

ORDINANCE NO. 26-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAYWARD AMENDING SECTIONS 8-18.20 TO 8-18.40, 8-18.120 TO 8-18.170, AND 8-18.190 TO 8-18.200 OF ARTICLE 18, CHAPTER 8 OF THE HAYWARD MUNICIPAL CODE RELATING TO THE UTILITY USERS TAX.

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Sections 8-18.20 to 8-18.40, 8-18.120 to 8-18.170, and 8-18.190 to 8-18.200, of Article 18, Chapter 8 of the Hayward Municipal Code are amended to read as follows, with deleted terms shown in strikethrough and added terms underlined:

**ARTICLE 18
UTILITY USERS TAX****SEC. 8-18.20 DEFINITIONS.**

The following words and phrases whenever used in this Article shall be construed as defined in this Section.

- (a) "Ancillary Telecommunication 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 (2) 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 (1) or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.
 - (5) "Voice Mail Service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

-
- (b) "Ancillary Video Services" means services that are associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, search functions, recording services, interactive services or other communications services that are associated with or incidental to the provision, use or enjoyment of video services.
 - (c) "Billing Address" shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.
 - (d) "City" shall mean the City of Hayward.
 - (e) "Gas" shall mean natural or manufactured gas or any alternate fuel which may be substituted therefore currently or in the future.
 - (f) "Mobile Telecommunications Service" has the meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C.A. Section 124) and the regulations thereunder.
 - (g) "Month" shall mean calendar month.
 - (h) "Non-Utility Service Supplier" means:
 - (1) A service supplier, other than a supplier of electric distribution service to all or a significant portion of the City, which generates electricity for sale to others, and shall include, but is not limited to, any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator, (15 U.S.C.A. Section 79Z-5a), municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity; or
 - (2) An electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; or
 - (3) A gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas or supplemental services to gas users within the City.
 - (i) "Paging Service" means a "telecommunications service" that provides transmission of coded radio signals for the purpose of activating specific pagers or similar reception devices, whether such transmissions include message and/or sounds.
 - (j) "Person" shall mean without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and non-profit), municipal district or municipal

corporation (other than the City), cooperative, or receiver, trustee, guardian, or other representative appointed by order of any court, or any other entity.

- (k) "Place of Primary Use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, whether the residential street address or the primary business street address of the customer.
- (l) "Post-paid Telecommunication Service" means the telecommunication service obtained by making a payment on a telecommunication-by-telecommunication basis whether through the use of a credit card or any other payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.
- (m) "Prepaid Telecommunication Service" means the right to access telecommunication services, which must be paid for in advance and which enables the origination of telecommunications services and that is sold in predetermined units or dollars of which the number declines with use.
- (n) "Private Telecommunication Service" means a telecommunication service that entitles the customer to exclusive or priority use of a telecommunications channel or limited group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.
- (o) "Service Address" shall mean the residential street address or the business street address of the service user. For a telecommunication or video service user, "service address" means either:
 - (1) The location of the service user's telecommunication or video equipment from which the communication originates or terminates, regardless of where the communication is billed or paid; or
 - (2) If the location in subsection (1) of the definition is unknown or mobile (e.g., mobile telecommunications service or VoIP service), the service address shall mean the location of the service user's place of primary use; or
 - (3) For prepaid telecommunication service, "service address" shall mean the location associated with the service number.
- (p) "Service Supplier" shall mean any person and/or the City, that provides any service subject to any tax hereunder, including, without limitation, telecommunication, video, electric and/or, gas service, to a user of such service within the City.
- (q) "Service User" shall mean a person required to pay a tax imposed under the provisions of this Article.
- (r) "State" shall mean the State of California.

-
- (s) "Streamlined Sales and Use Tax Agreement" shall mean the multi-state agreement commonly known and referred to as the Streamlined Sales and Use Tax Agreement, ~~and~~ as it is amended from time to time.
- (t) "Tax Administrator" means the Finance Director of the City or his or her designee.
- (u) "Telecommunications Channel" is a physical or virtual path of telecommunications over which signals are transmitted between or among customer channel termination points (i.e., the location where the customer either inputs or receives the telecommunications).
- (v) "Telecommunications Services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information ~~of or~~ signals to a point, or between or among points, whatever the technology used. 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 ~~Telecommunication-Communication~~ Commission as enhanced or value added, and includes video and/or data services that are functionally integrated with "telecommunications services". "Telecommunications services" include, but are not limited to, the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; mobile telecommunication service; prepaid telecommunication services; post-paid telecommunications services; private telecommunication services; paging service; 800 service (or any other toll-free numbers designated by the Federal ~~Telecommunication-Communication~~ Commission); 900 service (or any other similar numbers designated by the Federal ~~Telecommunication-Communication~~ Commission for services whereby subscribers call in to pre-recorded or live service).
- (w) "Video Programming" means those programming services commonly provided to subscribers by a "video service supplier", including, but not limited to, basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.
- (x) "Video Services" means "video programming" and any and all services related to the providing, recording, delivering, use or enjoyment of "video programming" (including origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video) using one (1) or more channels by a "video service supplier", regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes ancillary video services, data services,

"telecommunications services", or interactive communication services that are functionally integrated with "video services".

- (y) "Video Service Supplier" means any person, company, or service which provides or sells one (1) or more channels, programs or individual episodes of video programming, or provides or sells the capability to receive one (1) or more channels, programs or individual episodes of video programming, including any telecommunications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the City, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or telecommunications. A "video service supplier" includes, but is not limited to, multichannel video programming distributors [as defined in 47 U.S.C.A. Section 522(13)]; open video systems (OVS) suppliers; and suppliers of cable television or video program delivery of any kind, be it through channel or other subscribers or to individual buyers of programs or unique episodes; master antenna television; satellite master antenna television; multichannel multipoint distribution services (MMDS); video services using internet protocol (e.g., IP-TV and IP-Video, which provide, among other things, broadcasting and video on demand), direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video services (including two-way communications), whatever their technology.
- (z) VoIP (voice over internet protocol) means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.
- (aa) "800 Service" means "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877", and "888" toll-free calling and includes any subsequent numbers or other designations designated by the Federal Communications Commission for toll free telecommunications services.
- (bb) "900 Service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or a live service. "900 Service" does not include the charge for: collection services provided by the seller of the "telecommunications services" to the subscriber, or a service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and includes any subsequent numbers or other designations designated by the Federal Communications Commission for pay for services calls.

SEC. 8.18-30 CONSTITUTIONAL, STATUTORY AND OTHER EXEMPTIONS.

- (a) Nothing in this Article shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such person or service would be in violation of a

federal or state statute, the Constitution of the United States or the Constitution of the State.

- (b) Any service user that is exempt from ~~the a~~ tax imposed by this Article pursuant to subsection (a) of this Section shall file an application with the Tax Administrator for an exemption; provided, however, ~~that~~ this requirement shall not apply to a service user that is a state or federal agency or ~~a political~~ subdivision with a commonly recognized name ~~for such service~~. ~~Said The~~ application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, ~~and It~~ shall ~~also~~ include the names of all ~~utility~~ service suppliers serving that service user. If deemed exempt by the Tax Administrator, ~~such the~~ service user shall give the Tax Administrator timely written notice of any ~~subsequent~~ change in ~~utility~~ service suppliers so that the Tax Administrator can properly notify the new utility service supplier of the service user's tax exempt status. A service user that fails to comply with this Section shall not be entitled to a refund of utility user's taxes collected and remitted to the Tax Administrator from such service user as a result of such noncompliance.

The decision of the Tax Administrator may be appealed pursuant to Section 8-18.200 of this Article. Filing an application with the Tax Administrator and ~~an~~ appeal to the City Manager pursuant to Section 8-18.200 of this Article is a prerequisite to a suit thereon.

SEC. 8-18.40 LOW INCOME AND LIFELINE EXEMPTION.

- (a) Each household within the City, in respect to which the annual income of such household is less than fifty percent (50%) of the median family income for the County of Alameda, as most recently established by the United States Department of Housing and Urban Development, is and shall be exempt from each and all of the taxes imposed by this Article upon presentation to the Tax Administrator of a written request for such exemption and reasonable proof of qualification for the exemption.
- (b) Any service user who is enrolled in the California Public Utilities Commission's Lifeline Telephone Program, also known as Universal Lifeline Telephone Service (ULTS), is and shall be exempt from the tax imposed for telecommunication services under Section 8-18.50 of this Article, upon presentation to the Tax Administrator of written confirmation of enrollment in the Lifeline/ULTS program. The service user seeking the exemption under this subsection must reside at the location receiving the service. The exemption shall not apply to any nonresidential service location.
- (c) The Tax Administrator shall, within 60 days ~~of~~ receipt of an application for ~~an~~ exemption, determine whether the exemption is granted, and if so, notify the service supplier. The exemption shall apply from the date of the Tax Administrator's determination that the household qualifies.
- (d) The exemption granted to a person pursuant to this Section shall become effective on the beginning of the first regular billing period which commences after the Tax Administrator has notified the service supplier that an exemption has been granted. Upon a showing of hardship by a service supplier, including the City, the Tax

Administrator may, as an alternative, implement this Section 8-18.40 by requiring the exempt person to pay the tax and seek a refund under Section 8-18.190. The Tax Administrator shall provide a refund claim form for this purpose.

- (e) The Tax Administrator, in his or her sole discretion, may require annual written verification from the service user of his or her continuing eligibility for any exemption granted under this Section.

SEC. 8-18.120 DUTY TO COLLECT AND REMIT TAX. PROCEDURES.SERVICE SUPPLIERS.

~~(a) *Collection By Service Suppliers.* The duty of service suppliers to collect and remit the taxes imposed by the provisions of this Article shall be performed as follows:~~

~~(1) The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 8-18.160 shall apply.~~

~~(2) The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this Article. Where a service user receives more than one (1) billing, one (1) or more being for different periods than another, the duty to collect shall arise separately for each billing period.~~

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

(a) *Collection of Tax.*

(1) *A service supplier shall collect the tax due from a service user either directly or through a billing agent.*

-
- (2) A service supplier shall begin collecting the tax due from a service user at the start of the service user's first regular billing period. The duty to collect shall arise separately for each subsequent billing period.
- (3) A service supplier shall collect the tax due from a service user by:
- (A) applying the applicable tax rate to all charges made for services subject to taxation; and
 - (B) collecting the total amount due from the service user at the same time as, and along with, the charges made, in accordance with the service supplier's regular billing practices.

If a service supplier believes that this method of collecting tax is not practicable, it may ask the Tax Administrator to authorize an alternative method of collection. Any modifications to the method of collection shall be memorialized in an agreement executed under Section 8-18.170(c) of this Article.

- (4) If a service supplier properly applies the applicable tax rate to all charges made for services subject to taxation, but the amount paid by the service user is less than the combined amount of the charges made and the tax due, the service supplier shall treat a proportionate share of the total payment as a payment of tax.

(b) Remittance of Tax.

- (1) On or before the due date for remitting collected taxes, the service supplier shall remit to the Tax Administrator all taxes that it collected during the month (or other billing period) covered by the remittance. The service supplier shall submit a return with the remittance, using forms approved by the Tax Administrator, that identifies the amount of the remittance and any additional information the Tax Administrator deems necessary to determine if the service supplier is properly collecting and remitting taxes. Returns and remittances are due immediately upon a service supplier's cessation of business. Pursuant to Revenue and Tax Code Section 7284.6, the City and its agents shall treat returns and remittances as confidential records exempt from disclosure under the Public Records Act.
- (2) Taxes required to be remitted by a service supplier are delinquent if not received by the Tax Administrator on or before the due date for the remittance. If the due date occurs on a weekend or a legal holiday, the remittance must be received on or before the first regular working day after the weekend or legal holiday. An electronic fund transfer, including a direct deposit or other method of electronically exchanging monies between financial accounts, shall be considered timely if it is initiated on or before the due date and it settles into the City's account on the following business day.
- (3) The Tax Administrator may, in his or her discretion, modify the due dates established by this Article to make them consistent with a service supplier's

regular billing practices. Any such modifications shall be memorialized in an agreement executed under Section 8-18.170(c) of this Article.

SEC. 8-18.130 COLLECTION PENALTIES. FAILURE TO COLLECT OR REMIT - SERVICE SUPPLIERS.

- ~~(a) Taxes collected by a service supplier from a service user are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this subsection, shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on the following business day.~~
- ~~(b) If the person required to collect and/or remit the utility users tax fails to collect the tax (by failing to properly assess the tax on one (1) or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen percent (15%) of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of 75/100ths percent (.75%) 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.~~
- ~~(c) The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes pursuant to the provisions of this Article for fraud or gross negligence in reporting or remitting at the rate of fifteen percent (15%) of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.~~
- ~~(d) For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this Section shall become a part of the tax herein required to be paid.~~
- ~~(e) Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this Article to be consistent with any uniform standards or procedures that mutually agreed upon by other public agencies imposing a utility users tax, or otherwise legally established, to create a central payment location or mechanism.~~
- (a) If a service supplier, in violation of the requirements of this Article, fails to collect the full amount of tax due from a service user by failing to properly apply the applicable tax rate to one (1) or more charges made for services subject to taxation, the service supplier shall be liable to the City for an amount equal to the tax it failed to collect. The Tax Administrator may issue a deficiency determination to the service supplier pursuant to Section 8-18.150 to recover the amount owed, plus interest and penalties

as set forth in this Section. A service supplier that is liable or has paid money to the City pursuant to this subsection is not prohibited by this subsection from recovering the amount owed or paid to the City, excluding interest and penalties, from the service user who was responsible in the first instance for paying the tax that the service supplier failed to collect.

- (b) If a service supplier, in violation of the requirements of this Article, fails to remit, on or before the due date for the remittance, the tax that it has collected from a service user during a particular month (or other billing period), the service supplier shall be liable to the City for an amount equal to the tax it failed to remit. The Tax Administrator may issue a deficiency determination to the service supplier pursuant to Section 8-18.150 to recover the amount owed, plus interest and penalties as set forth in this Section.
- (c) A service supplier liable to the City under subsection (a) or (b) of this Section shall, in addition to paying the amount owed under subsection (a) or (b), pay interest on the amount owed and a penalty, as follows:
- (1) Interest shall apply at the rate of 75/100ths percent (.75%) per month, or any fraction thereof, of the tax the service supplier failed to collect or remit, exclusive of penalties. Interest shall begin accruing on the date after the uncollected or unremitted tax was due to the City and cease accruing on the date before the service supplier has paid, in full, the amount owed under subsection (a) or (b).
 - (2) The penalty shall apply at the rate of fifteen percent (15%) of the tax the service supplier failed to collect or remit. The Tax Administrator may increase the penalty to thirty percent (30%) if the failure to collect or remit was the result of fraud or gross negligence on the part of the service supplier.

SEC. 8-18.140 LIABILITIES AND ACTIONS TO COLLECT.

~~Any tax required to be paid by a service user under the provisions of this Article shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the City under the provisions of this Article shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this Article, along with any collection costs incurred by the City as a result of the person's noncompliance with this Article, including, but not limited to, reasonable attorneys' fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under 11 U.S.C.A. Section 507(a)(8)(C).~~

- (a) Any tax owed by a service user under any of the provisions of this Article is deemed a debt owed by the service user to the City. Any tax that a service supplier collects from

a service user is deemed a debt owed by the service supplier to the City, and once that tax has been collected, it shall no longer be deemed a debt owed by the service user to the City. Any tax that a service supplier is required, but fails, to collect from a service user is deemed a debt owed by the service supplier to the City – provided, however, that satisfaction of this debt by the service supplier does not prevent the service supplier from recovering the amount paid to the City from the service user who was responsible in the first instance for paying for paying the tax that the service supplier failed to collect.

(b) Any person owing money to the City under any of the provisions of this Article, including any person who has received a final assessment issued by the Tax Administrator pursuant to Section 8-18.150, shall be liable to the City in an action brought in the name of the City for the recovery of the amount owed, plus interest and penalties. In such an action, the City shall be entitled to recover any collection costs and reasonable attorneys' fees incurred as a result of the person's noncompliance with the requirements of this Article.

(c) Taxes owed by a service user and taxes that a service supplier collects or is required, but fails, to collect shall be treated as unsecured priority excise tax obligations under 11 U.S.C.A. Section 507(a)(8)(C).

SEC. 8-18.150 DEFICIENCY DETERMINATIONS AND FINAL ~~AND~~ ASSESSMENT. ~~TAX APPLICATION ERRORS.~~

- (a) ~~The Tax Administrator shall make a deficiency determination if he or she determines that any service supplier or service user required to pay, collect, and/or remit taxes pursuant to the provisions of this Article has failed to pay, collect, and/or remit the proper amount of tax by improperly or failing to apply the tax to one (1) or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 8-18.150 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.~~
- (b) ~~The Tax Administrator shall mail a notice of such deficiency determination to the person or entity allegedly owing the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of 75/100ths percent (.75%) per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) calendar days after the date of mailing of such notice, the person or entity allegedly owing the tax may file a request in writing with the Tax Administrator for a hearing on the matter.~~
- (c) ~~If the person or entity allegedly owing the tax fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the City. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty (30) calendar days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person or entity at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person or entity to produce specific records at such hearing, such notice may designate the records requested to be produced.~~
- (d) ~~At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person or entity owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 8-18.200 of this Article. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 8-18.200 of this Article is a prerequisite to a suit thereon.~~
- (e) ~~Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of 75/100ths~~

~~percent (.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Article shall commence from the date of delinquency as provided in this subsection (e).~~

- ~~(f) All notices under this Section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.~~
- (a) The Tax Administrator may issue a deficiency determination to a service user if he or she determines that the service user has failed to pay the full amount of tax owed. The Tax Administrator may issue a deficiency determination to a service supplier if he or she determines that the service supplier has failed to either: (i) collect the full amount of tax due from a service user by failing to properly apply the applicable tax rate to one (1) or more charges made for services subject to taxation; or (ii) remit, on or before the due date for the remittance, the tax that it has collected from a service user during a particular month (or other billing period).
- (b) The Tax Administrator shall mail a notice of deficiency determination to the service user or service supplier. The notice shall identify the amount claimed to be owed, plus any applicable interest and penalties.
- (c) Within fourteen (14) calendar days of the date of receipt of the notice of deficiency determination, the service user or service supplier may submit, to the Tax Administrator, a written request for a hearing on the deficiency determination. If the service user or service supplier fails to request a hearing within fourteen (14) calendar days, the deficiency determination shall become a final assessment, the notice of deficiency determination shall be treated as a notice of final assessment, and the service user or service supplier will be deemed to have waived the right to an appeal under Section 8-12.200 of this Article.
- (d) If the service user or service supplier requests a hearing, the Tax Administrator shall hold a hearing on the matter no later than sixty (60) calendar days after receipt of the request. The Tax Administrator shall mail notice of the time and place of the hearing to the service user or service supplier at least ten (10) calendar days prior to the hearing. The notice may direct that specified records be produced at the hearing.
- (e) At the hearing, the Tax Administrator shall consider all relevant evidence offered by the service user or the service supplier, including the testimony of witnesses. At the discretion of the Tax Administrator, the hearing may be continued from time to time to allow for the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue: (i) a final assessment confirming or modifying the deficiency determination; or (ii) a non-assessment withdrawing the deficiency determination. The Tax Administrator shall mail a notice of the final assessment or non-assessment to the service user or service supplier.

- ~~(f) A final assessment issued by the Tax Administrator may be appealed to the City Manager pursuant to Section 8-18.200 of this Article. Requesting a hearing before the Tax Administrator and appealing a final assessment to the City Manager are prerequisites to the filing of any action challenging a final assessment.~~
- ~~(g) Payment of a final assessment shall be delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day after receipt of the notice of final assessment. If payment is not made by this date:~~
- ~~(1) interest shall continue to accrue on the amount owed at the rate of 75/100ths percent (0.75%) per month, or any fraction thereof, through the date before the final assessment is paid in full; and~~
 - ~~(2) an additional penalty equal to fifteen percent (15%) of the total amount of the final assessment shall be imposed – provided, however, that this penalty shall not be imposed if the service user or service supplier makes a timely appeal of the final assessment to the City Manager and pays the full amount of the final assessment, as modified on appeal, within 30 days of the conclusion of the appeal.~~
- ~~(h) All notices required to be sent under this Section shall be sent by regular mail, postage prepaid, or, with the consent of the service user or service supplier, by electronic mail. Notices that are mailed shall be deemed to be received on the third (3rd) calendar day following the date of mailing, as established by a proof of mailing. Notices sent by electronic mail shall be deemed to be received on the date the notice is sent.~~
- ~~(i) If, in the opinion of the Tax Administrator, the cost of issuing or enforcing a final assessment against a service user or service supplier outweighs the likely benefit to the City, the Tax Administrator is not required to issue a deficiency determination or a final assessment to that service user or service supplier.~~

SEC. 8-18.160 ADMINISTRATIVE REMEDY – NON-PAYING SERVICE USERS.

- ~~(a) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this Article from certain named service users for specific billing periods. To the extent the service user has failed to pay the amount of tax owed for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Article. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 8-18.160 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.~~

- ~~(b) In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of fifteen percent (15%) of the total tax that is owed, and shall pay interest at the rate of 75/100ths percent (.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.~~
- ~~(c) The Tax Administrator shall notify the non-paying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.~~
- ~~(d) If the service user fails to remit the tax to the Tax Administrator within thirty (30) days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of fifteen percent (15%) of the amount of the total tax that is owed.~~
- (a) If a service user refuses to pay tax assessed by a service supplier and notifies the service supplier of that refusal, the service supplier may notify the Tax Administrator. The notice shall identify the name and address of the service user and the amount of tax owed. Upon receiving the notice, the Tax Administrator shall relieve the service supplier of the obligation to collect tax from the service user for a specified period of time, notify the service user that he or she has assumed responsibility for collecting the tax, and demand payment of the tax due. The notice to the service user shall be served by personal delivery or sent by regular mail, postage prepaid, to the address provided by the service supplier, or to any other known address. Notices that are mailed shall be deemed to be received on the third calendar day following the date of mailing, as established by a proof of mailing. Notices that are personally served are received on the date of service.
- (b) Any service user that receives a notice from the Tax Administrator shall be required to pay, to the Tax Administrator, the full amount of tax due through the date of the notice, as well as a penalty at the rate of fifteen percent (15%) of the total tax that is owed and interest at the rate of 75/100ths percent (.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties. Interest shall accrue from the date after the unpaid tax was required to be remitted by the service supplier through the date before the tax is paid. The Tax Administrator shall identify the amount of the penalty and interest in the notice.
- (c) If the service user, within thirty (30) days of the date of receipt of the notice, fails to pay the tax, penalty, and interest identified in the notice, the Tax Administrator may issue a deficiency determination to the service user pursuant to Section 8-15.150. The Tax Administrator may also increase the penalty from fifteen percent (15%) of the total tax that is owed to thirty percent (30%) of the total tax that is owed.

- (d) If a service user required to pay tax directly to the City under Section 8-18.90 fails to pay the full amount of tax due within the time prescribed by that Section, the Tax Administrator may issue a deficiency determination to the service user pursuant to Section 8-15.150 to recover the amount owed, plus interest and penalties. The interest and penalties shall apply at the rates set forth in subsection (b) of this Section.
- (e) The Tax Administrator is not required to issue a notice to a service user under this Section or issue a deficiency determination to a service user under Section 8-18.150 if, in the opinion of the Tax Administrator, the cost of collecting the unpaid tax, interest, and penalties outweighs the likely benefit to the City.

SEC. 8-18.170 ADDITIONAL POWERS AND DUTIES OF THE TAX ADMINISTRATOR.

- (a) The Tax Administrator shall have the power and duty to enforce each and all of the provisions of this Article.
- (b) The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this Article for the purpose of interpreting, clarifying, 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. To the extent that the Tax Administrator determines that the tax imposed under this Article shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of Government Code Section 53750 or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of Government Code Section 53570, and the City does not waive or abrogate its ability to impose the utility users tax in full as a result of promulgating administrative rulings or entering into agreements.
- (c) Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this Article and thereby: (1) conform to the billing procedures of a particular service supplier so long as said agreements result in the collection of the tax in conformance with the general purposes and scope of this Article; or, (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office and are voidable by the Tax Administrator or the City at any time.
- ~~(d) The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this Article, of any person required to collect and/or remit a tax pursuant to this Article. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax~~

~~Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 8-18.150 of this Article for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Article, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.~~

- ~~(d) The Tax Administrator may audit any service user required to pay a tax imposed under this Article or any service supplier required to collect and remit a tax imposed under this Article. The Tax Administrator shall notify the service user or service supplier of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the period of audit review shall be limited to the three (3) years preceding the date of receipt of the audit notice. After completing the audit, the Tax Administrator may, pursuant to Section 8-18.150 of this Article, issue a deficiency determination to the service user or service supplier for all amounts owed and not paid, including penalties and interest, as evidenced by information provided during the audit. If the service user or service supplier is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Article, the Tax Administrator may make a reasonable estimate of the deficiency, and that estimate shall be entitled to a rebuttable presumption of correctness.~~
- (e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Article for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of 75/100ths percent (.75%) per month, prorated for any portion thereof.
- (f) The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this Article.
- ~~(g) Notwithstanding any provision in this Article to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this Article if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration industry practice or other precedence.~~
- ~~(g) Notwithstanding any other provision of this Article, the Tax Administrator may waive any penalty or interest imposed or authorized by this Article if he or she determines that the service user or service supplier has made a good faith and reasonable effort to comply with the requirements of this Article. In making this determination, the Tax Administrator may take into consideration industry practice, prior attempts by the service user or service supplier to seek guidance from the Tax Administrator, attempts~~

by the service user or service supplier to cure any errors in the payment or collection of tax, and any other relevant matters.

SEC. 8-18.190 REFUNDS.

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Article from a service user or service supplier, it may be refunded as provided in this Section:

- (a) The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Article from a service user or service supplier, 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 (1) 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 unless each member of the class has submitted a written claim under penalty of perjury as provided by this subsection.
- (b) The Tax Administrator, where the claim is within his or her settlement authority as established by ordinance or by resolution of the City Council from time to time, or the City Council where the claim is in excess of that amount, shall act upon the refund claim within forty-five (45) calendar days of the initial receipt of the refund claim. Said decision shall be final. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the forty-five (45) calendar day period, the claim shall be deemed to have been rejected by the Tax Administrator/City Council on the forty-fifth (45th) day. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in Government Code Section 913.
- (c) The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon. Any action brought against the City pursuant to this Section shall be subject to the provisions of Government Code Section 945.6 and 946.

~~(d) Notwithstanding the notice provisions of subsection (a) of this Section, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this Article, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator, provided that: i) such credit is claimed in a return dated no later than one (1) year from the date of overpayment or erroneous collection of said tax; ii) the Tax Administrator is satisfied that the underlying basis and amount of such credit has~~

~~been reasonably established; and iii) in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.~~

- ~~(e) Notwithstanding subsections (a) through (d) above, a service supplier shall be entitled to take any overpayment as a credit against an underpayment whenever such overpayment has been received by the City within the three (3) years next preceding a deficiency determination or assessment by the Tax Administrator in connection with an audit instituted by the Tax Administrator pursuant to Section 8-18.170. A service supplier shall not be entitled to said credit unless it first clearly establishes, to the satisfaction of the Tax Administrator, the right to the credit by written records showing entitlement thereto. Under no circumstances shall an overpayment taken as a credit against an underpayment pursuant to this subsection qualify a service supplier for a refund to which it would not otherwise be entitled under the one-year written claim requirement of this Section.~~
- ~~(d) Notwithstanding subsection (a) of this Section, when a service supplier has overpaid tax by collecting and/or remitting tax in excess of the amount of tax due from a service user under this Article, the Tax Administrator may, in his or her discretion, allow the service supplier to claim a credit for the overpayment against the amount of tax which is due to the City in one or more subsequent remittances, provided that:~~
- ~~(1) the credit is claimed in a return dated no more than one (1) year after the date of the overpayment;~~
 - ~~(2) the amount of the overpayment is established to the Tax Administrator's satisfaction; and~~
 - ~~(3) if the overpayment was caused by the service supplier's collection of excess tax from the service user, the Tax Administrator receives proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.~~
- ~~(e) Notwithstanding subsections (a) and (d) of this Section, when a service supplier has overpaid tax by collecting and/or remitting tax in excess of the amount of tax due from a service user under this Article, the service supplier may take the overpayment as a credit against a final assessment issued by the Tax Administrator to the service supplier under Section 8-18.150 of this Article, provided that:~~
- ~~(1) the credit is claimed against a deficiency determination or final assessment that is issued to the service supplier no later than three (3) years after the date of the overpayment;~~
 - ~~(2) the amount of the overpayment has been established to the Tax Administrator's satisfaction; and~~
 - ~~(3) if the overpayment was caused by the service supplier's collection of excess tax from the service user, the Tax Administrator receives proof, to his or her~~

satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

No credit claimed by the service supplier pursuant to this subsection shall entitle the service supplier to receive a refund to which it would not otherwise be entitled under the one-year claim presentation requirement of subsection (a) of this Section and Title 1, Division 3.6, Part 3 of the Government Code.

SEC. 8-18.200 APPEALS.

- ~~(a) The provisions of this Section apply to any decision (other than a decision relating to a refund pursuant to Section 8-18.190 of this Article), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 8-18.190 of this Article), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this Section. Compliance with this Section shall be a prerequisite to a suit thereon. [See Government Code Section 935(b)]. Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.~~
- ~~(b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 8-18.190 of this Article), deficiency determination, assessment, or administrative ruling of the Tax Administrator he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within fourteen (14) calendar days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.~~
- ~~(c) The matter shall be scheduled for hearing before an independent hearing officer selected by the City Manager, no more than thirty (30) calendar days from the receipt of the appeal. The appellant shall be mailed notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.~~
- ~~(d) Based upon the submission of such evidence and the review of the City's files, the hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) calendar days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) calendar days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6.~~
- ~~(e) All notices under this Section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.~~

ATTACHMENT II

- (a) If a service user or service supplier is aggrieved by a final assessment, administrative ruling, or other decision issued by the Tax Administrator, other than a decision relating to a refund made under Section 8-18.190(a) of this Article, the service user or service supplier may appeal the final assessment, administrative ruling, or other decision to the City Manager by submitting a notice of appeal to the City Clerk within fourteen (14) calendar days of the date of receipt of the final assessment, administrative ruling, or decision. An appeal is a prerequisite to any action challenging the final assessment, administrative ruling, or decision.
- (b) The City Manager shall appoint an independent hearing officer to hear all appeals brought under this Section. Appointments shall last five (5) years and, once the appointment has expired, the person appointed shall not serve as a hearing officer for the City in any matter for a period of at least five (5) years.
- (c) The hearing shall take place within sixty (60) calendar days of receipt of the appeal, or within a longer period, if a longer period is agreed to in writing by the appealing party, the Tax Administrator, and the hearing officer. The hearing officer shall mail notice of the time and place of the hearing to the appealing party and the Tax Administrator at least ten (10) calendar days prior to the date of the hearing.
- (d) A record of the prior proceedings on the final assessment, administrative ruling, or other decision shall be submitted at the hearing. The appealing party and the Tax Administrator may also present other relevant evidence, including testimony. The hearing officer may continue the hearing from time to time for the presentation of additional evidence. The appealing party bears the burden of proof as to all factual issues.
- (e) Within thirty (30) calendar days of the conclusion of the hearing, the hearing officer shall issue a written notice of decision upholding, modifying, or reversing the final assessment, administrative ruling, or other decision. The notice of decision shall state the reasons for the hearing officer's decision. The notice shall also specify that the decision is final and that any petition for judicial review must be filed within ninety (90) calendar days of the date of the notice, in accordance with Code of Civil Procedure Section 1094.6.
- (f) If the appeal challenges a final assessment and the hearing officer's decision modifies the final assessment in a manner that reduces the amount found to be owed by the service user or service supplier, any penalties and interest included in the final assessment shall be recalculated based on the reduced amount.
- (g) All notices required to be sent under this Section shall be sent by regular mail, postage prepaid, or, with the consent of the appealing party and the Tax Administrator, by electronic mail. Notices that are mailed shall be deemed to be received on the third (3rd) calendar day following the date of mailing, as established by a proof of mailing. Notices sent by electronic mail shall be deemed to be received on the date they are sent.

ATTACHMENT II

Section 2. California Environmental Quality Act. Adoption of this Ordinance is exempt from environmental review as the adoption of this Ordinance does not qualify as a “project” pursuant to the California Environmental Quality Act (“CEQA”), under Public Resource Code Section 21065 and CEQA Guidelines Section 15320, 15378, and 15061(b) (3) as there is no possibility that such action would cause either a direct, or reasonably foreseeable indirect, physical change in the environment.

Section 3. If any section, subsection, paragraph, or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid, or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 4. The effective date of this Article shall be thirty (30) days after its adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the __ day of __, 2026, by Council Member _____,

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the __ day of _____, 2026, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

ATTACHMENT II