

FULL TEXT OF MEASURE

ORDINANCE NO. 327

**AN ORDINANCE OF THE CITY OF BRADBURY,
CALIFORNIA, ADDING CHAPTER 7 TO ARTICLE VI OF
THE BRADBURY MUNICIPAL CODE TO IMPOSE A
UTILITY USERS' TAX AND PROVIDE FOR ITS SUNSET**

THE PEOPLE OF THE CITY OF BRADBURY DO ORDAIN, AS FOLLOWS:

Section 1. Chapter 7 is hereby added to Article VI of the Bradbury Municipal Code, to read as follows:

6701. Description and purpose.

This chapter shall be known as the "Utility Users Tax Ordinance." The purpose of this chapter is to impose a utility users tax as a revenue measure necessary to pay the usual and current expenses of conducting the municipal government of the City of Bradbury, the proceeds of which shall be paid into the general fund of the City, to provide exemptions for certain low and very low income households headed by senior citizens and disabled persons, and to provide for the termination of the tax five years after adoption, unless extended by a vote of the people.

6702. Definitions.

Except where the context otherwise requires, the definitions given in this Section govern the construction of this Chapter.

1. "Ancillary Telecommunications Services" means 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' means 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' means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(3) 'Directory Assistance' means an ancillary service of providing telephone number information, and/or address information.

(4) 'Vertical Service' means 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) 'Voicemail Service' means an ancillary service that enables the customer to store, send or receive recorded messages. Voicemail service does not include any vertical services that the customer may be required to have in order to utilize the voicemail service.

2. "Billing Address" means the mailing address of the Service User where the Service Supplier submits invoices or bills for payment by the customer.
3. "City" means the City of Bradbury.
4. "Cogenerator" means any Person employing co-generation technology (as defined in Section 218.5 of the California Public Utilities Code) for producing power from other than a conventional power source for the generation of electricity for self-use or sale to others.
5. "Communication Services" means Telecommunications Services and Video Services.
6. "Gas" means natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.
7. "Month" means a calendar month.
8. "Nonutility Supplier" means (a) an electricity supplier, other than an electrical corporation franchised to serve the City, which generates electrical energy in capacities of at least fifty kilowatts for its own use or for sale to others, including those using cogeneration or fuel cell technologies; (b) a gas supplier, other than a gas corporation franchised to serve the City, that sells or supplies gas to other users within the City; and (c) a trash service other than an the franchised trash hauler for the City.
9. "Person" without limitation, means any domestic, non-profit or foreign corporation, firm, association, syndicate, joint-stock company, partnership of any kind, joint venture, club, trust, limited liability company, business or common-law trust, society, any natural individual, cooperative, receiver, trustee, guardian or other representative appointed by order of any court, or any municipal corporation (other than the City).
10. "Private Communications Services" means any dedicated Communications Services that entitle the user to the exclusive or priority use of communications channels.
11. "Service Supplier" means any Person or entity required to collect or self-impose and remit a tax as imposed by this chapter, including any entity or Person that provides communication, electric, Gas, Waste Disposal or Video Services to a user of such services within the City and the billing agent of any such entity.
12. "Service User" means a Person required to pay a tax imposed by this chapter.
13. "Tax Administrator" means the City Manager of City or his/her designee.
14. "Telecommunications Services" means 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, whether or not such information is transmitted through interconnected service with the public switched network, or through fiber optic, coaxial cable, power line transmission, broadband, digital subscriber line or other wireless transmission. The term "Telecommunications Services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are 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: central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling), local number portability, text messaging, Ancillary Telecommunication Services; prepaid and post-paid services (including but not limited to prepaid calling cards);

mobile telecommunications service; Private Communication Service; paging service; and 800 service (or any other toll-free numbers designated by the Federal Communications Commission). Telecommunication Service does not include charges for access to the internet or digital downloads, such as downloads of books, music, ringtones, games and similar digital products.

15. "Telephone Corporation," "Electrical Corporation," and "Gas Corporation," shall have the same meanings as defined in Sections 234, 218, and 222, respectively, of the California Public Utilities Code except, "Gas Corporation" shall also be construed to include any municipality or public agency engaged in the selling or supplying of electrical power or Gas to a Service User. "Electrical Corporation" shall include any organization or municipality or public agency engaged in the selling or supplying of electrical power to a Service User.

16. "Video Service Supplier" shall mean any Person, company, or service which provides one or more channels of video programming or video communications (including the leasing of channel access to provide such video programming or communications) to or from an address in the City, including to or from a business, home, condominium, or apartment, 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. Video Service Supplier includes, but is not limited to, multichannel video programming distributors [as defined in 47 U.S.C. Section 522(12)], suppliers of cable television, master antenna television, satellite master antenna television, multichannel multipoint distribution services, direct broadcast satellite (to the extent allowed by federal law), and other suppliers of video programming or video communications (including two-way communications), whatever their technology.

17. "Video Services" shall mean any and all services related to the supplying of video programming (including origination programming), communications (including two way communications), regardless of the content of the video programming or communications, and shall include, without limitation, the leasing of channel access (e.g., home shopping) to the extent that the Service User is subject to an additional direct or indirect charge for programming or communications over the leased channel and ancillary video services, including any service that is associated with or incidental to the provision or delivery of Video Services, including but not limited to electronic program guide services, search functions, or other interactive services that are associated with or incidental to the provision or use of video programming.

18. "Waste Disposal services" shall mean and include Solid waste handling service as defined in Public Resources Code section 49505, and shall such services provided by the City's franchised solid waste hauler.

6703. Effect of state and federal authorization.

To the extent that the City's authorization to impose or collect the tax imposed in this Chapter is expanded or limited as a result of changes in 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 City's authorization up to the full amount of the tax imposed by this Chapter.

6704. Communication Users' Tax.

A. There is hereby imposed a tax upon every Person with a Billing Address or service address in the City who uses Communication Services, including intrastate, interstate (including calls to the

District of Columbia), and international Communications Services, to the extent permitted by state and federal law. The tax imposed by this Section shall be at the rate as established in Section 6717 on the charges made for Communication Services and shall be collected from the Service User by the Service Supplier or its billing agent. To the extent allowed by law, the tax on Communication Services shall apply to a Service User if the Billing Address or service address of the Service User is within the City's boundaries.

B. Except as otherwise provided herein, Communication Services shall include all Communication Service for which there is a charge, regardless of the means or technology used to provide such services. The tax imposed under Subsection A, above shall not be imposed upon any Person for using the following Communications Services:

(1) Except with respect to local telephone service, services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press or by means of radio broadcasting, if the charge for such service is billed in writing to such Person.

(2) Services furnished to a public international organization in which the United States participates pursuant to treaty or Act of Congress, or to the American National Red Cross.

(3) Any toll telephone service which originates within a combat zone and is from a member of the Armed Forces of the United States performing service in such combat zone; provided a certificate, setting forth such facts as the Secretary of the United States Treasury may by regulations prescribe, is furnished to the Person receiving such payment.

(4) No tax shall be imposed under this Section on the amount paid for any Communications Services to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business.

(5) The installation of any instrument, wire, pole, switchboard, apparatus or equipment as is properly attributable to such installation.

(6) Amounts paid by a nonprofit hospital for services furnished to such organization. For purposes of this exemption, the term "nonprofit hospital" means a hospital referred to in Section 170(b)(1)(A)(iii) of the Internal Revenue Code, which is exempt from federal income tax under Section 501(a) of the Internal Revenue Code.

(7) Services or facilities furnished to the government of any state, or any political subdivision thereof.

(8) Services or facilities paid for by a nonprofit educational organization and furnished to such organization. For purposes of this subsection, the term "nonprofit educational organization" means an educational organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code, which is exempt from income tax under Section 501(a) of the same code. The term also includes a school operated as an activity of an organization described in Section 501(c)(3) of the Internal Revenue Code, which is exempt from income tax under Section 501(a) of the same code, if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(9) Items otherwise taxed. Only one payment of tax under this Section shall be required with respect to the tax on any service.

C. As used in this Section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the Service User in

exchange for the Communication Services.

D. Charges for Video Services that are taxable under this Section include, but are not limited to, charges for the following:

- (1) Franchise fees and access fees (PEG), whether designated on the customer's bill or not;
- (2) Initial installation of equipment necessary for provision and receipt of Video Services;
- (3) All programming services (e.g., basic services, premium services, audio services, video games, pay-per-view services, and electronic program guide services);
- (4) Equipment leases (e.g., converters, remote devices);
- (5) Service calls, service protection plans, name changes, changes of service, and special services (e.g., no promotional mail); and
- (6) The leasing of channel access (e.g., home shopping) to the extent that the Service User is subject to an additional direct or indirect charge for programming or communications over the leased channel; provided that, in the absence of evidence of direct payment by the Service User, the indirect payment of the Service User(s), which is subject to the tax imposed under this Section, shall be deemed to be the lease payment to the Video Service Supplier by the party leasing the channel access.

E. The Tax Administrator shall, from time to time, survey the Video Service Suppliers in the City to identify the various components of the Video Services that are being offered to customers within the City, and the charges therefor. The Tax Administrator may, thereafter, issue and disseminate to such Video Service Suppliers an administrative ruling identifying those components: I) that are necessary or common to the receipt, use and enjoyment of Video Services; or, ii) which currently are, or historically have been, included in a bundled rate for Video Services by a local distribution company. Charges for such components shall be subject to the tax of subsection A, above.

F. To prevent actual multi-jurisdictional taxation of Communication Services subject to tax under this Section, any Service User, upon proof to the Tax Administrator that the Service User owed and has previously paid the same tax in another state or city on such Communication 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.

G. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Chapter, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any Communication Services used by a Person with a service address in the City, 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. For Communication Services for which there is no Billing Address or primary physical location for the provision of services, the service address shall mean the point of sale of the services.

H. The tax on Communication Services imposed by this Section shall be collected from the Service User by the Service Supplier. In the case of Video Services, the Service User shall be deemed to be the purchaser of the bulk Video Services (e.g., an apartment owner), unless such services are resold to individual users, in which case the Service User shall be the ultimate purchaser of the Video Services. The amount of tax collected in one (1) Month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the

twentieth (20th) day of the following Month. If a Service Supplier of Communication Services uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the Service Supplier shall: I) 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, ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

I. The Tax Administrator may, from time to time, issue and disseminate to Service Suppliers, which are subject to the tax collection requirements of this Section, an administrative ruling identifying those Communication Services that are subject to the tax of subsection A, above. This administrative ruling shall be consistent with legal nexus rules, regulations, and laws pertaining to Communication Services. The Tax Administrator may determine, in his discretion, that the tax imposed under this Section shall not be collected in full for a period or periods of time. The Tax Administrator's exercise of prosecutorial forbearance under this Section does not constitute a change in taxing methodology for purposes of Government Code Section 53750, and the City does not waive or abrogate its ability to impose the tax on Communication Services in full as a result of issuing such administrative rulings.

6705. Electricity Users' Tax.

A. There is hereby imposed a tax upon every Person using electricity or electrical energy in the City. The tax imposed by this section shall be at the rate as established in Section 6717 for the charges made for such electricity or energy, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the Service Users, which are provided by a Service Supplier to a Service User. The tax applicable to electrical energy provided by a nonutility supplier shall be determined by applying the tax rate to the equivalent charges the Service User would have incurred if the energy used had been provided by the Electrical Corporation franchised by the City. Rate schedules for this purpose shall be available from the City.

B. The tax imposed in this section shall be collected from the Service User by any energy Service Supplier or Nonutility Supplier. An energy supplier providing wheeling services for delivery of electricity through its distribution system shall collect the tax from the Service User based upon the cost of wheeling the electricity. The amount of tax collected in one Month shall be remitted to the Tax Administrator, on or before the last day of the following Month; or, at the option of the Person required to collect or remit the tax, an estimated amount of tax measured by the tax billed in the previous Month or measured by the payment pattern of the customers of the Service Supplier, shall be remitted.

C. No tax shall be imposed upon energy provided by self production or by a Nonutility Supplier.

D. As used in this Section, the term "charges" shall include:

- (1) Energy charges;
- (2) Distribution or transmission charges;
- (3) Metering charges;
- (4) Stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar minimum charges for services, whether primary or supplemental;
- (5) Customer charges, late charges, service establishment or reestablishment charges, demand

charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges which are necessary or common to the receipt, use or enjoyment of electric service; and,

(6) Charges, fees, or surcharges for electric services or programs, which are mandated or authorized 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.

(7) As used in this section, the term “charges” includes 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.

E. The Tax Administrator may, from time to time, 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 may, thereafter, issue and disseminate to such electric Service Suppliers an administrative ruling identifying those components and items which are: I) necessary or common to the receipt, use and enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Unbundled charges for such components and items shall be subject to the tax of subsection A, above.

F. As used in this Section, the term “using electricity” shall not include the mere receiving of such electricity by an electric public utility or governmental agency at a point within the City for resale.

G. If an electric Service Supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the Service Supplier shall: I) 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, ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

6706. Gas Users Tax.

A. There is imposed a tax upon every Person using Gas in the City which is transported through a pipeline distribution system or by mobile transport. The tax imposed by this Section shall be at the rate established by Section 6717, for the charges made for such Gas and shall be paid by the Person using the Gas. “Charges” as used in this section shall include: (1) the charge for Gas which is delivered through a Gas pipeline distribution system or by mobile transport; (2) Gas transportation, delivery and storage charges; (3) demand charges, service charges, customer charges, minimum charges, annual and monthly charges and any other charges authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission; and (4) 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.

B. There shall be excluded from the tax imposed in this Section:

1. Charges made for Gas which is to be resold and delivered through a Gas pipeline distribution system or mobile transport;

2. Charges made for natural gas used in the propulsion of a motor vehicle, as that phrase is defined in the Vehicle Code of the state of California.

C. The tax imposed in this section shall be collected from the Service User by the energy service supplier. An energy supplier providing transportation services for delivery of Gas through a pipeline distribution system shall collect the tax from the Service User based upon the cost of transporting the Gas. The amount of tax collected in one Month shall be remitted to the Tax Administrator on or before the last day of the following Month; or, at the option of the Person required to collect or remit the tax, an estimated amount of tax measured by the tax billed in the previous Month or measured by the payment pattern of the customers of the Service Supplier, shall be remitted.

D. The Tax Administrator may, from time to time, 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 may, thereafter, issue and disseminate to such Gas Service Suppliers an administrative ruling identifying those components and items which are: I) necessary or common to the receipt, use and enjoyment of Gas service; or, ii) currently, or historically have been, included in a single or bundled rate for Gas service by a local distribution company to a class of retail customers. Unbundled charges for such components and items shall be subject to the tax of subsection A, above.

E. If a Gas Service Supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the Service Supplier shall: I) 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 to the City; and, ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

6707. Collection of tax from service users receiving direct purchase of gas or electricity.

A. Any Service User subject to the tax imposed by Sections 6705 and 6706, who produces electricity or Gas for self-use or who receives electricity or Gas directly from a Nonutility Supplier not under the jurisdiction of this Chapter or otherwise not having the full tax due on the use of Gas or electricity in the City directly billed and collected by the Service Supplier, shall report said fact to the Tax Administrator and remit the tax due directly to the City within thirty days of such use.

B. The Tax Administrator may require said Service User to identify its Nonutility Supplier and provide, subject to audit, filed tax returns or other satisfactory evidence documenting the quantity or electricity or Gas used and the price thereof.

6708 Solid Waste disposal users tax.

A. There is imposed a tax upon every Person in the City using Solid Waste disposal services. The tax imposed by this Section shall be at the rate established in Section 6717, for the charges

made for such Solid Waste disposal and shall be paid by the Person paying for such Solid Waste disposal services.

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

C. The tax imposed in this Section shall be collected from the Service User by the Person supplying the Solid Waste disposal services. The amount collected in one Month shall be remitted to the Tax Administrator on or before the last day of the following Month.

6710. Penalty and interest.

A. Taxes collected from a Service User or owed by a Service User which are not remitted to the Tax Administrator on or before the due dates provided in this Chapter are delinquent. If the Person required to collect and/or remit a tax imposed under this Chapter fails to collect and remit the tax, such taxes are delinquent. Should the due date occur on a weekend or legal holiday, the return may be made on the first regular working day following a Saturday, Sunday, or legal holiday.

B. Penalties for delinquency in remittance of any tax collected or any deficiency determination determined by the Tax Administrator shall attach and be paid by the Person required to collect and remit at the rate of fifteen percent of the total tax collected or imposed herein.

C. The Tax Administrator shall have the power to impose additional penalties upon any Person required to collect and remit taxes under the provisions of this Chapter for fraud or negligence in reporting or remitting at the rate of twenty-five percent of the amount of the tax collected or as recomputed by the Tax Administrator.

D. Every penalty imposed under the provisions of this Chapter shall become a part of the tax required to be remitted.

E. In addition to the penalties imposed in this section, any Person required to collect and/or remit any tax imposed by the provisions of this Chapter who fails to collect or remit the tax, shall pay interest at the rate of one percent per month, or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

6710. 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. In the event that a Service Supplier required to collect and remit a tax under the provisions of this Chapter fails to do so in whole or in part, the amount of such unremitted tax shall be deemed a debt owed by the Service Supplier to the City. 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, plus 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.

6711. Duty to collect—Procedures.

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

A. Except as otherwise provided by Section 6707 the tax shall be collected insofar as practicable at the same time as and along with the charges made in accordance with the regular billing practices of the Service Supplier. Where the amount paid by a Service User to a Service Supplier is less than the full amount of the utility charge and tax which has accrued for the billing period, such amount and any subsequent payments by a Service user shall be applied to the utility charge first until such charge has been fully satisfied. Any remaining balance shall be applied to taxes due. In those cases where a Service User has notified the Service Supplier of refusal to pay the tax imposed on said utility charges, Section 6713 (C) will apply.

B. The duty to collect tax from a Service User shall commence with the beginning of the first full 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.

6713. Additional power and duties of 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 not inconsistent with provisions of this Chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office.

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: i) conform to the billing procedures of a particular Service Supplier or Service User, so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this Chapter; or ii) 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. Such administrative agreements fall within the Tax Administrator's discretion to settle disputes. The Tax Administrator's exercise of prosecutorial forbearance under this Chapter does not constitute a change in taxing methodology for purposes of Government Code Section 53750, and the City does not waive or abrogate its ability to impose any tax owed under this Chapter in full as a result of entering into such administrative agreements.

D. The Tax Administrator shall be authorized to determine the eligibility of any Person who asserts a right to exemption from or a refund of a tax imposed by this Chapter.

6714. Assessment—Administrative remedy.

A. The Tax Administrator may make an assessment for taxes not remitted by a Person required to remit.

B. Whenever the Tax Administrator determines that a Service User has deliberately withheld the amount of the tax owed by him from the amounts remitted to a Service Supplier, or that a Service User has failed to pay the amount of the tax for a period of two (2) or more billing periods, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve the Service Supplier of the obligation to collect taxes due under this Chapter from certain named Service Users for specified billing periods. 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 Chapter.

C. The Tax Administrator shall notify the Service User that it has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the Service User by handing it to him or her personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the Service User at the address to which billing was made by the Service Supplier; or should the Service User have changed his or her address, to his or her last known address. If a Service User fails to remit the tax to the Tax Administrator within fifteen (15) days from the date of the service of the notice upon him or her, which shall be the date of mailing if service is not accomplished in person, a penalty of twenty-five percent (25%) of the amount of the tax set forth in the notice shall be imposed, along with interest at the rate of one percent (1%) per Month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid, but not less than Five Dollars (\$5.00).

D. The Tax Administrator may make an assessment for taxes not paid or remitted by a Service User required to pay or remit. A notice of the assessment which shall refer briefly to the amount of the taxes and penalties imposed and the time and place when such assessment shall be submitted to the City Council for confirmation or modification. The Tax Administrator shall mail a copy of such notice to the Service Supplier and Service User at least ten (10) days prior to the date of the hearing and shall post such notice for at least five (5) continuous days prior to the date of the hearing in a conspicuous place freely accessible to the public at large. Any interested party having any objections may appear and be heard at the hearing provided his or her objection is filed in writing with the Tax Administrator prior to the time set for the hearing. At the time fixed for considering said assessment, the City Council shall hear the same together with any objection filed regarding aforesaid and thereupon may confirm or modify said assessment by motion.

6714. 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 (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator, or the Tax Administrator's designated representative, shall have the right to inspect at all reasonable times.

B. If any Person subject to record-keeping under this Section unreasonably denies the Tax Administrator, or the Tax Administrator's designated representative, access to such records, the Tax Administrator, or the Tax Administrator's designated representative, may impose a penalty of five hundred dollars (\$500.00) on such Person for each day following the initial date that the Person refuses to provide such access. This penalty shall be in addition to any other penalty imposed under this Chapter.

6715. Refunds.

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

B. The Tax Administrator may refund any tax that has been overpaid, 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. Nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers. The submission of a written claim, which is acted upon by the City Council, shall be a prerequisite to a suit thereon. The City Council 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 be 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.

C. Notwithstanding other provisions of this Section, whenever a Service Supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to Service Users of charges for past utility services, the taxes paid pursuant to this Chapter on the amount of such refunded charges shall also be refunded to Service Users, and the Service Supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly return.

6716. Suspension or modification of utility users tax.

The Service Supplier shall, upon notification from the City, suspend or adjust the tax rate of any utility user tax commencing with the first full billing period which occurs after the effective date of such action by the City Council.

6717. Utility users tax rate.

(A) The taxes imposed by this Chapter shall be at the rate of two point seven five percent (2.75%) on water, and five point five percent (5.5%) on other covered utilities,

(B) The taxes imposed by this Chapter shall be reviewed by the City Council prior to April of each year. The City Council may, by ordinance or resolution, adjust the rates or temporarily suspend a portion of the tax, as appropriate to the financial condition of the City. No adjustment of the rate of the tax shall constitute a decrease in a tax, or an increase in a tax requiring voter approval under California Constitution Article XIII C (Proposition 218); provided, the city council's action does not increase the tax beyond three point seven five percent (3.75%) on water and seven point five percent (7.5%) on other covered utilities, or decrease the rates below one half of one percent (0.5%) and one percent (1%) respectively. Water rates shall remain at 50% of other utility rates in the event of any rate adjustment. To the extent that any aspect of a rate adjustment is found to invoke such a requirement under Proposition 218, the entire City Council action shall be deemed null and void *ab initio*, and there shall be no entitlement to adjustment or suspension for any service user.

6718. Bundling taxable and non-taxable charges.

If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the Service Supplier or taxpayer reasonably identifies

actual charges not subject to the utility users tax based upon books and records that are kept in the regular course of business, in a manner consistent with generally accepted accounting principles. The Service Supplier or Taxpayer has the burden of proving the proper apportionment of taxable and nontaxable charges.

6719. Exemptions.

A. Nothing in this Chapter shall be construed as imposing a tax upon:

- (1) Any Person or service if imposition of such tax upon that Person or service would be in violation of a federal or California statute, the Constitution of the United States or the Constitution of the State of California;
- (2) The City;
- (3) Any individual who uses any utility subject to tax under this Ordinance in or upon any premises occupied by a household of which the head of household is at least sixty two (62) years of age and qualifies as “extremely low income or low income” as defined by the U.S. Department of Housing and Urban Development’s most recent annual survey of income limits for the Public Housing and Section 8 Programs;
- (4) Any individual who uses any utility subject to tax under this Ordinance in or upon any premises occupied by a household of which the head of household is disabled and receiving Social Security Disability or Supplemental Security Income benefits.

B. The exemptions granted by this Section shall not eliminate the duty of the Service Supplier from collecting taxes from such exempt individuals, or the duty of such exempt individuals from paying such taxes to the Service Supplier; unless an exemption is applied for by the Service User and granted in accordance with the provisions of this Section.

C. Any Service User exempt from the taxes imposed by this Chapter because of the provisions of subsection A, above, may file an application with the Tax Administrator for an exemption. Such application shall be made upon a form supplied by the Tax Administrator; and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption.

D. The Tax Administrator shall review all such applications, and shall certify as exempt those applicants determined to qualify therefor; and shall notify all Service Suppliers affected that such exemptions have been approved. For each exemption, the following information shall be transmitted to the Service Supplier:

- (1) Name of exempt applicant;
- (2) Account number shown on utility bill;
- (3) Address to which exempt service is being supplied;
- (4) Any information to establish that the applicant is entitled to exemption; and
- (4) Any other information as may be necessary for the Service Supplier to remove the exempt Service User from its tax billing procedure.

E. Upon receipt of such notice, the Service Supplier shall not be required to continue to bill any further tax imposed by this Chapter from such exempt Service User, until further notice by the Tax Administrator is given. The Service Supplier shall eliminate such exempt Service User from its tax billing procedure no later than sixty (60) days after receipt of such notice from the Tax Administrator.

F. All exemptions shall continue and be renewed automatically by the Tax Administrator, so long as the prerequisite facts supporting the initial qualification for exemption shall continue; provided, however, that the exemption shall automatically terminate with any change in the

service address or residence of the exempt individual; further provided such individual may nevertheless apply for a new exemption with each change of address or residence.

G. The Tax Administrator shall have the power and right to demand evidence of continued eligibility of a Service User for exemption under the provisions of this Section. Such evidence may include, but need not be limited to, copies of business records, letters or statements from the Social Security Administration, copies of income tax returns, and such other evidence concerning the Service User or other members of his or her household as may tend to prove or disprove such eligibility. Failure to provide such evidence as is within the control of a Service User to so provide, either directly by him or by his consent or the consent of a member of his or her household when such evidence is requested of the Service User in writing by the Tax Administrator, shall be grounds for the immediate discontinuance of the Service User's eligibility for exemption under the provisions of this Section. Evidence provided to the Tax Administrator upon request, or voluntarily provided by the Service User without request, may not be used against such Service User as evidence of violation of the provisions of this Section; such evidence may only be used as grounds for termination of the exemption herein provided.

H. Any individual exempt from the tax shall notify the Tax Administrator within ten (10) days of any change in fact or circumstance which might disqualify said individual from receiving such exemption. It shall be a misdemeanor for any Person to knowingly receive the benefits of the exemptions provided by this Section, when the basis for such exemption either does not exist or ceases to exist.

I. Notwithstanding any of the provisions hereof, any Service Supplier who determines by any means that a new or nonexempt Service User is receiving service through a meter or connection exempt by virtue of an exemption issued to a previous user or exempt user of the same meter or connection, such Service Supplier shall immediately notify the Tax Administrator of such fact; and the Tax Administrator shall conduct an investigation to ascertain whether or not the provisions of this Section have been complied with, and where appropriate, order the Service Supplier to commence collecting the tax from the nonexempt Service User.

J. Any individual entitled to be exempt from the taxes imposed by this Chapter, who used communication, electric, or Gas services and paid more than \$3.00 in such taxes, may, during the calendar year following such payment, apply for a refund thereof on forms provided by the Tax Administrator. Refund applications shall contain a declaration of those facts, under oath, which qualify the applicant for a refund, and shall be accompanied by the customer's bills showing the amount of such taxes billed by Service Supplier during the preceding calendar year. Refund claims may be filed by an individual who used communication, electric, Solid Waste or Gas services and paid the taxes prescribed by this Chapter either directly or indirectly to the 'Service User' rather than the Service Supplier. In the event the applicant has lost or destroyed any relevant billings or statements showing the amount of tax paid, or if the applicant indirectly paid such taxes in conjunction with the occupation of premises without receiving a specific billing therefor from the Service User, the maximum refund shall be \$48.00, or \$4.00 for each full Month of services received by the applicant, whichever is less.

K. If the Tax Administrator determines that an application for exemption is faulty, or that the applicant has failed to truthfully set forth such facts, the application for the exemption shall be denied in writing to the applicant. The applicant shall thereafter have a right to file an amended application for exemption; or to appeal the Tax Administrator's decision to the City Manager within a 10-day period after the mailing date of the Tax Administrator's rejection. In the case of

an appeal, the City Manager shall review the facts in consultation with the City Attorney, and shall render a final determination on such appeal.

L. Upon request of the Tax Administrator, a Service Supplier, or its billing agent, shall provide a list of the names and addresses of those customers which, according to its billing records, are deemed exempt from any tax imposed under this Chapter.

6720. Reporting and remitting.

Each Person required by this Chapter to remit a tax shall file a return with the Tax Administrator on forms approved by the Tax Administrator on or before the due date. The full amount of the tax owed shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such further information as he or she deems necessary to properly determine if the tax here imposed is being levied and collected in accordance with this Chapter. Returns and remittances are due immediately upon cessation of business for any reason. Pursuant to California Revenue and Taxation Code § 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information, and not subject to the Public Records Act.

6721. No injunction or 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.

6722. Oversight Committee.

A six (6) member citizen oversight committee is hereby established, to be comprised of the City Treasurer plus five (5) members of the public, with each council member making one appointment. The oversight committee shall review and make recommendations concerning the audit and collection of the funds collected and/or remitted in accordance with this Chapter.

6723. Amendment or repeal.

Taxes imposed by this Chapter may be decreased, repealed or amended by the City Council, but may not be increased by more than one point two five percent (1.25%) above the then existing tax rate and in no event above three point seven five percent (3.75%) on water, and seven point five percent (7.5%) on all other covered utilities without a vote of the people as required in California Constitution Article XIIC and California Government Code Section 53750(h), and may not be decreased below one half of one percent (0.5%) on water and one percent (1%) on all other covered utilities. The People of the City of Bradbury affirm that 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 three point seven five percent (3.75%) on water and seven point five percent (7.5%) on all other covered utilities;

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

C. The establishment of a class of persons that is exempt or excepted from the tax, or the discontinuation of any such exemption or exception other than the discontinuation of an

exemption or exception specifically set forth in this Ordinance; and,
D. The collection of the tax imposed by this Ordinance even if the City had for some period of time failed to collect the tax.

Section 2. Sunset Clause. The tax created by this Ordinance shall expire five (5) years after adoption unless a new utility users tax ordinance is adopted by a vote of the People of the City.

Section 3. Majority Approval. This Ordinance shall be effective only if approved by a majority of the voters voting thereon (fifty percent plus one) and shall go into effect ten (10) days after the vote is declared by the City Council.

Section 4. Severability. If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this Ordinance shall nonetheless remain in full force and effect. The people of the City of Bradbury hereby declare that they would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Chapter be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.

Section 5. Execution.

The Mayor is hereby authorized to attest to the adoption of this Ordinance by signing where indicated below after approval by the requisite percentage of the voters and approval by the City Council.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Bradbury, California voting on the ___ day of _____, 2013.

MAYOR

ATTEST:

I, Claudia Saldana, City Clerk of the City of Bradbury, do hereby certify that the foregoing ordinance, being Ordinance No. ____, was duly passed by the People of the City of Bradbury, signed by the Mayor of said City, and attested by the City Clerk on the ___ day of _____, 2013.

Claudia Saldana
CITY CLERK

APPROVED AS TO FORM:

Cary S. Reisman
CITY ATTORNEY