

**34053**

**AGREEMENT FOR STATE COLLECTION AND ADMINISTRATION OF  
LOCAL CHARGES**

This Agreement is for the purpose of implementing the Local Prepaid Mobile Telephony Services Collection Act (Part 21.1, commencing with Section 42100) of Division 2 of the Revenue and Taxation Code), hereinafter referred to as the Local Charge Act. The City of Long Beach, California and the State Board of Equalization, hereinafter called the Board, do agree as follows:

**ARTICLE I  
DEFINITIONS**

Unless the context requires otherwise, wherever the following terms appear in this Agreement they shall be interpreted to mean the following:

**A. “Administrative Expenses”** means all expenses incurred by the Board in the administration and collection of the local charges, including preparation and wind down costs which are reimbursable to the Board from the revenues collected by the Board on behalf of the local jurisdiction.

**B. “Contingent Fee”** includes, but is not limited to, a fee that is based on a percentage of the tax liability reported on a return, a fee that is based on a percentage of the taxes owed, or a fee that depends on the specific tax result attained.

**C. “Direct Seller”** means a prepaid Mobile Telephony Service (MTS) provider or service supplier, as defined in section 41007, that makes a sale of prepaid mobile telephony services directly to a prepaid consumer for any purpose other than resale in the regular course of business. A direct seller includes, but is not limited to, a telephone corporation, a person that provides an interconnected Voice over Internet Protocol (VoIP) service, and a retailer as described in section 42004(b)(1).

**D. “Local Charges”** means a utility user tax imposed on the consumption of prepaid mobile telephony services, as described in section 42102, and charges for access to communication services or to local “911” emergency telephone systems imposed by a local jurisdiction, as described in section 42102.5.

**E. “Local Jurisdiction” or “local agency”** means a city, county, or city and county, which includes a charter city, county, or city and county of this State, which has adopted an ordinance imposing a local charge of the kind described in Part 21.1 of Division 2 of the Revenue and Taxation Code and has entered into a contract with the Board to perform all functions incident to the collection of the local charges.

**F. “Ordinance”** means an ordinance of a local jurisdiction imposing a local charge, including any local enactment relating to the filing of a refund or a claim arising under the ordinance, attached hereto, as amended from time to time.

**G. “Quarterly local charges”** means the total amount of local charges transmitted by the Board to a local jurisdiction for a calendar quarter, as set forth in section 42106(a)(1).

**H. “Refund”** means the amount of local charges deducted by the Board from a local jurisdiction’s quarterly local charges in order to pay that jurisdiction’s share of a local charge refund due to one taxpayer.

**I. “Section”** – all section references are to the Revenue and Taxation Code.

**J. “Seller”** means a person that sells prepaid mobile telephony service to a person in a retail transaction.

## **ARTICLE II BOARD ADMINISTRATION AND COLLECTION OF LOCAL CHARGES**

**A. Administration.** The Board and the local jurisdiction agree that the Board shall perform functions incident to the collection of the local charges from sellers that are not direct sellers.

**B. Collection.** The Board shall collect the local charges in the same manner as it collects the prepaid MTS Surcharge in the Prepaid Mobile Telephony Services Surcharge Collection Act, subject to specified limitations in the Local Charge Act for which the local jurisdiction is responsible, as set forth in Article III of this Agreement.

**C. Audits.** The Board’s audit duties shall be limited to verification that the seller that is not a direct seller complied with the Local Charge Act.

**D. Other applicable laws.** The Board and the local jurisdiction agree that all provisions of law applicable to the administration and operation of the Local Charge Act, Prepaid Mobile Telephony Services Surcharge Collection Act, and the Fee Collection Procedures Law (FCPL) shall be applicable to the collection of local charges. References in the FCPL to feepayer include a person required to pay the local charge, including the seller. All future amendments to applicable laws are automatically incorporated into this Agreement.

**E. Deposit of Local Charges.** All local charges collected by the Board shall be deposited in the Local Charges for Prepaid Mobile Telephony Services Fund in the State Treasury to be held in trust for the local taxing jurisdiction. Local charges shall consist of all taxes, charges, interest, penalties, and other amounts collected and paid to the Board, less payments for refunds and reimbursement to the Board for expenses incurred in the administration and collection of the local charges, including preparation and wind-down costs.

**F. Allocation of Expenses.** The Board shall allocate the total combined annual expenses incurred for administration and collection pursuant to the Prepaid Mobile Telephony Services Surcharge Collection Act and the Local Charge Act on a pro rata basis according to revenues collected for: (1) the emergency telephone users surcharge portion of the prepaid MTS surcharge, (2) the Public Utilities Commission surcharges

portion of the prepaid MTS surcharge, and (3) local charges. The Board shall charge a local jurisdiction its pro rata share of the Board's cost of collection and administration.

**G. Transmittal of money.** All local charges collected by the Board shall be transmitted to the local jurisdiction once in each calendar quarter. Transmittals may be made by mail or by deposit to the account of the local jurisdiction in a bank designated by that jurisdiction. The Board shall furnish a statement quarterly indicating the amounts paid and withheld for expenses of the Board.

**H. Rules.** The Board shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and collection of local charges and the distribution of the local charges collected.

**I. Security.** The Board agrees that any security which it hereafter requires to be furnished under the FCPL section 55022 will be upon such terms that it also will be available for the payment of the claims of the local jurisdiction for local taxes owing to it as its interest appears. The Board shall not be required to change the terms of any security now held by it, and the local jurisdiction shall not participate in any security now held by the Board.

**J. Records of the Board.**

1. Information obtained by the local jurisdiction from the examination of the Board's records shall be used by the local jurisdiction only for purposes related to the collection of the prepaid mobile telephony services surcharge and local charges by the Board pursuant to this Agreement.

2. When requested by resolution of the legislative body of a local jurisdiction, the Board shall permit any duly authorized officer or employee or other person designated by that resolution to examine any information for its own jurisdiction that is reasonably available to the Board regarding the proper collection and remittance of a local charge of the local jurisdiction by a seller, including a direct seller, subject to the confidentiality requirements of sections 7284.6, 7284.7 and 19542. (sections 42110(b), 42103(e)).

3. The resolution of the local jurisdiction shall certify that any person designated by the resolution, other than an officer and an employee, meets all of the following conditions:

- a. Has an existing contract with the local jurisdiction that authorizes the person to examine the prepaid MTS surcharge and local charge records.
- b. Is required by that contract with the local jurisdiction to disclose information contained in or derived from, those records only to an officer or employee of the local jurisdiction authorized by the resolution to examine the information.
- c. Is prohibited by that contract from performing consulting services for a seller during the term of that contract.
- d. Is prohibited by that contract from retaining information contained in, or derived from, those prepaid MTS surcharge and local charge records, after that contract has expired.

4. Any third party contract between the local jurisdiction and an entity or person authorized by the local jurisdiction to request information from the Board shall be subject to the following limitations:

a. Any third party shall, to the same extent as the Board, be subject to Section 55381, relating to unlawful disclosures.

b. A third party contract shall not provide, in whole or in part, in any manner a contingent fee arrangement as payment for services rendered.

5. Information obtained by examination of Board records shall be used only for purposes related to the collection of the prepaid MTS surcharge and local charges by the board pursuant to the contract, or for purposes related to other governmental functions of the local jurisdiction set forth in the resolution.

6. If the Board believes that any information obtained from the Board's records related to the collection of the prepaid MTS surcharge and local charges has been disclosed to any person not authorized or designated by the resolution of the local jurisdiction, or has been used for purposes not permitted by section 42110(b), the board may impose conditions on access to its local charge records that the board considers reasonable, in order to protect the confidentiality of those records. (section 42110 (c).)

7. The costs incurred by the Board in complying with a request for information shall be deducted by the Board from those revenues collected by the Board on behalf of the local jurisdiction making the request, as authorized by section 42110(b)(1).

**ARTICLE III  
LOCAL JURISDICTION  
ADMINISTRATION AND RESPONSIBILITIES**

**A. The local jurisdictions shall be solely responsible for all of the following:**

1. Defending any claim regarding the validity of the ordinance in its application to prepaid mobile telephony service. The claim shall be processed in accordance with the provisions of the local ordinance that allows the claim to be filed.

2. Interpreting any provision of the ordinance, except to the extent specifically superseded by section 42105 of the Local Charge Act. The claim shall be processed in accordance with the provisions of the local enactment that allows the claim to be filed.

3. Responding to specified consumer claims for refund involving: (1) rebutting the presumed location of the retail transaction; (2) a consumer claim of exemption from the local charge under the ordinance; or (3) any action or claim challenging the validity of a local tax ordinance, in whole or part. The claim shall be processed in accordance with the provisions of the local enactment that allows the claim to be filed.

4. Refunding the taxes in the event a local jurisdiction or local government is ordered to refund the tax under the local ordinance.

5. Reallocating local charges as a result of correcting errors relating to the location of the point of sale of a seller or the known address of a consumer, for up to two past quarters from the date of knowledge.

6. Collecting local charges on prepaid mobile telephony service and access to communication services or access to local 911 emergency telephone systems imposed on direct sellers.

7. Enforcement, including audits, of the collection and remittance of local charges by direct sellers pursuant to the ordinance.

8. The local jurisdiction shall be the sole necessary party defendant on whose behalf the local charge is collected in any action seeking to enjoin collection of a local charge by a seller, in any action seeking declaratory relief concerning a local charge, in any action seeking a refund of a local charge, or in any action seeking to otherwise invalidate a local charge. There shall be no recovery from the State for the imposition of any unconstitutional or otherwise invalid local charge that is collected under the Local Act.

9. Entering into an agreement with the Board to perform the functions incident to the collection of the local charges imposed on sellers that are not direct sellers.

10. Submitting an executed Certification to the Board, certifying that:

(a) the local jurisdiction's ordinance applies the local charge to prepaid mobile telephony services;

(b) the amount of the rate charged for access to local 911 emergency telephone systems or access to communications services complies with the requirements of section 42102.5; and/or applies the tiered rate for the utility user tax, as identified in section 42102.

(c) The local jurisdiction shall further certify that it agrees to indemnify and to hold harmless the Board, its officers, agents, and employees for any and all liability for damages that may result from the Board's collection pursuant to this Agreement.

11. Submitting signed documents to the Board to include agreement(s), certification, copy of ordinance(s), and resolution(s).

12. Providing payment to the Board of the local jurisdiction's pro rata share of the Board's cost of collection and administration as established pursuant to subdivision (e) of section 42020.

**ARTICLE IV  
LOCAL CHARGES**

**A. Local Charges – Timeliness – This part shall remain in effect until proposed California Code of Regulations, title 18, section 2460 is adopted by the Board and approved by the Office of Administrative Law.**

**1. Ordinances in effect as of September 1, 2015.**

On or after January 1, 2016, a local charge imposed by a local jurisdiction on prepaid mobile telephony services shall be collected from the prepaid consumer by a seller at the same time and in the same manner as the prepaid MTS surcharge is collected under Part 21 (commencing with section 42001) provided that, on or before September 1, 2015, the local jurisdiction enters into a contract with the Board pursuant to section 42101.5. Thereafter, all subsequently enacted local charges, increases to local charges, or other changes thereto, shall become operative pursuant to paragraphs (2), (3), and (4).

2. New charges. When a local jurisdiction adopts a new local charge after September 1, 2015, the local jurisdiction shall enter into a contract with the Board, pursuant to section 42101.5, on or before December 1<sup>st</sup>, with collection of the local charge to commence April 1<sup>st</sup> of the next calendar year.

3. **Increases in local charges.** When a local jurisdiction increases an existing local charge after September 1, 2015, the local jurisdiction shall provide the Board written notice of the increase, on or before December 1<sup>st</sup>, with collection of the local charge to commence April 1<sup>st</sup> of the next calendar year.

4. **Inaccurate rate posted on the Board’s website.** When a local jurisdiction notifies the Board in writing that the rate posted on the Board’s Internet Web site (posted rate) for a local charge imposed by that local jurisdiction is inaccurate, including scenarios where the local charge was reduced or eliminated, the recalculated rate applicable to the local jurisdiction shall become operative on the first day of the calendar quarter commencing more than 60 days from the date the Board receives the local jurisdiction’s written notification that the posted rate is inaccurate.

**A. Local Charges – Timeliness – This part shall take effect and supersede the above “Local Charges – Timeliness section when California Code of Regulations, title 18, section 2460 is adopted by the Board and approved by the Office of Administrative Law.**

**1. Ordinances in effect as of September 1, 2015.** On or after January 1, 2016, a local charge imposed by a local jurisdiction on prepaid mobile telephony services shall be collected from the prepaid consumer by a seller at the same time and in the same manner as the prepaid MTS surcharge is collected under Part 21 (commencing with section 42001) provided that, on or before September 1, 2015, the local jurisdiction enters into a contract with the Board pursuant to section 42101.5.

In the event a local jurisdiction does not enter into a contract with the Board by September 1, 2015, the local jurisdiction may enter into a contract with the Board, pursuant to section 42101.5, on or before December 1<sup>st</sup>, with collection of the local charge to commence April 1<sup>st</sup> of the next calendar year. Thereafter, all subsequently

enacted local charges, increases to local charges, or other changes thereto, shall become operative pursuant to paragraphs (2), (3), (4) and (5) of this subdivision.

**2. New charges.** When a local jurisdiction adopts a new local charge after September 1, 2015, the local jurisdiction shall enter into a contract with the Board, pursuant to section 42101.5, on or before December 1<sup>st</sup>, with collection of the local charge to commence April 1<sup>st</sup> of the next calendar year.

**3. Increases in local charges.** When a local jurisdiction increases an existing local charge after September 1, 2015, the local jurisdiction shall provide the Board written notice of the increase, on or before December 1<sup>st</sup>, with collection of the local charge to commence April 1<sup>st</sup> of the next calendar year.

**4. Advance written notification.** When a local charge is about to expire or decrease in rate, the local jurisdiction imposing the local charge shall notify the Board in writing of the upcoming change, not less than 110 days prior to the date the local charge is scheduled to expire or decrease. The change shall become operative on the first day of the calendar quarter commencing after the specified date of expiration or decrease in rate.

If advance written notice is provided less than 110 days prior to the specified date of expiration or decrease in rate, the change shall become operative on the first day of the calendar quarter commencing more than 60 days after the specified date of expiration or decrease.

**5. Inaccurate Rate Posted on the Board's Web site.** When a local jurisdiction notifies the Board in writing that the rate posted on the Board's Internet Web site (posted rate) for a local charge imposed by that local jurisdiction is inaccurate, including scenarios where the local charge was reduced or eliminated and the local jurisdiction failed to provide advance written notice pursuant to paragraph 4 of this subdivision, the recalculated rate applicable to the local jurisdiction shall become operative on the first day of the calendar quarter commencing more than 60 days from the date the Board receives the local jurisdiction's written notification that the posted rate is inaccurate. The local jurisdiction shall promptly notify the Board in writing of any such discrepancies with the posted rate that are known or discovered by the local jurisdiction.

## **ARTICLE V COMPENSATION**

The local jurisdiction agrees to pay the Board its pro rata share of the Board's cost of collection and administration of the local charges, as established pursuant to section 42020, subdivision (e). Such amounts shall be deducted from the local charges collected by the Board for the local jurisdiction.

## **ARTICLE VI MISCELLANEOUS PROVISIONS**

**A. Communications.** Communications and notices may be sent by first-class United States Mail. A notification is complete when deposited in the mail. Communications and notices to be sent to the Board shall be addressed to:

State Board of Equalization  
P.O. Box 942879 MIC: 27  
Sacramento, California 94279-0001

Attention: Supervisor,  
Local Revenue Allocation Unit

Communications and notices to be sent to the local jurisdiction shall be addressed to:

This document memorializes the contractual agreement that was reached, for the purposes of Revenue and Taxation Code section 42101.5, on or before September 1, 2015, to authorize collection of the prepaid MTS surcharge.

City of Long Beach  
Department of Financial Management  
333 W. Ocean Boulevard  
Long Beach, CA 90802

**B. Term.** The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on the first day of the calendar quarter next succeeding the date of such approval, but in no case before the operative date of the local jurisdiction's ordinance, nor on a day other than the first day of a calendar quarter. This Agreement shall be renewed automatically from year to year until January 1, 2020, when the Local Charge Act is repealed, unless a statute enacted prior to that date extends that date. In such event, this Agreement will continue to renew automatically from year to year to the date authorized by statute.

**STATE BOARD OF EQUALIZATION**

**CERTIFIED AS A TRUE AND CORRECT COPY**  
*Posnam Davis*  
CITY CLERK OF THE CITY OF LONG BEACH  
BY: *K. Moore*  
DATE: 8/27/15

By *[Signature]*  
Administrator,  
Return Analysis and Allocation Section

LOCAL  
JURISDICTION City of Long Beach, CA

By *[Signature]*  
(Signature on this line)

Patrick H. West  
(Type name here)

City Manager  
(Type title here)

APPROVED AS TO FORM  
8-26, 2015  
CHARLES PARKIN, City Attorney  
By *[Signature]*  
AMY R. WEBBER  
DEPUTY CITY ATTORNEY



CERTIFICATION

I, Patrick H. West am authorized to sign this certification on behalf of City of Long Beach, CA.  
(Insert name of local jurisdiction)

I certify to the following:


Please check all the following that apply to your jurisdiction:

- 1. 911 Charges/Access to Communication Services - Ordinance No. 3.68.050 of the City of Long Beach, CA imposes the local charge set forth in the ordinance to prepaid mobile telephony services for access to communication services or to local 911 emergency telephone systems. As required by section 42102.5, the percentage reflecting the rate for access to the local 911 emergency telephone systems or access to communications services is \_\_\_\_\_.
- 2.  Utility User Tax - Ordinance No. 3.68.050 of the City of Long Beach, CA imposes the local charge set forth in the ordinance to the consumption of prepaid mobile telephony services. The tiered rate for the utility user tax, as identified in section 42102 is 4.5 percent.
- 3. The City of Long Beach, CA agrees to indemnify and to hold harmless the Board of Equalization (Board), its officers, agents, and employees for any and all liability for damages that may result from the Board's collection pursuant to this agreement.

Executed in the City of Long Beach, CA on 8-27-15.  
(Insert name of local jurisdiction) (Add date)

**CERTIFIED AS A TRUE AND CORRECT COPY**  
Posner Davis  
CITY CLERK OF THE CITY OF LONG BEACH

BY: K. Moore  
DATE: 8/27/15

Signature 

8-26-2015  
CHARLES PARKIN, City Attorney

Printed name Patrick H. West

By   
AMY R. WEBBER  
DEPUTY CITY ATTORNEY

Title of person City Manager

**RESOLUTION NO. RES 15-0102**

**A RESOLUTION OF THE City of Long Beach  
Local Jurisdiction**  
**AUTHORIZING City Manager or Designee  
Title of Authorized Position TO EXECUTE**  
**AGREEMENT WITH THE STATE BOARD OF EQUALIZATION FOR IMPLEMENTATION**  
**OF THE LOCAL PREPAID MOBILE TELEPHONY SERVICES COLLECTION ACT**

WHEREAS, on 8-18-15, the City of Long Beach certified that Ordinance No. 3.68.050 applies its  
Date Local Jurisdiction  
local charge(s) (access to 911 or communication services and/or utility user tax) to prepaid mobile  
telephony services; and

WHEREAS, the Local Prepaid Mobile Telephony Services Collection Act, mandates the Board of  
Equalization (Board) to administer and collect the local charges for all applicable local jurisdictions  
(Rev. & Tax Code section 42103); and

WHEREAS, the Board will perform all functions incident to administration and collection of the local  
charges for the City of Long Beach; and  
Local Jurisdiction

WHEREAS, the Board requires that the City of Long Beach enter into an "Agreement for State  
Local Jurisdiction  
Collection and Administration of Local Charges" prior to implementation of the Local Prepaid Mobile  
Telephony Services Collection Act, and

Whereas, the Board requires that the City of Long Beach authorize the agreement;  
Local Jurisdiction

NOW, THEREFORE BE IT RESOLVED by the City of Long Beach that the attached "Agreement  
Local Jurisdiction  
for State Collection and Administration of Local Charges" is hereby approved and the  
City Manager or Designee is hereby authorized to execute the agreement.  
Title of Authorized Position

\* \* \* \* \*

The foregoing resolution was introduced and adopted at a regular meeting of the City of Long Beach  
held on 8-18-2015, by the following vote:  
Date Local Jurisdiction

AYES: Gonzalez, Lowenthal, Supernaw, Mungo, Andrews Uranga, Austin, Richardson

NOES: None

ABSENT: None

DATED: 08-18-2015

ATTEST: (s) Maria Delacruz Garcia, City Clerk (s) Maria del L. Garcia  
(Printed Name & Title) (Printed Name & Title)

C. There shall be excluded from the base on which the tax imposed in this Section is computed: (1) charges made for gas which is to be resold and delivered through mains or pipes; (2) charges made for gas to be used in the generation of electrical energy by an electrical corporation or governmental agency; (3) charges made for compressed natural gas used for motor vehicle fuel. (Ord. C-7224 § 1, 1994; Ord. C-6897 § 2, 1991; Ord. C-6745 § 1, 1990; prior code § 2480.4)

### 3.68.050 Telephone users tax.

A. There is imposed a tax upon every person, other than a telephone corporation, who uses telephone communication services in the City, including intrastate, interstate, and international telephone communication services, to the extent permitted by federal and State law. Interstate calls shall be deemed to include calls to the District of Columbia. The telephone users tax is intended to, and does, apply to all charges within the City's tax jurisdiction, such as charges billed to a telephone account having a situs in the City as permitted by the Mobile Telecommunications Sourcing Act of 2000, 4 U.S.C. § 116 et seq. The tax imposed by this Section shall be at the rate of five percent (5%). The tax shall apply to all charges made for such telephone communication services and shall be collected from the service user by the services supplier or its billing agent. There is a rebuttable presumption that telephone communication services billed to a billing or service address in the City are used, in whole or in part, within the City, and that such services are subject to taxation under this Chapter. There is also a rebuttable presumption that telephone communication services sold within the City that are not billed to a billing address or provided to a primary physical location (such as prepaid calling card services) are used, in whole or in part, within the City and are therefore subject to taxation under this Chapter.

B. 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 telephone communication services.

C. The tax administrator may, from time to time, issue and disseminate to telecommunication service suppliers administrative rulings identifying those telecommunication services that are subject to the tax of Subsection A of this Section. Such administrative rulings shall be consistent with legal nexus and laws pertaining to telephone communications services and shall not impose a new tax, revise an existing tax methodology, or increase an existing tax, except as allowed by California Government Code Section 53750(h) (2) and (3) or other law. The Tax Administrator may consider State-wide interpretive rules and guidelines promulgated by any government agency or association of government agencies as a factor in determining the intent of voters adopting this Section. To the extent that the Tax Administrator determines that the tax imposed under this Section shall not be collected in full for any period of time, such an administrative ruling falls 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(h), and the City does not waive or abrogate its ability to impose the telephone users' tax in full as a result of issuing such administrative rulings and may suspend such rulings and recommence collection of the tax without additional voter approval.

D. The following shall be exempt from the tax imposed by this Section:

1. Charges paid for by inserting coins in coin-operated telephones available to the public with respect to local telephone service, or with respect to long distance telephone service if the charge for such long distance telephone service is less than twenty-five cents (\$0.25); except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.

2. Except with respect to local telephone service, on any charges for 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.

3. Charges for services furnished to an international organization designated under the International Organizations Immunities Act and defined in 22 USCA 288 or to the American National Red Cross.

4. Charges for any long distance telephone service which originates within a combat zone, as defined in section 112 of the Internal Revenue Code, from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate, setting forth such facts as the Secretary of the U.S. Treasury may by regulations prescribe, is furnished to the person receiving such payment.

5. Charges for any long distance telephone service 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 as such.

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

7. Charges for services or facilities furnished to the government of any State, or any political subdivision thereof, or the District of Columbia.

8. Charges paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this Subsection, the term "nonprofit educational organization" means an educational organization described in Internal Revenue Code section 170(b)(1)(A)(ii) which is exempt from income tax under Internal Revenue Code section 501(a). The term also includes a school operated as an activity of an organization described in Internal Revenue Code sec-

tion 501(c)(3) which is exempt from income tax under Internal Revenue Code section 501(a), 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. Charges for maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations as such section existed on January 1, 1970.

E. To prevent actual multi-jurisdictional taxation of telephone communication 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 American jurisdiction on such telephone 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 jurisdiction; provided, however, the amount of credit shall not exceed the tax owed to the City under this Section. This ordinance shall be construed broadly in favor of the imposition and collection of the utility users tax to the fullest extent permitted by California and federal law, and as it may change from time to time.

F. The tax on telephone communication services imposed by this Section shall be collected from the service user by the service supplier. The amount of tax collected from the twenty-sixth day of each month through the twenty-fifth day of the following month shall be remitted to the City Clerk on or before the twenty-sixth day of such following month, or at the option of the person required to collect and remit the tax, an estimated amount of tax collected, measured by billings of the previous month, shall be remitted to the Clerk on or before the twenty-sixth day of each month.

G. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this subchapter, "substantial nexus" 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 that law may

change from time to time. Any telephone communication service (including VoIP) used by a person with a service address in the City, which service is capable of making 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 to be obligated to collect and remit the tax imposed by this Chapter if it does any of the following: maintains or has within the City, directly or through an agent or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents or other representatives; solicits business in the City 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. (Measure G, 11-4-2008, eff. 12-19-2008; ORD-06-0035 § 1, 2006; Ord. C-6897 § 3, 1991; Ord. C-6744 § 1, 1990; Ord. C-6127 § 1, 1985; prior code § 2480.2)

### 3.68.060 Water users tax.

A. There is imposed a tax upon every person using in the City water which is delivered through mains or pipes. The tax imposed by this Section shall be at the rate of ten percent (10%) of the charges made for such water and shall be paid by the person paying for such water.

B. "Charges", as used in this Section, shall include minimum charges for service, including customer charges, service charges, standby charges, and annual and monthly charges.

C. There shall be excluded from the base on which the tax imposed in this Section is computed charges made for water which is to be resold and delivered through mains or pipes and charges made for water used in the generation of electrical energy by an electrical corporation. (Ord. C-6897 § 4, 1991; Ord. C-6745 § 2, 1990; prior code § 2480.5)

### 3.68.065 Segregation of nontaxable charges.

As used in this Chapter, the term "charges" shall include the value of all consideration provided by the service user in exchange for utility services. If a nontaxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier identifies, by verifiable data, based upon its books and records that are kept in the regular course of business, in a manner that is consistent with generally accepted accounting principles, the nontaxable component of the charge. The service supplier has the burden of proving the proper apportionment of taxable and nontaxable charges. (Measure G, 11-4-2008, eff. 12-19-2008; ORD-06-0035 § 3, 2006)

### 3.68.070 Exemption—Constitutional violation.

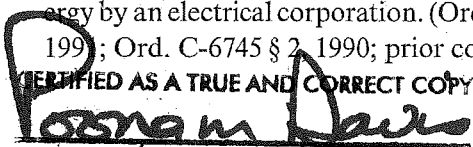

Nothing in this Chapter shall be construed as imposing a tax upon any person if imposition of such tax upon that person would be in violation of the Constitution of the United States or the Constitution of the State. (Prior code § 2480.6)

### 3.68.075 Effect of State and federal authorization.

To the extent that the City's authorization to impose or collect any tax imposed under 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 under this Chapter. (Measure G, 11-4-2008, eff. 12-19-2008)

### 3.68.080 Exemption—Application.

A. The tax imposed by this Chapter shall not apply to any individual sixty-two (62) years of age or older who uses telephone, electric, gas or water services, in or upon any premises occupied by such individual, provided the combined gross income of all members of the household in which such individual resides does not exceed a certain maxi-

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 CITY CLERK OF THE CITY OF LONG BEACH  
 BY:   
 DATE: 8/25/15

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imum amount for the calendar year prior to the fiscal year for which the exemption provided in this Chapter is applied for. The maximum amount of combined gross income of all members of the household shall be established by resolution of the City Council and available at the office of the City Clerk, 333 West Ocean Boulevard; and Commercial Services Bureau, 333 West Ocean Boulevard, Long Beach, California 90802.

B. The tax imposed by this Chapter shall not apply to any individual who is disabled, as defined herein, or in whose household a disabled individual resides, who uses telephone, electric, gas or water services, in or upon any premises occupied by such a disabled individual, provided the combined gross income of all members of the household in which such individual resides does not exceed a certain maximum amount for the calendar year prior to the fiscal year for which the exemption provided in this Chapter is applied for. The maximum amount of combined gross income of all members of the household shall be established by resolution of the City Council and available at the office of the City Clerk, 333 West Ocean Boulevard; and Commercial Services Bureau, 333 West Ocean Boulevard, Long Beach, California 90802.

For purposes of this Section, a "disabled individual" is defined as an individual under a physical disability as defined in Section 223 of the Social Security Act (42 USC 423) and Section 102(b)(5) of the Developmentally Disabled Assistance and Bill of Rights Act (42 USC 6001(7)), and as such sections shall be amended from time to time.

For purposes of this Section, gross income of all members of the household shall include, but not be limited to, the total gross wages, salary, business receipts, rents, gains, profits, gifts, inheritances, trusts, stock earnings, royalties, alimony, child support, welfare payments, Medicare, pensions, Social Security, and all other receipts whether received in cash, credits, property or services of any kind or nature during each calendar year for which the applicant seeks an exemption.

C. 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 Subsection D of this Section.

D. Any service user exempt from the taxes imposed by this Chapter because of the provisions of Subsections A or B of this Section may file an application with the City Treasurer for an exemption. Such application shall be made upon a form supplied by the City Treasurer and shall recite facts under oath which qualify the applicant for an exemption. The City Treasurer shall review all such applications and certify as exempt those applicants determined to qualify therefor and shall notify all service suppliers affected that such exemption has been approved, stating the name of the applicant, the address to which such exempt service is being supplied, the account number, if any, and such other information as may be necessary for the service supplier to remove the exempt service user from its tax billing procedure. 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 upon the earlier of a change of service address, termination of service, or until further notice by the City Treasurer is given. The service supplier shall eliminate such exempt service user from its tax billing procedure upon receipt of such notice from the City Treasurer, but no later than sixty (60) days after receipt of such notice from the City Treasurer, or as otherwise provided by law.

All exemptions shall continue and be renewed automatically by the City Treasurer so long as the prerequisite facts supporting the initial qualification for exemption 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. Any individual exempt from the tax shall notify the City Treasurer within ten (10) days of any change in fact or circumstance which might dis-

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