

CITY OF SEBASTOPOL
CITY COUNCIL
AGENDA ITEM REPORT
REVISED: Monday December 5, 2022 10:00 am

AS CERTIFIED BY THE SONOMA COUNTY REGISTRAR OF VOTERS ON FRIDAY DECEMBER 2, 2022

Meeting Date: December 6, 2022
To: Honorable Mayor and City Councilmembers
From: City Manager-City Attorney Larry McLaughlin
Assistant City Manager/City Clerk Mary Gourley
Subject: Resolutions of the City Council of the City of Sebastopol Reciting the Facts of the General Municipal Election Held on November 8, 2022 Declaring the Results and Such Other Matters as Provided by Law
Recommendation : That the City Council Approve and Adopt the attached Resolutions Certifying the Election Results
Funding: Currently Budgeted: _____ Yes _____ No XX N/A
Net General Fund Cost:
Amount: \$

Account Code/Costs authorized in City Approved Budget AK (verified by Administrative Services Department)

INTRODUCTION/PURPOSE: This item is to request that the City Council approve the attached Resolutions declaring the results of the November 8, 2022 Election for the Office of Member of the Sebastopol City Council, thereby determining:

That Sandra Maurer (Total Votes: 1892); Jill McLewis (Total Votes: 1930) and Stephen Zollman (Total Votes: 1974) have been elected to the office of Member of the City of Sebastopol City Council for a four-year term (term ending: 2026)

This item is to also request that the City Council approve the Resolution declaring the results of the November 8, 2022 election for the purpose of Submitting to the voters a measure seeking voter authorization to amend municipal code chapter 3.10 to extend the term of the city's existing utility users tax without a rate increase by removal of sunset provision.

Ballot Measure: Extension of Locally Controlled Funding Measure

Without raising current tax rates, and to maintain City services including Police and Fire, 9-1-1 emergency services, park maintenance and repair, youth and senior recreation, and for unrestricted general revenue purposes, shall an ordinance be adopted to continue the existing Utility Users Tax at the current rate of 3.75%, by removing the sunset date until voters otherwise decide, providing approximately \$700,000 annually that cannot be taken by the State?

BACKGROUND:

On June 7, 2022, the City Council by Resolution Numbers 6435-2022 and 6436-2022 called a General Municipal Election to be held and conducted In the City of Sebastopol, Sonoma County, California, on Tuesday; November 8, 2022, as required by law for the election of three (3) members of the City Council.

On August 2, 2022, the City Council by Resolution 6465-2022 ordered the submission to the qualified electors of the city a measure seeking voter authorization to amend municipal code chapter 3.10 to extend the term of the city's existing utility users tax without a rate increase by removal of sunset provision.

Pursuant to Election Code §10264, the City of Sebastopol City Council by resolution must declare the results of the election. The declaration must show:

1) the whole number of votes cast in the City; 2) the names of persons voted for; 3) the measures voted upon (City had two measures) 4) what office each person was voted for; 5) the number of votes given at each precinct to each person and 6) the total number of votes given to each person and for and against the measure(s). The purpose of this item is to certify the results of that election and other matters as provided by law.

The City's General Municipal Election was consolidated with the Statewide General Election, and the Sonoma County Registrar of Voters was authorized to canvass the returns. Sonoma County Registrar of Voters has canvassed the returns of the election and has certified the results.

DISCUSSION:

The County of Sonoma Registrar of Voters conducted the election on behalf of the City of Sebastopol and is required to provide to the City a Certification of Election Results. The City of Sebastopol received an email from the County of Sonoma Registrar of Voters indicating that the County hopes to certify the election on December 2, 2022. As of the writing of this staff report, the County has indicated they will provide the certification documentation to the City prior to the December 6th meeting if it is certified by this meeting date. A copy of the certification is expected to be provided at the December 6th meeting and will be attached to the Resolution. If the Official Canvas of Votes Cast Officially Signed certification is not received by this meeting from the County, Staff requests the City Council set a special City Council Meeting for as soon as possible after the City receives the Official Canvas of Votes Cast from the County of Sonoma for Certification of the Election and all associated actions.

Upon completion of the canvass of the votes and before installing the new officers, the City Council must adopt a resolution reciting the fact of the election and declaring elected the persons for whom the highest number of votes were cast for each office. A summary of the official election results for City Council members are as follows:

Contest Name	Candidate Name	Total Votes	Percent of votes	Registered Voters in Sebastopol	Total Ballots Cast	Number of Precincts	Total Number of Precincts Reporting
Member, City Council Sebastopol	Dennis Colthurst	1529	18%	5584	4132	7	7
Member, City Council Sebastopol	Oliver Dick	1608	17.12%	5584	4132	7	7
Member, City Council Sebastopol	Sandra Maurer	1892	21.18%	5584	4132	7	7
Member, City Council Sebastopol	Jill McLewis	1930	21.61%	5584	4132	7	7
Member, City Council Sebastopol	Stephen Zollman	1974	22.10%	5584	4132	7	7

Measure N: The ballot measure was subject to approval of a majority of the voters voting on the measure. The measure was approved by a simple majority of “yes” votes.

Votes in Favor:	3244	83.41%
Votes Opposed:	645	16.59%
Total Votes Cast:	3889	

A Resolution must be adopted by the City Council to officially declare the results of the election.

As stated above, A Certificate of the Canvass of the Election Returns is expected to be received by the Registrar of Voters prior to the December 6, 2022 City Council Meeting and will be provided to the City Council once received by the City.

Following adoption of the resolution, the City Clerk will deliver a certification of election certificate to each person elected and administer the oath of office prescribed in the Constitution of the State of California.

After the oaths of office have been administered, the newly elected Councilmembers will take their seats at the dais. Once seated, the Mayor will continue with the meeting as follows:

- Message from Outgoing Mayor
- Election of Mayor (Vice Mayor will call for nominations for the Office of Mayor) The City Council shall meet at the meeting at which the declaration of the election results for a general municipal election is made pursuant to Sections 10262 and 10263 of the Elections Code and, following the declaration of the election results and the installation of elected officials, choose one of its number as mayor, and one of its number as mayor pro tempore.)
 - Nominations Received
 - Public Comment
 - Council Comments (if any)
 - Vote (taken beginning with the first nominee)
 - Gavel is transferred to Mayor
- Election of Mayor Pro Tempore /Vice Mayor (Newly Elected Mayor will call for nominations for Office of Vice Mayor)
 - Nominations Received
 - Public Comment
 - Council Comments (if any)
 - Vote (taken beginning with the first nominee)

PUBLIC COMMENT:

As of the writing of this staff report, the City has not received any public comment. However, if public comment is received from interested parties following the publication and distribution of this staff report, it will be provided to the City Council as supplemental materials before or at the meeting. In addition, a consent calendar item may be requested to be removed from the consent calendar if a member of the Council or public requests to provide public comment on this item.

PUBLIC NOTICE:

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to scheduled meeting date.

FISCAL IMPACT:

There is no impact with this action tonight. The 2020 Election costs were approved in the City’s FY 20-21 budget.

RECOMMENDATION:

City staff recommends that the City Council Approve the Resolution declaring the results of the November 8, 2022 election for the Office of Member of the Sebastopol City Council, thereby determining that by votes cast in the November 8, 2022 Election.

That Sandra Maurer (Total Votes: 1892); Jill McLewis (Total Votes: 1930) and Stephen Zollman (Total Votes: 1974) have been elected to the office of Member of the City of Sebastopol City Council for a four-year term (term ending: 2026); and

Measure N: Without raising current tax rates, and to maintain City services including Police and Fire, 9-1-1 emergency services, park maintenance and repair, youth and senior recreation, and for unrestricted general revenue purposes, shall an ordinance be adopted to continue the existing Utility Users Tax at the current rate of 3.75%, by removing the sunset date until voters otherwise decide, providing approximately \$700,000 annually that cannot be taken by the State?" The measure was approved by a simple majority of "yes" votes.

Votes in Favor: 3244 83.41%

Following certification, the City Clerk will immediately make and deliver to each of the persons so elected a Certificate of Election signed by the City Clerk and authenticated; the City Clerk will also administer to each person elected the Oath of Office prescribed in the Constitution of the State of California and will have them subscribe to it and file it in the office of the City Clerk. Each and all of the persons so elected will then be inducted into the respective office to which they have been elected.

Attachment:

Final Resolution

Resolution Number XXXX-2022

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL RECITING THE FACTS OF THE CONSOLIDATED GENERAL MUNICIPAL ELECTION HELD ON NOVEMBER 8, 2022 DECLARING THE RESULT AND SUCH OTHER MATTERS AS PROVIDED BY LAW AND THEREBY DETERMINING THAT

That Sandra Maurer (Total Votes: 1892); Jill McLewis (Total Votes: 1930) and Stephen Zollman (Total Votes: 1974) have been elected to the office of Member of the City of Sebastopol City Council for a four-year term (term ending: 2026)

AND THAT MEASURE N

Ballot Measure: Extension of Locally Controlled Funding Measure

With Question:

Without raising current tax rates, and to maintain City services including Police and Fire, 9-1-1 emergency services, park maintenance and repair, youth and senior recreation, and for unrestricted general revenue purposes, shall an ordinance be adopted to continue the existing Utility Users Tax at the current rate of 3.75%, by removing the sunset date until voters otherwise decide, providing approximately \$700,000 annually that cannot be taken by the State?

Was approved by the Voters at the November 8, 2022 Municipal election.

The measure was approved by a simple majority of "yes" votes.

Votes in Favor: 3244 83.41%

WHEREAS, On June 7, 2022, the City Council by Resolution Numbers 6435-2022 and 6436-2022 called a General Municipal Election to be held and conducted In the City of Sebastopol, Sonoma County, California, on Tuesday; November 8, 2022, as required by law for the election of three (3) members of the City Council; and

WHEREAS, on August 2, 2022, the City Council by Resolution Number 6465-2022 ordered the submission to the qualified electors of the city a measure seeking voter authorization to amend municipal code chapter 3.10 to extend the term of the city's existing utility users tax without a rate increase by removal of sunset provision; and

WHEREAS, a General Municipal Election was held and conducted in the City of Sebastopol, Sonoma County, California, on Tuesday; November 8, 2022, as required by law; and

WHEREAS, notice of the election was given in time, form and manner as provided by law; that voting precincts were properly established; that election officers were appointed and that in all respects the election was held and conducted and the votes were cast, received, and canvassed and the returns made and declared in time, form and manner as required by the provisions of the Elections Code of the State of California for the holding of elections in general law cities; and

WHEREAS, the City General Municipal Election was consolidated with the Statewide General Election; and

WHEREAS, the Sonoma County Registrar of Voters was authorized and has canvassed the returns of the election and has certified the results to this City Council, the results are received, attached and made a part here of as "Exhibit A", and

WHEREAS, Elections Code 10263 provides that upon the completion of the canvass and before installing the new officers, the governing body shall adopt a resolution reciting the fact of the election and the other matters that are enumerated in Section 10264 as follows:

As soon as the result of the election is declared, the elections official of the governing body shall enter on its records a statement of the result.

The Statement shall show:

- (a) The whole number of votes cast in the city.
- (b) The names of the persons voted for.
- (c) The measures voted upon (City of Sebastopol did not have any measures for this election).
- (d) For what office each person was voted for.
- (e) The number of votes given at each precinct to each person and for and against each measure.
- (f) The number of votes given in the city to each person and for and against each measure; and

Contest Name	Candidate Name	Total Votes	Percent of votes	Registered Voters in Sebastopol	Total Ballots Cast	Number of Precincts	Total Number of Precincts Reporting
Member, City Council Sebastopol	Dennis Colthurst	1529	18%	5584	4132	7	7
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Member, City Council Sebastopol	Stephen Zollman	1974	22.10%	5584	4132	7	7

WHEREAS, the governing body shall declare elected the persons for whom the highest number of votes were cast for each office.

NOW, THEREFORE, the City Council of the City of Sebastopol, California, does resolve, declare, determine and order as follows:

Section 1. That the whole number of ballots for the office of Member of the City Council cast in the precinct except absent voter ballots was 4132 as Shown in Exhibit A.

Section 2. That the names of the persons voted for at the election for Member of the City Council are as follows:

- Sandra Maurer
- Jill McLewis
- Stephen Zollman

Section 3.

a. The City Council does declare and determine that Sandra Maurer (Total Votes: 1892); Jill McLewis (Total Votes: 1930) and Stephen Zollman (Total Votes: 1974) have been elected to the office of Member of the City of Sebastopol City Council for a four-year term (term ending: 2026)

b. The measures voted upon. Measure N

The ballot measure was subject to approval of a majority of the voters voting on the measure.

Measure N: The ballot measure was subject to approval of a majority of the voters voting on the measure. The measure was approved by a simple majority of “yes” votes.

Votes in Favor: 3244 83.41%

Votes Opposed: 645 16.59%

Total Votes Cast: 3889

The City Council does declare and determine that the majority of the voters voting on Measure N (ordinance attached Exhibit B) voted in favor of it and that Measure N was carried and deemed adopted and ratified.

Section 4. That the number of votes given at each precinct to each person and the respective total votes cast for each person are contained in Exhibit A, Statement of the Votes Cast at the City of Sebastopol Consolidated General Election held on November 8, 2022 and which is hereby attached.

Section 5. The City Clerk shall enter on the records of the City Council of the City of Sebastopol, a statement of the result of the election, showing: 1) the whole number of votes cast in the City; 2) the names of persons voted for; 3) the measures voted upon (City had two measures) 4) what office each person was voted for; 5) the number of votes given at each precinct to each person and 6) the total number of votes given to each person and for and against the measure(s).

Section 6. The City Clerk shall immediately make and deliver to each of the persons so elected a Certificate of Election signed by the City Clerk and authenticated; that the City Clerk shall also administer to each person elected the Oath of Office prescribed in the Constitution of the State of California and shall have them subscribe to it and file it in the Office of the City Clerk. Each and all of the persons so elected shall then be inducted into the respective office to which they have been elected.

Section 7. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

IN COUNCIL DULY PASSED, APPROVED and ADOPTED this 6th day of December, 2022.

I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the City of Sebastopol City Council by the following vote:

VOTE:

Ayes:

Noes:

Absent:

Abstain:

APPROVED: _____
Mayor Patrick Slayter

ATTEST: _____
Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM: _____
Larry McLaughlin, City Attorney

Attachment:

Certification of Election Results
Ordinance /Measure N

SONOMA COUNTY - OFFICIAL RESULTS NOVEMBER 8, 2022 GENERAL ELECTION

Elector Group	Counting Group	Cards Cast	Voters Cast	Registered Voters	Turnout
Total	Vote Center	20,450	10,223	304,066	3.36%
	Vote by Mail	379,894	190,124		62.53%
	Total	400,344	200,347		65.89%

Precincts Reported: 608 of 608 (100.00%)

Voters Cast: 200,347 of 304,066 (65.89%)

Cards Cast: 400,344

Governor (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

		Total	
Times Cast		200,347 / 304,066	65.89%
Undervotes		2,864	
Overvotes		29	

Candidate	Party	Total	
BRIAN DAHLE	REP	57,413	29.08%
GAVIN NEWSOM	DEM	140,041	70.92%
Total Votes		197,454	

Lieutenant Governor (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

		Total	
Times Cast		200,347 / 304,066	65.89%
Undervotes		5,441	
Overvotes		20	

Candidate	Party	Total	
ANGELA E. UNDERWOOD JACOBS	REP	53,259	27.33%
ELENI KOUNALAKIS	DEM	141,627	72.67%
Total Votes		194,886	

Secretary of State (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

		Total	
Times Cast		200,347 / 304,066	65.89%
Undervotes		5,719	
Overvotes		15	
Candidate	Party	Total	
ROB BERNOSKY	REP	53,125	27.30%
SHIRLEY N. WEBER	DEM	141,488	72.70%
Total Votes		194,613	

Controller (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

		Total	
Times Cast		200,347 / 304,066	65.89%
Undervotes		6,064	
Overvotes		60	
Candidate	Party	Total	
MALIA M. COHEN	DEM	132,453	68.20%
LANHEE J. CHEN	REP	61,770	31.80%
Total Votes		194,223	

Treasurer (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

		Total	
Times Cast		200,347 / 304,066	65.89%
Undervotes		7,098	
Overvotes		26	
Candidate	Party	Total	
FIONA MA	DEM	137,588	71.21%
JACK M. GUERRERO	REP	55,635	28.79%
Total Votes		193,223	

Attorney General (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

		Total	
Times Cast		200,347 / 304,066	65.89%
Undervotes		5,889	
Overvotes		17	
Candidate	Party	Total	
ROB BONTA	DEM	139,559	71.77%
NATHAN HOCHMAN	REP	54,882	28.23%
Total Votes		194,441	

Insurance Commissioner (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	200,347 / 304,066	65.89%
Undervotes	7,988	
Overvotes	20	

Candidate	Party	Total	
ROBERT HOWELL	REP	53,186	27.65%
RICARDO LARA	DEM	139,153	72.35%
Total Votes		192,339	

Member, State Board of Equal 2nd Dist (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	200,347 / 304,066	65.89%
Undervotes	8,983	
Overvotes	38	

Candidate	Party	Total	
PETER COE VERBICA	REP	53,319	27.87%
SALLY J. LIEBER	DEM	138,007	72.13%
Total Votes		191,326	

United States Senator (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	200,347 / 304,066	65.89%
Undervotes	5,114	
Overvotes	54	

Candidate	Party	Total	
ALEX PADILLA	DEM	143,197	73.37%
MARK P. MEUSER	REP	51,982	26.63%
Total Votes		195,179	

United States Senator (Partial/Unexpired) (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	200,347 / 304,066	65.89%
Undervotes	6,754	
Overvotes	21	

Candidate	Party	Total	
ALEX PADILLA	DEM	141,894	73.30%
MARK P. MEUSER	REP	51,678	26.70%
Total Votes		193,572	

U S Representative 2nd District (Vote for 1)

Precincts Reported: 303 of 303 (100.00%)

		Total	
Times Cast		103,099 / 151,766	67.93%
Undervotes		2,783	
Overvotes		10	
Candidate	Party	Total	
DOUGLAS BROWER	REP	25,855	25.78%
JARED HUFFMAN	DEM	74,451	74.22%
Total Votes		100,306	

U S Representative 4th District (Vote for 1)

Precincts Reported: 305 of 305 (100.00%)

		Total	
Times Cast		97,248 / 152,300	63.85%
Undervotes		2,396	
Overvotes		10	
Candidate	Party	Total	
MATT BROCK	REP	22,695	23.93%
MIKE THOMPSON	DEM	72,147	76.07%
Total Votes		94,842	

State Senator 2nd District (Vote for 1)

Precincts Reported: 484 of 484 (100.00%)

		Total	
Times Cast		163,283 / 247,052	66.09%
Undervotes		3,671	
Overvotes		15	
Candidate	Party	Total	
MIKE MCGUIRE	DEM	120,614	75.57%
GENE YOON	REP	38,983	24.43%
Total Votes		159,597	

Member of Assembly 2nd District (Vote for 1)

Precincts Reported: 322 of 322 (100.00%)

		Total	
Times Cast		100,792 / 151,352	66.59%
Undervotes		3,149	
Overvotes		10	
Candidate	Party	Total	
JIM WOOD	DEM	72,974	74.74%
CHARLOTTE SVOLOS	REP	24,659	25.26%
Total Votes		97,633	

Member of Assembly 4th District (Vote for 1)

Precincts Reported: 36 of 36 (100.00%)

	Total	
Times Cast	12,581 / 18,350	68.56%
Undervotes	397	
Overvotes	0	

Candidate	Party	Total	
BRYAN PRITCHARD	REP	3,032	24.89%
CECILIA AGUIAR-CURRY	DEM	9,152	75.11%
Total Votes		12,184	

Member of Assembly 12th District (Vote for 1)

Precincts Reported: 250 of 250 (100.00%)

	Total	
Times Cast	86,974 / 134,364	64.73%
Undervotes	13,579	
Overvotes	80	

Candidate	Party	Total	
DAMON CONNOLLY	DEM	38,722	52.82%
SARA AMINZADEH	DEM	34,593	47.18%
Total Votes		73,315	

Chief Justice of California Patricia Guerrero (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	200,347 / 304,066	65.89%
Undervotes	48,889	
Overvotes	79	

Candidate	Party	Total	
Yes		121,462	80.24%
No		29,917	19.76%
Total Votes		151,379	

Associate Justice of the Supreme Court Goodwin Liu (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	200,347 / 304,066	65.89%
Undervotes	54,653	
Overvotes	58	

Candidate	Party	Total	
Yes		114,605	78.69%
No		31,031	21.31%
Total Votes		145,636	

Associate Justice of the Supreme Court Martin J. Jenkins (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	200,347 / 304,066	65.89%
Undervotes	56,977	
Overvotes	55	

Candidate	Party	Total	
Yes		112,330	78.38%
No		30,985	21.62%
Total Votes		143,315	

Associate Justice of the Supreme Court Joshua P. Groban (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	200,347 / 304,066	65.89%
Undervotes	58,346	
Overvotes	44	

Candidate	Party	Total	
Yes		109,519	77.15%
No		32,438	22.85%
Total Votes		141,957	

Assoc Justice, Ct Appeal 1st Dist Div 2 Therese M. Stewart (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	200,347 / 304,066	65.89%
Undervotes	60,559	
Overvotes	51	

Candidate	Party	Total	
Yes		110,198	78.86%
No		29,539	21.14%
Total Votes		139,737	

Pres Justice, Ct Appeal 1st Dist Div 3 Alison M. Tucher (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	200,347 / 304,066	65.89%
Undervotes	61,342	
Overvotes	46	

Candidate	Party	Total	
Yes		109,698	78.94%
No		29,261	21.06%
Total Votes		138,959	

Assoc Justice, Ct Appeal 1st Dist Div 3 Victor A. Rodriguez (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	200,347 / 304,066	65.89%
Undervotes	62,368	
Overvotes	34	

Candidate	Party	Total	
Yes		106,556	77.25%
No		31,389	22.75%
Total Votes		137,945	

Assoc Justice, Ct Appeal 1st Dist Div 3 Ioana Petrou (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	200,347 / 304,066	65.89%
Undervotes	63,142	
Overvotes	76	

Candidate	Party	Total	
Yes		106,061	77.34%
No		31,068	22.66%
Total Votes		137,129	

Assoc Justice, Ct Appeal 1st Dist Div 3 Carin T. Fujisaki (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	200,347 / 304,066	65.89%
Undervotes	62,938	
Overvotes	53	

Candidate	Party	Total	
Yes		107,307	78.12%
No		30,049	21.88%
Total Votes		137,356	

Assoc Justice, Ct Appeal 1st Dist Div 4 Tracie L. Brown (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	200,347 / 304,066	65.89%
Undervotes	62,929	
Overvotes	38	

Candidate	Party	Total	
Yes		109,060	79.39%
No		28,320	20.61%
Total Votes		137,380	

Agenda Item Number: 6 (updated)

City Council Meeting Packet of: December 6, 2022

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Assoc Justice, Ct Appeal 1st Dist Div 4 Jeremy M. Goldman (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

		Total	
Times Cast		200,347 / 304,066	65.89%
Undervotes		64,039	
Overvotes		33	
Candidate	Party	Total	
Yes		104,078	76.37%
No		32,197	23.63%
Total Votes		136,275	

Pres Justice, Ct Appeal 1st Dist Div 5 Teri L. Jackson (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

		Total	
Times Cast		200,347 / 304,066	65.89%
Undervotes		62,861	
Overvotes		37	
Candidate	Party	Total	
Yes		108,259	78.76%
No		29,190	21.24%
Total Votes		137,449	

Assoc Justice, Ct Appeal 1st Dist Div 5 Gordon B. Burns (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

		Total	
Times Cast		200,347 / 304,066	65.89%
Undervotes		64,255	
Overvotes		29	
Candidate	Party	Total	
Yes		104,870	77.07%
No		31,193	22.93%
Total Votes		136,063	

State Superintendent of Public Instruction (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

		Total	
Times Cast		200,347 / 304,066	65.89%
Undervotes		44,792	
Overvotes		79	
Candidate	Party	Total	
LANCE RAY CHRISTENSEN		38,502	24.76%
TONY K. THURMOND		116,974	75.24%
Total Votes		155,476	

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County Superintendent of Schools (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	200,347 / 304,066	65.89%
Undervotes	50,276	
Overvotes	65	

Candidate	Party	Total	
AMIE CARTER		108,241	72.16%
BRAD COSCARELLI		41,765	27.84%
Total Votes		150,006	

Calistoga Joint Unified School District (Vote for 2)

Precincts Reported: 3 of 3 (100.00%)

	Total	
Times Cast	256 / 367	69.75%
Undervotes	260	
Overvotes	0	

Candidate	Party	Total	
LAUREL RIOS		103	40.87%
MATTHEW S. REID		65	25.79%
INDIRA LOPEZ-JONES		84	33.33%
Total Votes		252	

Shoreline Unified School District Area 1 (Vote for 2)

Precincts Reported: 7 of 7 (100.00%)

	Total	
Times Cast	1,110 / 1,458	76.13%
Undervotes	1,026	
Overvotes	0	

Candidate	Party	Total	
BUDDY FAURE		71	5.95%
HEIDI KOENIG		578	48.41%
TIMOTHY J. KEHOE		545	45.64%
Total Votes		1,194	

Sonoma Vly Unif Sch Dist Trustee Area 2 (Vote for 1)

Precincts Reported: 3 of 3 (100.00%)

	Total	
Times Cast	2,177 / 3,609	60.32%
Undervotes	356	
Overvotes	12	

Candidate	Party	Total	
JACQUELYN TORRES		422	23.33%
CELESTE WINDERS		699	38.64%
JOE LEMAS		688	38.03%
Total Votes		1,809	

Windsor Unified School District (Vote for 3)

Precincts Reported: 32 of 32 (100.00%)

	Total	
Times Cast	11,659 / 18,043	64.62%
Undervotes	13,796	
Overvotes	3	

Candidate	Party	Total	
STEPHANIE AHMAD		6,666	31.48%
RICH CARNATION		5,032	23.76%
PAUL COGORNO		4,926	23.26%
ERIC HEITZ		4,554	21.50%
Total Votes		21,178	

City of Santa Rosa High School District Trustee Area 2 (Vote for 1)

Precincts Reported: 28 of 28 (100.00%)

	Total	
Times Cast	9,963 / 16,861	59.09%
Undervotes	2,350	
Overvotes	2	

Candidate	Party	Total	
ROXANNE MCNALLY		5,370	70.56%
DANIELLE MOLKENBUHR		2,241	29.44%
Total Votes		7,611	

City of Santa Rosa High School District Trustee Area 4 (Vote for 1)

Precincts Reported: 27 of 27 (100.00%)

	Total	
Times Cast	7,180 / 13,886	51.71%
Undervotes	1,421	
Overvotes	1	

Candidate	Party	Total	
LISA BROWN		1,880	32.65%
OMAR MEDINA		3,878	67.35%
Total Votes		5,758	

West Sonoma County Union High School Dist. At-Large S/T (Vote for 1)

Precincts Reported: 85 of 85 (100.00%)

	Total	
Times Cast	25,962 / 35,666	72.79%
Undervotes	5,993	
Overvotes	5	

Candidate	Party	Total	
DEBBIE RAMIREZ		11,458	57.39%
DAVID PATRICK NAGLE		8,506	42.61%
Total Votes		19,964	

Piner-Olivet Union School District (Vote for 3)

Precincts Reported: 11 of 11 (100.00%)

	Total	
Times Cast	6,679 / 10,667	62.61%
Undervotes	9,792	
Overvotes	3	

Candidate	Party	Total	
CINDY PRYOR		2,298	22.44%
MARC MCCARTY		2,100	20.50%
MATT HEATH		3,119	30.45%
JANAE FRANICEVIC		2,725	26.61%
Total Votes		10,242	

Rincon Valley Union School District (Vote for 3)

Precincts Reported: 76 of 76 (100.00%)

	Total	
Times Cast	19,476 / 27,466	70.91%
Undervotes	26,016	
Overvotes	30	

Candidate	Party	Total	
DEBORAH TAPIA DE MARTIN		6,070	18.74%
SHELBY MOELLER		8,959	27.67%
JOLENE JOHNSON		8,574	26.48%
JEFF GOSPE		8,779	27.11%
Total Votes		32,382	

Roseland School District (Vote for 3)

Precincts Reported: 6 of 6 (100.00%)

	Total	
Times Cast	2,377 / 5,127	46.36%
Undervotes	3,081	
Overvotes	6	

Candidate	Party	Total	
ANA DIAZ-GARCIA		1,103	27.27%
MARY GOE BALCERAK		671	16.59%
DELASHAY CARMONA-BENSON		382	9.45%
JANICE SIEBERT		689	17.04%
DIANA MONDRAGON REYES		486	12.02%
ANTHONY MENDOZA		713	17.63%
Total Votes		4,044	

Sebastopol Union School District (Vote for 3)

Precincts Reported: 18 of 18 (100.00%)

	Total	
Times Cast	6,493 / 8,783	73.93%
Undervotes	8,866	
Overvotes	69	

Candidate	Party	Total	
DEBORAH E. DREHMEL		2,952	28.00%
LISA BAUMAN		3,222	30.56%
JOSEPH POGAR JR		1,835	17.40%
ELIZABETH SMITH		2,535	24.04%
Total Votes		10,544	

Waugh School District (Vote for 3)

Precincts Reported: 5 of 5 (100.00%)

	Total	
Times Cast	3,078 / 4,491	68.54%
Undervotes	3,332	
Overvotes	18	

Candidate	Party	Total	
DENISE BUGBEE		1,290	21.92%
RACHEL H. VAN GORP		955	16.23%
CHRISTINE D. PIEPER		1,161	19.73%
MATTHEW THOMAS		982	16.69%
KRISTINE WEEKS		1,496	25.42%
Total Votes		5,884	

Member, City Council Cloverdale (Vote for 3)

Precincts Reported: 3 of 3 (100.00%)

	Total	
Times Cast	3,637 / 5,361	67.84%
Undervotes	4,165	
Overvotes	3	

Candidate	Party	Total	
"WALKER" J THOMAS RUGINO		990	14.68%
MARJORIE A MORGENSTERN		1,235	18.32%
GUS WOLTER		2,090	31.00%
BRIAN J. WHEELER		1,761	26.12%
Total Votes		6,743	

		Total	
NICOLE HINCHLIFFE	WRITE-IN	667	9.89%

City Treasurer Cloverdale (Vote for 1)

Precincts Reported: 3 of 3 (100.00%)

	Total	
Times Cast	3,637 / 5,361	67.84%
Undervotes	3,637	
Overvotes	0	

Candidate	Party	Total	
There are no candidates for this office			
Total Votes		0	

Member, City Council Healdsburg F/T (Vote for 2)

Precincts Reported: 5 of 5 (100.00%)

	Total	
Times Cast	5,165 / 7,246	71.28%
Undervotes	2,086	
Overvotes	10	

Candidate	Party	Total	
LINDA CADE		826	10.03%
EVELYN L. MITCHELL		2,909	35.33%
CHRIS HERROD		2,873	34.89%
SUSAN GRAF		1,626	19.75%
Total Votes		8,234	

Member, City Council Healdsburg S/T (Vote for 1)

Precincts Reported: 5 of 5 (100.00%)

	Total	
Times Cast	5,165 / 7,246	71.28%
Undervotes	568	
Overvotes	18	

Candidate	Party	Total	
RONALD EDWARDS		2,095	45.75%
BRIGETTE MANSELL		2,042	44.59%
MATIAS LOPEZ JR.		442	9.65%
Total Votes		4,579	

Mayor Petaluma (Vote for 1)

Precincts Reported: 34 of 34 (100.00%)

	Total	
Times Cast	27,206 / 39,379	69.09%
Undervotes	3,342	
Overvotes	14	

Candidate	Party	Total	
KEVIN MCDONNELL		12,772	53.55%
D'LYNDA FISCHER		6,306	26.44%
PATRICK FLOWER		2,864	12.01%
SUSAN KIRKS		1,908	8.00%
Total Votes		23,850	

Member, City Council Petaluma District 1 (Vote for 1)

Precincts Reported: 7 of 7 (100.00%)

	Total	
Times Cast	3,932 / 6,032	65.19%
Undervotes	617	
Overvotes	1	

Candidate	Party	Total	
JANICE CADER THOMPSON		2,291	69.13%
DYLAN LLOYD		1,023	30.87%
Total Votes		3,314	

Member, City Council Petaluma District 2 (Vote for 1)

Precincts Reported: 5 of 5 (100.00%)

	Total	
Times Cast	4,698 / 6,843	68.65%
Undervotes	617	
Overvotes	8	

Candidate	Party	Total	
DAVID ADAMS		1,558	38.25%
JOHN SHRIBBS		2,252	55.29%
BOBB R. KOSOFF		263	6.46%
Total Votes		4,073	

Member, City Council Petaluma District 3 (Vote for 1)

Precincts Reported: 3 of 3 (100.00%)

	Total	
Times Cast	3,703 / 5,936	62.38%
Undervotes	439	
Overvotes	2	

Candidate	Party	Total	
ROBERT CONKLIN		1,024	31.39%
KAREN NAU		1,211	37.12%
JOHN HANANIA		1,027	31.48%
Total Votes		3,262	

Member, City Council Rohnert Park District 1 S/T (Vote for 1)

Precincts Reported: 2 of 2 (100.00%)

	Total	
Times Cast	1,990 / 3,795	52.44%
Undervotes	311	
Overvotes	1	

Candidate	Party	Total	
SAMANTHA RODRIGUEZ		1,036	61.74%
DAVE SOLDAVINI		642	38.26%
Total Votes		1,678	

Member, City Council Rohnert Park District 2 F/T (Vote for 1)

Precincts Reported: 6 of 6 (100.00%)

	Total	
Times Cast	3,344 / 5,539	60.37%
Undervotes	421	
Overvotes	11	

Candidate	Party	Total	
JASON ATALLAH		317	10.89%
EMILY SANBORN		1,468	50.41%
TOM LEVIN		1,127	38.70%
Total Votes		2,912	

Member, City Council Rohnert Park District 5 F/T (Vote for 1)

Precincts Reported: 7 of 7 (100.00%)

	Total	
Times Cast	2,931 / 4,903	59.78%
Undervotes	320	
Overvotes	2	

Candidate	Party	Total	
SUSAN HOLLINGSWORTH ADAMS		1,507	57.76%
JOSEPH T. CALLINAN		1,102	42.24%
Total Votes		2,609	

Member, City Council Santa Rosa District 2 F/T (Vote for 1)

Precincts Reported: 15 of 15 (100.00%)

	Total	
Times Cast	11,081 / 16,563	66.90%
Undervotes	2,144	
Overvotes	2	

Candidate	Party	Total	
MASON ROSSITER		1,541	17.25%
MARK STAPP		7,394	82.75%
Total Votes		8,935	

Member, City Council Santa Rosa District 3 S/T (Vote for 1)

Precincts Reported: 21 of 21 (100.00%)

	Total	
Times Cast	13,563 / 18,468	73.44%
Undervotes	4,322	
Overvotes	0	

Candidate	Party	Total	
DIANNA MACDONALD		9,241	100.00%
Total Votes		9,241	

Member, City Council Santa Rosa District 4 F/T (Vote for 1)

Precincts Reported: 29 of 29 (100.00%)

	Total	
Times Cast	12,873 / 17,882	71.99%
Undervotes	1,016	
Overvotes	33	

Candidate	Party	Total	
TERRENCE "TERRY" SANDERS		4,408	37.28%
SCHEHERAZADE SHAMSAVARI		281	2.38%
HENRY HUANG		2,403	20.32%
VICTORIA FLEMING		4,732	40.02%
Total Votes		11,824	

Member, City Council Santa Rosa District 6 F/T (Vote for 1)

Precincts Reported: 14 of 14 (100.00%)

	Total	
Times Cast	8,272 / 14,406	57.42%
Undervotes	1,523	
Overvotes	2	

Candidate	Party	Total	
JEFF OKREPKIE		4,192	62.13%
VERONICA "RONI" JACOBI		2,555	37.87%
Total Votes		6,747	

Member, City Council Sebastopol (Vote for 3)

Precincts Reported: 7 of 7 (100.00%)

	Total	
Times Cast	4,132 / 5,584	74.00%
Undervotes	3,445	
Overvotes	18	

Candidate	Party	Total	
OLIVER DICK		1,608	18.00%
DENNIS COLTHURST		1,529	17.12%
SANDRA MAURER		1,892	21.18%
JILL MCLEWIS		1,930	21.61%
STEPHEN ZOLLMAN		1,974	22.10%
Total Votes		8,933	

Member, City Council Sonoma (Vote for 3)

Precincts Reported: 11 of 11 (100.00%)

	Total	
Times Cast	5,625 / 7,650	73.53%
Undervotes	4,181	
Overvotes	12	

Candidate	Party	Total	
THOMAS G. DEEGAN		1,892	14.92%
MICHAEL J NUGENT		1,774	13.99%
PATRICIA FARRAR RIVAS		3,291	25.95%
RON WELLANDER		2,635	20.78%
JOHN GURNEY		3,090	24.37%
Total Votes		12,682	

Mayor Windsor (Vote for 1)

Precincts Reported: 23 of 23 (100.00%)

	Total	
Times Cast	10,952 / 16,945	64.63%
Undervotes	911	
Overvotes	3	

Candidate	Party	Total	
ROSA REYNOZA		6,190	61.67%
ESTHER LEMUS		3,848	38.33%
Total Votes		10,038	

Member, Town Council Windsor District 1 (Vote for 1)

Precincts Reported: 3 of 3 (100.00%)

	Total	
Times Cast	2,361 / 4,002	59.00%
Undervotes	164	
Overvotes	0	

Candidate	Party	Total	
GINA FORTINO DICKSON		811	36.91%
MIKE WALL		1,386	63.09%
Total Votes		2,197	

Member, Town Council Windsor District 2 S/T (Vote for 1)

Precincts Reported: 6 of 6 (100.00%)

	Total	
Times Cast	3,310 / 4,798	68.99%
Undervotes	238	
Overvotes	1	

Candidate	Party	Total	
SAM SALMON		1,751	57.02%
MAUREEN MERRILL		1,320	42.98%
Total Votes		3,071	

Member, Town Council Windsor District 4 (Vote for 1)

Precincts Reported: 8 of 8 (100.00%)

	Total	
Times Cast	2,612 / 4,065	64.26%
Undervotes	192	
Overvotes	0	

Candidate	Party	Total	
TANYA POTTER		1,745	72.11%
KEVIN GONYO		675	27.89%
Total Votes		2,420	

Graton Fire Protection Dist F/T (Vote for 2)

Precincts Reported: 6 of 6 (100.00%)

	Total	
Times Cast	3,411 / 4,588	74.35%
Undervotes	2,903	
Overvotes	10	

Candidate	Party	Total	
TIMOTHY DESANTIS		877	22.44%
BOB MADDOCKS		2,061	52.72%
JONATHAN DAVID SHIMODA HEBEL		971	24.84%
Total Votes		3,909	

Graton Fire Protection District S/T (Vote for 2)

Precincts Reported: 6 of 6 (100.00%)

	Total	
Times Cast	3,411 / 4,588	74.35%
Undervotes	2,613	
Overvotes	6	

Candidate	Party	Total	
CARLA PETERSON		1,771	42.14%
LINDA TRIPOLI		789	18.77%
SCOTT B. FISHER		1,643	39.09%
Total Votes		4,203	

Schell-Vista Fire Protection Dist (Vote for 2)

Precincts Reported: 8 of 8 (100.00%)

	Total	
Times Cast	1,868 / 2,587	72.21%
Undervotes	1,347	
Overvotes	2	

Candidate	Party	Total	
MELINDA "MINDY" NEVES		844	35.36%
JON MATHIEU		485	20.32%
ROBERT KRULJAC		1,058	44.32%
Total Votes		2,387	

Sonoma County Fire District (Vote for 3)

Precincts Reported: 136 of 136 (100.00%)

	Total	
Times Cast	27,156 / 41,944	64.74%
Undervotes	34,660	
Overvotes	57	

Candidate	Party	Total	
ROBERT M. BRIARE		13,202	28.24%
JOE CONWAY		7,725	16.52%
GARY SO		13,955	29.85%
STEVE KLINK		11,869	25.39%
Total Votes		46,751	

Timber Cove Fire Protection Dist (Vote for 2)

Precincts Reported: 1 of 1 (100.00%)

	Total	
Times Cast	238 / 307	77.52%
Undervotes	126	
Overvotes	0	

Candidate	Party	Total	
CAROLYNN ABST		126	36.00%
MARY ENTRIKEN		136	38.86%
WILLIAM SEYMOUR		88	25.14%
Total Votes		350	

Valley of the Moon Water District (Vote for 2)

Precincts Reported: 30 of 30 (100.00%)

	Total	
Times Cast	8,259 / 12,269	67.32%
Undervotes	5,808	
Overvotes	6	

Candidate	Party	Total	
STEVE ROGERS		4,895	45.73%
JON L. FOREMAN		4,200	39.24%
PAUL KANGAS		1,609	15.03%
Total Votes		10,704	

Prop 1 - Constitutional Right To Reproductive Freedom. (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	199,997 / 304,066	65.77%
Undervotes	3,751	
Overvotes	52	

Candidate	Party	Total	
Yes		155,741	79.38%
No		40,453	20.62%
Total Votes		196,194	

Prop 26 - Allows In-person Roulette, Dice Games, Sports Wagering (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	199,997 / 304,066	65.77%
Undervotes	6,635	
Overvotes	78	

Candidate	Party	Total	
Yes		57,089	29.54%
No		136,195	70.46%
Total Votes		193,284	

Prop 27 - Allows Online And Mobile Sports Wagering Outside Tribal Lands. (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	199,997 / 304,066	65.77%
Undervotes	4,687	
Overvotes	70	

Candidate	Party	Total	
Yes		26,252	13.45%
No		168,988	86.55%
Total Votes		195,240	

Prop 28 - Provides Additional Funding For Arts And Music Education In Public Schools (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	199,997 / 304,066	65.77%
Undervotes	4,547	
Overvotes	34	

Candidate	Party	Total	
Yes		141,004	72.16%
No		54,412	27.84%
Total Votes		195,416	

Prop 29 - Requires On-site Licensed Medical Professional At Kidney Dialysis (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	199,997 / 304,066	65.77%
Undervotes	7,592	
Overvotes	89	

Candidate	Party	Total	
Yes		56,485	29.37%
No		135,831	70.63%
Total Votes		192,316	

Prop 30 - Provides Funding For Programs To Reduce Air Pollution And Prevent Wildfires (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	199,997 / 304,066	65.77%
Undervotes	4,755	
Overvotes	143	

Candidate	Party	Total	
Yes		94,396	48.38%
No		100,703	51.62%
Total Votes		195,099	

Prop 31 - Referendum On 2020 Law That Would Prohibit The Retail Sale Of Flavored Tobacco (Vote for 1)

Precincts Reported: 608 of 608 (100.00%)

	Total	
Times Cast	199,997 / 304,066	65.77%
Undervotes	8,545	
Overvotes	104	

Candidate	Party	Total	
Yes		138,170	72.21%
No		53,178	27.79%
Total Votes		191,348	

Measure B - Calistoga Joint Unified School District 55% Bond (Vote for 1)

Precincts Reported: 3 of 3 (100.00%)

	Total	
Times Cast	257 / 367	70.03%
Undervotes	27	
Overvotes	0	

Candidate	Party	Total	
Bonds-Yes		134	58.26%
Bonds-No		96	41.74%
Total Votes		230	

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Measure C - City of Santa Rosa High School District 55% Bond (Vote for 1)

Precincts Reported: 237 of 237 (100.00%)

		Total	
Times Cast		76,595 / 123,006	62.27%
Undervotes		4,730	
Overvotes		17	
Candidate	Party	Total	
Bonds-Yes		47,909	66.68%
Bonds-No		23,939	33.32%
Total Votes		71,848	

Measure D - Forestville Union School District 55% Bond (Vote for 1)

Precincts Reported: 16 of 16 (100.00%)

		Total	
Times Cast		3,585 / 4,998	71.73%
Undervotes		215	
Overvotes		0	
Candidate	Party	Total	
Bonds-Yes		2,244	66.59%
Bonds-No		1,126	33.41%
Total Votes		3,370	

Measure E - Horicon School District 55% Bond (Vote for 1)

Precincts Reported: 2 of 2 (100.00%)

		Total	
Times Cast		864 / 1,080	80.00%
Undervotes		49	
Overvotes		0	
Candidate	Party	Total	
Bonds-Yes		616	75.58%
Bonds-No		199	24.42%
Total Votes		815	

Measure F - Kenwood School District 55% Bond (Vote for 1)

Precincts Reported: 8 of 8 (100.00%)

		Total	
Times Cast		2,905 / 3,434	84.60%
Undervotes		222	
Overvotes		0	
Candidate	Party	Total	
Bonds-Yes		1,820	67.83%
Bonds-No		863	32.17%
Total Votes		2,683	

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Measure G - City of Santa Rosa Elementary School District 55% Bond (Vote for 1)

Precincts Reported: 57 of 57 (100.00%)

	Total	
Times Cast	23,034 / 38,282	60.17%
Undervotes	1,485	
Overvotes	6	

Candidate	Party	Total	
Bonds-Yes		15,418	71.57%
Bonds-No		6,125	28.43%
Total Votes		21,543	

Measure H - City of Santa Rosa Renew Public Safety and Violence Prevention (Vote for 1)

Precincts Reported: 116 of 116 (100.00%)

	Total	
Times Cast	63,445 / 102,446	61.93%
Undervotes	3,474	
Overvotes	9	

Candidate	Party	Total	
Yes		43,818	73.08%
No		16,144	26.92%
Total Votes		59,962	

Measure I - City of Santa Rosa Amend City Charter to Affirm District-Based Elections (Vote for 1)

Precincts Reported: 116 of 116 (100.00%)

	Total	
Times Cast	63,445 / 102,446	61.93%
Undervotes	7,248	
Overvotes	13	

Candidate	Party	Total	
Yes		39,474	70.26%
No		16,710	29.74%
Total Votes		56,184	

Measure J - City of Santa Rosa Amend City Charter To Modernize Language and Procedures (Vote for 1)

Precincts Reported: 116 of 116 (100.00%)

	Total	
Times Cast	63,445 / 102,446	61.93%
Undervotes	5,557	
Overvotes	9	

Candidate	Party	Total	
Yes		39,128	67.60%
No		18,751	32.40%
Total Votes		57,879	

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Measure K - City of Cloverdale Sale and Use (Vote for 1)

Precincts Reported: 3 of 3 (100.00%)

		Total	
Times Cast		3,622 / 5,361	67.56%
Undervotes		116	
Overvotes		1	
Candidate	Party	Total	
Yes		1,650	47.08%
No		1,855	52.92%
Total Votes		3,505	

Measure L - City of Healdsburg Occupancy Tax (Vote for 1)

Precincts Reported: 5 of 5 (100.00%)

		Total	
Times Cast		5,145 / 7,246	71.00%
Undervotes		269	
Overvotes		0	
Candidate	Party	Total	
Yes		3,707	76.03%
No		1,169	23.97%
Total Votes		4,876	

Measure M - City of Healdsburg Business Tax (Vote for 1)

Precincts Reported: 5 of 5 (100.00%)

		Total	
Times Cast		5,145 / 7,246	71.00%
Undervotes		275	
Overvotes		1	
Candidate	Party	Total	
Yes		3,529	72.48%
No		1,340	27.52%
Total Votes		4,869	

Measure N - City of Sebastopol Extend Utility Users Tax (Vote for 1)

Precincts Reported: 7 of 7 (100.00%)

		Total	
Times Cast		4,132 / 5,584	74.00%
Undervotes		243	
Overvotes		0	
Candidate	Party	Total	
Yes		3,244	83.41%
No		645	16.59%
Total Votes		3,889	

Measure O - Schell-Vista Fire Protection District Parcel Tax Renewal (Vote for 1)

Precincts Reported: 8 of 8 (100.00%)

	Total	
Times Cast	1,863 / 2,587	72.01%
Undervotes	109	
Overvotes	0	

Candidate	Party	Total	
Yes		1,303	74.29%
No		451	25.71%
Total Votes		1,754	

Chapter 3.10 UTILITY USERS TAX

Sections:

- 3.10.010 Title.
- 3.10.020 Definitions.
- 3.10.030 Constitutional and statutory exemptions.
- 3.10.040 Telecommunications users tax.
- 3.10.050 Video users tax.
- 3.10.060 Electricity users tax.
- 3.10.070 Gas users tax.
- 3.10.080 Collection of tax from service users receiving direct purchase of gas or electricity.
- 3.10.090 Refuse collection users tax.
- 3.10.100 Effect of commingling taxable items with nontaxable items.
- 3.10.110 Substantial nexus/minimum contacts.
- 3.10.130 Duty to collect – Procedures.
- 3.10.140 Collection penalties – Service suppliers or self-collectors.
- 3.10.150 Deficiency determination and assessment – Tax application errors.
- 3.10.160 Administrative remedy – Nonpaying service users.
- 3.10.170 Actions to collect.
- 3.10.180 Additional powers and duties of the Tax Administrator.
- 3.10.190 Records.
- 3.10.200 Refunds/credits.
- 3.10.210 Appeals.
- 3.10.220 No injunction/writ of mandate.
- 3.10.230 Remedies cumulative.
- 3.10.240 Notice of changes to chapter.
- 3.10.250 Future amendment to cited statute.
- 3.10.260 Annual rate review and independent audit of tax collection, exemption, remittance and expenditure.
- 3.10.270 No increase in tax percentage or change in methodology without voter approval – Amendment or repeal.

3.10.010 Title.

This chapter shall be known as the “Utility Users Tax Ordinance of the City of Sebastopol.” (Ord. 1072 § 1, 2014)

3.10.020 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

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

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

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

1. “Conference bridging service” shall mean an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.
2. “Detailed telecommunications billing service” shall mean an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.
3. “Directory assistance” shall mean an ancillary service of providing telephone number information, and/or address information.
4. “Vertical service” shall mean an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.
5. “Voice mail service” shall mean an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

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

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

“City” shall mean the City of Sebastopol.

“City Manager” shall mean the City Manager or his or her authorized representative.

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

“Mobile telecommunications service” shall mean commercial mobile radio service, as defined in [47 CFR Section 20.3](#) and as set forth in the Mobile Telecommunications Sourcing Act ([4 U.S.C. Section 124](#)) and the regulations thereunder.

“Month” shall mean a calendar month.

“Nonutility service supplier” shall mean:

1. A service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include but not be limited to any publicly owned electric utility, investor owned utility, cogenerator, distributed generation provider, exempt wholesale generator ([15 U.S.C. Section 79z-5a](#)), municipal utility district, Federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;
2. An electric service provider (ESP), electricity broker, marketer, aggregator (including a community choice aggregator), pool operator, or other electricity supplier other than a provider of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; and
3. A gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas or supplemental services to gas users within the City.

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

“Person” shall mean, without limitation, any domestic, nonprofit or foreign corporation; firm; association; syndicate; joint stock company; partnership of any kind; limited liability company; joint venture; club; trust; Massachusetts business or common law trust; estate; society; cooperative; receiver, trustee, guardian or other

representative appointed by order of any court; any natural individual; joint power agency, municipal district or municipal corporation, other than the City.

“Place of primary use” shall mean the street address representative of where the customer’s use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

“Post-paid telecommunications service” shall mean the telecommunications 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 telecommunications service.

“Prepaid telecommunications service” (including prepaid mobile telecommunications service) shall mean the right to access telecommunications services, which must be paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed.

“Private telecommunications service” shall mean a telecommunications 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).

“Refuse” shall mean any putrescible and nonputrescible solid waste, except sewage, whether combustible or noncombustible and includes garbage and rubbish, including all waste accumulations of animal, fruit, vegetable or other matter that attends or results from the preparation, use, cooking, processing, dealing in or storage of food, meat, fish, fowl, fruits or vegetables, including the same or parts thereof.

“Refuse collector” shall mean the City’s authorized agent for refuse collection.

“Service address” shall mean the residential street address or the business street address of the service user. For a telecommunications service user, “service address” means either:

1. The location of the service user’s telecommunications equipment from which the communication originates or terminates, regardless of where the communication is billed or paid; or
2. If the location in subsection (1) of this definition is unknown (e.g., mobile telecommunications service or VoIP service), the service address shall mean the location of the service user’s place of primary use.
3. For prepaid telecommunications service, “service address” means the point of sale of the services where the point of sale is within the City, or if unknown, the known address of the service user (e.g.,

billing address or location associated with the service number), which location shall be presumed to be the place of primary use.

“Service supplier” shall mean any person, including the City, who provides or sells telecommunications, video, electric, gas or refuse service to a user of such services within the City. The term shall include any person required to collect, or self-collect under SMC [3.10.080](#), and remit a tax as imposed by this chapter, including its billing agent in the case of electric or gas suppliers.

“Service user” shall mean a person required to pay a tax imposed by this chapter.

“State” shall mean the State of California.

“Tax Administrator” shall mean the City Treasurer, or his or her authorized representative.

“Telecommunications services” shall mean the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as Voice over Internet Protocol (VoIP) services or is classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that are functionally integrated with telecommunications services. Telecommunications services include, but are not limited to, the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunications services; intrastate, interstate and international telecommunications services; all forms of VoIP service; mobile telecommunications service; prepaid telecommunications service; post-paid telecommunications service; private telecommunications service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers call in to prerecorded or live service).

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

“Video service supplier” means any person, company, or service which provides or sells video programming, or provides or sells the capability to receive video programming, including any communications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the City, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or communications. A “video service supplier” includes, but is not limited to, multichannel video programming distributors (as defined in [47 U.S.C. Section 522\(13\)](#)); open video systems (OVS) suppliers; and suppliers of cable television; master antenna television; satellite master antenna television;

multichannel multipoint distribution services (MMDS); video services using Internet Protocol (e.g., IP TV and IP video, which provide, among other things, broadcasting and video on demand), direct broadcast satellite to the extent Federal law permits taxation of its video services, now or in the future; and other suppliers of video services (including two-way communications), whatever their technology.

“Video services” means video programming and any and all services related to the providing, recording, delivering, use or enjoyment of video programming (including origination programming and programming using Internet Protocol, e.g., IP TV and IP video) by a video service supplier, regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes ancillary video services, data services, telecommunications services, or interactive communication services that are functionally integrated with video services.

“VoIP (Voice over Internet Protocol)” means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network. (Ord. 1072 § 1, 2014)

3.10.030 Constitutional and statutory exemptions.

A. The taxes imposed by this chapter shall not apply to:

1. Any person or service if imposition of such tax upon that person or service would be in violation of a Federal or State statute or the Constitution of the State of California, or the Constitution of the United States; or
2. The City, and the State of California and its subdivisions.

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

C. The decision of the Tax Administrator may be appealed pursuant to SMC [3.10.210](#). Filing an application with the Tax Administrator and appeal to the City Manager, or designee, pursuant to SMC [3.10.210](#) is a prerequisite to a suit thereon.

D. The City Council may, by resolution, establish one or more classes of persons or one or more classes of utility service otherwise subject to payment of a tax imposed by this chapter and provide that such classes of persons or service shall be exempt, in whole or in part, from such tax for a specified period of time. (Ord. 1072 § 1, 2014)

3.10.040 Telecommunications users tax.

A. There is hereby imposed a tax upon every person in the City using telecommunications services. The tax imposed by this section shall be at the rate of 3.75 percent of the charges made for such services and shall be collected from the service user by the telecommunications services supplier or its billing agent, or as otherwise provided by law. There is a rebuttable presumption that telecommunications services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this section. There is also a rebuttable presumption that prepaid telecommunications services sold within the City are primarily used, in whole or in part, within the City and are therefore subject to taxation under this section. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunications services.

B. "Mobile telecommunications service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act ([4 U.S.C. Section 124](#)). The Tax Administrator may issue and disseminate to telecommunications service suppliers, which are subject to the tax collection requirements of this section, sourcing rules for the taxation of other telecommunications services, including but not limited to post-paid telecommunications services, prepaid telecommunications services, and private telecommunications services; provided, that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation.

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

D. As used in this section, the term "telecommunications services" shall include, but is not limited to, charges for: connection, reconnection, termination or early termination charges; movement or change of telecommunications services; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory or administrative fees, charges or surcharges, including charges or surcharges for programs imposed by State or Federal law (whether such charges or surcharges are imposed on the service supplier or the

customer); local number portability charges; and text and instant messaging. “Telecommunications services” shall not include digital downloads that are not “ancillary telecommunications services,” such as music, ringtones, games, and similar digital products.

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

F. The tax on telecommunications services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth day of the following month. (Ord. 1072 § 1, 2014)

3.10.050 Video users tax.

A. There is hereby imposed a tax upon every person in the City using video services from a video provider. The tax imposed by this section shall be at the rate of 3.75 percent of the charges made for such services, and shall be collected from the service user by the video service supplier or its billing agent. There is a rebuttable presumption that video services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City’s boundaries, and such services are subject to taxation under this chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax.

B. As used in this section, the term “charges” shall include, but is not limited to, charges for the following:

1. Regulatory fees and surcharges, franchise fees and access fees (PEG) (whether such charges or surcharges are imposed on the service supplier or the customer);
2. Initial installation of equipment necessary for provision and receipt of video services;
3. Late fees, collection fees, bad debt recoveries, and returned check fees;
4. Activation fees, reactivation fees; termination or early termination charges; and reconnection fees;
5. Video programming and video services;
6. Ancillary video programming services (e.g., electronic program guide services, search functions, recording functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of the video services);
7. Equipment leases (e.g., remote, set box, recording and/or search devices; converters); and

8. Service calls, service protection plans, name changes, changes of services, and special services.

C. As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the video services.

D. The Tax Administrator may issue and disseminate to video service suppliers, which are subject to the tax collection requirements of this chapter, an administrative ruling identifying those video services, or charges therefor, that are subject to or not subject to the tax of subsection A of this section.

E. The tax imposed by this section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video service (e.g., an apartment owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of the video service. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth day of the following month. (Ord. 1072 § 1, 2014)

3.10.060 Electricity users tax.

A. There is hereby imposed a tax upon every person using electricity in the City. The tax imposed by this section shall be at the rate of 3.75 percent of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or nonutility service supplier to a service user. The tax shall be collected from the service user by the service supplier or nonutility service supplier, or its billing agent.

B. As used in this section, the term “charges” shall apply to all services, components and items that are: (1) necessary or common to the receipt, use and enjoyment of electric service; or (2) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term “charges” shall include, but is not limited to, the following charges:

1. Energy charges;
2. Distribution or transmission charges;
3. Metering charges;
4. Standby, reserves, firming, voltage support, regulation, emergency, or other similar charges for supplemental services to self-generation service users;
5. Customer charges, late charges, service establishment or reestablishment charges, termination or early termination charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC),

public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees and surcharges which are necessary to or common for the receipt, use and enjoyment of electric service; and

6. Charges, fees, or surcharges for electricity services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, or by any State or Federal law, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.

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

D. The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by State or Federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service providers an administrative ruling identifying those components and items which are: (1) necessary or common to the receipt, use or enjoyment of electric service; or (2) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Unbundled charges for such components and items shall be subject to the tax of subsection [A](#) of this section.

E. As used in this section, the term “using electricity” shall not be construed to include the mere receiving of such electricity by an electric public utility or governmental agency at a point within the City for resale, or the use of such energy in the production or distribution of water by a public utility or a governmental agency.

F. The tax on electricity provided by self-production or by a nonutility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in SMC [3.10.080](#). All other taxes on charges for electricity imposed by this section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth day of the following month; provided, that the service user shall submit an adjusted payment or request for credit, as appropriate, within 60 days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

Notwithstanding the foregoing, the tax imposed under this section shall not apply to any individual who qualifies, and has been accepted, for the California Alternate Rates for Energy (CARE) program pursuant to California Public Utilities Code Sections [327](#) and [739.1](#) et seq., and as it may be amended from time to time. In

the event that the CARE program is repealed or otherwise ceases to exist in a substantially similar form, the exemption granted under this subsection shall automatically terminate. (Ord. 1072 § 1, 2014)

3.10.070 Gas users tax.

A. There is hereby imposed a tax upon every person using gas in the City, which is delivered through a pipeline distribution system or by mobile transport. The tax imposed by this section shall be at the rate of 3.75 percent of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The tax shall be collected from the service user by the service supplier or nonutility service supplier, or its billing agent, and shall apply to all uses of gas, including, but not limited to, heating, electric generation by a nonpublic utility, and the use of gas as a component of a manufactured product.

B. As used in this section, the term “charges” shall apply to all services, components and items for gas service that are: (1) necessary or common to the receipt, use and enjoyment of gas service; or (2) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term “charges” shall include, but is not limited to, the following charges:

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

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

D. The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by State or Federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: (1) necessary or common to the receipt, use or enjoyment of gas service; or (2) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection [A](#) of this section.

E. There shall be excluded from the base on which the tax imposed by this section is computed 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 government agency; and charges made by a gas public utility for gas used and consumed in the conduct of the business of gas public utilities.

F. The tax on gas provided by self-production or by a nonutility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in SMC [3.10.080](#). All other taxes on charges for gas imposed by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth day of the following month; provided, that the service user shall submit an adjusted payment or request for credit, as appropriate, within 60 days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

G. Notwithstanding the foregoing, the tax imposed under this section shall not apply to any individual who qualifies, and has been accepted, for the California Alternate Rates for Energy (CARE) program pursuant to California Public Utilities Code Sections [327](#) and [739.1](#) et seq., and as it may be amended from time to time. In the event that the CARE program is repealed or otherwise ceases to exist in a substantially similar form, the exemption granted under this subsection shall automatically terminate. (Ord. 1072 § 1, 2014)

3.10.080 Collection of tax from service users receiving direct purchase of gas or electricity.

A. Any service user subject to the tax imposed by SMC [3.10.060](#) or [3.10.070](#), which produces gas or electricity for self-use; which receives gas or electricity, including any related supplemental services, directly from a nonutility service supplier not under the jurisdiction of this chapter; or which, for any other reason, is not having the full tax collected and remitted by its service supplier, a nonutility service supplier, or its billing agent on the use of gas or electricity in the City, including any related supplemental services, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within 30 days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within 30 days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity; provided, that the service user shall submit an adjusted payment or request for credit, as appropriate, within 60 days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

B. The Tax Administrator may require said service user to identify its nonutility service supplier and provide, subject to audit, invoices, books of account, or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the City. (Ord. 1072 § 1, 2014)

3.10.090 Refuse collection users tax.

A. There is hereby imposed a tax upon every person in the City using refuse collection services provided by the refuse collector. The tax imposed by this section shall be at the rate of 3.75 percent of the charges made for such services.

B. There shall be excluded from the base on which the tax imposed in this section is computed charges made for refuse collection services which are to be resold and delivered through mains or pipes.

C. The Tax Administrator shall, from time to time, survey the refuse collector operators in the City to identify the various billing components of the refuse collection service that is being offered to customers within the City, and the charges therefor, including those items that are mandated by State or Federal regulatory agencies. The Tax Administrator may, thereafter, issue and disseminate to such service suppliers an administrative ruling identifying those components and items that are necessary or common to the receipt, use and enjoyment of

refuse collection service. Charges for such components and items shall be subject to the tax of subsection A of this section.

D. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the thirtieth day of the following month; provided, that the service user shall submit an adjusted payment or request for credit, as appropriate, within 60 days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due. (Ord. 1072 § 1, 2014)

3.10.100 Effect of commingling taxable items with nontaxable items.

If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier’s books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. If the service supplier offers a combination of taxable and nontaxable services, and the charges are separately stated, then, for taxation purposes, the values assigned the taxable and nontaxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation and apportionment of taxable and nontaxable charges. (Ord. 1072 § 1, 2014)

3.10.110 Substantial nexus/minimum contacts.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this chapter, “substantial nexus,” “substantial economic presence,” and “minimum contacts” shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by State and Federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any telecommunications service (including VoIP) used by a person with a service address in the City, which service is capable of terminating a call to another person on the general telephone network, shall be subject to a rebuttable presumption that “substantial nexus/minimum contacts” exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this chapter. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the City, directly or through an agent, affiliate or subsidiary, a place of business of any nature; solicits business in the City by employees, independent

contractors, resellers, agents, affiliates or other representatives; solicits business in the City on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the City or distributed from a location within the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of utility services that are subject to a tax under this chapter (e.g., an affiliated person engaging in activities in the City that inure to the benefit of the service supplier in its development or maintenance of a market for its services in the City). (Ord. 1072 § 1, 2014)

3.10.130 Duty to collect – Procedures.

A. *Collection by Service Suppliers.* The duty of service suppliers to collect and remit the taxes imposed by the provisions of this chapter shall be performed as follows:

1. The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax that was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, SMC [3.10.160](#) shall apply.
2. The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this chapter. Where a 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.

B. *Filing Return and Payment.* Each person required by this chapter to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator, on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code Section [7284.6](#), the Tax Administrator, and its agents, shall maintain such filing returns as confidential information that is exempt from the disclosure provisions of the Public Records Act. (Ord. 1072 § 1, 2014)

3.10.140 Collection penalties – Service suppliers or self-collectors.

A. Taxes collected from a service user, or owed by a service user subject to SMC [3.10.080](#), are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City’s account on the following business day.

B. If the person required to collect and/or remit the utility users tax fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the customer’s billing) or fails to remit the tax collected on or before the due date, or, in the case of a service user that fails to properly self-collect and remit the tax under SMC [3.10.080](#) on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of 15 percent of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of 0.75 percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first become delinquent, until paid.

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

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

E. Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates and/or penalty and interest provisions of this section to be consistent with any uniform standards or procedures that are mutually agreed upon by UUT public agencies, or otherwise legally established, to create a UUT central payment location or mechanism. (Ord. 1072 § 1, 2014)

3.10.150 Deficiency determination and assessment – Tax application errors.

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

B. The Tax Administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of

0.75 percent per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within 14 calendar days after the date of service of such notice, the person may request in writing to the Tax Administrator for a hearing on the matter.

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

D. At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or nonassessment) thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person owing the tax. The decision of the Tax Administrator may be appealed pursuant to SMC [3.10.210](#). Filing an application with the Tax Administrator and appeal to the City Manager, or designee, pursuant to SMC [3.10.210](#) is a prerequisite to a suit thereon.

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

F. All notices under this chapter may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing. (Ord. 1072 § 1, 2014)

3.10.160 Administrative remedy – Nonpaying service users.

A. Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this section from certain named service users for specific billing periods. Whenever the service user has failed to pay the amount of tax owed for a period of two or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the

provisions of this section. Nothing herein shall require that the Tax Administrator institute proceedings under this section if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

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

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

D. If the service user fails to remit the tax to the Tax Administrator within 30 days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of 15 percent of the amount of the total tax that is owed. (Ord. 1072 § 1, 2014)

3.10.170 Actions to collect.

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this chapter, along with any collection costs incurred by the City as a result of the person's noncompliance with this chapter, including, but not limited to, reasonable attorney's fees. In the event that a service user or service supplier owing a tax under this chapter files bankruptcy, then such debt to the City shall be deemed an unsecured priority excise tax obligation under [11 U.S.C. Section 507\(a\)\(8\)\(C\)](#). Service suppliers who seek to collect charges for service in bankruptcy proceedings shall also include in any such claim the amount of taxes due the City for those services, unless the Tax Administrator determines that such duty is in conflict with any Federal or State law, rule, or regulation or that such action would be administratively impractical. (Ord. 1072 § 1, 2014)

3.10.180 Additional powers and duties of the Tax Administrator.

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

B. The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. The administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this chapter, or increase an existing tax, except as allowed by California Government Code Section [53750\(h\)\(2\)](#). A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office. To the extent that the Tax Administrator determines that the tax imposed under this chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of Government Code Section [53750](#) or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of Government Code Section [53750](#) and the City does not waive or abrogate its ability to impose the utility users tax in full as a result of promulgating administrative rulings or entering into agreements.

C. Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this chapter and thereby (1) conform to the billing procedures of a particular service supplier (or service user subject to SMC [3.10.080](#)) so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter; or (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and is voidable by the Tax Administrator or the City at any time.

D. The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this chapter, of any person required to collect and/or remit a tax pursuant to this chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period or review shall not exceed a period of three years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to SMC [3.10.150](#) for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to be a rebuttable presumption of correctness.

E. Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this chapter for a period of not to exceed 45 days; provided, that the time for filing the required statement has not already passed when the request is received. No penalty

for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of 0.75 percent per month, prorated for any portion thereof.

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

G. The Tax Administrator, with the written approval of the City Attorney, may compromise a claim pursuant to this chapter where the portion of the claim proposed to be released is equal to or less than \$4,999; and, with the approval of the City Attorney and the City Council, may compromise such a claim where the portion proposed to be released is greater than \$4,999.

H. Notwithstanding any provision in this chapter to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this chapter if the noncollection occurred in good faith. In determining whether the noncollection was in good faith, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, or whether the person offers to voluntarily disclose its tax liability. The Tax Administrator may also participate with other utility users tax public agencies in conducting coordinated compliance reviews with the goal of achieving administrative efficiency and uniform tax application determinations, where possible. To encourage voluntary full disclosure and ongoing cooperation on tax collection and remittance, the Tax Administrator, and its agents, may enter into agreements with the tax-collecting service providers and grant prospective-only effect on any changes regarding the taxation of services or charges that were previously deemed by the service provider, in good faith and without gross negligence, to be nontaxable. In determining whether the noncollection was in good faith and without gross negligence, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, and whether the disclosure was voluntarily made by the service provider or its agent. (Ord. 1072 § 1, 2014)

3.10.190 Records.

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

B. The Tax Administrator may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the City on or before the due date; provided, that such person shall reimburse the City for all reasonable travel expenses incurred by the City

to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.

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

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

E. If any person subject to record-keeping under this chapter unreasonably denies the Tax Administrator, or the Tax Administrator's designated representative, access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, the Tax Administrator may impose a penalty of \$500.00 on such person for each day following: (1) the initial date that the person refuses to provide such access; or (2) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this chapter. (Ord. 1072 § 1, 2014)

3.10.200 Refunds/credits.

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

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

B. The submission of a written claim, which is acted upon by the City Council, shall be a prerequisite to a suit thereon. (See Section [935](#) of the California Government Code.) The Tax Administrator, or the City Council where the claim is in excess of \$4,999, shall act upon the refund claim within the time period set forth in Government Code Section [912.4](#). If the City Council fails or refuses to act on a refund claim within the time prescribed by Government Code Section [912.4](#), the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in Government Code Section [912.4](#). The Tax Administrator shall give notice of the action in a form that substantially complies with that set forth in Government Code Section [913](#).

C. Notwithstanding the notice provisions of subsection [A](#) of this section, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this chapter, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator; provided, that, prior to taking such credit by the service supplier: (1) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; (2) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and (3) in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit. (Ord. 1072 § 1, 2014)

3.10.210 Appeals.

A. The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to SMC [3.10.200](#)), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to SMC [3.10.200](#)), deficiency determination, assessment, or administrative ruling of the Tax Administrator shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. (See Government Code Section [935\(b\)](#).) To the extent allowed by law, nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

B. If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to SMC [3.10.200](#)), deficiency determination, assessment, or administrative ruling of the Tax Administrator, he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within 14 days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

C. The matter shall be scheduled for hearing before an independent hearing officer selected by the City Manager, or designee, no more than 30 days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing,

the appealing party, the Tax Administrator, the City Manager, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

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

E. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing. (Ord. 1072 § 1, 2014)

3.10.220 No injunction/writ of mandate.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected and/or remitted. (Ord. 1072 § 1, 2014)

3.10.230 Remedies cumulative.

All remedies and penalties prescribed by this chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section [12650](#) et seq.) and the California Unfair Practices Act (Business and Professions Code Section [17070](#) et seq.), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter. (Ord. 1072 § 1, 2014)

3.10.240 Notice of changes to chapter.

If a tax under this chapter is added, repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of Public Utilities Code Section [799](#). (Ord. 1072 § 1, 2014)

3.10.250 Future amendment to cited statute.

Unless specifically provided otherwise, any reference to a State or Federal statute in this chapter shall mean such statute as it may be amended from time to time. To the extent that the City's authorization to collect or impose any tax imposed under this chapter is expanded or limited as a result of an amendment or new enactment of a State or Federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter. (Ord. 1072 § 1, 2014)

3.10.260 Annual rate review and independent audit of tax collection, exemption, remittance and expenditure.

The City shall annually verify that the taxes owed under this chapter have been properly applied, exempted, collected, and remitted in accordance with this chapter, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed. (Ord. 1072 § 1, 2014)

3.10.270 No increase in tax percentage or change in methodology without voter approval – Amendment or repeal.

This chapter may be repealed or amended by the City Council without a vote of the people. However, as required by Chapter XIII C of the [California Constitution](#), voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this chapter; provided, however, the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration of the rate of the tax to a rate that is no higher than that set by this chapter, if the City Council has acted to reduce the rate of the tax;
- B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as such interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this chapter;
- C. The establishment a class of persons that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this chapter); and

D. The collection of the tax imposed by this chapter, even if the City had, for some period of time, failed to collect the tax. (Ord. 1072 § 1, 2014)

As approved by the Voters at the November 8, 2022 City Municipal Election