

RESOLUTION NO. 14-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ADELANTO, SAN BERNARDINO COUNTY, CALIFORNIA, CALLING AND GIVING NOTICE OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 4, 2014, FOR THE SUBMISSION OF A PROPOSED MEASURE, AN ORDINANCE ADOPTING A UTILITY USERS TAX; AND REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2014, WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE DATE PURSUANT TO SECTION 10403 OF THE ELECTIONS CODE

WHEREAS, the Adelanto City Council unanimously declared a Fiscal Emergency for the City of Adelanto; and

WHEREAS, the City of Adelanto's ongoing budget deficit is \$2.6 million per year; and

WHEREAS, Adelanto has taken major steps to address the Fiscal Emergency, cutting \$2.9 million from the budget deficit, and reducing the city's workforce by 23%; and

WHEREAS, Adelanto has already reduced police administration staffing, eliminated its only gang officer, closed one fire station, and reduced firefighter/paramedics staffing to only 3 per shift; and

WHEREAS, without additional funds, Adelanto will have no choice but to declare bankruptcy and further reduce professional 9-1-1 emergency response, paramedics and fire protection and police services; and

WHEREAS, a declaration of bankruptcy will take control of the City's future out of the City's hands and put it in the hands of bankruptcy judges and the County; and

WHEREAS, in a municipal bankruptcy, the City would lose control and, if taken over by the County, the County could potentially have the power to impose new fees on Adelanto residents to cover service costs; and

WHEREAS, a local revenue measure would provide local funds to restore fiscal stability and preserve local control of Adelanto's fire, police, and other essential services; and

FILED

JUL 24 2014

BY  DEPUTY
REGISTRAR OF VOTERS

WHEREAS, closure of one of Adelanto fire station has already led to a 50% increase in 9-1-1 emergency response times; and

WHEREAS, if the City can no longer sustain the cost of professional fire and police protection, it will mean even deeper cuts and longer response times for fires, medical emergencies, and police calls – impacting the community's health and safety; and

WHEREAS, over the past several months the City of Adelanto has solicited input from residents about what essential community services they want maintained; and

WHEREAS, the City convened a Citizens' Finance & Budget Task Force of concerned residents to study the City's finances and evaluate ways to address Adelanto's Fiscal Emergency; and

WHEREAS, the Citizens' Finance & Budget Task Force reviewed a number of potential option to restore fiscal stability and recommended that the Council place a local Utility User Tax measure on the November ballot for the voters' consideration; and

WHEREAS, it is anticipated the City will have to declare bankruptcy the first part of 2015 unless additional revenues are secured or drastic measures are taken, such as deep cuts to fire protection and police services; and

WHEREAS, if approved by voters, the measure would include strict accountability requirements including an Independent Citizens' Oversight Committee and independent annual financial audits to ensure funds are spent properly and for Adelanto's benefit only; and

WHEREAS, a regularly scheduled Statewide General Municipal Election will be held in California on November 4, 2014 and under provisions of the laws relating to general law and charter cities in the State of California, the City Council is authorized to call a General Municipal Election on the same date; and

WHEREAS, the City Council of the City of Adelanto, California desires to submit to the voters of the City at a General Municipal Election a proposal to approve Ordinance No. 523, Adopting A Utility Users Tax; and

WHEREAS, the City Council of the City of Adelanto has unanimously declared a fiscal emergency.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ADELANTO, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of the laws of the State of California relating to general law and charter cities, there is called and ordered to be held in the City of Adelanto, California, on Tuesday, November 4, 2014, a General Municipal Election for the purpose of submitting to the voters at said election the following question:

City of Adelanto Temporary Fiscal Emergency Measure. To address Adelanto's Fiscal Emergency/prevent bankruptcy; prevent elimination of fire protection services; protect 9-1-1 emergency response, police protection, gang/crime prevention, senior services, and other essential general services; and to protect local businesses/jobs and restore fiscal stability; shall the City of Adelanto adopt a temporary 7.95% Utility Users Tax for 7 years only, with low income senior discounts, annual audits, citizens' oversight, and requiring funds be used locally?	YES
	NO

SECTION 2. That the text of the proposed Ordinance No. 523 is attached hereto as Exhibit "A" and is submitted to the qualified electors of the City of Adelanto for their approval or rejection at the General Municipal Election to be held on November 4, 2014, within the boundaries of the City. The City Clerk shall keep one or more copies of the proposed measure available to the public for inspection at the office of the City Clerk. The measure shall be designated on the ballot by a letter printed on the left margin of the square containing the description of the measure as provided in the California Elections Code.

SECTION 3. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 4. That the City Clerk, if necessary to facilitate the requested consolidation and as may be necessary to undertake other required actions, is authorized, instructed, and directed to procure and furnish any and all official ballots, notices, printed matter, and all supplies, equipment, and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 5. That the polls for the election shall be open at 7:00 a.m. of the day of the election and shall remain open continuously from that time until 8:00 p.m. of the same day when the polls shall be closed, except as provided in Section 14401 of the Elections Code of the State of California.

SECTION 6. That in all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 7. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election in time, form and manner as required by law.

SECTION 8. That pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of San Bernardino is hereby requested to consent and agree to the consolidation of a General Municipal Election with the General Municipal Election on Tuesday, November 4, 2014, for the purpose of submitting to the voters an Ordinance No. 523, as reflected by this Resolution calling an election for such purpose. The City of Adelanto acknowledges that the consolidated election will be held and conducted in the manner prescribed in Section 10418 of the Elections Code and that the election will be held and conducted in accordance with the provisions of law regulating the statewide election.

SECTION 9. That the County Election Department is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

SECTION 10. That the Board of Supervisors is requested to issue instructions to the County Election Department to take any and all steps necessary for the holding of the consolidated election.

SECTION 11. That the City of Adelanto recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

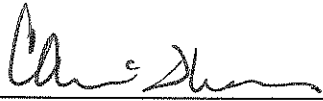
SECTION 12. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters/Election Department of the County of San Bernardino. Such filing shall be completed promptly upon adoption of this Resolution, but in no event later than August 8, 2014.

SECTION 13. The City Council determines, based on the entire record, that this action and the proposed ballot measure does not have the potential to have a physical effect on the environment and that there is no possibility that this action or the proposed ballot measure will have a significant effect on the environment. Therefore, pursuant to the California Environmental Quality Act (CEQA) and its implementing Guidelines (Cal. Pub. Res. Code § 21065; 14 Cal. Code Regs. §§ 15060(c)(2), 15378(a)) this activity is not subject to CEQA.

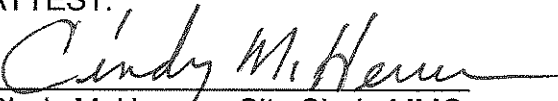
The City Council specifically finds, based on the record before it that the proposed ballot measure would not make revisions that involve physical impacts on the environment (some of these changes include, without limit, modifications to the City's public contracting and public works project contracting requirements). The City Clerk is directed to immediately file a Notice of Exemption with the County of San Bernardino following approval of this resolution.

SECTION 14. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED, AND ADOPTED this 23rd day of July, 2014.



Cari Thomas, Mayor

ATTEST:


Cindy M. Herrera, City Clerk, MMC

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss
CITY OF ADELANTO)

I, CINDY M. HERRERA, MMC, City Clerk of the City of Adelanto, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No.14-09 adopted by the City Council of the City of Adelanto, California, at a regular meeting thereof held on the 23rd day of July, 2014.

AYES: Council Members Camargo, Valvo, Mayor Pro Tem Baisden, and Mayor Thomas

NOES: Council Member Wright

ABSENT: None

ABSTAIN: None

IN WITNESS WHEREOF, I hereunto set my hand and affix the official seal of the City of Adelanto on the 23rd day of July, 2014.


Cindy M. Herrera, MMC
CITY CLERK

SEAL

EXHIBIT A

ORDINANCE NO. 523

AN ORDINANCE OF THE CITY OF ADELANTO, SAN BERNARDINO
COUNTY, CALIFORNIA, ADOPTING A UTILITY USER TAX

The people of the City of Adelanto do ordain as follows:

Section 1. Chapter 3.70 entitled "Utility User Tax" is hereby added to the Adelanto Municipal Code to read in its entirety as follows:

Chapter 3.70 Utility User Tax

- 3.70.010. Authority and Purpose**
- 3.70.020. Tax Imposed**
- 3.70.030. Definitions**
- 3.70.040. Electricity User Tax**
- 3.70.050. Gas User Tax**
- 3.70.060. Communication Services User Tax**
- 3.70.070. Sewer Service User Tax**
- 3.70.080. Water User Tax**
- 3.70.090. Cable Television User Tax**
- 3.70.100. Actions to Collect**
- 3.70.110. Collection Procedures**
- 3.70.120. Tax Administrator**
- 3.70.130. Administrative Agreements**
- 3.70.140. Delinquency**
- 3.70.150. Interest and Penalties - Supplier**
- 3.70.160. Interest and Penalties - User**
- 3.70.170. Records**
- 3.70.180. Refunds**
- 3.70.190. Notice to Utilities**
- 3.70.200. Appeals**
- 3.70.210. PUC Jurisdiction**
- 3.70.220. Constitutional Exemptions**
- 3.70.230. Low Income Senior Discount**
- 3.70.240. Segregation of Nontaxable Charges**
- 3.70.250. Effective Date and Sunset**
- 3.70.260. Verification Audit**
- 3.70.270. Use of Funds**
- 3.70.280. Citizen Oversight**
- 3.70.290. Severability**
- 3.70.300. Potential Temporary Reduction Of Tax Rate**

3.70.010. Authority and Purpose.

This chapter is adopted pursuant to the provisions of California law for the purpose of providing general municipal revenues to be used for general municipal purposes. This chapter is enacted solely to raise revenue for the general governmental purposes of the City of Adelanto and is not enacted for regulatory purposes. All of the proceeds from the tax imposed by this chapter shall be placed in the city's general fund and used for the usual and current expenses of the city.

3.70.020. Tax Imposed.

There is imposed a utility user tax in the amount set forth in this chapter to raise revenues for the general governmental purposes of the city.

3.70.030. Definitions.

Unless the contrary is stated or clearly appears from the context, the following definitions govern the construction of the words and phrases used in this chapter. Words and phrases not defined by this chapter have the meaning set forth elsewhere in this code or the Government Code.

“Ancillary telecommunication services” means services associated with or incidental to providing, use or enjoyment of telecommunication services, including, without limitation, the following:

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

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

(3) “Directory assistance” means an ancillary service of providing telephone number information or address information.

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

(5) “Voice mail service” means an ancillary service that enables customers 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.

“Billing address” means the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

“Communication services” means telecommunications services and ancillary telecommunication services.

“Electrical corporation,” “gas corporation,” and “telephone corporation” mean the same as defined in Sections 218, 222, and 234, respectively of the Public Utilities Code.

“Mobile telecommunications service” means the same as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations promulgated thereto or any successor statutes or regulations.

“Month” means a calendar month.

“Post-paid telecommunications service” means a 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” means the right to access telecommunication services, which is paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

“Private telecommunication service” means 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 supplier” means a person required to collect and remit a tax imposed under the provisions of this chapter.

“Service user” means a person required to pay a tax imposed under the provisions of this chapter.

“Tax administrator” means the City Manager or in his or her absence the Finance Director.

“Telecommunications services” means:

(1) The transmission, conveyance, or routing of voice, data, audio, or any other information or signals to a point, or between or among points, whatever the technology used, and includes broadband services to the extent federal or state law permits taxation of such broadband services, now or in the future. The term telecommunication services includes such transmission,

conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such services are referred to as voice over internet protocol services or are classified by the Federal Communications Commission as enhanced or value added, and includes video or data services that are functionally integrated with telecommunication services.

(2) Telecommunication services include, without limitation, the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; broadband services (to the extent federal and/or state law permits taxation of such service); mobile telecommunication service; landline telecommunication service; prepaid telecommunication service (to the extent it is practicable for the service supplier to collect the correct tax imposed under this chapter from the service user); post-paid telecommunication service; private telecommunication service; paging service; 800 service or any other toll-free numbers designated by the Federal Communications Commission; and 900 service or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers call in to pre-recorded or live service.

(3) Telecommunication services also include, without limitation, charges for connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including, without limitation, call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory, administrative and other cost recovery charges; local number portability charges; and text.

(4) Telecommunication services do not include digital downloads that are not ancillary telecommunication services, such as video programming, music, ringtones, games, and other similar digital products.

3.70.040. Electricity User Tax.

(a) There is imposed a tax upon every person in the city, other than an electrical corporation, using electrical energy in the city. The tax imposed by this section shall be at the rate of 7.95% of the charges made for such energy for each service user, and shall be paid by the person paying for such energy.

(b) As used in this section, the words "using electrical energy" shall not be construed to mean the use of such energy from a storage battery; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of storage batteries.

(c) As used in this section, the words "using electrical energy" shall not be construed to mean the receiving of such energy by an electrical corporation or a governmental agency at a point within the city for resale.

(d) The tax imposed in this section shall be collected from the service user by the person selling such electrical energy. The amount of tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month.

3.70.050. Gas User Tax.

(a) There is imposed a tax upon every person in the city, other than a gas corporation or electrical corporation, using in the city gas which is delivered through mains or pipes. The tax imposed by this section shall be at the rate of 7.95% of the charges made for such gas for each service user, and shall be paid by the person paying for such gas. "Charges," as used in this section, shall mean: (1) gas which is delivered through mains or pipes; and (2) minimum charges for such services, including customer charges, service charges, and annual and monthly charges.

(b) The following shall be excluded from the base on which the tax is imposed:

(1) Charges made for gas which is to be resold and delivered through mains or pipes;

(2) Charges made for gas sold for use in the generation of electrical energy or for the production or distribution of water by a public utility or governmental agency;

(3) Charges made by a gas public utility for gas used and consumed in the conduct of the business of gas public utilities;

(4) Charges made for gas used in the propulsion of a motor vehicle, as that phrase is defined in the Vehicle Code of the state, utilizing natural gas.

(c) The tax imposed in this section shall be collected from the service user by the person selling the gas. The amount of tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month.

3.70.060. Communication Services User Tax.

(a) There is a tax imposed upon every person in the city using communication services. The tax imposed by this section is at the rate of 7.95% of the charges made for each service user, and shall be paid by the person paying for such services. There is a rebuttable presumption that communication services 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 taxable under this chapter. If the billing address of the service user is different from the service address, the service address of the service user is used for purposes of imposing the tax.

(b) Mobile telecommunications service is sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 116), regulations promulgated thereto, and any successor statute or regulation. The tax administrator may issue and disseminate to communication service providers subject to the tax collection requirements of this chapter sourcing rules for the taxation of other communication services including, without limitation, post-paid communication services, prepaid communication services, and private communication services, provided that such rules are based upon industry

custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation.

(c) To prevent actual multi-jurisdictional taxation of communication services subject to tax under this section, any service user, upon proof to the tax administrator that the service user previously paid the same tax in another state or city on such communication services, is 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 cannot exceed the tax owed to the city under this section.

(d) Except as otherwise provided by applicable federal or state law, if any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges.

(e) For purposes of imposing a tax or establishing a duty to collect and remit a tax under this section, "substantial nexus" and "minimum contacts" are construed broadly in favor of the imposition, collection and remittance of the tax to the fullest extent permitted by state and federal law and as it may change from time to time by judicial interpretation or by statutory enactment. Any communication service 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, is subject to a rebuttable presumption that "substantial nexus/minimum contacts" exist for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this chapter. A service supplier is deemed to have sufficient activity in the city for tax collection and remittance purposes if its activities include, without limitation, any of the following: a place of business of any nature; solicitation of business in the city by employees, independent contractors, resellers, agents, or other representatives; solicitation of business in the city on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the city or distributed from a location within the city; or advertises in newspapers or other periodicals printed and published within the city or through materials distributed in the city by means other than the United States mail. Upon request, the city must make available an accurate description of its jurisdictional boundaries based on street addresses or ZIP Plus Four, in electronic format. If a service supplier relies upon such information provided by the city, the city is not responsible for any errors in taxation that may result.

(f) The tax imposed in this section shall be collected from the service user by the person selling the communication services. The amount of tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month.

(g) The communication services user tax is to be construed to reach to the full breadth of the city's constitutional power to tax and without respect to the technology or means by which communication services are provided.

3.70.070. Sewer Service User Tax.

(a) There is hereby imposed a tax on every person using in the city the services of a sewer service for the disposal of sewage into a sewer system. The tax imposed by this section shall be at the rate of 7.95% of the charges made for such services and shall be paid by the person paying for such services. "Charges," as used in this section, shall include charges for service, including customer charges, service charges and annual and monthly charges and any other charge authorized by this code, a franchise or collection services agreement granted pursuant to that Code, or the law of the State of California.

(b) The tax imposed by this section shall be collected from the service user by the person providing the services. The amount of tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month.

3.70.080. Water User Tax.

(a) There is hereby imposed a tax on every person using water which is delivered through mains or pipes. The tax imposed by this section shall be at the rate of 7.95% of the charges made for such water and shall be paid by the person paying for such water. "Charges," as used in this section, shall include charges made for metered water and charges for service, including customer charges, service charges and annual and monthly charges and any other charge authorized by law.

(b) Charges made for water which is to be resold and delivered through mains or pipes shall be excluded from the base on which the tax imposed by this section is computed.

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

3.70.090. Cable Television User Tax.

(a) There is hereby imposed a tax upon every person in the city using cable television service in the city. The tax imposed by this section shall be at the rate of 7.95% of the charges made for such service and shall be paid by the person paying for such service.

(b) As used in this section, the term "charges" includes, but is not limited to, charges for installation and programming, whether the programming is a cable transmission of broadcast channels, transmission of cable-only programming, "pay-per-view" programming or any other programming.

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

3.70.100. Actions to Collect.

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the city. Any such tax collected from a service user which has not been remitted to the tax administrator shall be deemed a debt owed to the city by the person required to collect and remit. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount.

3.70.110. Collection Procedures.

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

(a) The tax shall be collected insofar as practicable at the same time as and along with the charges made in accordance with regular billing practice of the service supplier. Except in those cases where a service user pays the full amount of said charges but does not pay any portion of a tax imposed by this chapter, or where a service user has notified a service supplier that he is refusing to pay a tax imposed by this chapter which said service supplier is required to collect, if the amount paid by a service user is less than the full amount of the charge and tax which has accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid.

(b) The duty to collect tax from a service user shall commence with the beginning of the first regular full billing period applicable to that person which starts on or after the operative date of the ordinance codified in this chapter. Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

3.70.120. Tax Administrator.

The tax administrator shall have the power and duty, and is directed to enforce each and all of the provisions of this chapter. The tax administrator shall have the power to adopt rules and regulations not inconsistent with the provisions of this chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed.

3.70.130. Administrative Agreements.

The tax administrator may make administrative agreements to vary the strict requirements of this chapter so that collection and remittance of any tax imposed herein may be made in conformance with the billing procedures of a particular service supplier as long as the overall result of said agreements results in collection of the tax in conformance with the general purpose and scope of this chapter.

3.70.140. Delinquency.

Taxes collected from a service user which are not remitted to the tax administrator on or before the due date provided in this chapter are delinquent.

3.70.150. Interest and Penalties—Supplier.

Interest and penalties for delinquency in remittance of any tax collected by a service supplier and not remitted shall be assessed as follows:

(a) Any service supplier who fails to remit any tax collected under this chapter within ten days after receipt of written notice from the city of such failure shall pay a penalty of ten percent of the amount of the tax.

(b) If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalty stated in subsection (a) of this section.

(c) In addition to the penalties imposed in this section, any service supplier who fails to remit any tax collected under this chapter shall pay interest at the rate of one percent per month on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(d) Every penalty imposed upon a service supplier, and such interest as accrued, under the provisions of this section shall become a part of the tax required to be remitted.

3.70.160. Interest and Penalties—User.

(a) Any service user who fails to pay any tax imposed by this chapter within ninety days of the date of notification of the amount of the tax due from the service supplier shall pay a penalty of ten percent of the amount of the tax, or one dollar, whichever is greater, and shall pay interest at the rate of one percent per month or fraction thereof on the amount of tax, exclusive of penalties, from the date on which the payment is ninety days delinquent.

(b) Whenever the tax administrator determines that a service user has deliberately withheld the amount of any tax imposed by the provisions of this chapter from the amounts remitted to a service supplier required to collect the tax, or that a service user has failed to pay the amount of the tax to such service supplier for a period of three or more billing periods, or whenever the tax administrator deems it in the best interest of the city, he or she shall relieve such service supplier of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods. The tax administrator shall notify the service user that he or she has assumed responsibility to collect the taxes and penalty due for the stated period and demand payment of such taxes. The notice shall be served on the service user by handing it to him or her personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the service supplier required to collect the tax; or, should the service user have changed his or her address, to his or her last known address. If a service user fails to remit the tax and penalty to the tax administrator within fifteen days from the date of the service of the notice upon him or her, which shall be the date of mailing if service is not accomplished in person, an additional penalty of twenty-five percent of the amount of the tax and penalty set forth in the notice shall be imposed, but not less than ten dollars.

(c) Every penalty imposed upon a service user, and such interest as accrues, under the provisions of subsections (a) and (b) of this section shall become a part of the tax required to be paid.

3.70.170. Records.

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

3.70.180. Refunds.

(a) Whenever the amount of any tax, interest, or penalty has been overpaid or paid more than once or has been erroneously collected or received by the city under this chapter, it may be refunded as provided in this section, provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator within one year of the date of payment. The claim must be on forms furnished by the tax administrator. No refund is paid unless the claimant establishes his or her right thereto by written records showing entitlement thereto. Nothing herein permits the filing of a claim on behalf of a class or group of taxpayers. Where the amount of any individual refund claim is in excess of twenty-five thousand dollars, city council approval is required in addition to approval by the tax administrator.

(b) Notwithstanding the provisions of subsection (a) of this section, a service supplier may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously collected or received when it is established that the service user from whom the tax has been collected did not owe the tax; provided, however, that neither a refund nor a credit is allowed unless the amount of the tax so collected has either been refunded to the service user or credited to charges subsequently payable by the service user or the person required to collect and remit. A service supplier that has collected any amount of tax in excess of the amount of tax imposed by this chapter and actually due from a service user may refund such amount to the service user and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns, provided such credit is claimed in a return dated no later than one year from the date of overpayment.

(c) Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this chapter on the amount of such refunded charges must also be refunded to service users by the service supplier, and the service supplier is entitled to claim a credit for such refunded tax against the amount of tax which is due upon the next monthly return. If this chapter is repealed, amounts of any refundable taxes will be borne by the city.

(d) The tax administrator, or the city council (where the claim is in excess of twenty-five thousand dollars), must act upon the refund claim within forty-five days of the initial receipt

of the refund claim. Said decision is the city's final decision. If the tax administrator or city council fails or refuses to act on a refund claim within the forty-five-day period, the claim is deemed to have been rejected. The tax administrator will give notice of its decision in a form which substantially complies with that set forth in Government Code Section 913.

(e) The filing of a written claim is a prerequisite to any lawsuit. Any action brought against the city pursuant to this chapter is subject to the provisions of Government Code Sections 945.6 and 946.

3.70.190. Notice to Utilities.

The tax administrator shall determine the eligibility of any person who asserts a right to exemption or discounts from the tax imposed by this chapter. The tax administrator shall provide the service supplier with a list of the names of persons whom the tax administrator determines are exempt or allowed discounts from the tax imposed hereby together with the address and account number to which service is supplied to any such exempt person or person entitled to a discount. This list will be the official determination by which the service supplier will provide exemption or discounts from the utility user tax. The exemptions or discounts shall be implemented by the service supplier within sixty days after the mailing of such list by the tax administrator. The tax administrator shall also notify the service supplier of the termination of any person's right to exemption or discount hereunder, or the change of any address to which service is supplied to any exempt person or person allowed a discount.

3.70.200. Appeals.

(a) Any person aggrieved by the decision of the tax administrator pursuant to this chapter may appeal to the city council by filing a notice of appeal with the city clerk within fifteen days of the serving or mailing of the decision.

(b) The city council shall fix a time and place for hearing such appeal. The city clerk shall give notice thereof in writing to such person by depositing it in the United States mail, postage prepaid, addressed to such person at his or her last known place of address.

(c) The city council shall have authority to determine all questions raised on such appeal at the time of the hearing. No determination so made by the city council shall conflict with any substantive provisions of this chapter.

(d) No interest or penalty provided for in this chapter shall be imposed prior to the completion of the hearing on the appeal and the making of a determination on the appeal by the city council.

3.70.210. PUC Jurisdiction.

Nothing contained in this chapter is intended to conflict with applicable rules, regulations, and tariffs of any service supplier subject to the jurisdiction of the California Public Utilities Commission. In the event of any conflict, the provisions of said rules, regulations and tariffs shall control.

3.70.220. Constitutional Exemptions.

Nothing in this section shall be construed as imposing a tax upon any person or transaction if that imposition would violate the Constitution of the United States, the Constitution of the State of California, or any California statute.

3.70.230. Low Income Senior Discount.

(a) The taxes imposed by this chapter shall be 5.95% for low income seniors. The low income senior discount shall only apply to any service user who: 1) is the head of a household and is sixty-five years old or older; and 2) have total household income that satisfies the most recent "very low income" category for households in the U.S. Department of Housing and Urban Development ("HUD") guidelines for San Bernardino County for the year in which the service user seeks the discount.

(b) The discount granted by this section shall not be granted unless the service user applies for, and the tax administrator grants, a discount in accordance with the provisions of subsection (c) of this section. The discount must be applied for by the service user annually. The discount expires on December 31 of each year automatically. Renewal applications must be submitted 30 days prior to expiration or the customer will be automatically charged the normal tax rate until the discount is approved for that year.

(c) Any person claiming a discount on taxes imposed by this chapter shall file a verified statement of discount on a form prescribed by, and accompanied by such evidence as may be reasonably required by, the tax administrator.

(1) The tax administrator shall, within sixty days of receipt of an application for a discount, determine whether the applicant is entitled to a discount, and if so, notify the service supplier.

(2) A discount granted pursuant to this section shall become effective at the beginning of the first regular billing period which commences after the tax administrator has notified the service supplier that a discount has been granted.

(3) The tax administrator shall notify the service supplier of the termination of any person's right to a discount hereunder, or the change of any address to which service is supplied to any person receiving a discount.

3.70.240. Segregation of Nontaxable Charges.

As used in this chapter, the term "charges" means and includes the value of all consideration provided by a service user in exchange for utility services. If a nontaxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier identifies, by verifiable data, based upon its books and records that are kept in the regular course of business, in a manner that is consistent with generally accepted accounting principles, the nontaxable component of the charge. A service supplier has the burden to prove the proper apportionment of taxable and nontaxable charges.

3.70.250. Effective Date and Sunset.

The taxes imposed by this ordinance shall become effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council. This ordinance shall be of no further force and effect seven years after the effective date.

3.70.260. Verification Audit.

The City shall annually verify that the taxes owed under this Chapter have been properly applied, discounted, collected, and remitted in accordance with this Chapter, and properly expended according to applicable law, and issue a public report of the findings of such verification. The annual verification shall be performed by a qualified auditor and shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The audit of a service supplied shall not be required where the cost of the audit is expected to exceed the additional tax revenue to be derived from the performance of the audit.

3.70.270. Use of Funds.

All funds collected from the utility user tax shall be used locally to benefit the City of Adelanto.

3.70.280. Citizen Oversight.

The City shall form a Citizen Oversight Committee, with the number of members and a meeting schedule to be determined by the City Council, that will periodically review the matters pertaining to the utility user tax and the City's use of funds derived from the tax.

3.70.290. Severability.

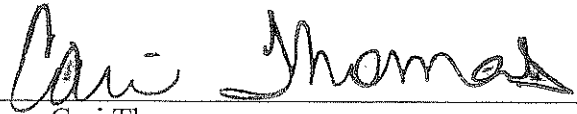
If any section, sentence, clause, phrase or portion of this chapter is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases or portions of this chapter shall nonetheless remain in full force and effect. The people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

3.70.300. Potential Temporary Reduction Of Tax Rate.

Each year in conjunction with the City's review of the verification audit, the Citizen Oversight Committee and the City Council may review the rate of the utility user tax. Following this review, the Citizen Oversight Committee may recommend a temporary reduction of the tax rate and the City Council, in its sole discretion, may reduce the tax rate for a temporary time period based upon the financial condition of the City. The people of the City affirm that the restoration of the rate of the tax to a rate, that is no higher than that set by this Chapter, following any temporary reduction by the City Council does not constitute an increase of the rate of the tax.


Section 2. This Ordinance shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council. The Mayor and City Clerk are hereby authorized to execute this Ordinance to give evidence of its adoption by the voters.

PASSED, APPROVED and ADOPTED this 23rd day of July, 2014.



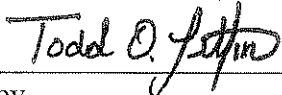
Mayor, Cari Thomas

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney

I, Cindy Herrera, City Clerk of the City of Adelanto, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Adelanto held on the 23rd day of July, 2014, by the following vote:


AYES: Council Members Camargo, Valvo, Mayor Pro Tem Baisden, and Mayor Thomas

NOES: Council Member Wright

ABSTAIN: None

ABSENT: None

ATTEST:



Cindy M. Herrera, City Clerk, City of Adelanto