a. 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,

b. If the location in paragraph a. of this definition is unknown (e.g., mobile telecommunications service or VoIP service), the service address shall mean the location of the service user's place of primary use.

c. For prepaid telecommunication service, "service address" means the point of sale of the services where the point of sale is within the City, or if unknown, the known address of the service user (*e.g.*, billing address or location associated with the service number), which locations shall be presumed to be the place of primary use.

Service supplier shall mean any person, including the City, who provides or sells telecommunication, video, electric, gas, water, or wastewater service to a user of such services within the City. The term shall include any person required to collect, or self-collect under Section 3.14.908 hereof, and remit a tax as imposed by this Chapter 3.14, including its billing agent in the case of electric or gas suppliers.

Service user shall mean a person required to pay a tax imposed by this Chapter 3.14.

State shall mean the State of California.

Tax Administrator shall mean the Finance Director, or his or her authorized representative.

Telecommunications services shall mean 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, and includes broadband service (e.g., digital subscriber line (DSL), fiber optic, coaxial cable, and wireless broadband, including Wi-Fi, WiMAX, and Wireless MESH) to the extent federal and/or state law permits taxation of such broadband services, now or in the future. The term "telecommunications service" 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 service is referred to as voice over internet protocol (VoIP) service~~s~~ or is classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data service that is functionally integrated with "telecommunication services". Telecommunications services include, but is not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; intrastate, interstate and international telecommunication services; all forms of VoIP service; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to prerecorded or live service).

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.

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, IP-Video, and over the top TV or OTT) 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.”

Video service supplier means any person, company, or service which provides or sells video programming, or provides or sells the capability to receive video programming, including any communications that are ancillary, necessary or common to the provision, use or enjoyment

of the video programming, to or from a business or residential address in the City, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or communications. A "video service supplier" includes, but is not limited to, multichannel video programming distributors (as defined in 47 U.S.C.A. Section 522(13)); open video systems (OVS) suppliers; and suppliers of cable television; master antenna television; satellite master antenna television; multichannel multipoint distribution services (MMDS); video services using internet protocol (e.g., IP-TV and IP-Video, which provide, among other things, broadcasting and video on demand), direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video services (including two-way communications), whatever their technology.

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

800 Service means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

900 Service means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.

3.14.030 Constitutional and Statutory Exemptions.

a. The taxes imposed by this Chapter 3.14 shall not apply to:

1. Any person or service if imposition of such tax upon that person or service would be in violation of a Federal or State statute or the Constitution of the State of California, or the Constitution of the United States; or
2. The City, and the State of California and its subdivisions.
3. Low Income Exemption. A residential service user shall be exempt from the gas, electric, and refuse tax of this chapter if he or she is qualified and is enrolled in Pacific Gas & Electric Company's (PG&E) CARE Program ("California Alternate Rates for Energy" program). Individuals receiving the exemption granted by this subsection must reside at the location receiving the service; the exemption shall not apply to any nonresidential service location.

b. Any service user that is exempt from the tax imposed by this Chapter 3.14 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 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 service suppliers so that the Tax Administrator can properly notify the new service supplier of the service user's tax exempt status. A service user that fails to apply and obtain an exemption pursuant to this Section 3.14.030 shall not be entitled to a refund of a users tax collected and remitted to the Tax Administrator from such service user as a result of such noncompliance.

c. The decision of the Tax Administrator regarding an exemption application may be appealed pursuant to Section 3.14.220 hereof. Filing an application with the Tax Administrator and appeal to the City Manager, or designee, pursuant to Section 3.14.220 hereof is a prerequisite to a suit thereon.

d. The City Council may, by resolution, establish one or more classes of persons or one or more classes of utility service otherwise subject to payment of a tax imposed by this Chapter 3.14 and provide that such classes of persons or service shall be exempt, in whole or in part from such tax for a specified period of time.

3.14.040 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 (%) percent of the charges made for such services and shall be collected from the service user by the telecommunication services supplier or its billing agent, or as otherwise provided by law. 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 section. There is also a rebuttable presumption that prepaid telecommunication services sold within the city are primarily used, in whole or in part, within the City and are therefore subject to taxation under this Section. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the 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 section, sourcing rules for the taxation of other telecommunication services, including but not limited to post-paid telecommunication services, prepaid telecommunication services, and private telecommunication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation.

c. The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this section, an administrative ruling identifying those telecommunication services, or charges therefore, that are subject to the tax of paragraph a. above. This administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this section, or increase an existing tax, except as allowed by *California Government Code Section 53750(h)(2)(A).*

d. As used in this Section, the term "telecommunication services" shall include, but is not limited to, charges for: connection, reconnection, termination or early termination charges; 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; fees, charges or surcharges, which are imposed by any state or federal agency or law (whether such fees, charges or surcharges are imposed on the service supplier or the customer); local number portability charges; and text and instant messaging. "Telecommunication services" shall not include digital downloads that are not "ancillary telecommunication services," such as music, ringtones, games, and similar digital products.

e. 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 city 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 City; 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.

3.14.050 Video Users Tax.

a. There is hereby imposed a tax upon every person in the City using video services from a video provider. The tax imposed by this subsection shall be at the rate of (%) percent 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 Article. If the billing address of the service user is different from the service address, the service address of the service user shall be used 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) fees, charges or surcharges, whether imposed by any state or federal agency or law or the service supplier, including franchise fees and access fees (PEG); whether such fees, charges or surcharges are imposed on the service supplier or the customer;
(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; termination or early termination charges; 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, set box, recording and/or search devises; 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.

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

(e) 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.

3.14.060 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 rates of: percent (%) percent for residential customers and percent (%) for non-residential customers. The rates shall be applied to 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 or common to the receipt, use and enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a

local distribution company to a class of retail customers. 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. Standby, reserves, firming, 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, termination or early termination 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 and surcharges which are necessary to or common for the receipt, use and enjoyment of electric service; and

6. Fees, charges or surcharges, which are imposed by any state or federal agency or law, whether or not such fees, charges or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.

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 non-residential customers in the City, and the charges therefor, including those items that are mandated by State or Federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service providers an administrative ruling identifying those components and items which are: (i) necessary or common to the receipt, use or enjoyment of electric service; or, (ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Unbundled charges for such components and items shall be subject to the tax of paragraph a. above.

e. The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this Chapter 3.14 shall be collected and remitted in the manner set forth in Section 3.14.080 hereof. 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 following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

3.14.070 Gas Users Tax.

a. There is hereby imposed a tax upon every person using gas in the City, which is delivered through a pipeline distribution system or by mobile transport. The tax imposed by this section shall be at the rates of: percent (%) percent for residential customers and percent (%) for non-residential customers. The rates shall be applied to 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, electric generation by a non-public utility, 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 or common to the receipt, use and enjoyment of gas service; or, ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. 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 provider shall not be required to apply the tax to any charges for gas storage services when the service providers 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, metering charges (including opt out charges); late charges, service establishment or reestablishment charges, termination or early termination charges, marketing charges, administrative charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary or common to the receipt, use and enjoyment of gas service; and,

5. Fees, charges or surcharges, which are imposed by any state or federal agency or law, whether or not such fees, charges or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.

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 non-residential 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 or common to the receipt, use or enjoyment of gas service; or, (ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of paragraph a. above.

e. The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this Chapter 3.14 shall be collected and remitted in the manner set forth in Section 3.14.080 hereof. 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 230th) 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 the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

3.14.080 Collection of Tax From Service Users Receiving Direct Purchase of Gas or Electricity.

a. Any service user subject to the tax imposed by Sections 3.14.060 or 3.14.070 hereof, 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 3.14; 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. In lieu of paying said actual tax, the service user may, at its option, remit to the

Tax Administrator within thirty (30) days for such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

b. The Tax Administrator may require said service user to identify its nonutility service supplier and provide, subject to audit, invoices, books of account, or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the City.

c. If the service user or its agent produces electricity for self-use and fails to meter the amount of electricity used by the service user, or fails to meter the amount of electricity that is taken as a against electricity provided by a service supplier (e.g., net-metering), the Tax Administrator may, for purposes of calculating the tax hereunder, estimate the amount of electricity that is self-produced based on the manufacturer's estimate of annual electricity generation for the facility used by the service user to generate electricity.

3.14.090 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 rates of: percent (%) percent for residential customers and percent (%) for non-residential customers. The rates shall be applied to the charges made for such water, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of water 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 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: water commodity charges (potable and non-potable); distribution or transmission charges; metering charges; customer charges; fire protection services; late charges; service establishment or reestablishment charges; franchise fees; franchise surcharges; annual and monthly charges; charges, fees, or surcharges for water services or programs, which are mandated by any state or federal agency or law, or 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; and any other charges, fees and surcharges, which are necessary for or common to the receipt, use or enjoyment of water service.

(c) As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the 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 non-residential 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) 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.

3.14.100 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 rates of: percent (%) percent for residential customers and percent (%) for non-residential customers. The tax shall be paid by the person using such sewer service.

(b) As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of sewer service; or, ii) currently are or historically have been included in a single or bundled rate for sewer service to retail customers. The term "charges" shall include, but is not limited to, the following charges: customer charges, late charges, service establishment or reestablishment charges, annual and monthly charges; franchise fees; franchise surcharges; charges, fees, or surcharges, which are mandated by any state or federal agency or law, or by a sewer district or service supplier, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing; and any other charges, fees and surcharges, which are necessary for or common to the receipt, use or enjoyment of sewer service.

(c) The Tax Administrator, from time to time, may survey the sewer service suppliers in the City to identify the various unbundled billing components of sewert retail service that they commonly provide to residential and non-residential customers in the City, and the charges therefor, including those items that are mandated by a sewer district or by a state or federal agency or law as a condition of providing such sewer service. The Tax Administrator, thereafter, may issue and

disseminate to such sewer service suppliers an administrative ruling identifying those components and items which 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 by a local company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

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

3.29.110 Refuse Users Tax.

(a) There is imposed a tax upon every person using refuse collection and disposal services provided by a refuse collector in the City. The tax imposed by this section shall be at the rates of: percent (%) percent for residential customers and percent (%) for non-residential customers. There is also imposed a tax upon every person in the City that delivers refuse directly to a transfer station or disposes of refuse at any city-owned landfill, at the rates of: percent (%) percent for residential customers and percent (%) for non-residential customers. The tax shall be paid by the person using such refuse collection or disposal service.

(b) As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of refuse collection and disposal services; or, ii) currently are or historically have been included in a single or bundled rate for refuse collection and disposal services to retail customers. The term "charges" shall include, but is not limited to, the following charges: customer charges, late charges, service establishment or reestablishment charges, annual and monthly charges, and other charges, fees and surcharges which are necessary for or common to the receipt, use or enjoyment of refuse collection and disposal services; and, charges, fees, or surcharges for refuse collection and disposal services or programs, which are mandated by the City, by a state or federal agency or law, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(c) The tax imposed upon every person in the City that delivers refuse directly to a transfer station or city-owned landfill shall be collected from the service user by the operator of the transfer station. The transport station or city-owned landfill operator shall not collect the tax from any person who shows proof, in a form deemed satisfactory by the tax administrator, that the person's place of primary use is outside the City's jurisdiction. The amount of tax collected by the transfer station or city-owned landfill operator in one month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the twentieth (20th) day of the following month.

(d) The tax on imposed by this section on every person in the City using refuse collection and disposal services provided by the refuse collector shall be collected from the service user by the refuse collector or its billing agent. The amount of tax collected in one (1) month shall be

remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

3.14.120 Effect of Commingling Taxable Items with Nontaxable Items.

If any non-taxable service 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 is able to establish reasonable values for the portions of the combined charge that are nontaxable and taxable. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, the service supplier shall assign reasonable values for the taxable and non-taxable services. In assigning reasonable values for taxable and non-taxable services under this Section 3.14.120, the service supplier may use reasonable and verifiable standards, as approved by the Tax Administrator, such as: i) the books and records kept in the regular course of business and in accordance with generally accepted accounting principles (not created and maintained for tax purposes); ii) the market value of such taxable and non-taxable services when offered on a stand-alone basis by the supplier or its competitors; or iii) other similar evidence of value. The service supplier has the burden of proving to the satisfaction of the Tax Administrator the reasonable valuation and proper apportionment of taxable and non-taxable charges under this Section.

3.14.130 Substantial Nexus/Minimum Contacts.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Article, "substantial nexus", "substantial economic presence", 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 Article. 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, affiliates 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 with the City or distributed from a location with 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 utility services that are subject to a tax under this Article (*e.g.,* an affiliated person engaging in activities in the City that inure to the benefit of the service supplier in its development or maintenance of a market for its services in the City).

3.14.140 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 3.14 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 that 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 3.14.170 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 3.14. Where a person receives more than one (1) billing, one (1) 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 3.14 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 3.14. 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.

3.14.150 Collection Penalties; Service Suppliers or Self-Collectors.

a. Taxes collected from a service user, or owed by a service user subject to Section 3.14.080 hereof, 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 Section 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 (1) or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, or, in the case of a service user that

fails to properly self-collect and remit the tax under Section 3.14.908 hereof 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 become 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 3.14 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 and/or penalty and interest provisions of this section to be consistent with any uniform standards or procedures that are mutually agreed upon by UUT public agencies, or otherwise legally established, to create a UUT central payment location or mechanism.

3.14.160 Deficiency Determination and Assessment; Tax Application Errors.

a. The Tax Administrator shall make a deficiency determination if he or she determines that any person required to pay or collect taxes pursuant to the provisions of this Chapter 3.14 has failed to pay, collect, and/or remit the proper amount of tax by improperly applying 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 3.14.160 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 required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of seventy-five one-hundredths percent (0.75%) per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) calendar days after the date of service of such notice, the person may send a request in writing to the Tax Administrator asking for a hearing on the matter.

c. If the person 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) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

d. At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.14.220. Filing an application with the Tax Administrator and appeal to the City Manager, or designee, pursuant to Section 3.14.220 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 seventy-five one-hundredths percent (0.75%) 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 3.14 shall commence from the date of delinquency as provided in this subsection (e).

f. All notices under this Chapter 3.14 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.

3.14.170 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 Section 3.14.170 from certain named service users for specific billing periods. Whenever 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 Section 3.14.170. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3.14.170 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 (15%) percent of the total tax that is owed, and shall pay interest at the rate of three-quarters of one (3/4%) 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 nonpaying 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 (15%) percent of the amount of the total tax that is owed.

3.14.180 Actions to Collect.

Any tax required to be paid by a service user under the provisions of this Chapter 3.14 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 3.14 shall be liable in 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 3.14, along with any collection costs incurred by the City as a result of the person's noncompliance with this Chapter 3.14, including, but not limited to, reasonable attorney's fees. In the event that a service user or service supplier owing a tax under this Chapter 3.14 files bankruptcy, then such debt to the City shall be deemed an unsecured priority excise tax obligation under *11 U.S.C.A. Section 507(a)(8)(C).* Service suppliers who seek to collect charges for service in bankruptcy proceedings shall also include in any such claim the amount of taxes due the City for those services, unless the Tax Administrator determines that such duty is in conflict with any federal or state law, rule, or regulation or that such action would be administratively impractical.

3.14.190 Additional Powers and Duties of the Tax Administrator.

a. The Tax Administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this Chapter 3.14.

b. The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this Chapter 3.14 for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. The administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this Chapter 3.14, or increase an existing tax, except as allowed by *California Government Code Section 53750(h)(2).* 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 3.14 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 3.14 and thereby; (1) conform to the billing procedures of a particular service supplier (or service user subject to Section 3.14.080 hereof) so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this Chapter 3.14; 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 3.14, of any person required to collect and/or remit a tax pursuant to this Chapter 3.14. 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 or 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 3.14.150 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 3.14, 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 3.14 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 three-quarters of one (3/4%) 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 3.14.

g. The Tax Administrator, with the written approval of the City Attorney, may compromise a claim pursuant to this Chapter 3.14 where the portion of the claim proposed to be released is equal to or less than ten thousand nine hundred ninety-nine ($10,000.00) dollars; and, with the approval of the City Attorney and the City Council, may compromise such a claim where the portion proposed to be released is greater than four thousand nine hundred ninety-nine ($4,999.00) dollars.

h. Notwithstanding any provision in this Chapter 3.14 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 3.14 if, in the opinion of the Tax Administrator, the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator may take into consideration the uniqueness of the product or service, industry practice or other precedence, or whether the person offers to voluntarily disclose its tax

liability. To encourage voluntary full disclosure and on-going cooperation on tax collection and remittance, the Tax Administrator, and its agents, may enter into agreements with the tax-collecting service providers and grant prospective only effect on any changes regarding the taxation of services or charges that were previously deemed by the service provider, in good faith and without gross negligence, to be non-taxable. In determining whether the non-collection was in good faith and without gross negligence, the Tax Administrator may take into consideration the uniqueness of the product or service, industry practice or other precedence, and whether the disclosure was voluntarily made by the service provider or its agent.

3.14.200 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 3.14 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 that such person 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 Tax Administrator 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 3.14, 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 nondisclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to *California Revenue and Tax Code Sections 7284.6 and 7284.7*. The Tax Administrator may request from a person providing transportation or distribution services of gas or electricity to service users within the City, a list of the names, billing and service addresses, quantities of gas or electricity delivered, and other pertinent information, of its transportation customers within the City pursuant to *Section 6354(e) of the California Public Utilities Code*.

d. If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: (1) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and, (2) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City .

e. If any person subject to record-keeping under this Chapter 3.14 unreasonably denies the Tax Administrator, or the Tax Administrator's designated representative, access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, the Tax Administrator may impose a penalty of five hundred ($500.00) dollars 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 3.14.

3.14.210 Refunds/Credits.

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 3.14, it may be refunded or credited 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 3.14, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the Tax Administrator within one (1) year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. To the extent allowed by law, 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 Section 3.14.210.

b. The submission of a written claim, which is acted upon by the City Council, shall be a prerequisite to a suit thereon. (*See Section 935 of the California Government Code*). The Tax Administrator, or the City Council where the claim is in excess of four thousand nine hundred ninety-five ($4,995.00) dollars shall act upon the refund claim within the time period set forth in *Government Code Section 912.4.* If the City Council fails or refuses to act on a refund claim within the time prescribed by *Government Section 912.4*, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in *Government Code Section 912.4*. The Tax Administrator shall give notice of the action in a form that substantially complies with that set forth in *Government Code Section 913*.

c. Notwithstanding the notice provisions of subsection (a) of this Section 3.14.210, 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 3.14, 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, prior to taking such credit by the service supplier: 1) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; 2) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, 3) in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the

overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

3.14.220 Appeals.

a. The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 3.14.210 hereof), 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 3.14.210 hereof), 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)*]. To the extent allowed by law, 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 3.14.210 hereof), 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) 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, or designee, no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with 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, the City Manager, 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 City Manager 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) 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) 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.

3.14.230 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 3.14 of any tax or any amount of tax required to be

collected and/or remitted.

3.14.240 Remedies Cumulative.

All remedies and penalties prescribed by this Chapter 3.14 of this Code, 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 (1) or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Section 3.14.240.

3.14.250 Notice of Changes to Ordinance.

If a tax under this Chapter 3.14 is added, repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of *Public Utilities Code Section 799.*

3.14.260 Future Amendment to Cited Statute.

Unless specifically provided otherwise, any reference to a State or Federal statute in this Chapter 3.14 shall mean such statute as it may be amended from time to time. To the extent that the City's authorization to collect or impose any tax imposed under this Chapter 3.14 is expanded or limited as a result of an amendment or new enactment of a State or Federal law, no amendment or modification of this Chapter 3.14 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 3.14.

3.14.270 No Increase in Tax Percentage or Change in Methodology Without Voter Approval; Amendment or Repeal.

This Chapter 3.14 of the Marina Municipal Code may be repealed or amended by the City Council without a vote of the People. However, as required by *Chapter XIIIC 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, provided however, the following actions shall not constitute an increase of the rate of a tax:

a. 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;

b. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as such interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance;

c. The establishment a class of persons 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

d. 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 1. Severability. That if any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter 3.14 or any part thereof is for any reason held to be invalid, unlawful or unconstitutional, such decision, and the decision not to enforce such, shall not affect the validity of the remaining portion of this Chapter 3.14 or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared invalid, unlawful or unconstitutional.

Section 2. Effective Date. This shall be deemed adopted upon the date that the vote is declared by the City Council and shall go into effect ten (10) days after that date, as provided in section 9217 of the California Elections Code.

Section 3. Commencement of Collection of Tax. Service providers shall begin to collect the tax imposed by this amended code as soon as feasible after the effective date of this code, but in no event later than permitted by Section 799 of the California Public Utilities Code.

Section 4. **Execution.** The Mayor is hereby authorized to attest to the adoption of this Ordinance by signing where indicated below.

I hereby certify that the foregoing ordinance was PASSED, APPROVED and ADOPTED by the people of the City of Marina voting on the 8th day of November, 2016.

_____

Mayor

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

City Attorney

Resolution No. 2016 -____

RESOLUTION ORDERING THAT A BUSINESS LICENSE TAX MEASURE BE SUBMITTED TO THE VOTERS AT THE NOVEMBER 8, 2016 ELECTION, REQUESTING COUNTY ELECTIONS OFFICIALS TO CONDUCT THE ELECTION, AND REQUESTING CONSOLIDATION OF THE ELECTION

City of Marina

WHEREAS, the City of Marina relies on its general fund to provides vital services within its boundaries; and

WHEREAS, the City requires additional revenues to fund general fund services, such as _____; and

WHEREAS, the City Council desires to place before the voters an ordinance that would increase the rate of the City's Business License Tax; and

WHEREAS, by prior action, the City Council of the City of Marina has called a general municipal election of the City for November 8, 2016; and

WHEREAS, the November 8, 2016 general municipal election is a regularly scheduled general election for members of the City Council; and

WHEREAS, Government Code Section 53724 and Elections Code Section 9222, authorize the City Council to submit general tax ordinances to the voters; and

WHEREAS, pursuant to Elections Code Section 10002, the City Council may, by resolution, request the Monterey County Board of Supervisors to permit the county elections official to render specified services to the City relating to the conduct of an election; and

WHEREAS, the resolution of the City Council must specify the services requested; and

WHEREAS, pursuant to Elections Code Section 10002, the City must reimburse the County in full for the services performed upon presentation of a bill to the City; and

WHEREAS, pursuant to Elections Code Section 10400, whenever two or more elections, including bond elections, of any legislative or congressional district, public district, city, county, or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, they may be consolidated upon the order of the governing body or bodies or officer or officers calling the elections; and

WHEREAS, pursuant to Elections Code Section 10400, such election for cities and special districts may be either completely or partially consolidated; and

WHEREAS, pursuant to Elections Code Section 10403, whenever an election called by a district, city or other political subdivision for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board requesting the consolidation, and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot. Upon such request, the Board of Supervisors may order the consolidation; and

WHEREAS, the resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election; and

WHEREAS, various district, county, state and other political subdivision elections may be or have been called to be held on November 8, 2016;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED THAT THE City Council hereby orders an election be called and consolidated with the City's general municipal election and any and all elections also called to be held on November 8, 2016, insofar as said elections are to be held in the same territory or in territory that is in part the same as the territory of the City of Marina, and the City of Marina requests the Board of Supervisors of the County of Monterey to order such consolidation under Elections Code Section 10400 and 10403.

BE IT FURTHER RESOLVED AND ORDERED that pursuant to Elections Code Section 10002, the City Council hereby requests the Board of Supervisors to permit the Monterey County Elections Department to provide any and all services necessary for conducting an election and agrees to pay for said services in full, and

BE IT FURTHER RESOLVED AND ORDERED that Monterey County Elections Department shall conduct the election for the following measure to be voted on at the November 8, 2016 election:

[Insert Ballot Question]

YES _____

NO _____

BE IT FURTHER RESOLVED AND ORDERED THAT Monterey County Elections Department is requested to print the full measure text (**Exhibit A**) exactly as filed or indicated on the filed document in the Voter Guide for the November 8, 2016 election. Cost of printing and distribution of the measure text will be paid for by the City of Marina.

In addition, the full measure text will be available at the following web site address: www.ci.marina.ca.us.

BE IT FURTHER RESOLVED AND ORDERED THAT

1. Voter approval requirement is a majority. In the event a majority of the electors voting on the measure vote in favor, the ordinance set forth in Exhibit A is, by such vote, adopted by the people of the City of Marina.

2. Arguments for and against the ballot measure may be filed consistent with Elections Code Section 9282, *et seq.* The last day for submission of direct arguments for or against the ballot measure shall be by 5:00 P.M. on August 18, 2016. Direct arguments shall not exceed three hundred words and shall be signed by not more than five persons.

3. Rebuttals to arguments for and against the ballot measure may be filed. The last day for submission of rebuttal arguments for or against the ballot measure shall be by 5:00 P.M. on August 25, 2016. Rebuttal arguments shall not exceed two hundred-fifty words and shall be signed by not more than five persons; those persons may be different persons than the persons who signed the direct arguments.

4. Pursuant to Election Code Section 9280, the City Council hereby directs the City Attorney to prepare by August 18, 2016, an impartial analysis of the ballot measure

5. _____ is hereby authorized to prepare written arguments in favor of the ballot measure, not to exceed three hundred words, on behalf of the City Council. At _____'s discretion, the argument may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote. In the event an argument is filed against the ballot measure, _____ is also authorized to prepare a rebuttal argument on behalf of the City Council, which may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote.

6. The Deputy City Clerk hereby is designated as the Elections Official and is directed to do all things required by law to effectuate the General Municipal Election and to present the ballot measure submitted herein to the electorate, including, but not limited to, required publications, postings, noticing and filings. Further, the Deputy City Clerk is hereby directed to forward a copy of this resolution to the City Attorney for preparation of impartial analyses of the ballot measure submitted. Pursuant to Election Code section 9285, when the Deputy City Clerk has selected the arguments for and against the ballot measure, which will be printed and distributed to voters, the Deputy City Clerk shall send copies of the arguments in favor of the ballot measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

7. The Deputy City Clerk is hereby directed to submit forthwith a certified copy of this resolution to the Board of Supervisors, to the Registrar of Voters and to the County Clerk of the County of Monterey. The Deputy City Clerk shall certify as to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

8. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Sections 15061(b)(3) and 15378(a), that this resolution is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. This action is further exempt under the definition of "Project" in Section 15378(b)(3) in that it concerns general policy and procedure making. The Council therefore directs that a Notice of Exemption be filed.

PASSED AND ADOPTED by the City Council of the City of Marina this 3rd day of August 2016, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

SIGNED: _____ _____
Bruce C. Delgado, Mayor

ATTEST: _____
Anita Shepherd-Sharp, Deputy City Clerk

EXHIBIT A

AN ORDINANCE OF THE PEOPLE OF THE CITY OF MARINA AMENDING CHAPTER 5.20 OF THE MUNICIPAL CODE, RELATING TO THE RATES OF THE BUSINESS LICENCE TAX

THE PEOPLE OF THE CITY OF MARINA DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 5.20 -Amended. Chapter 5.20 of the City of Marina Municipal Code is hereby amended to read as follows:

Chapter 5.20

RATES

Sections:

5.20.010 Professionals

5.20.020 Rentals.

5.20.030 Contractors and Building Trades.

5.20.040 Retailers and All Other Businesses.

5.20.050 Rounding of Gross Receipts.

5.20.010 Professionals.

The tax rate shall be $2.00 per $1,000 of gross receipts for any person practicing law, accounting, architecture, medicine, dentistry, optometry, physical therapy, clinical psychology, engineering, surveying, or any other profession the practice of which both (i) requires a state-issued license and (ii) is generally limited by law or regulation to those who have completed either not less than four years of general post-secondary education or not less than two years of specialized post-secondary professional education. This tax rate shall also apply to any real estate agent, insurance agent, escrow agent, financial planner, tax preparer, securities broker or other person who provides financial advice or services, regardless of whether a state-issued license is required to provide those services. The minimum annual tax for this category shall be $80.

5.20.020 Rentals.

The tax rate shall be $2.00 per $1,000 of gross receipts for any person who rents, leases, subleases, licenses or has available for rent, lease, sublease or license, (i) any single family home, dwelling unit, room, or other accommodation or (ii) any space for commercial, institutional or industrial use. This rate shall apply to, but shall not be limited to, operators of apartment buildings, hotels, office buildings, shopping malls, and storage facilities. The minimum annual tax for this category shall be $80.

5.20.030 Contractors and Building Trades.

The tax rate shall be $1.50 per $1,000 of gross receipts for any person who is a contractor or engages in any building trade, including, but not limited to:

(1) Awning.

(2) Boilers, hot water heating, steamfitting.

(3) Burglar alarm.

(4) Cabinet and mill work.

(5) Cement and concrete.

(6) Electrical contractor.

(7) Electric signs.

(8) Elevator installation.

(9) Excavating, grading, trenching, paving, surfacing.

(10) Fire protection engineering.

(11) Floodlight service.

(12) Flooring.

(13) Glazing, glass.

(14) Heating and/or air conditioning.

(15) House and building moving or wrecking.

(16) Insulation.

(17) Landscaping.

(18) Lathing.

(19) Masonry.

(20) Ornamental metals.

(21) Painting and decorating.

(22) Pest control.

(23) Plastering.

(24) Plumbing.

(25) Refrigeration.

(26) Roofing.

(27) Screens.

(28) Sewer

(29) Signs.

(30) Tile.

(31) Weather stripping.

The minimum annual tax for this category shall be $60.

5.20.040 Retailers and All Other Businesses.

The tax rate shall be $1.00 per $1,000 of gross receipts for any person engaging in any business for which no other rate is set forth in this Chapter 5.20. The minimum annual tax for this category shall be $40.

5.20.050 Rounding of Gross Receipts.

For purposes of calculating any tax pursuant to this chapter, the gross receipts of any person shall be rounded to the nearest thousand dollars.

* * *

Section 2. Amendment. Any provision added to the Municipal Code by this Ordinance may be repealed or amended by the city council without a vote of the people. However, as required by Article XIIIC of the California Constitution, voter approval is required in order to further increase the rate of any tax with respect to any taxpayer.

Section 3. Use of Proceeds. Proceeds of the tax imposed by this chapter shall be deposited in the general fund of the City and be available for any municipal purpose.

Section 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The People of the City of Marina hereby declare that they would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid or unenforceable.

Section 5. Effective Date. This ordinance shall be effective July 1, 2017.

Section 6. Publication. Within fifteen days after the passage of this ordinance the City Clerk shall cause this ordinance or a summary thereof to be published or to be posted in at least three places in the City of Marina in accordance with the requirements of Government Code section 36933.

The foregoing ordinance was adopted by the People of the City of Marina at an election held on November 8, 2016.

_____
Bruce C. Delgado, Mayor

ATTEST:

_____
Anita Sharp, Acting Deputy City Clerk

APPROVED BY THE FOLLOWING VOTE of the People of the City of Marina on November 8, 2016.

YES: _____

NO: _____

ADOPTED BY DECLARATION OF THE VOTE by the City Council of the City of Marina on _____ 2016.

Continued from July 19, 2016

July 15, 2016 Item No. **11c**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of July 19, 2016

RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2016-, RECEIVING INFORMATION REGARDING UTILITY USERS TAX AND BUSINESS LICENSE TAX FOR THE CITY OF MARINA AND PROVIDING FURTHER DIRECTION TO CITY STAFF

RECOMMENDATION:
It is recommended that the City Council:

1. Consider adopting Resolution No. 2016-, receiving information regarding Utility Users Tax and Business License Tax for the City of Marina and to provide staff with further direction.

BACKGROUND:
For the past several months the City Council has held numerous public meetings regarding possibly placing a ballot measure on the November election regarding approving a Utility User Tax and increasing and updating the current Business License Tax.

At the June 7, 2016 City Council meeting, the Council approved an agreement to hire Fairbank, Maslin, Maullin, Metz & Associates (FM3) to perform public opinion research services. The firm was hired to assist the City in better understanding and gauging community interest and to obtain community feedback regarding these two issues.

ANALYSIS:
For the past several weeks FM3 has been conducting community surveys with a goal of reaching a total sample size of 300. To date only 270 surveys have been collected and staff has not yet received the survey results. We anticipate the remaining surveys will be completed this weekend. We will provide an executive summary of the results as soon as we receive them. FM3 will be making a presentation at the Council meeting and will explain the results of the survey.

Included with this staff report is draft ballot language, resolutions, and ordinances for the proposed ballot measures. These are provided for information only and no action needs to be taken on these items until the next City Council meeting on August 3, 2016.

CONCLUSION:
This information is submitted to the City Council to facilitate further discussion regarding the Utility User Tax and Business License Tax.

Respectfully submitted,

_____

Layne Long
City Manager
City of Marina