



UTILITY USERS TAX ADMINISTRATIVE RULES

- I. To assist utility service providers that perform the valuable public service of collecting the City's Utility Users Tax (UUT), City will assume the following responsibilities:
 - A. For existing taxes, and prior to the implementation of a new UUT tax, City will assure the accuracy of its boundary information (including the reflection of the latest annexation and municipal reorganizations) needed for utility billing and tax collection purposes, by offering to review and correct the utility service provider's computerized billing data no less than once a year. City will also make available, upon request by a utility service provider, its current boundary information. The utility service provider shall not be responsible or liable for the collection or payment of any past UUT taxes that were not collected due to the inaccuracy of information provided by the City or due to the City's failure to make appropriate corrections to the utility service provider's billing data to the extent that the City reviews such data at the request of the utility service provider.
 - B. Provide utility service providers with accurate and timely ordinance information, including ordinance amendments, at a central location [website: <http://w.w.w.uutinfo.org>]. City will provide written notice of ordinance changes to persons designated by the utility service provider. In the absence of special circumstances, the utility service provider shall begin implementation of the UUT tax change within sixty (60) days from the date on which the utility service provider receives the written notification from the City. If the 60th day is not the first day of a month, then the utility service provider shall implement the changes no later than the first billing cycle of the month following the month in which the 60th day occurs. To "begin implementation" means to calculate and place the UUT tax in the customer billing.
 - C. As provided in Public Utilities Code Section 799, assume sole responsibility for defending any legal challenge regarding the validity of the UUT ordinance, any part thereof, or any collection thereunder, and shall defend and hold harmless any tax collecting agent named in such action for properly performing its legal obligations set out in the UUT ordinance.
 - D. Reimburse utility service providers for the reasonable costs associated with an extraordinary audit request (including but not limited to significant modifications to existing billing software in order to respond to an audit request).
 - E. Take reasonable steps to assure that all utility service providers, including new market entrants, are correctly applying and collecting the UUT tax.
 - F. To the extent feasible, permit utility service providers to follow the same payment and remittance protocol for UUT collections that is generally employed by

other California public agencies, provided that such protocol is agreed to and reflected in these administrative rules by the Tax Administrator. For example:

"The amount of tax collected in one month shall be remitted by U.S. Mail, to the Tax Administrator, and must be received by the Tax Administrator on or before the 20th day of the following month; or, at the option of the person required to collect 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 customer(s) of the service supplier, which must be received by the Tax Administrator on or before the 20th day of the following month."

UUT taxes may be remitted by electronic funds transfer (EFT) in lieu of U.S. Mail, provided that such protocol is agreed to by the Tax Administrator. For example:

"The utility will initiate an Automated Clearing House (ACH) credit transfer on the due date that will be received by the City's bank on the following business day. The ACH will be in CCP format to identify the type of payment being made. A monthly written report of amounts remitted, including amounts billed, write-offs, unpaid liability, adjustments and net tax payable will be provided by U.S. Mail."

G. Following the effective date of these administrative rules, the Tax Administrator shall notify the utility service providers within the City that they may request that the Tax Administrator and City Attorney render a determination of the application of the UUT tax to their various existing services. If such request is made within ninety (90) days of the notice, then any determination by the Tax Administrator and the City Attorney shall apply prospectively. The Tax Administrator shall give the utility service provider at least a 60 (sixty) day written notice following the determination of tax application before implementation of such changes shall be required. If the 60th day is not the first day of a month, then the utility service provider shall implement the changes on the first day of the month following the month in which the 60th day occurs. To "begin implementation" means to calculate and place the UUT tax in the customer billing. The Tax Administrator and City Attorney shall not be required to render a determination with prospective effect under this subsection where a utility service provider fails to apply the UUT tax at all, or fails to apply the tax to a service which is predominantly viewed by the utility service provider's industry as being subject to the UUT tax or, in the case of telecommunication services, has been directly determined by the IRS within the past six months or more, to be subject to the federal excise tax.

H. Where new utility technologies are employed or new utility services are being offered, a utility service provider may request that the Tax Administrator and City Attorney render a determination of applicability within ninety (90) days of providing such services or technologies. Upon rendering a determination of applicability, the Tax Administrator shall seek prospective application of the UUT tax ordinance to such technologies or services. The Tax Administrator shall give the utility service provider at least a 60 (sixty) day written notice before

implementation of such changes shall be required. If the 60th day is not the first day of a month, then the utility service provider shall implement the changes on the first day of the month following the month in which the 60th day occurs. To "begin implementation" means to calculate and place the UUT tax in the customer billing.

I. Regarding Paragraphs G. and H. above, the Tax Administrator and City Attorney may participate in an advisory committee, comprised of representatives of public agencies with UUT ordinances, to develop and recommend to such public agencies (after meeting and conferring with utility representatives): uniform applications of the UUT tax to various utility services and technologies; uniform implementation protocols; and appropriate amendments to UUT ordinances to reflect industry, regulatory, and technological changes.

J. Tax Administrator and City Attorney shall take reasonable steps to notify all service providers providing similar services of any determination made under paragraph G. or H.

II. The Tax Administrator has the right and obligation to assure fair and reasonable compliance with the UUT ordinance. Due to the complexity of utility services, technologies, and tax administration, the Tax Administrator may require special outside expertise to assist in performing compliance review of the UUT ordinance. Utility service providers have a legitimate interest in assuring that such outside firms maintain the confidentiality of utility customer information and conduct their compliance reviews in a professional and efficient manner. The Tax Administrator's use of special outside expertise shall therefore be subject to the following rules:

A. The outside firm will provide, at the beginning of each and every audit engagement, a letter or resolution from the City to the service supplier that identifies the outside firm as an authorized agent of the City.

B. The outside firm will execute a non-disclosure agreement (approved by the City Attorney) in which the outside firm agrees to maintain the confidentiality of customer information and not to use individual customer information for any purpose other than the UUT compliance review of this City.

C. The outside firm shall fully disclose to the City any potential conflict of interest (e.g., prior or proposed representation of private utility customers within the City).

D. The outside firm shall not make any data requests of a utility service provider unless the outside firm first receives the review and approval of the Tax Administrator of said request prior to the request being made to the utility service provider.

E. The outside firm is authorized to perform a compliance review (including sampling audits and computerized reviews) which, in its professional opinion, is

reasonably necessary to perform its contractual obligation to the City. If a utility service provider refuses to cooperate in connection with such compliance review, the outside firm shall immediately advise the Tax Administrator so that the Tax Administrator may take appropriate remedial steps.

F. The outside firm will use its best efforts to accurately identify all errors, whether such corrections are in favor of the customer, the City, another public agency, or the utility service provider.

G. The Tax Administrator shall make available to the utility service provider a copy of the draft compliance report prepared by the outside firm regarding such utility service provider. The utility service provider shall be afforded an opportunity (at least thirty (30) days) to respond to any aspect of the draft report before such report becomes final. The final report will identify and address all substantive written comments on the draft report submitted by the utility service provider.

OPTIONAL III. Dispute Resolution Process

If a utility disputes an application of these administrative rules, an interpretation of the UUT ordinance, or any other action by the Tax Administrator (including its outside firm), the protesting utility may request to the Tax Administrator that the matter be submitted to non-binding arbitration within thirty (30) days. If the matter is not resolved within thirty (30) days following the arbitration decision, the protesting utility may request that the matter be set for a de novo hearing before the City Council at the next available City Council meeting.