

ORDINANCE NO. ____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF DESERT HOT SPRINGS, AMENDING CHAPTER 3.28 (UTILITY USERS TAX) OF THE CITY OF DESERT HOT SPRINGS' MUNICIPAL CODE EXTENDING THE DURATION OF THE EXISTING, VOTER-APPROVED UTILITY USERS' TAX, WITHOUT ANY INCREASE, UNTIL ENDED BY VOTERS.

THE PEOPLE OF THE CITY OF DESERT HOT SPRINGS ORDAIN AS FOLLOWS:

Section 1. ELECTIONS CODE SECTION 13119 STATEMENT

That the Utility Users Tax currently produces annually approximately \$2,831,815 of revenue for the Public Safety and Debt Service Funds, which will remain the same since there will be no increase in or expansion of the Utility Users Tax rates, until subsequently repealed by voters.

Section 2. AMENDMENT TO CHAPTER 3.28

That Chapter 3.28 of the Desert Hot Springs Municipal Code shall be amended to read as follows (the only edit is shown in bold and underline in Section 3.28.210 "Expiration date"):

3.28.010 Definitions.

Except where the context otherwise requires, the definitions of the words and phrases set forth in this section shall govern the application and administration of the provisions of this chapter.

"City" means the City of Desert Hot Springs.

"Cogenerator" means any corporation or person employing cogeneration (as defined in Public Utilities Code Section 218.5) for producing power for the generation of electricity for self use or sale to others from a qualified cogeneration facility (as defined in the federal Public Utility Regulatory Policies Act of 1978 and federal regulations thereunder).

"Electrical corporation" means a corporation or person as defined in Public Utilities Code Section 218.

"Exempt wholesale generator" means the same meaning as set forth in the Federal Power Act (15 United States Code Sections 79z-5a) and the federal regulations thereunder.

“Gas” means natural or manufactured gas or any alternate hydrocarbon fuel, including propane, which may be substituted therefor.

“Gas corporation” means a corporation or person as defined in Public Utilities Code Section 222.

“Intrastate telecommunication” means all telecommunications regardless of routing that either (1) originate in the City and terminate in the state, or (2) originate in the state and terminate in the City, where, in either instance, the service or billing address of the service user is in the City.

“Interstate telecommunication” means all telecommunications that either (1) originate in the City and terminate in another state, or (2) originate in another state and terminate in the City, where, in either instance, the service or billing of the service user is in the City.

“International telecommunication” means all telecommunications that either (1) originate in the City and terminate outside of the United States, or (2) originate outside of the United States and terminate in the City, where, in either instance, the service or billing of the service user is in the City.

“Month” means a calendar month.

“Non-utility supplier” means: (1) a service supplier, other than an electrical corporation franchised to serve within the City, which generates electricity in capacities of 50 kilowatts, or more, for its own use or for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity; (2) an electricity broker, marketer, aggregator, pool operator, or other supplier of electricity which is not franchised by the City to use or occupy any public right-of-way, which sells or supplies electricity or supplemental services to electric service users within the City; and (3) a gas supplier, aggregator, marketer or broker, other than a gas corporation franchised to serve within the City, which sells or supplies gas to users within the City.

“Person” means, without limitation, any natural individual, firm, trust, common law trust, estate, joint stock company, joint venture, limited liability company, corporation (foreign or domestic), cooperative, or receiver, trustee, guardian or other representative appointed by order of any court.

“Public safety” means, animal control services, code enforcement services, fire protection services and police protection services, as defined in municipal code Section 3.32.010.

“Service(s)” refers to the utility and other compensated activities provided by a service supplier to a service user. The use of the word “service” as used in a particular section of this chapter refers to the particular utility and other compensated activities which are paid for by the service user to the service.

“Service supplier” means any entity or person required to collect (or self-collect) and remit any tax imposed under this chapter.

“Service user” means a person required to pay a tax imposed under the provisions of this chapter. In general, a service user is the person in whose name a service supplier delivers the services and other compensation activities provided by a service supplier and who is responsible for paying for the cost of such services.

“State” means the State of California.

“Tax Administrator” means the Finance Director of the City.

“Telecommunication services” means and includes, in addition to the meaning ordinarily and popularly ascribed to it, without limitation, the transmission of messages or information (including, but not limited to voice, data, facsimile, video, text) through the use of the local, toll and wide area telephone service; telegraph, teletypewriter and computer services; cellular telephone services; or any other transmission of messages or information by electronic or similar means through interconnected service with the public switched network (as those terms are commonly used in the Federal Communications Act and the regulations of the Federal Communications Commission) by wire, cable, fiber-optics, light waves, laser, microwaves, radio waves, switching facilities, satellite or similar facilities, whether such service is provided by a telephone corporation, competitive access provider, private communication service provider, or any other person. Telecommunication services shall include access services, and any other services that are an adjunct to the transmission of messages or information described above. Telecommunication services shall not include land mobile services or maritime mobile services, which are not interconnected with the public switched network.

“Telephone corporation” means a corporation or person as defined in Public Utilities Code Section 234(t).

“Video services” means any and all services related to the providing of video programming (including origination programming), or communications (including two-way communications), regardless of the content of the video programming or communications, and shall include the leasing of channel access, but shall not include services for which a tax is paid under Section 3.28.020.

“Video services provider” means any person or corporation, partnership, association, joint stock company, joint venture, limited liability company or other entity providing one or more channels of video programming or communications (including the leasing of channel access to provide such video programming or communications) to an address in the City, including to a business, home, condominium or apartment, where some fee is paid, whether directly or as 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 services provider includes, but is not limited to, multichannel video programming distributors (as defined in 47 U.S.C. Section 522(12)), providers of cable television, master antenna television, satellite master antenna television, direct broadcast satellite, multichannel multipoint distribution services and other providers of video programming or communications (including two-way communications), whatever their technology.

“Water and sewer services provider” means Mission Springs Water District and any successor entity providing water and sewer services to an address in the City, including to a business, home, condominium or apartment.

3.28.020 Telecommunication services user tax.

A. There is approved, imposed and levied by the City a tax upon every person, other than a telephone corporation, using interstate, international, and/or intrastate telecommunication services in the City. The tax approved and levied by this section shall be at the rate of seven percent of the charges billed for such services by the telecommunications service supplier, and shall be paid by the service user/person. The tax shall not be based on network usage-related charges for cellular telephone services and other similar mobile services, for which the service provider cannot, as a practical matter, determine the origination or termination of the telecommunication. The Tax Administrator may adopt administrative rules for assuring a reasonable and consistent allocation of the monthly cellular billing between network usage-related charges and non-usage-related charges. The word “charges” as used in this section shall also include the value of any other services, credits, property of every kind or nature, or other consideration payable to the service user to the service supplier.

B. The following charges (whether or not they are determined to be exempt from or not subject to a federal excise tax) shall be included in the calculation of the tax amount payable under this section:

1. Charges to a service user by a hotel or motel for telecommunication services used in the City when such charges are incidental to the right of occupancy in such hotel or motel. Collection of the tax shall be the responsibility of the hotel or motel;

2. Charges to a service user in the City by a telecommunication service supplier for providing access to a public long distance network, by any means, including but not limited to a virtual private network, private channel or private line, or radio wave or microwave, whether such access charges are determined as a flat periodic amount, on the basis of distance and/or elapsed transmission time, or in any other manner; and

3. Charges to a service user in the City by a telecommunication service provider for providing access to an interactive subscriber network, which is available to the general public through the public switched network, among other means.

C. The tax approved by this section shall be collected from the service user by the service supplier providing the telecommunication services (or by the motel or hotel owner in cases covered by subsection (B) (1) of this section). The amount of the tax collected in one month shall be remitted by United States mail to the Tax Administrator, and must be received by the Tax Administrator on or before the last day of the following month.

D. To prevent actual multi-jurisdictional taxation of the telecommunication services subject to the tax approved by 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 service, shall be allowed a credit against the tax approved by this section to the extent of the amount of such tax legally imposed in such other state or local agency; provided, however, the amount of credit shall not exceed the amount of the tax owed to the City under this section.

3.28.030 Electricity service users tax.

A. There is approved, imposed and levied by the City a tax upon every person using electricity, including cogenerated electricity, in the City. The tax approved and levied by this section shall be at the rate of seven percent of the charges made for such electricity (or cogenerated electricity, as applicable) and for any supplemental services provided by a service supplier or non-utility supplier to a service user related to the provision of electricity. The tax shall be paid by the service user/person paying for such electricity or supplemental services.

B. The word "charges," as used in this section, shall include charges payable by the service user for: (1) metered energy; (2) minimum charges for services, customer charges, services charges, demand charges, standby charges, fuel or other cost adjustments, stranded investment or competitive transition charges, and all other annual and monthly charges or surcharges for electricity services or programs, which are authorized by the State Public Utilities Commission, whether or not such charges appear on a bundled or line item basis on the customer billing. The word "charges for supplemental services related to the

provision of electricity” as used in this section shall include charges payable by the service user for wheeling, transmission (including congestion charges), distribution and stand-by, reserves, firming, ramping, voltage, support, regulation, emergency or other similar services. The word “charges” as used in this section shall also include the value of any other services, credits, property or every kind or nature, or other consideration payable by the service user to the service supplier in exchange for the electricity or services related to the provision of such electricity. The word “charges” as used in this section shall not include charges made for electricity sold for the production or distribution of water by a public utility or governmental agency.

C. As used in this section, the words or term “using electricity” shall not be construed to mean the storage of electrical energy in a battery that a person owns or possesses for use in an automobile or other machinery or device apart from the premises upon which the electricity was received; provided, however, the term shall include the receiving of such electricity for the purpose of using it in the charging of batteries; nor shall the term include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the City for resale.

D. The tax approved in this section shall be collected from the service user by the electricity service supplier or non-utility supplier who provides such service. The amount of tax collected in one month shall be remitted by United States mail, to the Tax Administrator, postmarked on or before the last day of the following month.

E. The tax approved by this section on electricity provided to the service user by a self-production or by a non-utility supplier or an electric utility not otherwise collecting and remitting the tax to the Tax Administrator under this section in the case of one or more of its customers shall be collected and remitted in the manner set forth in Section 3.28.090(C).

F. The tax approved, imposed and levied by this section on cogenerated electricity shall be calculated at the rate specified in subsection A of this section on the value of the cogenerated electricity consumed by the service user in the City. For the purpose of this subsection, the value of cogenerated electricity consumed by the service user in the City shall be determined by reference to the electric utility suppliers combined “Avoided Cost Energy Pricing and Avoided Cost Capacity Pricing” reporting procedure which is filed with the State Public Utilities Commission or by such successor formula authorized by the State Public Utilities Commission. The cogenerated electricity service user shall pay the tax approved by this section to the Tax Administrator in the manner provided in Section 3.28.090(C).

If the cogenerator sells the energy for consumption by other service users in the City, the value of the cogenerated electricity sold to each such service user in the

City shall be based upon the actual charges made for such service, and the amount of the tax approved by this section shall be collected from the service user by the cogenerator/non-utility supplier. The cogenerator shall install and maintain an appropriate metering system for measuring the number of kilovolts of cogenerated electricity provided to the service user such that the cogenerator and the Tax Administrator may verify compliance with the obligation of the service user to pay the tax amount approved by this subsection. The amount of tax collected in one month shall be remitted by United States mail, to the Tax Administrator, and must be received by the Tax Administrator on or before the last day of the following month. The tax on cogenerated electricity provided by a non-utility supplier shall be collected and remitted in the manner set forth in Section 3.28.090(C).

Whether the cogenerator consumes or sells the cogenerated electricity, the service user of the cogenerator shall also pay the tax on all "charges for supplemental services" related to the provision of cogenerated electricity which includes the analogous matters covered in the definition of this term as found in subsection (B)(2) of this section.

3.28.040 Water and sewer service user tax.

A. There is approved, imposed and levied by the City a tax upon every person using water and sewer services in the City delivered to a service user by a water and sewer services provider. The tax approved, imposed and levied by this section shall be at the rate of seven percent of the charges made for such water and sewer services and shall be paid by the person using such water and such sewer services. The word "charges" as used in this section shall include: (1) the commodity charges payable by a service user for purchased water; (2) water transportation charges (including interstate charges), customer charges, minimum charges, annual and monthly charges and any other charges for water and sewer services which a water and sewer services provider is authorized to impose.

B. All taxes on charges for water and sewer services approved by this section shall be collected from the service user by the water and sewer services provider. The amount of tax collected in one month shall be remitted by United States mail, to the Tax Administrator, and must be received by the Tax Administrator on or before the last day of the following month.

3.28.050 Gas services user tax.

A. There is approved, imposed and levied by the City a tax upon every person using gas in the City, which is delivered to a service user through a pipeline distribution system or by mobile transport. The tax approved, imposed and levied by this section shall be at the rate of seven percent of the charges made for such gas, including all services related to the storage, transportation and delivery of

such gas, and shall be paid by the person using such gas; provided, however, that the tax shall not apply to any charge for gas storage services when the service supplier cannot, as a practical matter, determine the location where such stored gas is ultimately used. The word "charges" as used in this section shall include: (1) the commodity charges payable by a service user for purchased gas, or the cost of gas owned by the service user, which is delivered through a gas pipeline distribution system or by mobile vehicle transport; (2) gas transportation charges (including interstate charges), customer charges, minimum charges, annual and monthly charges and any other charges for gas services or programs, which are authorized by the State Public Utilities Commission or the Federal Energy Regulatory Commission. The words "cost of gas owned by the service user" as used in this section shall include 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. The word "charges" as used in this section shall also include the value of any other services, credits, property of every kind or nature, or other consideration payable by the service user in exchange for the gas or services related to the delivery of such gas.

B. There shall be excluded from the base on which the tax imposed in this section is computed: (1) charges payable by a service user for gas which is to be resold and delivered through a pipeline distribution system or by mobile vehicle transport; (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 payable by a service user at the time of sale of propane or other alternate hydrocarbon fuel which is to be used by the service user in motor vehicles or charges for propane or other alternate hydrocarbon fuels payable by the service user where the quantity of the propane or alternate hydrocarbon fuel at each time of delivery is 25 gallons or less; and (5) charges made for gas used by a non-utility supplier to generate electrical energy for its own use or for sale to others provided the electricity so generated is subject to the tax in accordance with this section.

C. The tax that is calculated on charges for gas provided by self-production or by a non-utility supplier not otherwise remitting the tax to the Tax Administrator under this section shall be collected and remitted in the manner set forth in Section 3.28.090(C). All other taxes on charges for gas approved by this section shall be collected from the service user by the gas service supplier. The amount of the tax collected in one month shall be remitted by United States mail to the Tax Administrator, and must be received by the Tax Administrator on or before the last day of the following month.

D. Where a gas service supplier is providing commodity transportation service to a service user but the service user has purchased the commodity from a third

party, then the commodity transporting service supplier shall collect the tax imposed by this section from the service user, which shall be calculated as follows:

1. Seven percent of the commodity transportation charges, including interstate transportation charges to the extent not included in the commodity charge, transition charges or any other charges for gas services or programs, which are authorized by the State Public Utilities Commission or the Federal Energy Regulatory Commission; plus
2. Seven percent of the imputed value of the transported commodity (net of the amount described in subsection (D) (1) of this section) as calculated in accordance with Public Utilities Code Section 6353(a), (b) and (c), or at the election of the service user, seven percent of the actual charges for the transported commodity (net of the amount described in subsection (D) (1) of this section).

E. If the service user elects to pay the tax approved by this section based upon the actual charges for the transported commodity as provided in subsection (D)(2) of this section, the service user must:

1. Give 30 days prior written notice to the Tax Administrator of the exercise of such an election; and
2. Submit to the Tax Administrator an adjusted payment or request for credit, as appropriate, within 60 days following each calendar quarter to reflect the difference between the tax based upon the imputed value in accordance with the Public Utilities Code Section 6353(a), (b) and (c) and the actual charges of the transported commodity. A credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill relating to the tax imposed by this section that becomes due.

3.28.060 Video service user tax.

A. There is approved, imposed and levied by the City a tax upon every person using video services from a video services provider. The tax approved and levied by this section shall be at the rate of seven percent of the charges made for such service. The tax shall be paid by the person paying for such video services.

B. The tax approved in this section shall be collected from the service user by the video services provider. The amount of tax collected in one month shall be remitted by United States mail, to the Tax Administrator, and must be received by the Tax Administrator on or before the last day of the following month.

3.28.070 Delinquency—Interest—Penalty.

A. Taxes collected by a service supplier from a service user which are not remitted to the Tax Administrator on or before the due date provided in this chapter are delinquent. Taxes owed by a service user subject to Section 3.28.090(C) 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 and the corresponding tax amount must be received by the Tax Administrator on the first regular business day of the City following a Saturday/Sunday, or legal holiday.

B. Civil penalties for delinquency in either the filing of a tax return and/or the remittance to the City of any tax amounts collected by a service supplier shall attach and be paid by the service supplier at the rate of 15 percent of the total tax amount imposed by the provision of this chapter during the period of such delinquency.

C. The Tax Administrator shall have the power to impose additional civil penalties upon any service supplier or other person required to collect and remit tax amounts pursuant to the provisions of this chapter for fraud and negligence in reporting or remitting to the City of any tax amounts at the rate of 15 percent of the tax amount imposed by the City, or as recomputed by the Tax Administrator during the period of time that such fraud or negligence is alleged to have occurred.

D. Each penalty amount imposed pursuant to the provisions of this section shall become a part of the tax amount required to be remitted to the Tax Administrator.

E. 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 service supplier or other person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, the Tax Administrator may relieve such service supplier or other person of any further obligation to collect the tax amounts due under this chapter from certain named service users for specific billing periods. Whenever the service user has failed to pay the amount of the tax owed for a period of two or more consecutive billing periods, the service supplier shall be relieved from the further obligation to collect the tax amounts owed by such user which correspond to the period of such delinquency; provided, however, that the service supplier has first provided the City with the name and address of such service user and the amount of the tax owed under the provisions of this chapter.

F. The Tax Administrator shall notify each non-paying service user as identified in subsection E of this section that the Tax Administrator has assumed the responsibility to collect the tax amounts due for the stated periods and demand payment of such taxes. The notice shall be served on the service user at the address to which billing was made by the service supplier or other person required to collect the tax, or, should the service user have changed its address,

to the last known address. If the service user fails to remit the tax to the Tax Administrator within 15 days from the date of the mailing of the notice, a penalty of 25 percent of the amount of the tax set forth in the notice shall be imposed, but not less than five dollars. The penalty shall become a part of the tax required to be paid.

G. The Tax Administrator may make an assessment for any tax amount not paid or remitted by a service user or other person required to pay or remit such tax amount to the City. A notice of the assessment shall refer briefly to the amount of the taxes and penalties imposed and the time and place when such assessment shall be submitted to the City Council for confirmation or modification. The City Clerk shall mail a copy of such notice to the service supplier and to the service user at least ten days prior to the date of the hearing and shall post such notice for at least five continuous days prior to the date of the hearing. Any interested party having any objections may appear and be heard at the hearing provided his or her objection is filed in writing with the City Clerk prior to the time set for the hearing. At the time fixed for considering such assessment, the City Council shall hear the same, together with any objections filed as provided in this subsection, and thereupon may confirm or modify such assessment by motion. Upon the confirmation or modification of an assessment, the City may seek to recover the amount of the assessment by any lawful means, including but not limited to the bringing of an action against the person responsible for payment of the amount.

3.28.080 Actions to collect.

The amount of any tax required to be paid by a service user under the provision of this chapter shall be deemed a debt owed by the service user to the City. Any amount of a tax collected from a service user by a service supplier which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the service supplier. Any person owing money to the City under this provisions of this chapter shall be liable to pay such an amount upon entry of judgment in an action brought in the name of the City for the recovery of such sum, including reasonable attorneys' fees, costs and interest.

3.28.090 Duty to collect—Procedures.

The duty of each service supplier (including certain direct purchasers of electricity or gas services) to collect and remit to the City the tax amounts approved and levied by any provision of this chapter from each service user who is a customer of the service supplier shall be performed as follows:

A. The tax shall be collected by the service supplier insofar as practicable at the same time as, and along with, the charges made in accordance with the regular service billing practice of the service supplier. In the event that an amount paid by a service user to a service supplier includes less than the full amount of the charge and tax imposed by this chapter which accrued during the billing period,

such amount and any subsequent payments by a service user shall be applied to the utility service charges: first, (or net of the amount of the tax imposed under this chapter) until such other charges of the service supplier have been fully satisfied; and second, any remaining balance shall be applied to the tax amount due from the service user under this chapter. In those cases where a service user has notified the service supplier of a refusal to pay a tax amount approved by this chapter, Section 3.28.070(F) shall apply.

B. The duty of the service supplier to collect the tax approved by this chapter from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this chapter. Where a service user receives more than one billing from the service supplier relating to one or more billing periods or relating to one or more separate service accounts, the duty of the service supplier to collect the amount of the tax approved by this chapter from the service user shall arise separately for each billing period and/or for each separate account payable by that service user.

C. Any service user subject to the tax imposed by Section 3.28.030 or Section 3.28.050 of this chapter, which produces electricity or gas for self-use, as applicable, or any service user who purchases gas or electricity directly from a non-utility supplier which does not collect the applicable tax amount approved and levied by this chapter from the service user, or any such service user who does not otherwise pay the full tax due for the use of such gas or electricity (as applicable), shall report such fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within 30 days of use of such gas or electricity. In lieu of paying the actual amount of any of the taxes referenced in the first sentence of this section, the service user may, at its option, remit to the Tax Administrator within 30 days of such use an estimated amount of the tax payable based upon an average monthly estimated payment pattern for use of comparable amounts of gas or electricity (as applicable), provided that the service user shall submit an adjusted payment or request for credit, as appropriate, to the Tax Administrator within 60 days following the end of each calendar quarter. A credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due. The Tax Administrator may require the service user to identify its non-utility supplier and provide, subject to audit, invoices, books of account or other satisfactory evidence documenting the quantity of gas or electricity used and the cost thereof. If the service user is unable to provide satisfactory evidence relating to the calculation of the tax, or, if the administrative costs of calculating the tax, in the opinion of the Tax Administrator, is excessive, the Tax Administrator may determine the amount of the tax payable by applying the tax rate to the equivalent service charges which the service user would have incurred if the gas or electricity used had been provided by a gas corporation or electrical corporation, as applicable, which is a primary provider of gas or electricity within the City. Rate schedules for this purpose shall be prepared by the Tax Administrator.

D. Nothing contained in this chapter shall prohibit the City from directly billing any service user or directly collecting from any service user the amount of any tax approved by this chapter in accordance with such direct tax billing and/or direct tax collection procedure as may be provided by rule or regulation of the Tax Administrator approved by resolution of the City Council.

E. Each service supplier (and each service user subject to subsection C of this section) shall prepare and file a written tax return to the Tax Administrator on forms provided by the Tax Administrator. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator once per month or on such other schedule of reporting and payment as may be authorized by the Tax Administrator. The Tax Administrator is authorized to specify such additional information as deemed necessary to determine if the tax is being calculated and collected by the service supplier in accordance with this chapter. Returns are due immediately upon cessation of business for any reason.

3.28.100 Additional powers and duties of Tax Administrator.

A. The Tax Administrator shall have the power and duty, and is directed to enforce each and all of the provisions of this chapter.

B. 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 imposed by this chapter. A copy of such rules and regulations shall be on file in the Tax Administrator's office.

C. The Tax Administrator may enter into administrative agreements to vary from the strict requirements of this chapter, so that collection of any tax imposed herein may be made in conformance with the billing procedures of a particular service supplier (or service user subject to Section 3.28.090(C)) as long as such agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter. A copy of each such agreement shall be on file in the Tax Administrator's office.

D. The Tax Administrator, or designee, shall provide prompt written notice to all service suppliers of any change in the City's boundaries following any annexation or other change in the City's boundaries. Such notice shall set forth the revised boundaries by street and address along with a copy of the final annexation order from the Local Agency Formation Commission.

3.28.110 Records.

A. It shall be the duty of every person required to collect and remit to the City any 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 as he or she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator, or the Tax Administrator's designated representative, shall have the right to inspect at all reasonable times. The Tax Administrator or the Tax Administrator's designated representative, is authorized to execute a nondisclosure agreement approved by the City Attorney to protect the confidentiality of customer information.

B. The Tax Administrator, or the Tax Administrator's designated representative, may request from a person providing transportation services of gas or electricity to service users within the City a list of the names and address of its transportation customers within the City pursuant to Section 6354(e) of Chapter 2.56 of Division 3 of the State Public Utilities Commission.

C. If any person subject to record-keeping under this section unreasonably denies the Tax Administrator, or the Tax Administrator's designated representative, access to such records, then the Tax Administrator may impose a penalty of \$500 on such person for each day following the initial date that the person refuses to provide such access.

3.28.120 Refunds.

Whenever the amount of any tax imposed under this chapter has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator, it may be refunded as provided in this section.

A. The Tax Administrator may refund any tax amount 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, provided that no refund shall be paid under the provisions of this section unless the claimant has submitted a written claim for a refund of the tax amount paid to the Tax Administrator within one year of the date of the overpayment or the date of erroneous or illegal collection of the tax. Such a tax refund claim must clearly establish claimant's right to the refund by written record showing entitlement thereto. The submission of a written tax refund claim, which complies with the claim filing procedures of Government Code Section 910, et seq., shall be a prerequisite to the initiation of any legal proceeding to recover a refund of any tax amount or assert any other challenge to the validity of any tax approved and levied by this chapter. The City Council shall act upon each tax refund claim within the time period set forth in Government Code Section 910.4. If the City Council fails or refuses to act on a tax refund claim within the time prescribed by Government Code Section 910.4, 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 is required to act upon the claim as provided in Government Code Section 910.4. It is the intent of the City Council that any tax refund claim which may have arisen prior to the commencement of the one year tax refund claim period of this section and which is not otherwise

barred by the applicable statute of limitation or claim procedure found elsewhere in this chapter shall be filed with the Tax Administrator in accordance with the tax refund claim procedure applicable to any such claim arising prior to the operative date of this chapter.

B. Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the State Public Utilities Commission or a court of competent jurisdiction, orders the service supplier to pay a refund to one or more service users of charges for past services, the taxes paid by each such affected service user pursuant to this chapter on the amount of such refunded charges shall also be refunded to each such affected service user by the service supplier; provided, however, the service supplier shall be entitled at its option to claim a credit for the amount of such refunded tax against the amount of the tax which is due and payable to the City with the next monthly return following the date of payment of such refunded charges for past services.

3.28.130 Termination or suspension of taxes by resolution of the City Council.

Upon written notification from the Tax Administrator that the City Council has authorized a termination or suspension of any tax approved under this chapter, each service supplier shall implement the direction of the City Council terminating or suspending the tax for the period of time indicated in such a written notice, commencing with the first full billing period which occurs after the effective date of such an action authorized by resolution of the City Council.

3.28.140 Exemptions.

The taxes imposed by this chapter shall not apply to:

A. Any person if imposition of such tax upon that person would be in violation of the Constitution of the United States or the Constitution of the state;

B. The City;

C. Charges related to late payments, returned checks and collection charges.

The City Council may by resolution establish other classifications of persons or services which may be declared to be exempt, in whole or in part, from the levy, payment and collection of any tax imposed by this chapter. Such classifications shall be described in the resolution of the City Council, along with a description of the duration of the exemption. The Tax Administrator shall annually prepare a list of the persons exempt from the provisions of subsection A of this section and furnish a copy thereof to each person required to collect or to self-collect and to remit a tax as imposed by this chapter.

3.28.150 Maximum tax rate.

No person shall pay a tax of more than seven percent to the City of any services subject to a tax under this chapter, nor shall any person pay in the aggregate more than seven percent in taxes to the City of all services subject to tax under this chapter.

3.28.160 Temporary reduction in the rate of any tax approved in this chapter.

Each of the tax rates approved, imposed and levied by Sections 3.28.020 through 3.28.060 may be temporarily reduced and levied at a rate of less than seven percent by resolution of the City Council. Each such temporary reduction of the tax rate shall be in effect and may be levied at a reduced rate only for the period of time authorized in the City Council resolution and upon the end of the temporary period of the tax rate reduction authorized in the resolution, the tax shall be levied at the full amount of the rate set forth in Sections 3.28.020 through 3.28.060. Neither a temporary reduction in a tax rate approved by a resolution of the City Council nor the reinstitution of the rate set forth in Sections 3.28.020 through 3.28.060 shall require the approval of the voters of the City.

3.28.170 Any amendment to increase a tax rate set forth in Sections 3.28.020 through 3.28.060 requires further voter approval.

Any amendment of one or more sections of this chapter to increase the rate of a tax above the rate of the tax set forth in Sections 3.28.020 through 3.28.060 shall not take effect until after an ordinance proposing such an increase in a tax rate has first been approved by a majority vote of the electors of the City at an election called for such a purpose in a manner authorized by law.

3.28.180 Use of tax revenue.

All proceeds of the tax levied and imposed hereunder shall be accounted for and paid into two special funds. Thirty-five and seventy-one one hundredths (35.71) percent of the proceeds generated by the tax shall be deposited into a fund to be used solely for debt reduction; the other sixty-four and twenty-nine one hundredths (64.29) percent shall be deposited into a fund to be used solely for the provision of public safety services.

3.28.190 Annual reports to the City Council regarding the tax revenues received.

A. Commencing on October 1, 2001 and thereafter on each October 1st until such time as the taxes approved and levied by this chapter may be terminated or suspended, the Finance Director of the City shall submit a written report to the City Council which includes the following information:

1. a. Total tax revenue received and expended by the City under Section 3.28.020 as of June 30th of the fiscal year preceding the date of the report,

- b. Total tax revenue received and expended by the City under Section 3.28.030 as of June 30th of the fiscal year preceding the date of the report,
- c. Total tax revenue received and expended by the City under Section 3.28.040 as of June 30th of the fiscal year preceding the date of the report,
- d. Total tax revenue received and expended by the City under Section 3.28.050 as of June 30th of the fiscal year preceding the date of the report,
- e. Total tax revenue received and expended by the City under Section 3.28.060 as of June 30th of the fiscal year preceding the date of the report;

2. An appropriately detailed summary of the amount of taxes which have been refunded, adjusted or modified as authorized under this chapter as of June 30th of the fiscal year preceding the date of the report;

3. An appropriately detailed summary of tax collection and administration costs and expenses incurred by the City, and penalty and interest amounts, if any, received by the City under this chapter as of June 30th of the fiscal year preceding the date of the report; and

4. A recommendation of the Director of Finance of the City as to whether an adjustment to the rate of any tax approved and levied under this chapter is indicated in light of the financial condition of the City as described in the report; provided, however, that any recommendation to increase any one or more of the tax rates to a new rate (or rates) which is higher than the rate or rates approved and levied under this chapter shall not be deemed to empower the City Council to approve a higher tax rate than seven percent on any service without first obtaining approval by a majority vote of the electors of the City at an election called for such a purpose in a manner authorized by law.

B. The City of Desert Hot Springs existing Finance Advisory Commission shall, in addition to the Commission's existing responsibilities, serve as an advisory committee to the City Council with respect to the receipt and expenditure of funds under Sections 3.28.020 through 3.28.060. In that capacity, the Finance Advisory Committee shall at least annually prepare and provide to the City Council a review of the expenditures of funds generated by Sections 3.28.020 through 3.28.060.

C. By no later than December 31st of each year, the City's independent auditors shall complete a compliance and internal control audit report for the funds received under Sections 3.28.020 through 3.28.060. Such report shall review whether the tax revenue is collected, managed and expended in accordance with this chapter.

3.28.200 Expansion of scope of tax.

The tax imposed pursuant to this chapter may be imposed and levied by resolution of the City Council on a utility service or on utility services additional to those set forth in Sections 3.28.020 through 3.28.060; provided however, that the

scope of the tax imposed and levied by this chapter shall not be expanded if the estimated total revenues to be derived from the expanded tax exceed the total revenues derived from the tax in fiscal year 2000-2001 ("base amount"), which base amount shall be adjusted annually by that percentage which is 90 percent of the total percentage of change in the United States Department of Labor, Bureau of Labor Statistics' Gas (piped) and Electric Consumer Price Index For All Consumers Urban for the Riverside/San Bernardino Area calculated on the basis of the two consecutive and most recent completed years for which data is available from the United States Department of Labor.

3.28.210 Expiration date.

This chapter shall expire until repealed by the voters. ~~June 30, 2020.~~

Section 3. VOTER APPROVAL

That this ordinance was approved by at least two-thirds (2/3rd) of the voters voting in the Desert Hot Springs special municipal election held on November 7, 2017.

Section 4. SEVERABILITY

That should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 5. REPEAL OF CONFLICTING PROVISIONS

That all the provisions of the Municipal Code as heretofore adopted by the City of Desert Hot Springs that are in conflict with the provisions of this ordinance are hereby repealed.

Section 6. CERTIFICATION

That the City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

Section 7. EFFECTIVE DATE

That this ordinance shall take effect ten (10) days following the City Council's certification of the results of the November 7, 2017, special municipal election.

PASSED AND ADOPTED by the People of the City of Desert Hot Springs at a special municipal election held on November 7, 2017.

Scott Matas, Mayor

ATTEST:

Jerryl Soriano, City Clerk

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney