



COUNTY OF ALAMEDA

Sample Ballot and Voter Information Pamphlet Consolidated District Election TUESDAY, NOVEMBER 3, 2009

POLLS OPEN AT 7 A.M.
AND CLOSE AT 8 P.M.

**WARNING: THE LOCATION OF YOUR POLLING
PLACE MAY HAVE CHANGED**

SEE BACK COVER FOR YOUR POLLING PLACE
LOCATION AND VOTE BY MAIL BALLOT REQUEST

TAKE THIS SAMPLE BALLOT TO THE POLLS
AND PRE-MARK IT TO AVOID DELAY













Sample Ballot

OFFICIAL BALLOT ALAMEDA COUNTY, CALIFORNIA NOVEMBER 3, 2009 CONSOLIDATED DISTRICT ELECTION

INSTRUCTIONS TO VOTERS: USE BLACK OR BLUE BALLPOINT PEN ONLY. To vote for a candidate of your choice,



complete the arrow  to the right of the candidate's name. To vote for a qualified write-in candidate, PRINT the person's name in the blank space provided and complete the arrow. To vote on any measure, complete the arrow after the word "Yes" or "No."

NONPARTISAN	
SCHOOL	
EMERY UNIFIED SCHOOL DISTRICT GOVERNING BOARD MEMBERS	
Vote for no more than Three	
CHERYL WEBB Incumbent	
BRIAN DONAHUE Home Builder	
MIGUEL DWIN Incumbent	
DARICE BRIDGES Homemaker, Student	
JOSHUA SIMON Incumbent	
	
	
	
	

Sample Ballot

CITY OF EMERYVILLE

FOR MEMBERS OF CITY COUNCIL

Vote for no more than Two

JENNIFER WEST

Teacher

FRANK EMERY FLORES

Businessman

KURT BRINKMAN

Businessman

MEASURES SUBMITTED TO THE VOTERS

CITY OF EMERYVILLE

K To maintain the high quality of life and unique character of Emeryville, continue to fund emergency services, and fund other vital City services, shall the City of Emeryville increase the business license tax imposed on the business of operating, conducting, or managing a card room, from 9% of gross receipts per month or \$1,000.00 per table per month, whichever is greater, to 10% of gross receipts per month or \$1,000.00 per table per month, whichever is greater?

YES

NO

CA01-1-380300-1-0001

BT:001

Candidates' Statements
EMERY UNIFIED SCHOOL DISTRICT
Governing Board Member

CHERYL WEBB

Occupation: Incumbent

My education and qualifications are: As an incumbent, I seek re-election to provide continuity in preparing our students for their future success. I am a product of California public education with a Bachelor of Science degree from Cal Poly, San Luis Obispo, an Emeryville resident since 1984, parent of children attending Anna Yates Elementary since 1994, now with two sons attending Emery Secondary School. For 24 years I have worked at the University of California in curriculum development. Who could have imagined our world would change so much? We need to prepare our students for that which is impossible for us to imagine today. We are continually aligning the curriculum and increasing the rigor of instruction K-12, while providing maximum support to assure academic success for all students. We teach concepts of leadership and provide programs and experiences for students to develop self-understanding and to strengthen their ability to speak for themselves. Students must also think critically and creatively. We have increased programs and opportunities for them to be innovative and to think beyond the curriculum. I want to thank each of you who have volunteered, mentored or in other ways supported the schools. Please re-elect Cheryl Webb, Joshua Simon and Miguel Dwin on November 3, 2009.

BRIAN DONAHUE

Occupation: Builder

Age: 51

My education and qualifications are: Emeryville children and families deserve outstanding public schools. Academic achievement, teacher quality, rich extra-curricular programs and cutting bureaucratic waste are my top priorities. I've lived here 28 years and as a parent of a four-year-old about to enroll in Emeryville public schools, my wife and I have a large stake in assuring our daughter and all children get an excellent public education. Our school board is poised to spend \$125 million to consolidate all our schools into a single campus called the "Center of Community Life", but children learn from great teachers, not expensive new buildings. Just last year, the district spent \$9 million renovating Anna Yates Elementary, a building they will abandon if the Center of Community Life becomes a reality. Very soon, they will begin spending an estimated \$10 million just on preliminary costs like architect's fees, public relations, etc. I see a need to renovate our high school but the Center for Community life is too expensive and not a good use of our district's limited resources. The district's resources should go more directly to our children.

MIGUEL DWIN

Occupation: Incumbent

My education and qualifications are: As the district Trustee, I will continue to focus on ensuring that every student has an opportunity for an excellent education by continuing to support the curriculum standards that our schools have established. I will promote active community involvement with parents, neighbors and the business community. I will assure fiscal accountability by proactively monitoring the annual budgets with all outcomes supporting student's achievement. My experience with the district coupled with my community involvement over the past four years, have provided me with a realistic perspective on the direction and needs the district faces. I believe that every student deserves well qualified, motivated and committed teachers, as well as administrators and staff who are ultimately accountable for each student's achievement. Each student is entitled to have access to world-class educational resources which include facilities, textbooks, and supplies. I am committed to fighting a good fight for the sake of our kids and community. Our community is working hard to create an excellent school district. With your support, I will bring hard work, commitment and accountability to our educational programs, employees and the students we serve.

JOSHUA SIMON

Occupation: Incumbent

Age: 49

My education and qualifications are: I have served on the School Board for eight years, with two years as President of the Board. I am running for re-election to ensure our schools remain welcoming centers of academic excellence that prepare our kids for college. We have made great progress these past four years. Over 89% of this year's graduating class has been accepted to college. With your support, we restored funding for librarians, music teachers, and counselors. We increased science and technology instruction and created a school garden for instruction. We formed many partnerships to maintain programs in the face of State budget cuts. We have built a strong foundation, but there's still much to do. By rebuilding our obsolete Secondary School, and adding the City's proposed recreation and community service center, we will create a new Center of Community Life for Emeryville. New facilities will help us retain, and continue attracting, highly qualified teachers for our extraordinary schools. My two children have begun their own education at Emeryville's Anna Yates Elementary School. Through my work on the School Board, I strive to ensure that for them, their classmates, and all of our community's children, our schools remain centers of learning, health and recreation. www.Josh4EmeryUnified.com

Candidates' Statements
CITY OF EMERYVILLE
City Councilmember

JENNIFER WEST

Occupation: Teacher

Age: 40

My education and qualifications are: I am running for the City Council because I want to help usher in a brighter future for Emeryville. I will support community-oriented development that will provide tangible benefits for the people who live and work in Emeryville. I want to see increased affordable housing for families, good jobs, better pedestrian and bike access, strong continued support for our schools, and local-owned and local-serving businesses. Emeryville has transformed itself into a regional success story, but our residents deserve a greater opportunity to have their voices heard when decisions are made in our city. I will work to find solutions for all while building a more livable community in Emeryville. Practical, honest, detail driven, I am enthusiastic about working with other stakeholders to create positive change in the way we do business in Emeryville. Dedicated to community and committed to public service, I have been a public school teacher since 1995. I am married with two daughters and live with my family on Doyle Street. Join AC Transit Director and former Councilmember Greg Harper, Councilmember John Fricke, Watergate resident Sam Foushee and other neighborhood leaders in voting for me for City Council. www.west4council.com

FRANK EMERY FLORES

Occupation: Businessman

Age: 40

My education and qualifications are: The City of Emeryville's economic position is sounder than our neighboring cities. Smart Growth and sensible development have put us in an enviable position financially. By continuing on this healthy course and completing projects that are already planned, Emeryville will emerge from this recession in an even stronger position. As a council member, I want to build upon the successes of our recent past by increasing the quality of our 'goods and services' and using our precious tax dollars wisely. Since moving to the Triangle Neighborhood in 2003, I have been a member of the Emeryville Housing Advisory Committee. I was appointed to the Planning Commission in 2006 and still serve on both committees. I look forward to continuing my civic service on City Council. I hold a Bachelor of Business from Humboldt State University and a Master of Planning from Berkeley. I have worked in both private and non-profit housing development for over 16 years and am committed to quality, affordable housing. Feel Free to email or call me to discuss any issue you might have: floresfrank@hotmail.com (510)715-3892 Thank you for your support.

KURT BRINKMAN

Occupation: Businessman

Age: 56

My education and qualifications are: For the past twenty years I have been an active and involved resident and businessman living in Emeryville. I started my business Intrepid Electronic, Inc. twelve years ago in the triangle neighborhood of Emeryville and own a house on the north side of town. For the past six years I have served as a Trustee on the board of The Emery Unified School District. In addition, I am co-chair of the City/School Committee, vice chair of the Emeryville Chamber of Commerce and an active board member on The Emeryville Annual Arts Committee and the Business Student Partnership Council, which supports EYE, Emery's Young Entrepreneurs. My vision for Emeryville is one based upon equity for all— a city where all of its youth can be educated, go off to college and come back home to family, friends, and a good job. Why vote for me? I am dedicated to this community and am a businessman who manages a payroll of IBEW union electricians. I know what it takes to manage a budget and I am prepared to make the decisions that these difficult times require.

CITY OF EMERYVILLE MEASURE K

<p>K To maintain the high quality of life and unique character of Emeryville, continue to fund emergency services, and fund other vital City services, shall the City of Emeryville increase the business license tax imposed on the business of operating, conducting, or managing a card room, from 9% of gross receipts per month or \$1,000.00 per table per month, whichever is greater, to 10% of gross receipts per month or \$1,000.00 per table per month, whichever is greater?</p>	YES
	NO

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE K

The purpose of this measure is to adopt an ordinance increasing the existing business license tax imposed on persons engaged in the business of operating, conducting or managing a card room in the City of Emeryville to provide for general municipal services. Under Proposition 218, adopted in 1996, proposed tax and fee increases must be placed on the ballot for voter approval.

Currently, the business license tax imposed on card room businesses is the greater of nine percent (9%) of gross receipts or \$1,000.00 per approved card table, paid on a monthly basis. Under the proposed ordinance, the business license tax imposed on card room businesses would be increased to the greater of ten percent (10%) of gross receipts or \$1,000.00 per approved card table, paid on a monthly basis.

A **YES** vote will increase the business license tax imposed on card room businesses to the greater of ten percent (10%) of gross receipts or \$1,000.00 per approved card table, paid on a monthly basis.

A **NO** vote will not increase the business license tax imposed on card room businesses; however, the present business license tax imposed on card room businesses, which is the greater of nine percent (9%) of gross receipts or \$1,000.00 per approved card table, paid on a monthly basis, will remain in effect.

Respectfully submitted
 this 7th day of August 2009,
 s/MICHAEL G. BIDDLE
 Emeryville City Attorney

ARGUMENT IN FAVOR OF MEASURE K

Vote **YES on K** to support our local community and preserve the quality of life in Emeryville!

Measure K **only** impacts the Card Room, it is **not a tax on residents**. It simply increases an important revenue source to ensure that our City can maintain the high quality of public safety, maintain parks and greenways, street repair, and emergency services.

Did you know that due to the weak economy and the state budget crisis, the City has been forced to make significant reductions to vital city services? Emeryville has been forced to make millions of dollars in cuts, including:

- implemented a hiring freeze and lay-offs of 8% of the City's workforce
- reduced street sweeping and tree trimming throughout the City
- eliminated Library Services Contract

Our City cannot continue to provide the level of service that citizens want and need, without additional funding. Without this measure, essential City services will be further cut.

Yes on K can help offset some of the revenue that Emeryville will lose to the State.

Yes on K generates local funds for OUR local needs. Every cent stays in Emeryville to maintain the services important to residents.

Emeryville is a special community with excellent services and programs residents value. Supporting the services that make Emeryville a great community is important to our quality of life. Emeryville residents and businesses are extremely proud and enjoy the benefits of our clean, safe, and well-maintained city. Many residents live in Emeryville because it offers a higher level of service, programs and quality of life than neighboring cities.

Yes on K ensures the Card Room continues to pay its fair share to support services vital to our City's character.

Vote YES on K to keep Emeryville a quality community.

- s/Richard L. Kassis
Mayor
- s/Nora Davis
Councilmember
- s/Ruth Atkin
Councilmember
- s/John Fricke
Councilmember
- s/Ken Bukowski
Vice-Mayor

NO ARGUMENT AGAINST MEASURE K WAS SUBMITTED.

**FULL TEXT OF MEASURE K
ORDINANCE NO. 09-**

AN ORDINANCE OF THE CITY OF EMERYVILLE AMENDING THE PARAGRAPH ENTITLED "CARD ROOM" OF SECTION 3-1.125 OF CHAPTER 1 OF TITLE 3 OF THE EMERYVILLE MUNICIPAL CODE IN ORDER TO INCREASE THE BUSINESS LICENSE TAX IMPOSED ON PERSONS ENGAGED IN THE BUSINESS OF OPERATING, CONDUCTING OR MANAGING A CARD ROOM FROM 9% OF GROSS RECEIPTS PER MONTH OR \$1,000.00 PER TABLE PER MONTH, WHICHEVER IS GREATER, TO 10% OF GROSS RECEIPTS PER MONTH OR \$1,000.00 PER TABLE PER MONTH, WHICHEVER IS GREATER, IN ORDER TO PROVIDE FOR GENERAL MUNICIPAL SERVICES IN THE CITY OF EMERYVILLE

WHEREAS, at the regularly scheduled general municipal election held on Tuesday, November 3, 2009, the City Council of the City of Emeryville placed before the voters of the City of Emeryville a measure posing the question of whether to increase the business license tax imposed on persons engaged in the business of operating, conducting or managing a card room from 9% of gross receipts per month or \$1,000.00 per table per month, whichever is greater, to 10% of gross receipts per month or \$1,000.00 per table per month, whichever is greater, in order to provide for general municipal services in the City of Emeryville; and

WHEREAS, at said regularly scheduled general municipal election, the electorate of the City of Emeryville, by majority vote as required by law, did approve said aforementioned measure; now, therefore, be it

RESOLVED, THAT THE PEOPLE OF THE CITY OF EMERYVILLE DO ORDAIN AS FOLLOWS:

SECTION ONE. PURPOSE AND INTENT. The purpose and intent of this Ordinance is to increase the business license tax imposed on persons engaged in the business of operating, conducting or managing a card room from 9% of gross receipts per month or \$1,000.00 per table per month, whichever is greater, to 10% of gross receipts per month or \$1,000.00 per table per month, whichever is greater, in order to provide for general municipal services in the City of Emeryville.

SECTION TWO. AMENDING PARAGRAPH ENTITLED "CARD ROOM" IN SECTION 3-1.125 OF CHAPTER 1 OF TITLE 3 OF THE EMERYVILLE MUNICIPAL CODE. The paragraph entitled "Card Room" in Section 3-1.125 of Chapter 1 of Title 3 of the Emeryville Municipal Code is hereby amended, as to the license tax, to read as follows:

Section 3-1.125 Certain Enumerated Businesses.

Card Room. Carrying on the business of operating, conducting or managing a card room or card game in any public place or to which an admission fee is charged within the City of Emeryville, the license tax shall be as follows:

Card room businesses shall pay, monthly, to the City, a license tax of ten percent (10%) of the monthly gross

receipts of such business, or shall pay, monthly, a license tax of one thousand dollars (\$1,000.00) per table, per month, whichever of these two (2) tax amounts is greater.

SECTION THREE. SEVERABILITY. Every section, paragraph, clause and phrase of this Ordinance is severable. If, for any reason, any section, paragraph, clause or phrase is held to be invalid or unconstitutional, such invalidity or constitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases.

SECTION FOUR. CEQA DETERMINATION. Pursuant to Title 14 of the California Administrative Code, Section 15378 (b)(4), this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) because the submittal of proposals to a vote of the people of the state or of a particular community is not a "project" for purposes of CEQA.

SECTION FIVE. EFFECTIVE DATE AND POSTING. This Ordinance shall take effect ten (10) days after the City Council certifies the election results as provided pursuant to California Elections Code Section 9217. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code Section 33693.

SECTION SIX. CODIFICATION. Section Two of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Three, Four, Five and Six shall not be so codified.

PASSED AND ADOPTED at a regularly scheduled general municipal election held on Tuesday, November 3, 2009 by the following vote:

YES: _____

NO: _____

MAYOR

ATTEST:

APPROVED AS TO FORM:

CITY CLERK

CITY ATTORNEY

OFFICIAL BALLOT

ALAMEDA COUNTY, CALIFORNIA

NOVEMBER 3, 2009 CONSOLIDATED DISTRICT ELECTION

INSTRUCTIONS TO VOTERS: USE BLACK OR BLUE BALLPOINT PEN ONLY. To vote for a candidate of your choice,



complete the arrow ← to the right of the candidate's name. To vote for a qualified write-in candidate, PRINT the person's name in the blank space provided and complete the arrow. To vote on any measure, complete the arrow after the word "Yes" or "No."

MEASURES SUBMITTED TO THE VOTERS	
<p>SCHOOL</p> <p>To help restore teacher positions and student services lost because of deep and unprecedented State budget cuts, including school safety and security, reading and math support, music, art and library services, shall the Albany Unified School District levy a special parcel tax for only five years at \$149 per year on residential units (three cents/sq. ft. on non-residential parcels), with annual audits and adjustments for inflation, exempting homeowners age 65 and over and low-income taxpayers?</p>	<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p>YES ←</p> </div> <div style="text-align: center;"> <p>NO ←</p> </div> </div>

Sample Ballot

J To maintain high quality Albany public schools, shall the Albany Unified School District combine, without increasing, three existing special school taxes into a single annual tax of \$555/residential unit (eleven cents/ sq. ft. on nonresidential parcels), adjusted annually for inflation, exempting homeowners age 65 and over and low-income taxpayers, with funds for school library and mental health services, science, technology, arts, music courses and athletics, small class sizes, and attracting and retaining highly qualified teachers?

YES

NO



CA01-1-260100-2-0002

BT:002

ALBANY UNIFIED SCHOOL DISTRICT MEASURE I

<p>I To help restore teacher positions and student services lost because of deep and unprecedented State budget cuts, including school safety and security, reading and math support, music, art and library services, shall the Albany Unified School District levy a special parcel tax for only five years at \$149 per year on residential units (three cents/sq. ft. on non-residential parcels), with annual audits and adjustments for inflation, exempting homeowners age 65 and over and low-income taxpayers?</p>	<p>YES</p>
	<p>NO</p>

reading, writing and math support. The measure provides that the monies collected shall be accounted for separately and shall be expended only for those specified purposes. An independent financial auditor will monitor the collection and expenditures of the special tax funds and file annual reports with the Board of Education.

If two-thirds of the qualified electors voting on this measure do not vote for approval, the measure will fail, and the District will not be authorized to levy the special tax.

s/RICHARD E. WINNIE
County Counsel

The above statement is an impartial analysis of Measure I, which measure is printed in full in this sample ballot pamphlet. If you desire an additional copy of the measure, please call the Elections Official's office at (510) 272-6933 and a copy will be mailed at no cost to you.

COUNTY COUNSEL'S IMPARTIAL ANALYSIS OF MEASURE I

ANALYSIS BY ALAMEDA COUNTY COUNSEL OF AN ALBANY UNIFIED SCHOOL DISTRICT SPECIAL PARCEL TAX MEASURE

Measure I is an Albany Unified School District ("District") special parcel tax measure. Measure I seeks voter approval of an annual special parcel tax on residential units and nonresidential property for a period of five years, beginning July 1, 2010. This measure would levy the following annual taxes: (1) \$149.00 per taxable, residential unit, and (2) \$0.03 per square foot of land area or \$149.00 on each parcel of nonresidential property (whichever is greater).

School districts have the authority to levy special taxes upon approval by two-thirds of the votes cast on the special tax proposals pursuant to the provisions of Article XIII A, Section 4 and Article XIII C, Section 2 of the California Constitution and sections 50075-50077, 50079, and 53722 of the California Government Code.

If two-thirds of the qualified electors voting on this measure vote for approval, the special tax described above will be imposed annually for five years. The tax will be collected by the Alameda County Treasurer-Tax Collector at the same time and in the same manner as *ad valorem* property taxes are collected. Upon application to the District, an exemption from the special parcel tax may be granted (a) to any parcel that is owned and occupied by a person 65 years of age or older, or (b) to any property owner whose combined family income is at or below the "low income" level of the U.S. Housing Act of 1937. Upon proper application to the District, a rebate equal to the amount of this special tax is available to any tenant of a rental unit whose combined family income is at or below the "low income" level of the U.S. Housing Act of 1937.

If two-thirds of the qualified electors voting on this measure vote for approval, the funding revenue will be used for the specific purposes set forth in the full text of the measure printed in this sample ballot, including restoration of teaching positions and support services; music and arts courses; English language learning services; campus safety and security services; library services; counseling; and

**ARGUMENT IN FAVOR OF MEASURE I
MEASURE I – EMERGENCY TAX**

The California budget crisis has so far cost Albany Unified School District 4.2 million dollars, 13% of the school budget.

Despite these drastic and unprecedented cuts, Albany schools have a balanced budget for the current school year – but the sacrifices are enormous and heart breaking:

- Class sizes have been increased in elementary and high school.
- Teachers are working without classroom aides.
- Assistant principal positions have been cut, jeopardizing campus safety.
- School library services are reduced.
- Academic counselors struggle to keep up with 8% higher caseloads.
- Elementary music and arts courses have been cut.
- Access to elective courses has been drastically reduced at the middle and high schools.

District administration has been cut by \$200,000. Teachers have accepted pay cuts and higher work loads to save money. The community has rallied to donate \$330,000, allowing some electives, athletics and arts programs to continue this year. But this limited funding is very short term.

MEASURE I ASKS ALBANY VOTERS IF THEY WILL PROVIDE APPROX. ONE MILLION DOLLARS TO RESTORE SOME OF THE SERVICES THAT HAVE BEEN LOST DUE TO THE STATE CRISIS. Measure I is structured as a 5 year special tax of \$149 per residence per year, exempting seniors and low income households. Measure I needs a 2/3 vote to pass.

A vote for Measure I is a vote to maintain the high quality of Albany schools which have long been the centerpiece of our wonderful community. The Albany Unified School District brings Measure I to the voters only because THE QUALITY OF ALBANY EDUCATION IS IN SERIOUS JEOPARDY. It is expected that by 2015 — or before — state funding for education will return to manageable levels and this local emergency tax can be retired.

Thank you for voting YES! Good schools are important to ALL of us.

s/David Glasser
President, Albany Unified School District Board of Education

s/Dr. Patricia Low
Albany Unified School District Board of Education

s/Marge Atkinson
Albany Mayor

s/Ricky G. Freed
Past President, Albany P.T.A. Council

s/Loring Barker
President, Albany Teachers Association

**NO ARGUMENT AGAINST MEASURE I
WAS SUBMITTED.**

FULL TEXT OF MEASURE I

ALBANY UNIFIED SCHOOL DISTRICT EMERGENCY EDUCATION FUNDING ACT OF 2009

This Proposition may be known and referred to as the “Albany Unified School District Emergency Education Funding Act of 2009” or as “Measure I”.

FINDINGS

A superior and comprehensive K-12 education program delivers many long-lasting benefits and advantages to all the children and residents of a community.

The State’s dire economic condition has led the Governor Schwarzenegger and the California Legislature to make drastic cuts in education funding.

The direct impact of these State cuts on local Albany schools has meant eliminating 17 teaching positions and many more student support and District support staff.

Long after the current recession is over, Californians will be struggling to repay the debts incurred today. Despite promises from Sacramento, the full funding guarantee to schools enshrined in the California Constitution will not be realized for many years.

The District’s current students cannot wait for the economy to come out of recession or the State’s financial condition to improve. Some of Albany’s school-age children will never recover from lost years of inadequate school funding.

A temporary emergency parcel tax, supplementing regular State and local school funding, is the only way to protect our children and their education programs from serious damage.

TERMS

Upon approval of two-thirds of those voting on this Proposition, the District shall be authorized to levy a qualified special tax (education parcel tax) for five years commencing on July 1, 2010, at the rate of \$149 per year on each residential unit, as defined in this section. On each parcel of nonresidential property, the qualified special tax shall be levied commencing on July 1, 2010 at the rate of \$0.03 per square foot of land area or \$149 per parcel, whichever is greater.

During its term, the education parcel tax authorized by this Proposition shall be in addition to any other existing parcel taxes or another tax enacted on the same date.

To account for the impact of inflation on the cost of delivering the classroom programs and student services supported by the education parcel tax, the tax rate and maximum tax shall be adjusted annually as the Board of Education shall determine, commencing July 1, 2011, by no more than the average of the reported monthly or other periodic percentage changes in the Consumer Price Index-All Urban Consumers, San Francisco-Oakland-San Jose area (Series CUURA422SA0) over the prior twelve months, as of April of each year, as published by the U.S. Bureau of Labor Statistics, rounded to the nearest dollar. If in any year, that index is not available, the rate will be adjusted based on the changes in the Consumer Price Index-All Urban Consumers (CPI-U).

“Residential unit” shall mean any building or portion

thereof which is intended and legally permitted to be occupied by not more than one family, whether or not then inhabited, with facilities for living, sleeping, cooking and eating, and having only one kitchen.

“Nonresidential property” shall mean all real property not used for dwelling purposes.

The nonresidential property portion of any parcel that includes one or more residential units shall be taxed at the nonresidential property rate.

PURPOSES

Moneys raised under this Emergency Education Funding Act shall be authorized to be used to restore programs and services cut from the District’s budget as a direct result of a reduction in State funding for schools, including but not limited to:

- Restore teaching positions and support services
- Restore music and arts courses
- Restore English language learning services
- Restore campus safety and security services
- Restore library services
- Restore counseling
- Restore reading, writing and math support

and to restore and preserve other academic programs, instructional equipment, materials and supplies from State budget cuts, to the extent of available funds.

EXEMPTIONS AND REBATES

The exemptions and rebate provided for below shall be available pursuant to procedures to be prescribed by the Board of Education or otherwise as required by law or by the Alameda County Tax Collector.

A. Senior Exemption. Any parcel owned and occupied by a person 65 years of age or older shall be exempt from the education parcel tax upon proper application to the District. Senior citizens with a current valid exemption from the District’s education parcel taxes shall continue to be exempt and not be required to reapply.

B. Low-Income Homeowner Exemption. Any parcel containing a single residential unit owned and occupied by a person or persons whose combined family income from all sources for the previous calendar year is at or below the income level qualifying as “low income” or “very low-income” for a family of such size under Section 8 of the U.S. Housing Act of 1937 [42 U.S.C. 1437 *et seq.*], for such year, shall be exempt from the education parcel tax upon proper application to the District.

C. Low-Income Renter Rebate. Any person who is the tenant of record in a rental unit not exempt from the education parcel tax and whose combined family income, from all sources for the previous calendar year, is at or below the income level qualifying as “very low-income” or “low income” for a family of such size under Section 8 of the U.S. Housing Act of 1937 [42 U.S.C. 1437 *et seq.*], for such year shall be eligible to receive a rebate in the amount of the special tax imposed by this Proposition on the rental unit in which he or she resides, upon proper application to the District.

ACCOUNTABILITY PROVISIONS

Annual Audit. Upon the levy and collection of the education parcel tax, the Board of Education shall cause an account to be established for deposit of the proceeds, pursuant to Government Code Section 50075.1. For so long as the tax is collected, the Superintendent of the District shall cause an independent financial auditor to prepare a report to be filed with the Board of Education no later than December 31 of each year, commencing December 31, 2010, stating (1) the amount collected and expended in such year, and (2) the status of any projects or description of any programs funded. The report may relate to the calendar year, fiscal year, or other appropriate annual period, as the Superintendent shall determine, and may be incorporated into or filed with the annual budget, audit, or other appropriate routine report to the Board of Education.

Specific Purposes. All of the purposes named in this Proposition shall constitute the specific purposes of the education parcel tax, and proceeds thereof shall be applied only for such purposes.

LEVY AND COLLECTION

The education parcel tax shall be collected by the Alameda County Treasurer-Tax Collector at the same time and in the same manner and shall be subject to the same penalties as *ad valorem* property taxes collected by the Treasurer-Tax Collector. Unpaid taxes shall bear interest at the same rate as the rate for unpaid *ad valorem* property taxes until paid.

The education parcel tax shall be due with respect to every parcel of real property in the District which receives a separate tax bill for *ad valorem* property taxes from the Alameda County Treasurer-Tax Collector's Office. All property which is otherwise exempt from or on which are levied no *ad valorem* property taxes in any year shall also be exempt from the education parcel tax in such year. In addition, parcels may be exempt from the education parcel tax as described above under "EXEMPTIONS AND REBATES".

The District shall annually provide a list of parcels to the Alameda County tax collection officials which the District has approved for an exemption in accordance with this Proposition. The Alameda County Assessor's determination of exemption or relief for any reason of any parcel from taxation, other than through either of said exemptions, shall be final and binding for the purposes of the education parcel tax. Taxpayers wishing to challenge the County Assessor's determination must do so under the procedures for correcting a misclassification of property pursuant to Section 4876.5 of the California Revenue and Taxation Code or other applicable procedures. Taxpayers seeking a refund of any tax paid shall follow the procedures applicable to property tax refunds pursuant to the California Revenue and Taxation Code.

PROTECTION OF FUNDING

In the event the Congress or State Legislature enacts any law, or the U.S. Department of Education, or the State Department of Education or State Board of Education adopts any rule, providing that other funding to which the District would otherwise be entitled will be reduced as a result of the District's income from the education parcel

tax, the Board of Education may take action as soon as practicable to reduce the amount or rate of the education parcel tax such that the amount collected will not cause such other funding to be reduced.

SEVERABILITY

The Board of Education hereby declares, and the voters by approving this Proposition concur, that every section, paragraph, sentence and clause of this Proposition has independent value, and the Board of Education and the voters would have adopted each provision hereof regardless of every other provision hereof. Upon approval of this Proposition by the voters, should any part be found by a court of competent jurisdiction to be invalid for any reason, all remaining parts hereof shall remain in full force and effect to the fullest extent allowed by law.

ALBANY UNIFIED SCHOOL DISTRICT MEASURE J

<p>J To maintain high quality Albany public schools, shall the Albany Unified School District combine, without increasing, three existing special school taxes into a single annual tax of \$555/ residential unit (eleven cents/ sq. ft. on nonresidential parcels), adjusted annually for inflation, exempting homeowners age 65 and over and low-income taxpayers, with funds for school library and mental health services, science, technology, arts, music courses and athletics, small class sizes, and attracting and retaining highly qualified teachers?</p>	YES
	NO

If two-thirds of the qualified electors voting on this measure vote for approval, the funding revenue will be used for the specific purposes set forth in the full text of the measure printed in this sample ballot, including hiring and retaining librarians; preserving small class sizes; and hiring and retaining qualified teachers. The measure provides that the monies collected shall be accounted for separately and shall be expended only for those specified purposes. An independent financial auditor will monitor the collection and expenditures of the special tax funds and file annual reports with the Board of Education.

If two-thirds of the qualified electors voting on this measure do not vote for approval, the measure will fail, and the District will not be authorized to combine the special taxes. Those special taxes, however, will continue in effect until their scheduled expiration, if any.

s/RICHARD E. WINNIE
County Counsel

The above statement is an impartial analysis of Measure J, which measure is printed in full in this sample ballot pamphlet. If you desire an additional copy of the measure, please call the Elections Official's office at (510) 272-6933 and a copy will be mailed at no cost to you.

COUNTY COUNSEL'S IMPARTIAL ANALYSIS OF MEASURE J

ANALYSIS BY ALAMEDA COUNTY COUNSEL OF AN ALBANY UNIFIED SCHOOL DISTRICT SPECIAL PARCEL TAX MEASURE

Measure J is an Albany Unified School District ("District") special parcel tax measure. Albany voters already approved three separate parcel taxes in 1987, 1999, and 2005. Measure J seeks voter approval to combine these three special parcel taxes. This measure would not increase, or be in addition to, the total amount of the three already-approved special parcel taxes. The levy of the combined special parcel taxes would be as follows: (1) \$555.00 per taxable, residential unit, and (2) \$0.11 per square foot of land area or \$555.00 on each parcel of non-residential property (whichever is greater). This measure would also add exemptions and rebates that are not available under the already approved special parcel taxes. Finally, this measure would extend the special parcel tax approved in 2005, which is currently set to expire in 2012.

School districts have the authority to levy special taxes upon approval by two-thirds of the votes cast on the special tax proposals pursuant to the provisions of Article XIII A, Section 4 and Article XIII C, Section 2 of the California Constitution and sections 50075-50077, 50079, and 53722 of the California Government Code.

If two-thirds of the qualified electors voting on this measure vote for approval, the special tax will be imposed annually beginning on July 1, 2010. The tax will be collected by the Alameda County Treasurer-Tax Collector just as *ad valorem* property taxes are collected. Upon application to the District, an exemption from the special parcel tax may be granted (a) to any parcel that is owned and occupied by a person 65 years of age or older, or (b) to any property owner whose combined family income is at or below the "low income" level of the U.S. Housing Act of 1937. Upon proper application to the District, a rebate equal to the amount of this special tax is available to any tenant of a rental unit whose combined family income is at or below the "low income" level of the U.S. Housing Act of 1937.

ARGUMENT IN FAVOR OF MEASURE J

MEASURE J – COMBINED TAXES

In light of the serious reductions to the Albany schools budget because of the California state budget crisis, MEASURE J IS DESIGNED TO STABILIZE, WITHOUT INCREASING, EXISTING LOCAL FUNDING FOR THE SCHOOLS.

The measure reduces local taxes for seniors and low income families, a small but welcome help during difficult economic times.

Albany currently has three separate special schools taxes. Each has slightly different rules and exemptions. Because of drastic state budget cuts to schools, Albany is now dependent on this local funding wisely approved by Albany voters in the past.

One of these taxes is set to expire in 2013, which means that Albany schools are faced with additional budget cuts of over 2 million dollars at a time when we can least afford it.

Measure J will stabilize local funding for the schools and help the community. It:

- Combines the three existing taxes, WITHOUT INCREASING ANY TAXES, into one, uniform tax with annual adjustments for inflation.
- Prevents the expiration of one tax, saving the schools 2 million dollars that are desperately needed to maintain the high quality of education in Albany.
- Extends exemptions on all local schools taxes to seniors and low income families: A REDUCTION IN TAXES of \$132 per year for seniors and \$288 per year for low income families.
- Maintains funding for science, technology, athletics, and foreign language courses, including smaller than state average class sizes, library and mental health services at every site, and safe facilities throughout the district.

The combined measure also provides for an annual audit so the community will always know that funds are being spent effectively as intended. Measure J needs a 2/3 vote to pass.

Thank you for your YES vote! Working together our community can survive and thrive in these tough times.

s/David Glasser

President, Albany Unified School District Board of Education

s/Dr. Patricia Low

Albany Unified School District Board of Education

s/Marge Atkinson

Albany Mayor

s/Ricky G. Freed

Past President, Albany P.T.A. Council

s/Loring Barker

President, Albany Teachers Association

NO ARGUMENT AGAINST MEASURE J WAS SUBMITTED.

FULL TEXT OF MEASURE J

ALBANY UNIFIED SCHOOL DISTRICT LOCAL EDUCATION PROTECTION ACT OF 2009

This Proposition may be known and referred to as the “Albany Unified School District Local Education Protection Act of 2009” or as “Measure J”.

FINDINGS

A superior and comprehensive K-12 education program delivers many long-lasting benefits and advantages to all the children and residents of a community.

It is essential that the Albany Unified School District (the “District”) have stable funding sources to maintain its quality academic programs, including librarians; student mental health services; courses in science, technology, arts, music, and foreign language; and athletics, including extra-curricular activities; and will help preserve small class sizes and allow the District to attract and retain highly qualified teachers;

Perpetual California State budget problems threaten the District’s many successful educational programs with an increasingly uncertain fiscal future.

However, local voters and taxpayers have provided strong support of the District’s schools with parcel tax measures since 1987.

The District’s three current parcel tax programs, passed in 1987, 1999, and 2005, contain inconsistent rates and terms, and do not all contain exemptions and rebates for seniors and low-income residents. In addition, the District’s Measure A approved by voters in November, 2005, will expire in 2012 if not re-approved, leaving critical educational programs at risk in the near future.

By combining, replacing and re-enacting all existing parcel taxes, local voters can ensure that our schools will receive a stable, reliable, local source of funding, while treating all taxpayers equally and fairly.

TERMS

Upon approval of two-thirds of those voting on this Proposition, the District shall be authorized to levy a qualified special tax (education parcel tax) commencing on July 1, 2010 at the rate of \$555 per year on each residential unit, as defined in this section. On each parcel of nonresidential property, the qualified special tax shall be levied commencing on July 1, 2010 at the rate of \$0.11 per square foot of land area or \$555 per parcel, whichever is greater.

The education parcel tax authorized by this Proposition shall replace the three existing special taxes approved by the voters of the District in 1987, 1999 and 2005, and the initial rate of the education parcel tax is equal to the 2009-10 combined rate of the three replaced taxes. In the event that this Proposition is not approved by the requisite vote, the existing parcel taxes shall continue in effect until their scheduled expiration, if any. Under no circumstances shall the education parcel tax approved in this Proposition and any of the three existing measures be collected in the same year.

To account for the impact of inflation on the cost of delivering the classroom programs and student services supported by the education parcel tax, the tax rate and

maximum tax shall be adjusted annually as the Board of Education shall determine, commencing July 1, 2011, by no more than the average of the reported monthly or other periodic percentage changes in the Consumer Price Index-All Urban Consumers, San Francisco-Oakland-San Jose area (Series CUURA422SA0) over the prior twelve months, as of April each year, as published by the U.S. Bureau of Labor Statistics, rounded to the nearest dollar. If in any year, that index is not available, the rate will be adjusted based on the changes in the Consumer Price Index-All Urban Consumers (CPI-U).

“Residential unit” shall mean any building or portion thereof which is intended and legally permitted to be occupied by not more than one family, whether or not then inhabited, with facilities for living, sleeping, cooking and eating, and having only one kitchen.

“Nonresidential property” shall mean all real property not used for dwelling purposes.

The nonresidential property portion of any parcel that includes one or more residential units shall be taxed at the nonresidential property rate.

PURPOSES

Moneys raised under this Local Education Protection Act shall be authorized to be used only to provide financial support to local school programs in accordance with priorities established by the Board of Education and to the extent of available funds, including but not limited to:

- hire and retain librarians;
- provide student mental health services;
- offer courses in science, technology, arts, music, and foreign language;
- offer athletics, including extra-curricular activities;
- preserve small class sizes;
- attract and retain highly qualified teachers;

and to provide other financial support to the extent of available funds to maintain and support the District’s academic programs and facilities, including the purchase of instructional equipment, materials and supplies.

EXEMPTIONS AND REBATES

The exemptions and rebate provided for below shall be available pursuant to the procedures to be prescribed by the Board of Education or otherwise as required by law or by the Alameda County Tax Collector.

A. Senior Exemption. Any parcel owned and occupied by a person 65 years of age or older shall be exempt from the education parcel tax upon proper application to the District. Senior citizens with a current valid exemption from the District’s education parcel taxes shall continue to be exempt and not be required to reapply.

B. Low-Income Homeowner Exemption. Any parcel containing a single residential unit owned and occupied by a person or persons whose combined family income from all sources for the previous calendar year is at or below the income level qualifying as “low income” or “very low-income” for a family of such size under Section 8 of the U.S. Housing Act of 1937 [42 U.S.C. 1437 *et seq.*], for such year, shall be exempt from the education parcel tax upon

proper application to the District.

C. Low-Income Renter Rebate. Any person who is the tenant of record in a rental unit not exempt from the education parcel tax and whose combined family income, from all sources for the previous calendar year, is at or below the income level qualifying as “very low-income” or “low income” for a family of such size under Section 8 of the U.S. Housing Act of 1937 [42 U.S.C. 1437 *et seq.*], for such year shall be eligible to receive a rebate in the amount of the special tax imposed by this Proposition on the rental unit in which he or she resides, upon proper application to the District.

ACCOUNTABILITY PROVISIONS

Annual Audit. Upon the levy and collection of the education parcel tax, the Board of Education shall cause an account to be established for deposit of the proceeds, pursuant to Government Code Section 50075.1. For so long as the tax is collected, the Superintendent of the District shall cause an independent financial auditor to prepare a report to be filed with the Board of Education no later than December 31 of each year, commencing December 31, 2010, stating (1) the amount collected and expended in such year, and (2) the status of any projects or description of any programs funded. The report may relate to the calendar year, fiscal year, or other appropriate annual period, as the Superintendent shall determine, and may be incorporated into or filed with the annual budget, audit, or other appropriate routine report to the Board of Education.

Specific Purposes. All of the purposes named in the Proposition shall constitute the specific purposes of the education parcel tax, and proceeds thereof shall be applied only for such purposes.

LEVY AND COLLECTION

The education parcel tax shall be collected by the Alameda County Treasurer-Tax Collector at the same time and in the same manner and shall be subject to the same penalties as *ad valorem* property taxes collected by the Treasurer-Tax Collector. Unpaid taxes shall bear interest at the same rate as the rate for unpaid *ad valorem* property taxes until paid.

The education parcel tax shall be due with respect to every parcel of real property in the District which receives a separate tax bill for *ad valorem* property taxes from the Alameda County Treasurer-Tax Collector’s Office. All property which is otherwise exempt from or on which are levied no *ad valorem* property taxes in any year shall also be exempt from the education parcel tax in such year. In addition, parcels may be exempt from the education parcel tax as described above under “EXEMPTIONS AND REBATES”.

The District shall annually provide a list of parcels to the Alameda County tax collection officials which the District has approved for an exemption in accordance with this Proposition. The Alameda County Assessor’s determination of exemption or relief for any reason of any parcel from taxation, other than through either of said exemptions, shall be final and binding for the purposes of the education parcel tax. Taxpayers wishing to challenge the County Assessor’s determination must do so under the

procedures for correcting a misclassification of property pursuant to Section 4876.5 of the California Revenue and Taxation Code or other applicable procedures. Taxpayers seeking a refund of any tax paid shall follow the procedures applicable to property tax refunds pursuant to the California Revenue and Taxation Code.

PROTECTION OF FUNDING

In the event the Congress or State Legislature enacts any law, or the U.S. Department of Education, or the State Department of Education or State Board of Education adopts any rule, providing that other funding to which the District would otherwise be entitled will be reduced as a result of the District’s income from the education parcel tax, the Board of Education may take action as soon as practicable to reduce the amount or rate of the education parcel tax such that the amount collected will not cause such other funding to be reduced.

SEVERABILITY


The Board of Education hereby declares, and the voters by approving this Proposition concur, that every section, paragraph, sentence and clause of the Proposition has independent value, and the Board of Education and the voters would have adopted each provision hereof regardless of every other provision hereof. Upon approval of the Proposition by the voters, should any part be found by a court of competent jurisdiction to be invalid for any reason, all remaining parts hereof shall remain in full force and effect to the fullest extent allowed by law.








Sample Ballot

OFFICIAL BALLOT
ALAMEDA COUNTY, CALIFORNIA
NOVEMBER 3, 2009 CONSOLIDATED DISTRICT ELECTION

INSTRUCTIONS TO VOTERS: USE BLACK OR BLUE BALLPOINT PEN ONLY. To vote for a candidate of your choice,



complete the arrow  to the right of the candidate's name. To vote for a qualified write-in candidate, PRINT the person's name in the blank space provided and complete the arrow. To vote on any measure, complete the arrow after the word "Yes" or "No."

NONPARTISAN	
CITY OF NEWARK	
FOR MAYOR Vote for One	
DAVID W. SMITH Mayor	
	
FOR MEMBERS OF CITY COUNCIL Vote for no more than Two	
ANA APODACA Newark City Councilmember	
NADJA ADOLF Housewife	
ALAN L. NAGY Newark City Councilmember	
	
	

Sample Ballot

MEASURES SUBMITTED TO THE VOTERS

CITY OF NEWARK

L CITY OF NEWARK VITAL SERVICES MEASURE. To

prevent severe cuts to critical Newark city services, including police officers and patrols, crime prevention, anti-gang/drug prevention, fire protection and 911 emergency services, senior services and health programs, programs for children and teens, street maintenance and pothole repair, and general city services, shall the City of Newark establish a 3.9 percent Utility Users Tax for six years exempting low-income seniors and requiring independent audits with all funds staying local?

YES

NO



CA01-1-850300-3-0003

BT:003

**Candidate's Statement
CITY OF NEWARK
Mayor**

DAVID W. SMITH

Occupation: Mayor

Age: 63

My education and qualifications are: YOWZA! I enjoy serving as your Mayor! Newark has retained that "small town feeling" while blossoming into a progressive city. To this point, we have done well in a difficult economy. We have retained city services at reasonable levels through conservative fiscal policies. But now we are at a "fiscal crossroads." City revenues, particularly sales tax, have continued to decline. To balance our budget, we have made \$4.4 million in cuts, eliminated over 50 positions, and cut employees' pay. However, \$3.5 million more in severe cuts loom in January if we fail to act. Newark citizens have the opportunity to generate additional revenue through a Utility Users Tax that appears on this ballot. I will be supporting that measure, and I hope you will join me. This measure will give Newark some local control over local funds for local needs. As we continue through these complex times, experienced, seasoned leadership will be increasingly important. We can be proud of our accomplishments as a community! The path ahead has many challenges, but they can be met if we continue to work together to make Newark one of California's finest cities! I would appreciate your vote!

Candidates' Statements
CITY OF NEWARK
City Councilmember

ANA APODACA

Occupation: Councilmember/ Community and Government Relations Manager

Age: 36

My education and qualifications are: It has been my honor to serve as your councilmember over the past four years and I would like to continue to serve you for the next four years. During my time on the council I worked hard to ensure that even in these difficult financial times we are able to maintain basic city services, balance the city budget and most importantly live within our means. As the state and the nation faces economic difficulties so does our city. We must continue to focus on economic development that will once again allow us to rebuild our economy and sustain our community for future generations. Public Safety is my top priority. We must continue to ensure rapid response times for fire, police and emergency services so we keep residents and our community safe. Maintaining a high quality of life for residents of all ages is important. Newark must continue to be a community that protects and provides for its children, seniors and neighborhoods. Newark needs strong leaders who will continue to make the difficult decisions while maintaining a vision for the future. I am that leader and I would be honored to have your vote.

NADJA ADOLF

Occupation: Housewife

Age: 54

My education and qualifications are: My objective, if elected to the city council, is to empower the community to help find the best use of Newark's assets. City officials and employees need to be open to ideas from residents. One example of the need for community involvement is the planned massive rezoning of the city. This would put high-density housing in several existing neighborhoods; and move the current city hall and library out of the city center. The city's own study says this would reduce the ability of the police to protect the community. Is moving City Hall the best use of this asset? How will this affect your neighborhood? Where will the new residents go to school or find park space in a city already short of soccer fields and playgrounds? Residents have the right to speak up with alternatives to improve the quality of life and property values in their neighborhoods – and city officials need to pay attention to them. We need to work together, residents and government, to find ways of living within our means. We need to learn why businesses are leaving Newark and find ways to keep them. It's time to work together and build the future of Newark.

ALAN L. NAGY

Occupation: Information Technology Manager

Age: 67

My education and qualifications are: I am proud to serve as your Councilmember and Vice Mayor. I've had the honor to serve you in good and in difficult times. Together, we have built a community that we can all be proud of. A community committed to being "family friendly" with a special "small town" feeling, where a high quality of life for families, senior citizens, and our youth are most important. Right now our Nation, State, and City are experiencing unparalleled economic hardships. A real strength of our community has been how we have pulled together to address past challenges. This gives me confidence that together we will pull through this economic crisis. We will come out stronger and wiser, better able to respond to the expanding needs of our residents. The next Council will face tough economic challenges. With your support and input I will continue to provide the leadership in facing these challenges head on. My commitment to community service, the experience I have gained as a Councilmember, and my business skills make me uniquely qualified to serve on the City Council. I would appreciate your vote on November 3rd so I can continue the vital task of "Working for a Better Newark!"

CITY OF NEWARK MEASURE L

<p>L CITY OF NEWARK VITAL SERVICES MEASURE. To prevent severe cuts to critical Newark city services, including police officers and patrols, crime prevention, anti-gang/drug prevention, fire protection and 911 emergency services, senior services and health programs, programs for children and teens, street maintenance and pothole repair, and general city services, shall the City of Newark establish a 3.9 percent Utility Users Tax for six years exempting low-income seniors and requiring independent audits with all funds staying local?</p>	YES
	NO

by a qualified, independent third party. The results of the annual audits will be available to the public.

A “Yes” vote on Measure L means the voter is in favor of authorizing the City to collect a three and nine-tenths percent (3.9%) utility users tax for six (6) years. A “No” vote on Measure L means the voter is not in favor of the City collecting such a utility users tax.

The above statement is an impartial analysis of Measure L. The full text of the measure which includes the complete text of the City of Newark Utility Users Tax Ordinance will be printed in the Voter Information Pamphlet and also is available on the City of Newark website, www.newark.org.

s/GARY T. GALLIANO
City Attorney, City of Newark

August 6, 2009
Date

CITY ATTORNEY’S IMPARTIAL ANALYSIS OF MEASURE L

Measure L is proposed by the Newark City Council to place a Utility Users Tax on the November 3, 2009, Election Ballot for voter consideration. The Utility Users Tax is a general tax required to be used to support local City of Newark services. If approved by more than fifty percent (50%) of the voters voting in the election, the Utility Users Tax Ordinance would impose a three and nine-tenths percent (3.9%) utility users tax on telecommunication services (including landline telephone and cellphone services), video services (including cable television), electricity and gas consumption. The tax would expire on June 30, 2016 unless reauthorized by the voters of Newark at another election.

Qualifying low-income seniors are exempt from the tax, upon application and approval by the Tax Administrator. Government agencies such as the Newark Unified School District are also exempt. The definition of each utility service and a description of how the tax is calculated are more particularly described in the Ordinance. In general, utility companies would collect the tax from consumers as part of their regular utility bills and would remit the taxes to the City.

The measure would generate a reliable, protected revenue source to support and maintain Newark city services. Revenues from Measure L are legally required to be used in Newark for essential city services and under current law cannot be taken by the State of California or Alameda County.

The Utility Users Tax is a general tax with its proceeds deposited in the City’s General Fund. Such funds would be available to the City for all of its programs and public services, such as police services and patrols, crime prevention, anti-drug and gang-prevention programs, fire protection and 9-1-1 emergency services, senior services, youth programs, code enforcement, street and park maintenance and pothole repair and other general services, for the City of Newark.

The Ordinance includes a requirement for annual financial audits of tax collection and expenditures to be performed

ARGUMENT IN FAVOR OF MEASURE L

YES on L gives you LOCAL CONTROL over LOCAL FUNDS for LOCAL NEEDS.

LOCAL CONTROL

It's time we take control of our own money to protect local city services. The State has just taken almost 1.2 million dollars from Newark to balance its budget. YES on L protects the services Newark residents depend on from more money grabs by Sacramento politicians.

YES on L generates protected funding for Newark's local community services that can't be taken to balance the State's fiscal crisis. WE use Measure L money for what WE need in Newark!

LOCAL FUNDS

YES on L provides Newark with a reliable local revenue source to prevent severe cuts to public safety, 9-1-1 emergency, senior services and other essential local services.

Every penny is legally required to be spent in Newark for services that benefit YOU. No money can go to other communities.

YES on L includes annual independent financial audits and reports to the community to keep the City accountable for how the funds are spent. Low-income seniors are exempt from Measure L.

LOCAL NEEDS

YES on L prevents our City from having to make more severe cuts to fire and 9-1-1 emergency response services.

YES on L prevents additional severe cuts to police services and patrols.

YES on L maintains the City's ability to respond quickly and effectively to a natural disaster like an earthquake.

YES on L reduces and prevents crime in our neighborhoods by protecting community policing programs where police officers work closely with businesses and community organizations.

YES on L funds youth services, such as anti-drug and gang prevention programs, senior programs, and other essential services.

Join the Newark Police Officers and Firefighters associations, the Newark Chamber of Commerce, Newark Employees Association, and youth and senior advocates in supporting YES on L.

Signers:

s/David Smith

Mayor of Newark

s/Patrick Smith

President, Newark Police Officers Association

s/Bob Bodner

President, Newark Firefighters Association

s/Linda Ashley

President/CEO, Newark Chamber of Commerce

s/Ray J. Rodriguez

Board Member, Newark Unified School District Board of Trustees

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE L

Please Vote NO on Measure L, Newark's Utility User TAX. Don't believe the scare tactics of the Special Interest Groups urging you to vote for this NEW TAX. This 3.9% TAX is in addition to what you already pay to the City, County, State and Federal Governments.

- The amount we will be taxed isn't fixed and will be charged based on the use of utilities we cannot live without, phones, electricity, and gas. The more you use, the more TAX you pay.
- The TAX will increase each year tied to rising utility charges. Even if you don't use more utilities, you will still pay more. (It will take even more money out of your pocket as the utility companies raise their rates).
- This ADDITIONAL TAX will be spent any way the Mayor and City Council see fit because the TAX goes into the General Fund and the City Council controls how those monies are spent.
- Federal monies have already been designated to maintain many "vital services".

They say that there will be an annual audit on how the money is spent. What about an audit on where our surplus of \$35 million went?

Most importantly, we need to be attracting new businesses not drive them away. This TAX will force businesses to leave the City.

For more information and facts please visit our web site.

<http://home.earthlink.net/~lewis2/vote.nonewarktax/>

or email nonewarktax@yahoo.com

Please Vote No on Measure L, Newark's Utility User's TAX.

s/Stewart "Dean" Lewis

s/Wayne W. Miller

s/Don A. Marenzi

s/Margaret Lewis

ARGUMENT AGAINST MEASURE L

Please vote NO on the User Utility Tax (UUT). This is an added tax to be placed on over-burdened citizens of Newark, in troubled times, for unspecified benefits, on top of what you already pay the City, County, State, and Federal governments.

THIS IS WHAT YOU SHOULD KNOW ABOUT THIS TAX.

The City claims they need a UUT to fund programs. They haven't told you many programs are receiving Federal stimulus monies:

- \$700,000 for anti-drug programs.
- \$600,000 for at-risk kids and after school programs,
- \$1,800,000 for programs like Head Start.
- \$900,000 for paving our streets.

We are asked to pay more in taxes? WHY? In 2005, we had a surplus of \$35 million dollars. Where is it now?

UUT's go to the City's general fund, to be spent as the Mayor and City Council desire, with no restrictions on how the money's spent. Do you want your hard-earned money spent on pet projects like the proposed championship golf course?

At a time when we need to encourage businesses to stay in Newark, they are proposing taxes that will drive them away. Empty businesses do not create sales tax. We need to help them stay here in Newark, not chase them away.

What utilities will be taxed? Cell and regular phone services, gas, electricity, cable...things you need on a daily basis. There are limited exemptions for senior citizens, but none for lower income families and those who have lost jobs.

Our utility costs will increase dramatically in the next few years, so will the proposed tax. It is a percentage of our utility bills.

Keep Newark politicians' hands out of your pocket! This is a tax they don't need and WE CAN'T AFFORD.

Please vote NO on Newark's additive Users Utility Tax.

s/Stewart "Dean" Lewis

s/Wayne W. Miller

s/Patricia C. Knight

s/Don A. Marenzi

s/Margaret Lewis

REBUTTAL TO ARGUMENT AGAINST MEASURE L

Yes on L for LOCAL CONTROL. Measure L provides local money for local needs – preserve Newark's quality of life!

Don't believe opponents' misleading statements – they're only meant to scare voters.

The City isn't hiding anything, a secret surplus is ridiculous – we could only wish! There is no money. Deep cuts have already been made; services are down to barebones!

One time federal funds for specific programs are not long term solutions we need for Newark. And nothing can make up for the ongoing state takeaways.

In the past three years, the City has made millions in cuts to operate as efficiently as possible. Although Newark has demonstrated good fiscal stewardship and has been able to balance the budget, the cost for essential services is more than our declining revenues can support – especially when the State continues to take more and more away from Newark.

Yes on L ensures that Newark has a LOCAL source of revenue that cannot be taken by Sacramento or Washington D.C.

Yes on L requires annual independent audits to ensure money is spent responsibly.

Yes on L protects the Newark we all know and love by ensuring we have the level of city services we rely on—including neighborhood policing, youth services, and senior programs.

Yes on L is supported by local businesses and homeowners because they understand the value of a safe Newark.

Don't be fooled by scare tactics and misinformation.

YES on L: LOCAL CONTROL – money for Newark, not Sacramento!

s/F. Preston "Bud" Spalding

Retired Fire Chief, City of Newark

s/Bernie Nillo

Local Parent and Volunteer

s/Mel Nunes

Senior Citizens Advisory Committee Member

s/Patricia "Pat" Danielson

Washington Hospital Healthcare District Boardmember

s/Luis Freitas

Chairman of the Board, Newark Pavilion

FULL TEXT OF MEASURE L

ORDINANCE NO.

AN INITIATIVE ORDINANCE OF THE VOTERS OF THE CITY OF NEWARK ADOPTING A THREE AND NINE-TENTHS PERCENT (3.9%) UTILITY USERS TAX ON UTILITY SERVICES (ELECTRICITY, GAS, TELECOMMUNICATIONS, AND VIDEO) AND AMENDING TITLE 3, REVENUE AND FINANCE, BY THE ADDITION OF CHAPTER 3.18, "UTILITY USERS TAX" TO THE NEWARK MUNICIPAL CODE

NOW THEREFORE THE PEOPLE OF THE CITY OF NEWARK DO ORDAIN AS FOLLOWS:

Section 1

Title 3, REVENUE AND FINANCE, of the Newark Municipal Code is hereby amended to add Chapter 3.18 entitled "Utility Users Tax" to read in full as follows

Chapter 3.18

Utility Users Tax

3.18.010 Ordinance title.

3.18.020 Definitions.

3.18.030 Exemptions.

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This chapter shall be known as the "Utility Users Tax" of the City of Newark.

3.18.020 Definitions.

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

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

(1) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

(2) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(3) "Directory assistance" means an ancillary service of providing telephone number information and/or address information.

(4) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(5) "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.

"Ancillary video services" mean 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, or other interactive services or communications that are associated with or incidental to the provision, use or enjoyment of video services.

"Billing address" means the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

"City" means the City of Newark.

"Gas" means natural or manufactured gas or any alternate hydrocarbon fuel that may be substituted therefore.

"Gas service provider" means any entity or person, including the city, that provides gas service to a service user within the city.

"Mobile telecommunications service" means the meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations established therewith.

"Month" means a calendar month.

"Non-utility service supplier" means the following:

1. A service supplier, other than a provider of electric distribution services to all or a significant portion of the city that generates electricity for sale to others, including, but not limited to, any publicly-owned electric utility,

investor-owned utility, co-generator, exempt wholesale generator, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity.

2. An electric service provider (ESP), electricity broker, marketer, aggregator, pool, operator, or other electricity supplier other than a provider of electric distribution services to all or a significant portion of the city that sells or supplies electricity or supplemental services to electricity users within the city.

3. A gas service supplier, aggregator, marketer or broker, other than a provider of Gas distribution services to all or a significant portion of the city that sells or supplies gas or supplemental services to gas users within the city.

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

“Person” means, 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, receiver, trustee, guardian, or other representative appointed by order of any court.

“Place of primary use” means the street address where the customer’s use of a taxable service primarily occurs, which must be the residential street address or the primary business street address of the customer.

“Post-paid telecommunication service” means the telecommunication service obtained by making a payment on a telecommunication -by- telecommunication basis either through the use of a 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.

“Prepaid telecommunication service” means the right to access telecommunication services, which must be paid for in advance and which enables the origination of telecommunications using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

“Private telecommunication service” means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points (*i.e.*, the location where the customer either inputs or receives the communications).

“Service address” means the residential street address

or the business street address of the service user. For a telecommunication service user, “service address” means either:

(1) The location of the service user’s communication equipment from which the communication originates or terminates, regardless of where the communication is billed or paid; or,

(2) If the location in subsection (1) of this definition is unknown (*e.g.*, mobile telecommunications service or VoIP service), the service address means the location of the service user’s place of primary use.

(3) For prepaid telecommunication service, “service address” means the location associated with the service number or, if not known, the point of sale of the services.

“Service supplier” means any entity or person, including the city, that provides telecommunication, video, gas, electrical, or refuse collection and disposal service to a user of such service within the city.

“Service user” means a person required to pay a tax imposed under the provisions of this chapter.

“Tax Administrator” means the finance director of the city or his or her designee.

“Telecommunications Service” means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used. The term “telecommunications services” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that is functionally integrated with “telecommunication 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; intrastate, interstate, and international telecommunication services; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to pre-recorded or live service).

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

“Video services” mean 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 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, telecommunication services, or interactive communication services that are functionally integrated with video services.

“Video service supplier” means any person or service that provides or sells one or more channels of video programming, or provides or sells the capability to receive one or more channels 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, multi-channel video programming distributors (as defined in 47 U.S.C.A. Section 522(13); open video systems (OVS) suppliers; and suppliers of cable television; master antenna television; satellite master antenna television; multi-channel 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.

“VoIP (Voice over Internet Protocol) means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

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

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

3.18.030 Exemptions.

A. Consistency with State and Federal Law. Nothing in this chapter 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 of California.

B. Exemption Application. Any service user that is exempt pursuant to subsection (A) from any tax imposed by this chapter pursuant shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a state or federal agency or subdivision (such as a public school district or a community college district) with a commonly recognized name for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts declared under penalty of perjury which qualify the applicant for an exemption and shall include the names of all utility service suppliers serving that service user. If deemed exempt by the Tax Administrator such service user shall give the Tax Administrator timely written notice of any change in 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 taxes collected and remitted to the Tax Administrator from such service user as a result of such noncompliance. The decision of the Tax Administrator maybe appealed pursuant to Section 3.18.180A of this Chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 3.18.180B of this Chapter is a prerequisite to a suit thereon.

C. Senior Citizen Exemption. An exemption shall be granted to any residential service user who is sixty-five (65) years of age or older if such service user resides alone or if he or she shares his or her residence with a spouse or a registered domestic partner, and at least one spouse or partner meets the age criteria for the exemption. The service user(s) seeking exemption under this subsection shall be enrolled in Pacific Gas & Electric Company’s (PG&E) CARE Program (“California Alternate Rates for Energy” program). Individuals receiving the exemption granted by this subsection must reside at the location receiving the service; the exemption shall not apply to any nonresidential service location. Any service user who has been exempted under this subsection shall comply with the notification requirements of subsection (H) of this section if any change in fact or circumstance disqualifies the individual from receiving this exemption.

D. The City. Nothing in this chapter shall be construed as imposing a tax upon the City of Newark.

E. Exemption Application. Any service user that is exempt pursuant to subsection (C) of this section from any tax imposed by this chapter shall file an application with the Tax Administrator for any exemption. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all service suppliers serving that service user. A service user seeking a senior citizen exception shall provide evidence of enrollment in Pacific Gas &

Electric Company's (PG&E) CARE Program ("California Alternate Rates for Energy" program) and evidence that the service user is at least age sixty-five (65) on the date of application. A Driver License or Identification (ID) Card issued by the California Department of Motor Vehicles shall be *prima facie* proof of age.

F. Application Processing. The Tax Administrator shall within sixty (60) days of receipt of an application for 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.

G. Effective Date of Exemption. 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, the Tax Administrator may, as an alternative implement this Section by requiring the exempt person to pay the tax and seek a refund under Section 3.18.170. The Tax Administrator shall provide a refund claim form for this purpose.

H. Continuing Eligibility. 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.

I. Denial—Appeal. If the Tax Administrator determines that an application for exemption is faulty, that the applicant has failed to truthfully set forth facts, or that the facts do not support the application for exemption, the application shall be denied in writing to the applicant. The applicant shall thereafter have a right to file an amended application, or to appeal the Tax Administrator's decision to the city manager within a ten-day period after the mailing date of the Tax Administrator's notification. In the case of an appeal, the city manager shall review the facts in consultation with the city attorney, and shall render a final determination on such appeal.

3.18.040 Telecommunications users tax.

A. Establishment of Telecommunications Users Tax. There is hereby imposed a tax upon every person in the city using telecommunication services. The tax imposed by this section shall be at the rate of three and nine-tenths (3.9%) percent of the charges made for such services and shall be collected from the service user by the telecommunication services supplier or its billing agent. There is a rebuttable presumption that telecommunication services, which are billed to a billing or service address in the city, are used, in whole or in part, within the city's boundaries and such services are subject to taxation under this chapter. There is also a rebuttable presumption that prepaid telecommunication services sold within the city are used, in whole or in part, within the City and are therefore subject to taxation under this chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. 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 telecommunication services.

B. Sourcing Rules. "Mobile telecommunications service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124). The Tax Administrator may issue and disseminate to communication service suppliers, which are subject to the tax collection requirements of this Chapter, sourcing rules for the taxation of other communication services, including but not limited to post-paid communication services, prepaid communication services, VoIP and private communication services. In promulgating any sourcing rules hereunder the Tax Administrator shall take into account but shall not be legally bound by custom and common practice that furthers administrative efficiency and minimizes taxation by more than one state of the same service usage, commonly referred to as multi-jurisdictional taxation. In doing so the Tax Administrator may refer to and/or rely upon the Streamlined Sales and Use Tax Agreement, and/or any other reasonable precedent or resource.

C. Authority for Administrative Rulings. The Tax Administrator may issue and disseminate to telecommunication service suppliers which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those telecommunication services, or charges therefore, that are subject to the tax of subsection (A) above.

D. Specific Inclusions in Telecommunication Services. As used in this section, the term "telecommunication services" shall include, but are not limited to, charges for the following: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; all fees, charges and surcharges, including those mandated by state or federal regulatory agencies to fund such agencies or various mandated programs; local number portability charges; and text and instant messaging.

E. Specific Exclusions from Telecommunications Services. As used in this Section, "telecommunications services" shall not include digital downloads that are not ancillary telecommunications services such as books, music, ringtones, games, and similar digital products.

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

G. Collection of Telecommunication Users Tax. The

telecommunication user tax imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

3.18.050 Video users tax.

A. Establishment of Video Users Tax. There is hereby imposed a tax upon every person in the city using video services. The tax imposed by this section shall be at the rate of three and nine-tenths (3.9%) percent of the charges made for such services and shall be collected from the service user by the video service supplier or its billing agent. There is a rebuttable presumption that video services that are billed to a billing or service address in the city, are used, in whole or in part, within the city's boundaries, and such services are subject to taxation under this chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax.

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

1. Regulatory fees and surcharges, franchise fees, and access fees (e.g., "PEG" fees), whether designated on the customer's bill or not.
2. Initial installation of equipment necessary for provision and receipt of video services.
3. Late fees, collection fees, bad debt recoveries, and return check fees.
4. Activation fees, reactivation fees, and reconnection fees.
5. Video programming and video services.
6. Ancillary video services (e.g., electronic program guide services, recording functions, search functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of video services).
7. Equipment leases (e.g., remote, recording or search devices, converters, remote devices).
8. Service calls, service protection plans, name changes, changes of services, and special services.

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

D. Authority for Administrative Rulings. The Tax Administrator may issue and disseminate to video service suppliers which are subject to the tax collection requirements of this Chapter an administrative ruling identifying those video services or charges therefore that are subject to or not subject to the tax of subsection (A) above.

E. Collection of Video Users Tax. The tax imposed by this section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video ser-

vice (e.g., an apartment owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of the video service. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

3.18.060 Electricity users tax.

A. Establishment of Electricity Users Tax. There is hereby imposed a tax upon every person in the city using electricity. The tax imposed by this section shall be at the rate of three and nine-tenths (3.9%) percent of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service users that are provided by a service supplier or non-utility service supplier to a service user

B. Electricity Charges. As used in this section, the term "charges" shall include, but is not limited to, the following charges:

1. Energy charges.
2. Distribution or transmission charges.
3. Metering charges.
4. Stand-by, reserves, firming, ramping, voltage support, regulation, emergency or other similar minimum charges for services.
5. Customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees, or surcharges which are necessary for or common to the receipt use or enjoyment of electric service; and,

6. Charges, fees, or surcharges for electric services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

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

D. Survey of Electricity Service Suppliers— Authority for Administrative Rulings. The Tax Administrator shall, from time to time, survey the electric service suppliers in the city to identify the various unbundled billing components of the electric retail service that are being offered to customers within the city, and the charges therefore, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter,

may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items that are: (1) necessary for or common to the receipt, use and enjoyment of electric service; or (2) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (A) above.

E. **“Using Electricity” Further Defined.** As used in this Section the term “using electricity” shall not include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the City for resale.

F. **Collection of Electricity Users Tax.** The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section 3.18.080 of this Chapter. All other taxes on charges for electricity imposed by this Section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month provided that such person shall submit an adjusted payment or request for credit as appropriate within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

3.18.070 Gas users tax.

A. **Establishment of Gas Users Tax.** There is hereby imposed a tax upon every person in the city using gas that is delivered through a pipeline distribution system or by mobile transport. The tax imposed by this section shall be at the rate of three and nine-tenths (3.9%) percent of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas, and shall apply to all uses of gas, including but not limited to, heating, electricity generation, or the use of gas as a component of a manufactured product.

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

1. The commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunk-line, pipeline, and other operating costs associated with the produc-

tion and delivery of such gas), which is delivered through a gas pipeline distribution system or by mobile transportation.

2. Gas transportation charges (including interstate charges to the extent not included in commodity charges).
3. Storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction.
4. Capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges, which are necessary or common to the receipt, use and enjoyment of gas service.
5. Charges, fees, or surcharges for gas services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

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

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

E. **Exclusion for Resale.** There shall be excluded from the calculation of the tax imposed in this Section charges made for gas which is to be resold and delivered through a pipeline distribution system.

F. **Collection of Gas Users Tax.** The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section

3.18.080 of this Chapter. All other taxes on charges for gas imposed by this Section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month provided that such person shall submit an adjusted payment or request for credit as appropriate within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

3.18.080 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity.

A. Report to Tax Administrator. Any service user subject to the tax imposed by Sections 3.18.060 or 3.18.070 that produces gas or electricity for self-use, that receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this chapter, or that, for any other reason, is not having the full tax collected and remitted by its service supplier, a non-utility service supplier, or its billing agent on the use of gas or electricity, including any related supplemental services, in the city, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

B. Investigation. The Tax Administrator may require said service user to identify its non-utility service supplier and provide, subject to audit, invoices, books of account or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the city. The rate schedule for this purpose shall be available from the city.

3.18.090 Bundling taxable items with non-taxable items.

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

3.18.100 Substantial Nexus/Minimum Contacts.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Chapter, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any telecommunication service (including VoIP) used by a person with a service address in the City which service is capable of terminating a call to another person on the general telephone network shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax or establishing a duty to collect and remit a tax under this Chapter. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include but are not limited to any of the following maintains or has within the City directly or through an agent, affiliate, or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents, or other representatives; solicits business in the City on a continuous regular, seasonal, or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the City or distributed from a location within the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of services that are subject to a tax under this Chapter.

3.18.105 Duty to Collect—Procedures.

A. Collection by Service Suppliers. The duty of ser-

vice suppliers to collect and remit the taxes imposed by the provisions of this Chapter shall be performed as follows:

(1) The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with 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 3.18.140 shall apply.

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

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

3.18.110 Collection penalties—Service suppliers.

A. Due Date for Taxes—Delinquencies. Taxes collected 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. Failure to Collect or Remit. If the person required to collect and/or remit a tax imposed pursuant to this chapter fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen per-

cent of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of and 75/100ths percent 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. Penalties for Fraud or Gross Negligence in Reporting or Remitting. The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes pursuant to the provisions of this chapter for fraud or gross negligence in reporting or remitting at the rate of fifteen percent of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

D. Penalties Due as Tax. 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. Authority to Modify Due Dates. Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this chapter to be consistent with any uniform standards or procedures that are mutually agreed upon by other public agencies imposing a utility users tax, or otherwise legally established, to create a central payment location or mechanism.

3.18.120 Actions to collect.

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the city. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the city by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount, including penalties and interest as provided for in this chapter, along with any collection costs incurred by the city as a result of the person's non-compliance with this chapter, 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). Service suppliers who seek to collect charges for service in bankruptcy proceedings shall also include in any such claim the amount of taxes due the City for those services, unless the Tax Administrator determines that such duty is in conflict with any federal or state law, rule, or regulation or that such action would be administratively impractical.

3.18.130 Deficiency determination and assessment—Tax application errors.

A. Tax Deficiency Determinations. The Tax Administrator shall make a deficiency determination if he or she determines that any service user or service supplier required to pay or collect taxes pursuant to the provisions of this chapter has failed to pay, collect, and/or remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute

proceedings under this section if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. Notice of Deficiency. 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 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 service of such notice, the person or entity allegedly owing the tax may request in writing to the Tax Administrator a hearing on the matter.

C. Hearing on Deficiency. 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 such person or entity requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

D. Determination after Hearing. 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 3.18.180 of this chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 3.18.180 of this chapter is a prerequisite to a suit thereon.

E. Delinquencies. 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 per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the city seeking payment of a tax assessed under this chapter shall commence from the date of delinquency as provided in this subsection.

F. Notice of Delinquency. All notices under this sec-

tion 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.

3.18.140 Administrative remedy—Non-paying service users.

A. Administrative Remedies for the Obligation to Collect Tax. 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 chapter 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 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 chapter. Nothing herein shall require that the Tax Administrator institute proceedings under this section if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. Delinquency Penalty. 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 (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

C. Notice to Non-Paying Service User. 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. Additional Penalties. 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 of the amount of the total tax that is owed.

3.18.150 Additional powers and duties of the Tax Administrator.

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

B. Administrative Regulations Regarding Payment. The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this Chapter for the purpose of interpreting, clarifying, carrying out, and enforcing the payment, collection, and remittance of the taxes herein imposed. A copy of such

administrative rules and regulations shall be on file in the Tax Administrator's office. To the extent that the Tax Administrator determines that the tax imposed under this Chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of Government Code Section 53750 or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of Government Code Section 53750, and the City does not waive or abrogate its ability to impose the utility users tax in full as a result of promulgating administrative rulings or entering into agreements.

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

D. Compliance Audits. The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this chapter, of any person required to collect and/or remit a tax pursuant to this chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 3.18.130 of this chapter for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

E. Extension of Time. Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this chapter for a period of not to exceed 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 per month, prorated for any portion thereof.

F. Eligibility for Exemption. The Tax Administrator

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

G. Waiver of Penalties and Interest. Notwithstanding any provision in this chapter to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this chapter, or require prospective application of the tax, 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 precedents.

3.18.160 Records.

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

B. Administrative Subpoenas. The city through the City Council may issue an administrative subpoena to compel a person to deliver to the Tax Administrator copies of all records deemed necessary by the Tax Administrator to establish compliance with this chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the city on or before the due date, provided that such person shall reimburse the city for all reasonable travel expenses incurred by the city to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the city to conduct the inspection.

C. Non-Disclosure Agreements. The Tax Administrator is authorized to execute a non-disclosure agreement approved by the city attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code Sections 7284.6 and 7284.7.

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

E. Access to Necessary Records. If any person subject to record-keeping under this section unreasonably

denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of five hundred dollars on such person for each day following: (1) the initial date that the person refuses to provide such access; or (2) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Chapter.

3.18.170 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 chapter from a person or service supplier, it may be refunded as provided in this section as follows:

A. Tax Administrator Authority. The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter 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 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. Written Claim for Refund 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. Refunds to Service Suppliers. Notwithstanding subsections (A) through (C) above, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this Chapter, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator, provided that: [1] such credit is claimed in a return dated no later than

one year from the date of overpayment or erroneous collection of said tax; [2] the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, [3] in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

3.18.180 Appeals

A. Administrative Appeals. The provisions of this Section apply to any decision (other than a decision relating to a refund pursuant to Section 3.18.170 of this Chapter), 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 3.18.170 of this Chapter), 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. Appeal to City Manager. If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.18.170 of this chapter), 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) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved said person.

C. Scheduling of Administrative Appeal Hearing. The matter shall be scheduled for hearing before an independent hearing officer selected by the city manager, no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (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. Notice of Decision. 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) 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) days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6.

E. Manner of Notice. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third (3rd) calendar day following

the date of mailing, as established by a proof of mailing.

3.18.190 No Injunction/Writ of Mandate

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

3.18.200 Notice of changes to ordinance.

If a tax under this chapter is added repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of California Public Utilities Code Section 799.

3.18.210 Effect of state and federal reference—Authorization.

Unless specifically provided otherwise, any reference to a state or federal statute in this chapter shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease (as a result of excluding all or a part of a communication service, or charge therefore, from taxation). Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the city's authorization to collect or impose any tax imposed under this chapter is expanded or limited as a result of 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 authorization up to the full amount of the tax imposed under this chapter.

3.18.220 Independent audit.

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

3.18.230 Remedies cumulative.

All remedies and penalties prescribed by this chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and

the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

3.18.240 Termination of Utility Users Tax.

The levy of taxes as provided in this Chapter shall expire on June 30, 2016 unless re-enacted by a separate ordinance approved by a vote of the People of the City of Newark conducted pursuant to law. The termination of the levy of taxes as provided herein shall not terminate the obligation to pay taxes levied on services used prior to such date. Taxes levied prior to June 30, 2016 shall remain a debt payable to the City. All provisions of this Chapter except those relating to the levy of taxes shall continue in full force and effect after such date.

Section 2

Severability. If any section subsection sentence clause phrase or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The People hereby declare that they would have adopted each section subsection sentence clause phrase or portion of this Ordinance irrespective of the fact that any one or more sections subsections sentences clauses phrases or portions of this Ordinance be declared invalid or unenforceable.

Section 3.

Amendment or Repeal Chapter 3.18 of Title 3 of the Newark Municipal Code may be repealed or amended by the City Council without a vote of the people. However as required by Article XIII C of the California Constitution voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance. The People of the City of Newark affirm that the following actions shall not constitute an increase of the rate of a tax

A. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance if the City Council has acted to reduce the rate of the tax;

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

C. The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception other than the discontinuation of an exemption or exception specifically set forth in this Ordinance; and,

D. The collection of the tax imposed by this Ordinance even if the City had for some period of time failed to collect the tax.

Section 4

Effective Date This Chapter shall become effective immediately upon the date that this Ordinance is adopted by voters of the City of Newark at the election of November 3, 2009.

Sample Ballot

OFFICIAL BALLOT ALAMEDA COUNTY, CALIFORNIA NOVEMBER 3, 2009 CONSOLIDATED DISTRICT ELECTION

INSTRUCTIONS TO VOTERS: USE BLACK OR BLUE BALLPOINT PEN ONLY. To vote for a candidate of your choice,



complete the arrow ← to the right of the candidate's name. To vote for a qualified write-in candidate, PRINT the person's name in the blank space provided and complete the arrow. To vote on any measure, complete the arrow after the word "Yes" or "No."

PARTISAN	
UNITED STATES REPRESENTATIVE	
10TH DISTRICT Vote for One	
MARY C. MCILROY PEACE AND FREEDOM	←
DAVID HARMER Independent Businessman REPUBLICAN	←
JEREMY CLOWARD College Instructor GREEN	←
JEROME "JERRY" DENHAM Insurance Agent AMERICAN INDEPENDENT	←
JOHN GARAMENDI Lieutenant Governor/Rancher DEMOCRATIC	←
	←

Sample Ballot

BT:004

CA01-1-500100-4-0004

Candidate's Statement
UNITED STATES REPRESENTATIVE - DEMOCRATIC

JOHN GARAMENDI

Occupation: California Lieutenant Governor, Former Insurance Commissioner, Rancher

My education and qualifications are: America is at a crossroads. Change is on the horizon. President Obama is leading us towards better times—I want to help him. I will focus on creating jobs and financial regulation, protecting Social Security and Medicare, enacting universal healthcare, withdrawing our troops from Iraq, protecting consumers, creating an energy policy that halts global warming and builds renewable energy systems, and making college available to all. I have a proven record of state, national, and international service. As Lieutenant Governor and Chairman of the Commission on Economic Development we developed employment strategies that promote existing industries and transition California to a green economy. As President Clinton's Deputy Secretary of Interior, I lead efforts to defend the environment and water in the Sacramento-San Joaquin Delta. As California's Insurance Commissioner, I created the nation's best consumer protection agency, forced insurance companies to pay claims in the Oakland Hills fire, protected seniors from fraud and patients from denial of claims, and lowered homeowner and workers compensation premiums. I will write laws to protect consumers and regulate Wall Street, and make sure that Social Security is not privatized and Medicare is protected. I will work to extend BART to Livermore, improve the ACE rail system and I-580, increase funding for education, medical research, and energy research at our National Labs. I graduated from UC Berkeley and Harvard with an MBA. Patti and I served in Peace Corps Ethiopia. We have six children, nine grandchildren. I'm endorsed by President Clinton and Vice President Gore.