

ORDINANCE NO.

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF RIALTO,
CALIFORNIA EXTENDING THE EXPIRATION DATE BY 5 YEARS
OF THE EIGHT PERCENT (8%) UTILITY USERS TAX FROM
JUNE 30, 2018 TO JUNE 30, 2023, BY AMENDING SECTION 3.16.230
OF CHAPTER 3.16 OF TITLE 3 OF THE RIALTO MUNICIPAL
CODE AND OTHERWISE AFFIRMING CHAPTER 3.16 OF TITLE 3
OF THE RIALTO MUNICIPAL CODE**

7 **WHEREAS**, in or about 2003, the City Council of the City of Rialto, California determined at
8 a regular City Council meeting that it should present to voters of the City of Rialto the question of
9 whether to establish an eight percent (8%) Utility Users Tax within the City of Rialto for the purpose
10 of raising general fund revenue to provide basic services for residents, including but not limited to,
11 law enforcement, fire department, recreational public parks, sidewalk and street repair, capital
12 projects, and City staffing (the “Utility Users Tax”); and

13 **WHEREAS**, in or about 2003, the voters of the City of Rialto approved by a simple majority
14 the Utility Users Tax for a term of 5 years and set to expire on June 30, 2013; and

15 **WHEREAS**, in or about 2007, the voters of the City of Rialto approved by a simple majority
16 the Utility Users Tax for a term of 5 years and set to expire on June 30, 2013; and

17 WHEREAS, in or about 2013, the voters of the City of Rialto approved by a simple majority
18 the Utility Users Tax for a term of 5 years and set to expire on June 30, 2018; and

19 **WHEREAS**, on _____, 2018, the Rialto City Council called an election to submit to the
20 voters at a Special Municipal Election on April 10, 2018 a ballot measure to consider adopting a
21 proposed ordinance to extend by 5 years the expiration date of the existing eight percent (8%) Utility
22 Users Tax within the City of Rialto from June 30, 2018 to June 30, 2023; and

23 **WHEREAS**, on April 10, 2018, the voters of the City of Rialto approved by a simple majority
24 an extension of the expiration date of the Utility Users Tax by 5 years from June 30, 2018 to June 30,
25 2023.

26 **NOW THEREFORE, THE PEOPLE OF THE CITY OF RIALTO FIND AND ORDAIN**
27 **AS FOLLOWS:**

28 | **Section 1.** The above recitals as true and correct and are hereby adopted as findings.

1 **Section 2.** That on April 10, 2018 by a simple majority of the voters, the entirety of
2 Chapter 3.16 of Title 3 of the Rialto Municipal Code was affirmed, with the single exception of an
3 amendment was adopted to provide for a 5 year extension of the expiration date of the Utility User
4 Tax, provided for in Subsection 3.16.230 of Chapter 3.16 of Title 3 of the Rialto Municipal Code,
5 from June 30, 2018 to June 30, 2023.

6 **Section 3.** Chapter 3.16 of Title 3 of the Rialto Municipal Code is amended, as indicated
7 below (new text is identified in ***bold & italics***, deleted text in ~~strike through~~), as follows: amended to
8 read as follows:

9 "Chapter 3.16 - UTILITY USER TAX

10 **3.16.010 - Title.**

11 This chapter shall be known as the "utility user tax ordinance of the city of Rialto."

12 **3.16.020 - Purpose.**

13 This chapter is enacted solely to raise revenue for the general governmental purposes
14 of the city of Rialto and is not enacted for regulatory purposes. All of the proceeds
15 from the tax imposed by this chapter shall be placed in the city's general fund and used
16 for the usual and current expenses of the city.

17 **3.16.030 - Definition.**

18 Whenever used in this chapter, the following words and phrases shall be construed as
19 defined in this section:

20 "City" means the city of Rialto.

21 "Electrical corporation," "gas corporation," "telephone corporation," "cable television
22 corporation," "water corporation" and "sewer system corporation" shall have the same
23 meanings as are defined in Sections 218, 222, 234, 241, and 230.6, respectively, of the
24 Public Utilities Code of the State of California. "Electrical corporation," "gas
25 corporation," "water corporation" and "sewer system corporation" shall include any
26
27
28

1 municipality or government agency engaged in the selling or supplying of electrical
2 power, gas, water or sewer services to a service user.

3 "Month" means a calendar month.

4 "Non-utility supplier" means a service supplier, other than an electrical corporation
5 providing service within the city, which generates electrical energy for its own use or
6 for sale to others.

7 "Person" means any domestic or foreign corporation, firm, association, syndicate, joint
8 stock company, partnership of any kind, joint venture, club, Massachusetts business or
9 common law trust, society or individual.

10 "Service supplier" means any entity required to collect or self-impose and remit a tax
11 imposed by this section.

12 "Service user" means a person required to pay a tax imposed by this section.

13 "Tax administrator" means the chief financial officer of the city or his or her designee.

14 "Telephone services" means and includes any telephonic quality communication for
15 the purpose of transmitting messages or information (including, but not limited to,
16 voice, telegraph, teletypewriter, data, facsimile, video, or text) by electronic, radio or
17 any other means through "interconnected service" with the "public switched network"
18 (as these terms are commonly used in the Federal Communications Act and the
19 regulations of the Federal Communications Commission—see 47 USCA Section
20 332(d)), whether such transmission occurs by wire, cable, fiber-optic, light wave, laser,
21 microwave, broadband, computer processing applications such as Voice over Internet
22 Protocol (VOIP) service and services classified by the Federal Communications
23 Commission as "enhanced" or "value added," radio wave (including, but not limited to,
24 cellular service, wireless broadband, commercial mobile service, personal
25 communications service (PCS), specialized mobile radio (SMR), and other types of
26 personal wireless service—see 47 USCA Section 332(c)(7)(C)(i)—regardless of radio
27 spectrum used), switching facilities, satellite or any other technology now existing or
28 developed after the adoption of the ordinance codified in this chapter.

1

2 3.16.040 - Telephone user tax.

3 There is imposed on every person other than a telephone corporation, electrical
4 corporation, gas corporation, water corporation or waste hauler a tax for use of
5 intrastate, interstate and international telephone services in the city of Rialto. The tax
6 imposed by this section shall be at the rate of eight percent of the charges made for
7 such services and shall be paid by the person paying for such services. Said tax shall
8 apply to all services within the jurisdiction of the city to tax, including charges billed
9 to a telephone account having a situs in the city, irrespective of whether a particular
10 telephone service originates or terminates within the city.

11 A. The following shall be exempt from the tax imposed by this section:

12 1. Charges paid for by inserting coins in coin-operated telephones available to the
13 public with respect to local telephone service, or with respect to toll telephone service
14 if the charge for such toll telephone service is less than twenty-five cents; except that
15 where such coin-operated telephone service is furnished for a guaranteed amount, the
16 amounts paid under such guarantee plus any fixed monthly or other periodic charge
17 shall be subject to the tax;

18 2. Except with respect to local telephone service, on any charges for services used
19 in the collection of news for the public press, or a news ticker service furnishing a
20 general news service similar to that of the public press, or radio broadcasting, or in the
21 dissemination of news through the public press, or a news ticker service furnishing a
22 general news service similar to that of the public press, or by means of radio
23 broadcasting, if the charge for such service is billed in writing to such person;

24 3. Charges for services furnished to an international organization or to the
25 American National Red Cross;

26 4. Charges for any toll telephone service which originates within a combat zone,
27 as defined in Section 112 of the Internal Revenue Code, from a member of the Armed
28 Forces of the United States performing service in such combat zone, as determined

1 under such section, provided a certificate, setting forth such facts as the Secretary of
2 the U.S. Treasury may by regulations prescribe, is furnished to the person receiving
3 such payment;

4 5. Charges for any long distance telephone service to the extent that the amount
5 so paid is for use by a common carrier, telephone or telegraph company, or radio
6 broadcasting station or network in the conduct of its business as such;

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

11 7. Charges for services or facilities furnished to the government of any state, or
12 any political subdivision thereof, or the District of Columbia;

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

23 9. Charges for private land mobile services or maritime mobile services as
24 defined in Section 2.1 of Title 47 of the Code of Federal Regulations as such section
25 existed on January 1, 1970. Public land mobile services, as defined in Section 2.1 of
26 Title 47 of the Code of Federal Regulations as such section existed on October 1,
27 1992, are not within the scope of this exemption;

1 10. Charges for any type of service or equipment furnished by a service supplier
2 subject to public utility regulation during any period in which the same or similar
3 services or equipment are also available for sale or lease from persons other than a
4 service supplier subject to public utility regulation.

5 B. The tax imposed by this section shall be collected from the service user by the
6 person providing the telephone services or the person receiving payment for such
7 services. The amount of the tax collected in one month shall be remitted to the tax
8 administrator on or before the last day of the following month, unless the due date
9 occurs on a weekend or a holiday, in which case the tax shall be remitted on or before
10 the next business day thereafter. Taxes shall be deemed remitted on the date received
11 by the tax administrator, or on the date postmarked if remitted by first class United
12 States mail with postage fully prepaid. With prior written approval of the tax
13 administrator, remittance of the tax may be predicated on a formula based upon the
14 payment pattern of the supplier's customers; or at the option of the person required to
15 collect and remit the tax, an estimated amount of the tax collected, measured by the tax
16 bill in the previous month.

17
18 3.16.050 - Cellular telephone user tax.

19 A. There is hereby imposed a tax on the amounts paid for any cellular telephone
20 communication services within the jurisdiction of the city to tax. The tax imposed by
21 this section shall be at the rate of eight percent of the total charges made for such
22 services, including but not limited to, access and basic monthly charges, and shall be
23 paid by the person paying for such services.

24 B. As used in this section, the term "charges" does not include charges for
25 services paid for by inserting coins in coin-operated cellular telephones except that
26 where such coin-operated service is furnished for a guaranteed amount, the amounts
27 paid under such guarantee plus any fixed monthly or other periodic charge shall be
28 included in the base for computing the amount of tax due; nor does the term "charges"

1 include charges for any type of service or equipment furnished by a service supplied
2 subject to public utility regulation during any period in which the same or similar
3 services or equipment are also available for sale or lease from persons other than a
4 service supplier subject to public utility regulations. The term "cellular telephone
5 communication services" refers to that service which, by means of portable or fixed
6 cellular, digital or other similar radio telephones, provides access to a telephone
7 system and the privilege of telephone-quality communication with substantially all
8 persons having telephone stations which are part of such telephone systems. The term
9 "cellular telephone communication services" also includes public aeronautical mobile
10 service, public land mobile service, public maritime mobile service and public mobile-
11 satellite services, as defined in Section 2.1 of Title 47 of the Code of Federal
12 Regulations, as it existed on October 1, 1992. The cellular telephone users tax is
13 intended to, and does, apply to all charges within the jurisdiction of the city to tax,
14 including charges billed to a cellular telephone account having a billing address in the
15 city, irrespective of whether a particular communication service originates or
16 terminates within the city.

17 C. This section is included in addition to Section 3.16.040 to eliminate any
18 ambiguity as to the application of the telephone user tax to cellular telephony. The
19 specification of this aspect of the telephone user tax shall not, however, raise any
20 implication that other forms of telephony are not within the scope of the telephone user
21 tax. The telephone user tax is to be construed to reach to the full breadth of the city's
22 constitutional power to tax and without respect to the technology or means by which
23 telephone services are provided.

24
25 3.16.060 - Electricity user tax.

26 A. There is hereby imposed a tax on every person other than a telephone
27 corporation, electrical corporation, gas corporation, water corporation, or sewer service
28 corporation using electrical energy in the city. The tax imposed by this section shall be

1 at the rate of eight percent of the charges made for such energy and shall be paid by
2 the person paying for such energy. The tax applicable to electrical energy provided by
3 a non-utility supplier shall be determined by applying the tax rate to the equivalent
4 charge the service user would have incurred if the energy had been provided by the
5 electrical corporation franchised by the city. The tax administrator shall make
6 available rate schedules for this purpose. Non-utility suppliers shall install, maintain
7 and use an appropriate metering system to enable compliance with this section.
8 "Charges," as used in this section, shall include charges made for metered energy and
9 charges for service, including customer charges, service charges, standby charges,
10 charges for temporary services, demand charges, annual and monthly charges and any
11 other charge authorized by the California Public Utilities Commission or the Federal
12 Energy Regulatory Commission.

13 B. As used in this section, the term "using electrical energy" shall not be
14 construed to mean the storage of such energy by a person in a battery owned or
15 possessed by him or her for use in an automobile or other machinery or device apart
16 from the premises upon which the energy was received, provided, however, that the
17 term shall include the receiving of such energy for the purpose of using it in the
18 charging of batteries; nor shall the term include the mere receiving of such energy by
19 an electric public utility or governmental agency at a point within the city for resale;
20 nor shall the term include the use of such energy in the production or distribution of
21 water by a public utility or a governmental agency.

22 C. The tax imposed in this section shall be collected from the service user by the
23 person supplying such energy. The amount of tax collected in one month shall be
24 remitted to the tax administrator on or before the last day of the following month,
25 unless the due date occurs on a weekend or a holiday, in which case the tax shall be
26 remitted on or before the next business day thereafter. Taxes shall be deemed remitted
27 on the date received by the tax administrator, or on the date postmarked, if remitted by
28 first class United States mail with postage fully prepaid. With prior written approval of

1 the tax administrator, remittance of taxes may be predicated on a formula based upon
2 the payment pattern of the supplier's customers.

3

4 3.16.070 - Gas user tax.

5 A. There is hereby imposed a tax on every person other than a telephone
6 corporation, electrical corporation, gas corporation, water corporation or sewer service
7 corporation using in the city gas which is delivered through mains or pipes. The tax
8 imposed by this section shall be at the rate of eight percent of the charges made for
9 such gas and shall be paid by the person paying for such gas. "Charges," as used in this
10 section, shall include charges made for metered gas and charges for service, including
11 customer charges, service charges and annual and monthly charges and any other
12 charge authorized by the California Public Utilities Commission or the Federal Energy
13 Regulatory Commission.

14 B. There shall be excluded from the base on which the tax imposed in this section
15 is computed:

16 (1) Charges made for gas which is to be resold and delivered through mains or
17 pipes;

18 (2) Charges made for gas sold for use in the generation of electrical energy or for
19 the production or distribution of water by a public utility or governmental agency;

20 (3) Charges made for natural gas used in the propulsion of a motor vehicle, as that
21 phrase is defined in the Vehicle Code of the State of California; and,

22 (4) Charges made for gas used by a non-utility supplier to generate electrical
23 energy for its own use or for sale to others, provided the electricity so generated is
24 subject to tax under Section 3.16.060 of this chapter.

25 C. The tax imposed by this section shall be collected from the service user by the
26 person providing the gas. The amount of tax collected in one month shall be remitted
27 to the tax administrator on or before the last day of the following month, unless the due
28 date occurs on a weekend or a holiday, in which case the tax shall be remitted on or

1 before the next business day thereafter. Taxes shall be deemed remitted on the date
2 received by the tax administrator, or on the date postmarked, if remitted by first class
3 United States mail with postage fully prepaid. With prior written approval of the tax
4 administrator, remittance of tax may be predicated on a formula based upon the
5 payment pattern of the supplier's customers.

6

7 3.16.080 - Sewer service user tax.

8 A. There is hereby imposed a tax on every person other than a telephone
9 corporation, electrical corporation, gas corporation, water corporation or sewer service
10 corporation using in the city the services of a sewer service corporation for the
11 disposal of sewage into a "sewer system," as that term is defined in Section 230.5 of
12 the Public Utilities Code of the State of California. The tax imposed by this section
13 shall be at the rate of eight percent of the charges made for such services and shall be
14 paid by the person paying for such services. "Charges," as used in this section, shall
15 include charges for service, including customer charges, service charges and annual
16 and monthly charges and any other charge authorized by this code, a franchise or
17 collection services agreement granted pursuant to that Code, or the law of the State of
18 California.

19 B. The tax imposed by this section shall be collected from the service user by the
20 person providing the services. The amount of tax collected in one month shall be
21 remitted to the tax administrator on or before the last day of the following month,
22 unless the due date occurs on a weekend or a holiday, in which case the tax shall be
23 remitted on or before the next business day thereafter. Taxes shall be deemed remitted
24 on the date received by the tax administrator, or on the date postmarked, if remitted by
25 first class United States mail with postage fully prepaid. With prior written approval of
26 the tax administrator, remittance of tax may be predicated on a formula based upon the
27 payment pattern of the supplier's customers.

1 3.16.090 - Water user tax.

2 A. There is hereby imposed a tax on every person other than a telephone
3 corporation, electrical corporation, gas corporation, water corporation or sewer service
4 corporation using water which is delivered through mains or pipes. The tax imposed
5 by this section shall be at the rate of eight percent of the charges made for such water
6 and shall be paid by the person paying for such water. "Charges," as used in this
7 section, shall include charges made for metered water and charges for service,
8 including customer charges, service charges and annual and monthly charges and any
9 other charge authorized by law.

10 B. Charges made for water which is to be resold and delivered through mains or
11 pipes shall be excluded from the base on which the tax imposed by this section is
12 computed.

13 C. The tax imposed by this section shall be collected from the service user by the
14 person supplying the water. The amount of tax collected in one month shall be
15 remitted to the tax administrator on or before the last day of the following month,
16 unless the due date occurs on a weekend or a holiday, in which case the tax shall be
17 remitted on or before the next business day thereafter. Taxes shall be deemed remitted
18 on the date received by the tax administrator, or on the date postmarked, if remitted by
19 first class United States mail with postage fully prepaid. With prior written approval of
20 the tax administrator, remittance of tax may be predicated on a formula based upon the
21 payment pattern of the supplier's customers.

22 3.16.100 - Cable television users' tax.

23 A. There is hereby imposed a tax upon every person in the city other than a
24 telephone corporation, electrical corporation, gas corporation, water corporation or
25 sewer service corporation using cable television service in the city. The tax imposed
26 by this section shall be at the rate of eight percent of the charges made for such service
27 and shall be paid by the person paying for such service.

1 B. As used in this section, the term "charges" includes, but is not limited to,
2 charges for installation and programming, whether the programming is a cable
3 transmission of broadcast channels, transmission of cable-only programming, "pay-
4 per-view" programming or any other programming.

5 C. The tax imposed in this section shall be collected from the service user by the
6 person providing the cable television service. The amount of the tax collected in one
7 month shall be remitted to the tax administrator on or before the last day of the
8 following month, unless the due date occurs on a weekend or a holiday, in which case
9 the tax shall be remitted on or before the next business day thereafter. Taxes shall be
10 deemed remitted on the date received by the tax administrator, or on the date
11 postmarked if remitted by first class United States mail with postage fully prepaid.
12 With prior written approval of the tax administrator, remittance of tax may be
13 predicated on a formula based upon the payment pattern of the supplier's customers; or
14 at the option of the person required to collect and remit the tax, an estimated amount of
15 tax collected, measured by the tax bill in the previous month.

16

17 3.16.110 - Interest and penalty.

18 A. Taxes collected from a service user that are not remitted to the tax
19 administrator on or before the due dates provided in this section are delinquent and are
20 subject to penalties and interest.

21 B. Any person who fails to remit taxes collected in the time required by this
22 section shall pay a penalty of five percent of the amount of the tax owed, and if not
23 remitted within two working days after the date of delinquency, shall pay a penalty of
24 twenty percent of the amount of tax owed. Such penalty shall attach to the amount of
25 tax due and shall be paid by the person required to collect and remit the tax.

26 C. When fraud or gross negligence in reporting and remitting tax collections is
27 discovered, the tax administrator shall have power to impose additional penalties of

1 twenty percent of taxes owed upon persons required to collect and remit taxes under
2 the provisions of this section.

3 B Any person required to remit to the tax administrator delinquent taxes as
4 required in this section, shall pay interest at the rate of one and one-half percent per
5 month or portion thereof, on the amount of tax owed exclusive of penalties, from the
6 date on which the tax first became delinquent until paid.

7 E. Notwithstanding the provisions of subsections 2 and 4 of this section, no
8 penalty or interest shall be applied if delinquencies are the result of natural disasters or
9 other phenomena beyond the control of the person charged with collecting and
10 remitting the tax, provided the person obliged to remit tax notifies the tax
11 administrator as soon as normal communications permit.

12

13 3.16.120 - Actions to collect.

14 Any tax required to be paid by a service user under the provisions of this section shall
15 be deemed a debt owed by the service user to the city. Any such tax collected from a
16 service user which has not been remitted to the tax administrator shall be deemed a
17 debt owed to the city by the person who collected the tax. Any person owing money to
18 the city under the provisions of this section shall be liable in an action brought in the
19 name of the city for the recovery of such amount.

20

21 3.16.130 - Duty to collect—Procedures.

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

24 A. The tax shall be collected insofar as practicable at the same time as, and along
25 with, the collection of charges made in accordance with the regular billing practices of
26 the service supplier. Where the amount paid by a service user is less than the full
27 amount of the charge and the tax which has accrued for a billing period, such payment
28 and any subsequent payments may be first applied to the charge until such charge has

been fully satisfied. Any remaining balance shall be applied to the taxes due, except where a service user pays the full amount of the charges but notifies the service supplier of a refusal to pay the tax imposed on such charges, in which case the service supplier may be relieved of the duty to collect the tax pursuant to Section 3.16.150 of this code.

B. The duty to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to that service use which begins on or after July 1, 2003. Where a person is billed separately for distinct periods, the duty to collect shall arise separately for each billing period.

3.16.140 - Additional powers and duties of tax administrator.

A. The tax administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this section.

B. The tax administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this section for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such rules and regulations shall be on file in the tax administrator's office.

C. The tax administrator may make administrative agreements to vary the strict requirements of this section so that collection of any tax imposed hereby may be made in conformance with the billing procedures of a particular service supplier so long as said agreements result in collection of the tax in conformance with the general purpose and scope of this section. A copy of each such agreement shall be on file in the tax administrator's office.

D. The tax administrator shall have authority to retain an independent auditor to audit the charges and/or tax collections and remittances of any service supplier or service user, as such times and in such manner as the tax administrator may deem to be in the best interests of the city.

E. Annually, within thirty days after the conclusion of each fiscal year which this chapter is in effect, the tax administrator shall retain an independent auditor to review the deposits and expenditures of the tax proceeds collected by the city pursuant to this chapter for the purpose of obtaining a report as to whether such tax proceeds have been expended in compliance with the laws affecting the city's expenditure of general fund revenues.

3.16.150 - Assessment—Administrative remedy.

A. The tax administrator may assess a service user for taxes not paid to a service supplier.

B. Whenever the tax administrator determines that a service user has deliberately withheld the amount of the tax owed from the amounts remitted to a service supplier, or that a service user has refused to pay the amount of tax to a service supplier, or whenever the tax administrator otherwise deems it in the best interest of the city, he or she may relieve a service supplier of the obligation to collect taxes due under this section from certain named service users for specified billing periods.

C. Service suppliers shall inform the city of amounts which services users have failed to pay, along with the names, service and mailing addresses, and any reasons of the service users refusing to pay the tax imposed under this section of which the service supplier has knowledge. Whenever a service user has failed to pay tax for two or more consecutive billing periods, the tax administrator may relieve the service supplier of the obligation to collect taxes due pursuant to subsection B of this section.

D. The tax administrator shall notify the service user that he or she has assumed responsibility to collect the taxes due for stated periods and shall demand payment of such taxes. The notice shall be served on the service user by personal delivery or by deposit in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the service supplier or to his or her last known address. If a service user fails to remit the tax to the tax administrator within fifteen

1 days from the date of the service of the notice, which shall be deemed to be the date of
2 mailing if personal service is not accomplished, a penalty of twenty-five percent of the
3 amount of the tax set forth in the notice shall be imposed, but shall in no event be less
4 than five dollars. The penalty shall become part of the tax herein required to be paid.

5

6 3.16.160 - Records.

7 It shall be the duty of every person required to collect and remit to the city any tax
8 imposed by this section to keep and preserve, for a period of three years, all records
9 necessary to determine the amount of tax that person was obliged to collect and remit
10 to the city. The tax administrator or his or her designee shall have the right to inspect
11 such records at all reasonable times.

12

13

14 3.16.170 - Refunds.

15 A. Any tax that has been overpaid, paid more than once, or erroneously or
16 illegally collected or received by the tax administrator under this section may be
17 refunded as provided in this section.

18 B. A service supplier may, with prior written approval from the tax administrator,
19 claim a refund or take as credit against taxes collected and remitted an amount
20 overpaid, paid more than once, or erroneously or illegally collected or received when it
21 is established that the service user from whom the tax has been collected did not owe
22 the tax; provided however, that neither a refund nor a credit shall be allowed unless the
23 amount of the tax so collected has either been refunded or credited to the service user.
24 A service supplier that has collected any amount of tax in excess of the amount of tax
25 imposed by this section may refund such amount to the service user and may, with
26 prior written approval of the tax administrator, claim credit for such overpayment
27 against the amount of tax which is due to the city, provided such credit is claimed no
28 later than one year from the date of overpayment.

1 C. No refund shall be paid unless the claimant produces written records which
2 establish the right to the claimed refund.

3 D. Notwithstanding any other provision of this section, whenever a service
4 supplier, pursuant to an order of the California Public Utilities Commission or a court
5 of competent jurisdiction, makes a refund to service users of charges for past utility
6 services, the taxes paid pursuant to this chapter on the amount of such refunded
7 charges shall also be refunded to service users, and the service supplier may, with prior
8 written approval of the tax administrator, take a credit for such refunded taxes against
9 the amount of tax which is due upon the next monthly returns. In the event this
10 subsection is repealed, the amounts of any refundable taxes will be borne by the city.

11

12 3.16.180 - Schedule of implementation.

13 A. Each service supplier shall immediately implement collection procedures in
14 accordance with the effective dates contained in this section.

15 B. Notwithstanding the provisions of subsection A of this section, the tax
16 administrator may grant a service supplier an extension of time to implement tax
17 collection procedures to a date not later than September 30, 2003, provided that within
18 ten days of the effective date of this chapter the service supplier certifies in writing to
19 the tax administrator that operational limitations prevent the service supplier from
20 implementing tax collection procedures in accordance with the effective dates
21 contained in this chapter.

22 C. Notwithstanding anything in this chapter to the contrary, if a service supplier
23 has been granted an extension of time to implement tax collection procedures, taxes
24 accrued for the period of time prior to implementation shall be due and collected in the
25 first regular billing following the implementation of tax collection procedures, or in
26 accordance with a collection schedule authorized by the tax administrator pursuant to
27 subsection D of this section.

1 D. The tax administrator may enter into an agreement with any service supplier to
2 provide for reimbursement, within the limits set forth herein, of the service supplier's
3 actual costs incurred in implementing procedures to collect the tax accrued from the
4 time the tax became effective to the time the service supplier implements tax collection
5 procedures in accordance with the requirements of this chapter. Any agreement
6 entered into pursuant to this subsection D shall provide that the service supplier will be
7 reimbursed by retaining up to ten percent of such accrued taxes collected, but not to
8 exceed (i) two hundred thousand dollars if all or a part of the previously accrued tax is
9 included in all customer billings issued not later than July 30, 2003 ; (ii) one hundred
10 fifty thousand dollars if all or a part of the previously accrued tax is included in all
11 customer billings issued after July 30, 2003 but on or before August 31, 2003, or (iii)
12 one hundred thousand dollars if all or a part of the previously accrued tax is included
13 in all customer billings issued after August 31, 2003, but on or before September 30,
14 2003.

15 E. In any agreement entered into pursuant to subsection D of this section, the tax
16 administrator may authorize the service supplier to collect previously accrued taxes
17 over a period of two or more months, provided that all such taxes are collected and
18 remitted to the tax administrator no later than December 31, 2003.

19

20 3.16.190 - Reduction, termination or suspension of utility user tax.

21 The service supplier shall, upon notification by the city, reduce, terminate or suspend
22 any utility user tax as to each service user commencing with the first full billing period
23 applicable to such user which occurs after the effective day of such action by the city.

24

25 3.16.200 - Constitutional exemptions.

26 Nothing in this section shall be construed as imposing a tax upon any person or
27 transaction if that imposition would violate the Constitution of the United States, the
28 Constitution of the State of California, or any California statute.

1

2 3.16.210 - Other exemptions.

3 A. The taxes imposed by this section shall not apply to any service user who is the
4 head of a household and either:

5 (1) Sixty-five years old or older; or
6 (2) A member of a "very low income household" as that term is defined in Health
7 and Safety Code Section 50105, as it now exists or may hereafter be amended.

8 B. The exemption granted by this section shall not eliminate the duty of the
9 service supplier from collecting taxes from such exempt individuals or the duty of such
10 exempt individuals from paying such taxes to the service supplier unless the service
11 user applies for, and the tax administrator grants, an exemption in accordance with the
12 provisions of subsection C of this section.

13 C. Any person claiming an exemption from the taxes imposed by this chapter
14 shall file a verified statement of exemption on a form prescribed by, and accompanied
15 by such evidence as may be reasonably required by, the tax administrator prior to
16 September 1, 2003 or June 30th of any subsequent year.

17 (1) The tax administrator shall, within sixty days of receipt of an application for
18 exemption, determine whether the applicant is entitled to an exemption, and if so,
19 notify the service supplier.

20 (2) An exemption granted pursuant to this section shall become effective at the
21 beginning of the first regular billing period which commences after the tax
22 administrator has notified the service supplier that an exemption has been granted.

23 (3) The tax administrator shall notify the service supplier of the termination of any
24 person's right to exemption hereunder, or the change of any address to which service is
25 supplied to any exempt person.

26

27 3.16.220 - Segregation of nontaxable charges.

28

1 As used in this chapter, the term "charges" means and includes the value of all
2 consideration provided by a service user in exchange for utility services. If a
3 nontaxable service and a taxable service are billed together under a single charge, the
4 entire charge shall be deemed taxable unless the service supplier identifies, by
5 verifiable data, based upon its books and records that are kept in the regular course of
6 business, in a manner that is consistent with generally accepted accounting principles,
7 the nontaxable component of the charge. A service supplier has the burden to prove the
8 proper apportionment of taxable and nontaxable charges.

9

10 3.16.230 - Effective date and sunset.

11 The taxes imposed by this shall become effective July 1, 2003. The tax imposed under
12 this shall apply to services furnished from the beginning of the first regular billing
13 period commencing on or after July 1, 2003. This chapter shall be of no further force
14 and effect at eleven fifty-nine p.m. on ~~June 30, 2018~~ **June 30, 2023**.

15

16 3.16.240 - Jurisdiction of the California Public Utilities Commission.

17 Nothing contained in this section is intended to conflict with tariffs of any service
18 supplier subject to the jurisdiction of the California Public Utilities Commission or
19 with any applicable rules or regulations of that Commission. In the event any such
20 conflict arises, the provisions of said rules, regulations and tariffs shall control.

21

22

23 3.16.250 - Administrative determinations—Appeal procedures.

24 The tax administrator shall administer this chapter. Appeals of any determination of
25 the tax administrator shall be submitted in writing to the city clerk not later than
26 December 1st of the fiscal year for which the tax is imposed. The city administrator or
27 his or her designee shall consider the appeal and issue a final decision to the appellant
28 in writing.

1

2 3.16.260 - Amendment of ordinance.

3 This chapter may be repealed or amended by the city council without a vote of the
4 people except as follows: as required by Propositions 62 and 218, any amendment to
5 this chapter that increases the amount or rate of tax beyond the levels authorized by
6 this chapter may not take effect unless approved by a vote of the people. The city
7 council may impose the taxes authorized by this chapter in any amount or rate which
8 does not exceed the rate approved by the voters of the city.

9

10 3.16.270 - Severability.

11 If any section, sentence, clause, phrase or portion of this chapter is for any reason held
12 to be invalid or unenforceable by a court of competent jurisdiction, the remaining
13 sections, sentences, clauses, phrases or portions of this chapter shall nonetheless
14 remain in full force and effect. The people of the city of Rialto hereby declare that they
15 would have adopted each section, sentence, clause, phrase or portion of this chapter,
16 irrespective of the fact that any one or more sections, sentences, clauses, phrases or
17 portions of this chapter be declared invalid or unenforceable.”

18 **Section 4.** This Ordinance may be repealed or amended by the city council without a vote
19 of the people except as follows: as required by Propositions 62 and 218, any amendment to this
20 Ordinance that increases the amount or rate of tax beyond the levels authorized by this Ordinance may
21 not take effect unless approved by a vote of the people. The city council may impose the taxes
22 authorized by this Ordinance in any amount or rate which does not exceed the rate approved by the
23 voters of the city.

24 **Section 5.** This measure to be submitted to the voters adopts a general tax to fund any
25 lawful purpose of the City. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a
26 project within the meaning of CEQA because it creates a government funding mechanism that does
27 not involve any commitment to any specific project that may result in a potentially significant impact

1 on the environment. Therefore, under CEQA Guidelines section 15060, review under CEQA is not
2 required.

3 **Section 6.** The provisions of this ordinance are severable and if any provision, clause,
4 sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or
5 circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or
6 impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the
7 ordinance or their applicability to other persons or circumstances.

8 **Section 7.** After its adoption by the voters, this Ordinance shall be in full force and effect
9 ten (10) days after the vote is declared by the City Council of the City of Rialto, pursuant to the
10 provisions of Election Code Sections 9217 and 15400 and as provided by law.

11 **Section 8.** The City Clerk of the City of Rialto shall cause this ordinance to be posted in
12 the manner required by law.

13 **Section 9.** The Mayor of the City of Rialto is hereby authorized and ordered to attest to the
14 adoption of the Ordinance by the voters of the City of Rialto by signing where indicated below.
15

16 I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by
17 the People of the City of Rialto, California voting on the ____ day of _____, 2018.
18
19

20 _____
21 Mayor

22 ATTEST:
23
24 _____
25 City Clerk

26 APPROVED AS TO FORM:
27
28 _____
29 City Attorney

1

2 **CERTIFICATE OF ATTESTATION AND ORIGINALITY**

3

4 I, _____, City Clerk of the City of Rialto, California, do hereby
5 attest to and certify that the above Ordinance No. _____ was Passed, Approved, and Adopted by the
6 People of the City of Rialto, California, voting on the 10th day of April, 2018.

7

8

9 _____
10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28