CITY OF COALINGA

The Sunny Side of the Valley

SPECIAL
CITY COUNCIL/SUCCESSOR AGENCY/PUBLIC FINANCE AUTHORITY MEETING AGENDA

July 17, 2014
6:30 PM

The Mission of the City of Coalinga is to provide for the preservation of the community character by delivering quality, responsive City services, in an efficient and cost-effective manner, and to develop, encourage, and promote a diversified economic base in order to ensure the future financial stability of the City for its citizens.

Notice is hereby given that the City Council will hold a Special Meeting, on July 17, 2014 in the City Council Chambers located at 155 West Durian, Coalinga, CA. Persons with disabilities who may need assistance should contact the Deputy City Clerk at least 24 hours prior to this meeting at 935-1533 x113. The Special Meeting will begin at 6:30 p.m. and the agenda will be as follows:

1. CALL TO ORDER

1. Pledge of Allegiance
2. Changes to the Agenda

2. AWARDS, PRESENTATIONS, APPOINTMENTS AND PROCLAMATIONS (NONE)

3. CITIZEN COMMENTS

This section of the agenda allows members of the public to address the City Council on any item not otherwise on the agenda. Members of the public, when recognized by the Mayor, should come forward to the lectern, identify themselves and use the microphone. Comments are normally limited to three (3) minutes. In accordance with State Open Meeting Laws, no action will be taken by the City Council this evening and all items will be referred to staff for follow up and a report.

4. PUBLIC HEARINGS

1. Consideration of Resolution No. 3650 Which Sets Forth in Motion, Measure P, a Public Safety Utility User Tax Initiative on the November 2014 Ballot, and Introduce and Waive the First Reading of Ordinance No. 777, Which Establishes the Utility User Tax in the Municipal Code Should the Measure P Pass.

   Laurie Avedisian-Favini, City Attorney

5. CONSENT CALENDAR (NONE)

6. ORDINANCE PRESENTATION, DISCUSSION AND POTENTIAL ACTION ITEMS

1. Direction Regarding the Sale for the Downtown Plaza Condominium Units
   Sean Brewer, Assistant Community Development Director
2. Budget FY15 Workshop
   Rene A. Ramirez, City Manager

7. ANNOUNCEMENTS

1. City Manager's Announcements
2. Councilmembers' Announcements/Reports
3. Mayor's Announcements

8. FUTURE AGENDA ITEMS

9. CLOSED SESSION (NONE)

10. ADJOURNMENT

Closed Session: A "Closed" or "Executive" Session of the City Council, Successor Agency, or Public Finance Authority may be held as required for items as follows: personnel matters; labor negotiations; security matters; providing instructions to real property negotiators; legal counsel regarding pending litigation; and protection of records exempt from public disclosure. Closed session will be held in the Administration Building at 155 W. Durian Avenue and any announcements or discussion will be held at the same location following Closed Session.

STAFF REPORT - CITY COUNCIL/SUCCESSOR AGENCY/PUBLIC FINANCE AUTHORITY

Subject:	Consideration of Resolution No. 3650 Which Sets Forth in Motion, Measure P, a Public Safety Utility User Tax Initiative on the November 2014 Ballot, and Introduce and Waive the First Reading of Ordinance No. 777, Which Establishes the Utility User Tax in the Municipal Code Should the Measure P Pass.
Meeting Date:	July 17, 2014
From:	Rene A. Ramirez, City Manager
Prepared by:	Laurie Avedisian-Favini, City Attorney

I. RECOMMENDATION:

Staff recommends the City Council adopt Resolution Number 3650 which set in motion a ballot measure for the general election on November 4, 2014. Staff also recommends that the City Council, by separate motion, introduce and waive the first reading of Ordinance No. 777, which would establish a Utility User Tax in the Municipal Code should the ballot measure pass.

II. BACKGROUND:

Over the past few weeks the Council has deliberated on options to generate revenue for the General Fund. At their July 10 meeting, the Council directed staff to prepare an resolution that would ask the County Clerk's office to place Measure P, a special utility user tax, on the November ballot and prepare an ordinance that would codify Measure P into the Municipal Code should Measure P pass in November.

The purpose of Measure P is to allow the community to decide if they want to maintain their current level of public safety services. The City's General Fund finds itself about $1.0 million short of a balance with little reserves to draw from for FY15. The two public safety departments, Police and Fire, require more than 75% of General Fund revenue for current levels of service.

The remnants of the economic recession and loss of revenue from the contract with the State CDCR has reduced the City's General Fund revenues by some $1.0 million. Without a tax measure or some other large source of revenue, cuts in public safety services will have to be made. Over the past several years, appropriations for General Fund departments have been reduced to a point where there are very few places to reduce expenses other than reductions in staffing, which affects service levels.

The Council at their most recent meeting, after discussing several tax measures, chose and directed staff to pursue a Utility User Tax, as a Special Tax, over other such taxing measures as a parcel or sales tax. Since last week, the City Attorney's office has been working feverishly developing the particular parameters to be included in the utility user tax and placed into the ordinance.

The County Clerk's office requires the Council to adopt a Resolution which contains a ballot measure's language and creates a place on the ballot for, in this case, a tax measure.

III. DISCUSSION:

The attached Resolution contains all of the necessary language necessary for the County Clerk to place

Measure P on the November 2014 ballot. The Council still has the ability to modify the Resolution. As it currently stands, Measure P contemplates a 5.5% utility user tax to all residential and non-residential customers. Some cities have stipulated that their utility user tax exempt schools, colleges, other governmental agencies, and such groups as senior citizens. Other cities have also stipulated in their tax measure that the tax rate for non-residential customers, which could be quite large if it is at the same rate as residential customers, be at a lower percentage. Another common provision found in similar tax measures is an exemption for low income seniors. Should the Council decide to modify the tax rate, it may require changes to the Resolution, which becomes the basis for the text in the ballot measure. Any changes to the resolution or ordinance should be decided tonight, given our short time-frame to get this to the Elections Department.

For a utility user tax to take effect, it must be codified in the Municipal Code. This requires adoption of an ordinance. Ordinance No. 777 has been drafted for introduction and waiver of first reading. A second reading and adoption would take place at the Council's next meeting, which is scheduled for August 7, 2014. Staff has reconsidered the need for an urgency ordinance, with the adoption of a Resolution being the key document for the County Clerk's office. An ordinance will simply enact the tax should the measure pass in November. The Council will have the ability to modify the ordinance during the introduction and first reading, but keep in mind that any change to the ordinance requires a modification to the Resolution, and vise versa.

IV. ALTERNATIVES:

At this point, besides an alternative that stops a ballot initiative, the Council could modify the Resolution and ordinance such that it exempts certain customer bases, or changes the tax rates on non-residential customers.

V. FISCAL IMPACT:

The intent of the ballot measure is to generate approximately $1.0 million in additional revenue for the General Fund to support public safety by taxing the use of several utility services rendered to community customers such as water, sewer, natural gas, trash, power, telephone and television.

ATTACHMENTS:

	File Name	Description
🗋	Resolution_(00331635).DOC	Resolution No. 3650
🗋	UUT_Ordinance_(00331529-3).DOC	Ordinance No. 777
🗋	UUT_Campaign_Do_s___Don_ts_(00275661).DOC	Campaign Do's and Don'ts

RESOLUTION NO. 3650

RESOLUTION OF THE CITY OF COALINGA ORDERING AN ELECTION ON MEASURE "P," REQUESTING COUNTY ELECTIONS TO CONDUCT THE ELECTION, AND REQUESTING CONSOLIDATION OF THE ELECTION

WHEREAS, pursuant to Elections Code section 10002, the governing body of any city or district may by resolution request the Board of Supervisors of the county to permit the county elections official to render specified services to the city or district relating to the conduct of an election; and

WHEREAS, the resolution of the governing body of the city or district shall specify the services requested; and

WHEREAS, pursuant to Elections Code section 10002, the city or district shall reimburse the county in full for the services performed upon presentation of a bill to the city or district; and

WHEREAS, pursuant to Elections Code Section 10400, whenever two or more elections, including bond elections, of any legislative or congressional district, public district, city, county, or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, they may be consolidated upon the order of the governing body or bodies or officer or officers calling the elections; and

WHEREAS, pursuant to Elections Code Section 10400, such election for cities and special districts may be either completely or partially consolidated; and

WHEREAS, pursuant to Elections Code Section 10403, whenever an election called by a district, city, or other political subdivision for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board requesting the consolidation, and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot. Upon such request, the Board of Supervisors may order the consolidation; and

WHEREAS, the resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election; and

WHEREAS, various district, county, state and other political subdivision elections may be or have been called to be held on November 4, 2014; and

WHEREAS, the City desires to adopt Ordinance No. 14-777 adopting special utility users tax to finance public safety, subject to a two-thirds voter approval, as required by Cal. Const., art. XIIIC, § 2(d); and

WHEREAS, the City Attorney shall prepare an impartial analysis of the Measure.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the governing body of the City of Coalinga hereby orders a traditional election be called and consolidated with any and all elections also called to be held on November 4, 2014 insofar as said elections are to be held in the same territory or in territory that is in part the same as the territory of the County of Fresno, requests the Board of Supervisors of the County of Fresno to order such consolidation under Elections Code Section 10401 and 10403.

BE IT FURTHER RESOLVED AND ORDERED that said governing body hereby requests the Board of Supervisors to permit the Fresno County Elections Department to provide any and all services necessary for conducting the election and agrees to pay for said services, and

BE IT RESOLVED AND ORDERED that the Fresno County Elections Department shall conduct the election for the following Measure, designated as Measure "P", to be voted on at the November 4, 2014 election:

Measure to be voted on:

Measure "P" Ballot Question:

"To preserve the safety and quality of life of the citizens of the City of Coalinga, shall the City enact a Utility Users Tax in the amount of 5.5% with all revenues dedicated to finance public safety services such as law enforcement, fire protection, and emergency medical response?

Yes _____ No _____"

BE IT FURTHER RESOLVED AND ORDERED that the Fresno County Elections Department is requested to print the attached measure text exactly as filed or indicated on the filed document in the Voter's Information Pamphlet section of the Sample Ballot for the November 4, 2014 election. Cost of printing and distribution of the measure text will be paid for by the City.

* * * *

This resolution was introduced and duly passed at a regular meeting of the City Council of the City of Coalinga held on the _____ day of July, 1014, by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

____

Mayor

ATTEST

____

City Clerk

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Ordinance No. 777

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COALINGA, ADDING CHAPTER 9 TO TITLE 3 OF THE COALINGA MUNICIPAL CODE WITH RESPECT TO A UTILITY USERS TAX TO FUND PUBLIC SAFETY.

WHEREAS, the City Council of the City of Coalinga ("Council"), has determined that there is an immediate need to finance public safety;

WHEREAS, the Council seeks to establish a utility users tax as a special tax dedicated to finance public safety;

WHEREAS, the Council seeks to submit the utility users tax to the voters in the upcoming regular election on November 4, 2014.

THE CITY COUNCIL OF THE CITY OF COALINGA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The City of Coalinga Municipal Code is hereby amended by adding Chapter 9 of Title 3 to read as follows:

Chapter 9 Utility Users Tax

3-9.100 Short title.

This Chapter shall be known as the “Utility Users Tax Ordinance.”

3-9.102 Special tax.

The taxes enacted by this Ordinance are special taxes as defined in Article XIIIC of the California Constitution to create needed revenue to preserve the safety and quality of life of the City of Coalinga. The tax revenue generated by the utility users taxes described in this Ordinance will be used only to fund law enforcement, fire protection, and emergency medical response services.

3-9.103 Definitions.

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

(a) “Ancillary telecommunication services” means services that are associated with or incidental to the provision, use, or enjoyment of telecommunications services, including but not limited to the following services:

(1) “Conference bridging service” means an ancillary service that links two 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 services” means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(b) “Ancillary video services” means services that are associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, search functions, or other interactive services or communications that are associated with or incidental to the provision, use, or enjoyment of video programming.

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

(d) "City" means the City of Coalinga.

(e) "City Manager" means the City Manager of the City, or his or her authorized representative.

(f) "Communication services" means: "telecommunication services," "ancillary telecommunication services," "video services," and "ancillary video services."

(g) "Gas" means natural or manufactured gas or any alternate hydrocarbon fuel, which may be substituted therefore.

(h) "Mobile telecommunications service" has the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C., § 124) and the regulations thereunder.

(i) "Month" means a calendar month.

(j) "Municipal Organization" shall mean that statewide organization sanctioned by the League of California Cities, or created by statute or by voluntary action, whose purpose is to facilitate the development and dissemination of uniform rulings or interpretations regarding the application of utility users taxes to communication services in the state of California.

(k) "Non-Utility Service Supplier" means:

(1) a service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include, but is not limited to, any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, 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 supplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; and

(3) a gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas or supplemental services to gas users within the City.

(l) "Person" means, without limitation, any domestic, non-profit, or foreign corporation; firm; association; syndicate; joint stock company; partnership of any kind; limited liability company; joint venture; club; trust; California business or common law trust; estate; society; cooperative; receiver, trustee, guardian, or other representative appointed by order of any court; any natural individual; municipal district or municipal corporation, other than the City.

(m) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

(n) "Post-paid telecommunication service" means the telecommunication service obtained by making a payment on a communication-by-communication basis either through the use of a credit card or 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.

(o) "Prepaid telecommunication service" means the right to access telecommunication services, which must be paid for in advance and which enables the origination of communications 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.

(p) "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).

(q) "Refuse collection" means services provided for the collection, recycling, destruction, or shredding of any refuse, debris, or unwanted materials including but not limited to garbage, chemicals, paper, plastic, and metals.

(r) “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 telecommunication 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 telecommunications service, “service address” means the location associated with the service number.

(s) “Service Supplier” means any person, including the City, who provides or sells communication, electric, gas, refuse collection service, sewage service, water service, or video service to a user of such service within the City. The term shall include any person required to collect, or self-collect, under this Chapter, and remit tax as imposed by this Chapter, including its billing agent in the case of electric, gas, refuse collection, water, sewage, or video service suppliers. In the case of video service, where the purchaser of bulk video service (e.g., an apartment owner) resells the video service to individual users, the purchaser of the bulk video service shall be deemed the “service supplier” for tax collection and remittance purposes.

(t) “Service user” means a person required to pay a tax imposed by this Chapter.

(u) “Sewage” means services provided for the collection, treatment, and disposal of water-carried waste through the use of plumbing, septic tanks, or other methods.

(v) “State” means the State of California.

(w) “Tax Administrator” means the City Manager of the City of Coalinga or his or her designee.

(x) “Telecommunication services” means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used, and includes broadband service (e.g., digital subscriber line (DSL), fiber optic, coaxial cable, and wireless broadband, including Wi-Fi, WiMAX, and wireless MESH) to the extent federal and/or state law permits taxation of such broadband services, now or in the future. The term “telecommunication services” includes such transmission, conveyance, or routing in which computer processing applications are suited to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol (VoIP) services or is classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data service that is functionally integrated with "telecommunication services." Telecommunications services include, but is 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; broadband service (to the extent federal and/or state law permits taxation of such service); mobile telecommunications service; prepaid telecommunication service; paging service, 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to pre-recorded or live service); and value-added non-voice data service.

(y) "Value-added non-voice data service" means a service that otherwise meets the definition of "telecommunications services" in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(z) "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.

(aa) "Video services" means any an all services related to the providing or delivering 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 or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes data services, "telecommunication services," or interactive communication services that are functionally integrated with "video services."

(bb) "Video Service Supplier" means any person, company, or service which 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 communications 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 communications. A "video service supplier" includes but is not limited to, multichannel video programming distributors (as defined in 47 U.S.C., § 522(13)); open video systems (OVS) suppliers; and suppliers of cable television; master antenna television; satellite master antenna television, multichannel multipoint distribution services (MMDS); video services using internet protocol (e.g., IP-TV and IP-Video, which provide, among other things, broadcasting and video on demand), direct broadcast satellite to the extent federal law permits taxation of its video services, nor or in the future; and other suppliers of video programming or communications (including two-way communications), whatever their technology.

3-9.104 Communications users tax.

(a) There is hereby imposed a tax upon every person in the City using communication services. The tax imposed by this section shall be at the rate of five and one-half percent (5.5%) of the charges made for such services and shall be collected from the service user by the communication services supplier or its billing agent. There is a rebuttable presumption that communication 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. If the billing address of the service user is different from the service address, the service address of the service user shall be sued 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 in exchange for the communication services.

(b) "Mobile telecommunications service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C., § 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 communications services, prepaid communication services, and private communication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation.

(c) The Tax Administrator may issue and disseminate to communication service suppliers, which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those communication services, or charges therefore, that are subject to the tax of subsection (a) above. This administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this Section, or increase an existing tax, but shall be deemed an administrative adjustment as provided by California Government Code section 53750(h)(2)(A).

(d) To facilitate the uniform interpretation and application of similar ordinance provisions in other local jurisdictions in the state, the Tax

Administrator shall, prior to issuing and disseminating a sourcing rule or an administrative tax ruling, submit its proposed sourcing rule, or administrative tax ruling to the Municipal Organization for review and comment, according to the rules and procedures of that organization, or its successor organization.

(e) As used in this section, the term "communication services" shall not include charges for service paid for by inserting coins in coin-operated telephones except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due.

(f) Charges for communication services shall include, but are not limited to, charges for the following:

(1) franchise fees and access fees (PEG);
(2) initial installation of equipment necessary for provision and receipt of communication services;
(3) late fees, collection fees, bad debt recoveries, and return check fees;
(4) activation fees, reactivation fees, and reconnection fees;
(5) all video programming services (e.g., basic services, premium services, audio services, video games, pay-per-view services, or on demand programming);
(6) ancillary programming services (e.g.), electronic program guide services, search functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of the video programming);
(7) equipment leases (e.g., converters, remote devices); and,
(8) service calls, service protection plans, name changes, changes of services, and special services.

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

(h) The tax on communication services imposed by this section shall be collected from the service user by the service supplier. 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.

3-9.105 Electricity users tax.

(a) There is hereby imposed a tax upon every person using electricity in the City. The tax imposed by this section shall be at the rate of five and one-half percent (5.5%) 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 user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

(b) As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary for or common to the receipt, use, or enjoyment of electric service; or ii) 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. 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 charges for supplemental services to self-generation service users;
(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 electricity 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) 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) The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of electric service; or ii) 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) 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) 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 3-9.107 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.

(g) 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.

3-9.106 Gas users tax.

(a) There is hereby imposed a tax upon every person using gas in the City, which is transported and delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of five and one-half percent (5.5%) of the charges made for such gas, including all services related to the storage, transportation, and delivery of such gas. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

(b) As used in this section, the term “charges” shall apply to all services, components and items for gas service that are: i) necessary for or common to the receipt, use, or enjoyment of gas service; or ii) 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, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;
(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 for or common to the receipt, use or enjoyment of gas service; and
(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) 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) The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use, or enjoyment of gas service; or ii) 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) 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) 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 3-9.107 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.

3-9.107 Collection of tax from service users receiving direct purchase of gas or electricity.

(a) Any service user subject to the tax imposed by Section 3-9.105 or by Section 3-9.106 of this Chapter, which produces gas or electricity for self-use; which receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this Chapter; or which, 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 in the City, including any related supplemental services, 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) 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. Rate schedules for this purpose shall be available from the City.

3-9.108 Refuse collection users tax.

(a) There is hereby imposed a tax upon every person using refuse collection services in the City. There is also imposed a tax upon every person in the City that delivers refuse directly to a transfer station or disposes of trash or refuse at any landfill or other facility accepting waste material within the City. The tax imposed by this Section shall be at the rate of five and one-half percent (5.5%) of the charges made for such refuse collection services, including all services related to the collection, transportation, and disposal of such refuse. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

(b) As used in this section, the term “charges” shall apply to all services, components and items for refuse collection service that are: i) necessary for or common to the receipt, use, or enjoyment of refuse collection service; or ii) currently are or historically have been included in a single or bundled rate for refuse collection 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 refuse collection service, or the cost of refuse collection services provided by the service user (including the actual costs attributed to operating costs associated with refuse collection);
(2) refuse 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 services when the service supplier cannot, as a practical matter, determine the jurisdiction where the refuse is stored; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for refuse 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 for or common to the receipt, use or enjoyment of refuse collection service; and
(5) charges, fees, or surcharges for refuse collection services or programs which are mandated by a state or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(c) As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the refuse collection services related to the delivery of such refuse collection service.

(d) The Tax Administrator, from time to time, may survey the refuse collection service suppliers to identify the various unbundled billing components of refuse collection service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such refuse collection service. The Tax Administrator, thereafter, may issue and disseminate to such refuse collection service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use, or enjoyment of refuse collection service; or ii) currently are or historically have been included in a single or bundled rate for refuse collection 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) All taxes on charges for refuse collection imposed by this section shall be collected from the service user by the refuse collection 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.

3-9.109 Water users tax.

(a) There is hereby imposed a tax upon every person using water in the City, which is transported and delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of five and one-half percent (5.5%) of the charges made for such water, including all services related to the storage, transportation, and delivery of such water. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

(b) As used in this section, the term "charges" shall apply to all services, components and items for water service that are: i) necessary for or common to the receipt, use, or enjoyment of water service; or ii) currently are or historically have been included in a single or bundled rate for water 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) water commodity charges (potable and non-potable);
(2) distribution and transmission charges (including interstate charges to the extent not included in commodity charges);
(3) metering charges;
(4) customer charges, late charges, service establishment or reestablishment charges, transition charges, minimum charges, annual and monthly charges, and any other charges which are necessary for or common to the receipt, use or enjoyment of water service; and
(5) charges, fees, or surcharges for water services or programs which are mandated by a water district or a state or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(c) As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the water or services related to the delivery of such water.

(d) The Tax Administrator, from time to time, may survey the water service suppliers to identify the various unbundled billing components of water retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such water service. The Tax Administrator, thereafter, may issue and disseminate to such water service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use, or enjoyment of water service; or ii) currently are or historically have been included in a single or bundled rate for water 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) There shall be excluded from the calculation of the tax imposed in this section, charges made for water which is to be resold and delivered through a pipeline distribution system.

(f) The tax on water 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 3-9.107 of this Chapter. All other taxes on charges for water imposed by this section shall be collected from the service user by the water 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.

3-9.110 Sewage users tax.

(a) There is hereby imposed a tax upon every person using sewage services in the City. The tax imposed by this section shall be at the rate of five and one-half percent (5.5%) of the charges made for such sewage services, including all services related to the storage, transportation, treatment, and disposal of such sewage. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

(b) As used in this section, the term “charges” shall apply to all services, components and items for sewage service that are: i) necessary for or common to the receipt, use, or enjoyment of sewage service; or ii) currently are or historically have been included in a single or bundled rate for sewage 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: customer charges, late charges, service establishment or reestablishment charges, annual and monthly charges, and other charges, fees, and surcharges which are necessary for or common to the receipt, use, or enjoyment of sewer service; and charges, fees, or surcharges for sewer services or programs, which are mandated by the City, a state or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(c) As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the sewage services related to the providing of such services.

(d) The Tax Administrator, from time to time, may survey the sewage service suppliers to identify the various unbundled billing components of sewage service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such sewage service. The Tax Administrator, thereafter, may issue and disseminate to such sewage service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use, or enjoyment of sewage service; or ii) currently are or historically have been included in a single or bundled rate for sewage 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) All taxes on charges for sewage service imposed by this section shall be collected from the service user by the sewage 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.

3-9.111 Effect of commingling taxable items with non-taxable items.

Except as otherwise provided by applicable federal or state law, 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. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges.

3-9.112 Constitutional and statutory exemptions.

(a) Nothing in this Chapter shall be construed as imposing a tax upon:

(1) any person or service when imposition of such tax upon that 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; and

(2) the City.

(b) Any person that is exempt from the tax imposed by this Chapter pursuant to subsection (a) 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 with a commonly recognized name. 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 users' taxes collected and remitted to the Tax Administrator from such service user as a result of such non-compliance. Upon request of the Tax Administrator, a service supplier or non-utility service supplier, or its billing agent, shall provide a list of the names and addresses of those customers which, according to its billing records, are deemed exempt from the utility users' tax.

(c) The City Council may, by resolution, establish one or more classes of persons or one or more classes of utility service otherwise subject to payment of a tax imposed by this Chapter and provide that such classes of persons or service shall be exempt, in whole or in part from such tax for a specified period of time.

(d) The decision of the Tax Administrator may be appealed pursuant to Section 3-9.125 of this Chapter. Filing an application with the Tax Administrator and appeal to the City Administrator pursuant to Section 3-9.125 of this Chapter is a prerequisite to a suit thereon.

3-9.113 Accurate jurisdictional boundaries.

The City shall make available, upon request, an accurate description of its jurisdictional boundaries based on street addresses and/or ZIP Plus Four, in an electronic format. If a service supplier relies upon such information provided by City, it shall not be responsible for any errors in taxation that may result.

3-9.114 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 communication 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.

3-9.115 Temporary tax percentage reduction and reinstatement tax percentage without election.

The City Council may, by resolution and upon a majority vote of the Council, temporarily reduce any or all of the tax percentages in Sections 3-9.104 through 3-9.110 for a period of no more than twelve (12) months. The Tax Administrator shall implement the temporary tax reduction by giving sixty (60) day written notice to all affected service suppliers as required by Public Utilities Code section 799. At the end of the twelve month period, the original tax percentage shall be automatically reinstated without further notice or action by the City Council.

In a resolution granting a temporary tax rebate or tax reduction, the City Council shall make the following finding: The temporary tax reduction shall not adversely affect the City's ability to meet its financial obligations as contemplated in its current or its proposed budget.

Nothing herein shall prohibit the City Council from adopting consecutive temporary tax percentage reductions, as provided herein.

As provided by Government Code section 9611, the enactment of a temporary tax percentage reduction by the City Council shall not constitute a repeal of one or more of the original provisions of this Chapter. Upon the expiration of the time of the temporary tax percentage reduction, the original provisions of this Chapter shall have the same force and effect as if the temporary tax percentage reduction had not been enacted. Nothing herein is intended to constitute a decrease in a tax, or an increase in a tax requiring election approval under California Constitution Article XIIIC; and to the extent that any aspect of a temporary tax percentage reduction is found to invoke such a requirement, the entire temporary tax percentage reduction shall be deemed null and void ab initio, and there shall be no entitlement to such tax reduction for any service user.

3-9.116 Duty to collect and remit—procedures.

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

(a) The tax shall be collected insofar as practicable at the same time as, and along with, the charges made in accordance with the regular billing 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 3-9.120 shall apply.

(b) 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 person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

3-9.117 Filing return and payment.

Each person required by this Chapter to remit a tax shall file a return with the Tax Administrator or his or her designated agent, on forms approved by the Tax Administrator on or before the due date. The full amount of the tax owed shall be included with the return and filed with the Tax Administrator or his or her designated agent. 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 California Revenue and Tax Code section 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information.

3-9.118 Collection penalties—service suppliers and self-collectors.

(a) Taxes collected from a service user, or self-collected by 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 or before 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 or before the following business day.

(b) If a service supplier, or a service user subject to Section 3-9.107 of this Chapter, fails to remit any tax collected, on or before the due date, said person shall pay a penalty for such delinquencies at the rate of ten percent (10%) of the total tax that is delinquent in the remittance, and shall pay interest at the rate of three-quarters of one percent (¾%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

(c) The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and/or remit taxes pursuant to the provisions of this Chapter for fraud or gross negligence in reporting or remitting at the rate of ten percent (10%) of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

(d) For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid.

(e) Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates and/or penalty and interest provisions of this Chapter to be consistent with any uniform standards or procedures that are mutually agreed upon by UUT public agencies, or otherwise legally established, to create a UUT central payment location or mechanism.

3-9.119 Deficiency determination and assessment—tax application errors.

(a) The Tax Administrator shall make a deficiency determination if he or she determines that any person required to collect or self-collect taxes pursuant to the provisions of this Chapter has failed to collect and remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges.

(b) The Tax Administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of three-quarters of one percent (¾%) 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 may request in writing to the Tax Administrator for a hearing on the matter. If the person 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.

(c) If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be held 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) 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 owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3-9.125 of this Chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 3-9.125 of this Chapter is a prerequisite to a suit thereon.

(e) Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be ten percent (10%) on the total amount of the assessment, along with interest at the rate of three-quarters of one percent (¾%) 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 Section shall commence from the date of delinquency as provided in this subsection (e).

(f) All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

3-9.120 Administrative remedy—nonpaying service users.

(a) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this Chapter from certain named service users for specific billing periods. Whenever the service user has failed to pay the amount of tax owed for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Chapter.

(b) In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of ten percent (10%) of the total tax that is owed, and shall pay interest at the rate of three-quarters of one percent (¾%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

(c) The Tax Administrator shall notify the non-paying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.

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 ten percent (10%) of the amount of the total tax that is owed.

3-9.121 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 noncompliance with this Chapter, including, but not limited to, reasonable attorneys' fees. In the event that a service user or service supplier owing a tax under this chapter files bankruptcy, then such debt to the City shall be deemed an unsecured priority excise tax obligation under 11 U.S.C. section 507(a)(8)(C).

3-9.122 Additional powers and duties of the tax administrator.

(a) The Tax Administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this Chapter.

(b) The Tax Administrator may adopt administrative rules and regulations not inconsistent with provisions of this Chapter for the purpose of 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.

(c) Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this Chapter and thereby: (1) conform to the billing procedures of a particular service supplier (or service user subject to Section 3-9.107 of this Chapter) 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) 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 (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 3-9.119 of this Chapter for all taxes, 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 and issue a deficiency determination assessment. Said deficiency determination assessment shall be entitled to a rebuttable presumption of correctness.

(e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this 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 three-quarters of one percent (¾%) per month, prorated for any portion thereof.

(f) The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this Chapter.

(g) The Tax Administrator, with the written approval of the City Attorney, may compromise a claim pursuant to this Chapter where the portion of the claim proposed to be released is less than the amount set by separate resolution of the City Council relating to the settlement of general liability claims against the City and, with the approval of the City Attorney and the City Council, may compromise such a claim where the portion proposed to be released is equal to or greater than the amount set by separate resolution of the City Council relating to the settlement of general liability claims against the City.

(h) 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 if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration industry practice or other precedence.

3-9.123 Records.

(a) It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax that such person 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) The City, through its 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) 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. The Tax Administrator may request from a person providing transportation or distribution services of gas or electricity to service users within the City, a list of the names, billing and service addresses, quantities of gas or electricity delivered, and other pertinent information, of its transportation customers within the City pursuant to California Public Utilities Code Section 6354(e).

(d) 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.

If any person subject to record-keeping under this section unreasonably denies the Tax Administrator, or the Tax Administrator's designated representative, access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, the Tax Administrator may impose a penalty of five hundred dollars ($500) on such person for each day following: i) the initial date that the person refuses to provide such access; or ii) 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.

3-9.124 Refunds.

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

(b) The Tax Administrator may refund any tax that has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor or administrator has submitted a written claim, under penalty of perjury, 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 refund claim on behalf of a class or group of taxpayers. Where the amount of any individual refund claim is in excess of the amount set by separate resolution of the City Council relating to the settlement of general liability claims against the City, City Council approval shall be required.

(c) The Tax Administrator, or the City Council where the claim is in excess of the amount set by separate resolution of the City Council relating to the settlement of general liability claims against the City, shall act upon the refund claim within forty-five (45) 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) 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.

(d) The filing of a written claim 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 sections 945.6 and 946.

(e) Notwithstanding the notice provisions of subsection (a) of this section, in the event that a service supplier, or a service user subject to Section 3-9.107 hereof, remits a tax to City in excess of the amount of tax imposed by this Chapter, said service supplier, or service user subject to Section 3-9.107 hereof, may claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the Tax Administrator, provided such credit is claimed in a return dated no later than one year from the date of overpayment of said tax. The Tax Administrator shall first determine the validity of the service user's claim of credit, and the underlying basis for such claim.

(f) Notwithstanding the notice provisions of subsection (a) of this Section, a service supplier that has collected any amount of tax in excess of the amount of tax imposed by this Chapter and actually due from a service user (whether due to overpayment or erroneous or illegal collection of said tax), may refund such amount to the service user, or credit to charges subsequently payable by the service user to the service supplier, and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the Tax Administrator, provided such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous or illegal collection of said tax. The Tax Administrator shall first determine the validity of the service user's claim of credit, and the underlying basis for such claim.

3-9.125 Appeals.

(a) The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 3-9.124 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 3-9.124 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 Gov. Code, § 935(b).) Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

(b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3-9.124 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 the service user or service supplier.

(c) The matter shall be set for hearing 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, the City Manager, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

(d) Based upon the submission of such evidence and the review of the City's files, the City Manager 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. If the City Manager fails or refuses to act on a refund claim within the fourteen (14) day period, the claim shall be deemed to have been rejected by the City Manager on the fourteenth (14th) day.

(e) All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

3-9.126 Independent audit of tax collection, exemption, remittance, and expenditure.

The City shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted in accordance with this Chapter, and properly expended according to applicable municipal 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 reviewed.

3-9.127 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.

3-9.128 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 (Gov. Code, §§ 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code, §§ 17000 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.

3-9.129 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. Prior to the effective date of the ordinance change, the service supplier shall provide the Tax Administrator with a copy of any written procedures describing the information that the service supplier needs to implement the ordinance change. If the service supplier fails to provide such written instructions, the Tax Administrator, or his or her agent, shall send, by first class mail, a copy of the ordinance change to all collectors and remitters of the City's utility users taxes according to the latest payment records of the Tax Administrator.

3-9.130 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter or any part thereof is for any reason held to be invalid, unlawful or unconstitutional, such decision, and the decision not to enforce such, shall not affect the validity of the remaining portion of this Chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared invalid, unlawful or unconstitutional.

3-9.131 Penalties.

Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor, or an infraction at the discretion of the City Attorney, and upon conviction punished pursuant to this Code.

3-9.132 Future amendment to cited statute.

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.

3-9.133 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 utility 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.

SECTION 2: The City of Coalinga Municipal Code is hereby amended by adding Article 3 to Chapter 3 of Title 3 to read as follows:

Article 3. – Public Safety Fund

Section 3-3.301 Created.

There is herby created in the City treasury a special fund to be known as the "Special Public Safety Tax Fund."

Section 3-3.302 Deposits.

All moneys received by the City from the taxes paid under Chapter 9 of Title 3 of this Code, for Public Safety, shall be paid into the Special Public Safety Tax Fund.

Section 3-3.303 Expenditures.

All moneys in the Special Public Safety Tax Fund shall be expended exclusively for the purposes authorized by, and subject to, all of the provisions of Chapter 9 of Title 3 of this Code.

SECTION 3: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 4. Amendment or Repeal. Chapter 9 of Title 3 of the Municipal Code may be repealed or amended by the City Council without a vote of the people. However, as required by Article XIIIC 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 Coalinga affirm that the following actions shall not constitute an increase of the rate of a tax:

1. 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;

2. 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;

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

4. 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 5: If two-thirds (2/3) of the voters voting thereon approve this Ordinance, it shall become effective ten (10) days after the results of the election are declared by the City Council. Within fifteen (15) days of its adoption, the City Clerk shall cause the full text of the ordinance, with the names of those City Council Members voting for and against the ordinance, to be published one time in a newspaper of general circulation within the community.

* * * *

This ordinance was introduced and duly passed at a regular meeting of the City Council of the City of Coalinga held on the _____ day of July, 1014, by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

____

Mayor

ATTEST

____

City Clerk

J:\wdocs\01904\001\ord\00331529.DOC

Utility Users Tax Measures

Dos & Don’ts of a Utility Users Tax Election Campaign

DOS AND DON’TS OF BALLOT MEASURE CAMPAIGNS

There are certain campaign restrictions imposed on cities and other public agencies regarding support of ballot measure campaigns, including utility users tax measures.

DON’T

1. **RESTRICTIONS ON POLITICAL ACTIVITIES**
   In addition to any applicable municipal ordinances and regulations, no City employee should, on City property, except as set forth in section 1 under *DOS* below, promote or advocate a position for (or against) a ballot measure either by stickers, buttons, leaflets, orally or by soliciting or receiving funds. The rationale here is that public funds should not be expended to influence public opinion. Otherwise employee first amendment rights are intact. See *DOS* below.

2. **PROHIBITION OF USE OF CITY FUNDS, SERVICES, SUPPLIES, OR EQUIPMENT**. ***DON'T:***
   No City funds, services, supplies or equipment may be used for the purpose of urging the support or defeat of any ballot measure including a utility users tax measure. "Funds, services, supplies, or equipment" includes, but is not limited to, administrative time (i.e., work day), postage, paper, and the use of copiers, fax machines, and telephones. Cities should not purchase bumper stickers, posters, advertising floats, or TV or radio spots, nor should they disseminate campaign literature prepared by private supporters of the ballot measure.

   OKAY IF: However, City resources can be used to develop and provide educational information to the public about the possible effects of any ballot measure so long as the information is a "fair and impartial presentation" of facts which aids the public in reaching an informed judgment regarding the ballot measure. Relevant considerations include the style, tenor, and timing of information provided.

Do

1. **<u>Share the City's Views and Analyses of a Meaure's Impacts and Merits</u>**
Information about a ballot measure, whether or not it would have an impact on the City's finances, may be shared in a simple, measured and informative way. Communications by City officials should not be directed towards encouraging the public to adopt the City's views, or to vote one way or another. However, presenting information in a factual, non-inflammatory way regarding the ballot measure and its impact on the City is permissible. See *Vargas v. City of Salinas* (2009) 46 Cal.4th 1.

2. **<u>Political Activities Unrelated to Use of City Property</u>**
No restrictions apply to first amendment freedoms to support ballot measures including ballot measures during nonworking hours.

3. **<u>Recognized Employee Organizations</u>**
Recognized employee organizations, such as collective bargaining organizations, may solicit or receive political funds or contributions from employee members to promote (or defeat) any ballot measure on City property provided it is during non-working time (including employees' lunch period). This would include any support of a ballot measure.

4. **<u>Appearance of City Officers Before Citizens and Community Groups</u>**
As with elected City Council members, any employee who is an administrative officer may accept an invitation from any civic minded organization to discuss reasons why the City called an election on a utility users tax ballot measure and to respond to questions regarding why the utility users tax is needed. These are invitations allowing an appearance off City property in an official capacity and also in a private capacity as a citizen and voter in the City.

The overriding principle in the above dos and don'ts is that City funds, services, supplies or equipment cannot be used to support or defeat any ballot measure in the State of California.

STAFF REPORT - CITY COUNCIL/SUCCESSOR AGENCY/PUBLIC FINANCE AUTHORITY

Subject:	Direction Regarding the Sale for the Downtown Plaza Condominium Units
Meeting Date:	July 17, 2014
From:	Rene A. Ramirez, City Manager
Prepared by:	Sean Brewer, Assistant Community Development Director

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I. RECOMMENDATION:

Staff is ready to release the Downtown Plaza Condominium Units to the market for sale and want to provide the Council with information regarding the Association Fees that will be a part of the cost for a buyer.

II. BACKGROUND:

The Request for Proposals is ready to be issued with the direction from the Council. The missing piece was the cost for an Association Fee, which is being presented by staff.

III. DISCUSSION:

IV. ALTERNATIVES:

The Council has the option to direct staff in another manner as it relates to the sale of the Downtown Plaza Condominiums.

V. FISCAL IMPACT:

The two buildings have been appraised at approximately $600,000 under current market conditions. Recall that there were no comparable sales. The revenue from the sale of the buildings would come into the General Fund. Staff's recommendation is to set aside the proceeds of the buildings sale and place into the General Fund reserve and not use to pay for operations because the revenue is one-time only and not a sustainable revenue.

ATTACHMENTS:

File Name	Description
No Attachments Available	

STAFF REPORT - CITY COUNCIL/SUCCESSOR AGENCY/PUBLIC FINANCE AUTHORITY

Subject:	Budget FY15 Workshop
Meeting Date:	July 17, 2014
From:	Rene A. Ramirez, City Manager
Prepared by:	Rene A. Ramirez, City Manager

I. RECOMMENDATION:

That the Council meet in a workshop format to continue the discussion of a budget for FY15.

II. BACKGROUND:

Part of the focus will continue with the General Fund and a discussion on developing a balanced General Fund for FY15. Staff continues to develop a clear nexus between elements of public safety and services provided to the Enterprise Funds, but it will not be sufficient to balance the General Fund Budget.

For the workshop, staff has invited Chief Mark Johnson and Battalion Chief Chris Bump from Cal-FIRE to attend, discuss and answer questions on how the City can maintain local control of the fire suppression, save existing jobs and provide the same service level and response time should the City invite Cal-FIRE to reply to a request for proposal to provide labor.

Staff is working on and will present a matrix of regional communities similar in size to Coalinga showing their General Fund revenues and expenses, their General Fund Balance, the number of personnel in both Police and Fire, the size of the Police and Fire budgets, and the percentage of the General Fund appropriated by these cities to provide public safety in their communities.
While the recent Press Release from the Mayor has garnered the attention of the Valley on our plight at Claremont with the State CDCR and has the CDCR back-pedaling from negative press on the subject, the City still does not have a contract with the State CDCR nor has there been contact from the Sheriff at Fresno, Los Angeles or Riverside Counties.

III. DISCUSSION:

The purpose of the workshop is for staff to share information with the Council, answer questions, take direction so that staff can come back in the near future with a budget plan for FY15 that the Council can adopt.

IV. ALTERNATIVES:

There are very few alternatives remaining and they will be brought up during the workshop.

V. FISCAL IMPACT:

The idea is to create a balance budget and set in motion a plan that will bring forth a positive fund balance in the General Fund over the next few years.

ATTACHMENTS:

File Name	Description
Fire_Dept_Options.pdf	Fire Dept Options Memorandum
General_Fund_Balance_Ranking_Similar_Sized_Cities.pdf	Gen Fund Balance Ranking Area Cities
Public_Safety_as_Pct_of_Gen_Fund.pdf	Public Safety as a Pct of Gen Fund
Questions_for_Chief_Johnson_071514.docx	Questions Asked of Chief Johnson

CITY OF COALINGA

FIRE DEPARTMENT

PHONE (559) 935-1652
FAX (559) 935-1638
E-MAIL: shenry@coalinga.com

TO:	**RENE RAMIREZ, CITY MANAGER**
FROM:	**STEVE HENRY, FIRE CHIEF**
SUBJECT:	**PROPOSED CHANGES TO FIRE/EMS AS REQUESTED**
DATE:	**JUNE 17, 2014**

MEMORANDUM

This memo is the result of Staff discussions to find ways to reduce the impact on the General Fund for operating the Fire/EMS Department. The target dollar amount is $500,000

Definitions: Emergency Medical Services (EMS)
Fresno County Emergency Medical Services (FCEMS)
Advanced Life Support Paramedic (ALS)
Basic Life Support (BLS)
American Medical Service Inc. (AMS)
Fresno County Fire District (FCO)

The current actual staffing level of the fire department is 21 fire/ems personnel, 1 Office Clerk and 1 Fire Chief.

CONTRACT AMBULANCE TRANSPORT SERVICE AND CONTRACT FIRE SERVICE

Formally request a proposal from AMS to staff two ALS medic units with a backup unit to operate within the Non Exclusive Ambulance Service Area Zone C that the City of Coalinga is now responsible for. This would reduce labor costs since the contract company would assume that fiscal responsibility.

> We would ask for a proposal to allow AMS to access our transport zone and provide ALS services. Transport ambulance billing will be retained to continue that revenue source. Estimated Cost of proposal $1 million dollars.

Request a proposal from CAL FIRE to staff fire units to operate within the City of Coalinga Fire Department is now responsible for. This would reduce labor costs since the CAL FIRE would assume that fiscal responsibility.

> We would formally request Cal Fire to provide a proposal for a full-service fire protection and EMS primary responder. Estimated cost of providing the same level of fire protection currently provided is estimated at $880,000, estimated costs of increasing the level to 3 personnel on duty per day is $1.2 million dollars.

This will allow the City of Coalinga to retain the rights provided to us by law to provide ALS service to our community.

California Health and Safety Code Section 1797.201

Upon the request of a city or fire district that contracted for or provided, as of June 1, 1980, pre-hospital emergency medical services, a county shall enter into a written agreement with the city or fire district regarding the provision of pre-hospital emergency medical services for that city or fire district. Until such time that an agreement is reached, pre-hospital emergency medical services shall be continued at not less than the existing level, and the administration of pre-hospital EMS by cities and fire districts presently providing such services shall be retained by those cities and fire districts, except the level of pre-hospital EMS may be reduced where the city council, or the governing body of a fire district, pursuant to a public hearing, determines that the reduction is necessary.

Pros

+ Depending on the Council's desire for fire department staffing levels, the fire suppression side of the department would have a 2 person staffed fire engine or a 3 person ALS staffed fire engine that would be staffed in town solely.
+ Would allow the City of Coalinga to continue to receive GEMT Reimbursement funds for Medi-Care and Medi-Cal.
+ AMS would provide Ambulances. City owned ambulances will be available to sell/surplus. Eliminating replacement costs.
+ Fire Mechanics costs, Fire Prevention services and Administration are added to the agreement.
+ State Certified and trained Arson Investigators available to assist Coalinga PD.
+ Fire Administration would not change. (Fire Chief would remain in place as rep to council)
+ Operating Costs remain under city control.
+ Cal Fire operates their shift schedule on a two (2) shift rotation and the City of Coalinga is a three (3) shift rotation. This would reduce the number of personnel needed to cover each day.
+ All personnel will be retained and absorbed by Cal Fire. ***This would prevent any layoffs of fire personnel***.
+ Contract can be used as leverage to control labor costs.
+ If additional revenue is found or generated (Claremont), money could be redirected to other General Funds accounts due to contractual fixed FD costs.
+ 2014 Labor agreement can be postponed or a Transition MOU could be established.
+ Reduces Workers Compensation and Health Costs liability. Figures not available.
+ Grant writers, Public Information Officer, Haz Mat Team, Rescue Team are provided to the city.
+ If after the initial contract, the Council would like to re-establish their own city fire department, cost of the department could be determined at that time and payroll costs would be lower due to using new city employees at beginning scale.

Cons

- The City of Coalinga would not retain the direct rights to negotiate salaries and benefits costs. This would be decided at the State level then passed on to Local Governments by renegotiation of the provider contract as it comes up for renewal. (Although leverage can be applied to contain costs within the contract)
- This process would take an estimated 6-8 months to negotiate, plan, and implement. Limiting the costs savings to 4 months in this fiscal year.

Proposal Design Criteria

The following elements describe the design criteria to fully meet the level of service requested.

1. The City will maintain local identity and control of the level of service, budget, and funding for emergency services in the City provided by CAL FIRE.
2. The services provided through contract with CAL FIRE will match or exceed the City's current service levels, of responding to calls for service in the city within five minutes or less – 90% of the time, at an economical cost while increasing daily staffing levels.
3. CAL FIRE will provide the professional management and operational control of the fire department following the level of service and policies established by the City.
4. Career opportunities will be available to the existing permanent full-time City fire protection employees.
5. CAL FIRE will staff the identified fire station with qualified personnel at levels established by the City.
6. Station staffing, initial, and extended emergency response will meet or exceed the stated objectives of the City.
7. The City will retain ownership, control, and responsibility for replacement of all real property, assets, fire apparatus, and equipment. The City and CAL FIRE will develop an MOU that details the rights, responsibilities, and usage of the city's real property.
8. CAL FIRE will provide and maintain the training of all employees, by qualified instructors, that will meet or exceed the accepted industry standards, requirements, and specific operational needs of the City. The City will be responsible for the costs associated with initial training to meet CAL FIRE standards of City assigned employees and all ongoing training, as well as any new employees that may be assigned to future City vacancies. These costs will be included in the annual agreement update fiscal detail.
9. CAL FIRE will maintain fire apparatus, ambulances, and support vehicles by qualified Fire Mechanics. The service, inspection, and maintenance level will meet or exceed all legal requirements for safety and code compliance.
10. CAL FIRE will recruit, select, hire, train, and manage all aspects of the full-time CAL FIRE personnel required to deliver this service. Employee testing, labor negotiations, Worker's Compensation administration, employee benefits, and career development will be managed by and the responsibility of CAL FIRE thereby reducing workload and costs to the City.

11. The City will benefit from the CAL FIRE managed and funded personnel and resources operating from the City station and adjoining Fresno County Fire and CAL FIRE stations. This provides an economy of scale, efficiency, workforce strength, and depth of experience that the City has demonstrated a commitment to providing its citizens.

Proposal Process

1. Coalinga City Council formally requests a comprehensive proposal from CAL FIRE.

2. Coalinga City staff and CAL FIRE meet to clarify desired services and level of protection desired by the Coalinga City Council.

3. CAL FIRE, City staff, and firefighters meet to clarify CAL FIRE compensation, benefits, and working conditions for CAL FIRE employees.

4. City of Coalinga will review the preliminary proposal and will vote on an "intent to contract" resolution.

5. City of Coalinga will provide CAL FIRE with level of service description that identifies emergency response standards, administrative roles, budgeting processes, and the role of CAL FIRE in the City Fire Department Management Team.

6. CAL FIRE will prepare a comprehensive service proposal that will detail:
   - Services to be delivered including options.
   - Employee transition process.
   - Salary and state civil service transition.
   - Asset and facility management plan.
   - Costs and payment schedule for services.
   - Contractual agreement for services between the City of Coalinga and CAL FIRE.
   - Timetables for implementation.

7. Presentation is made to the Coalinga City Council for acceptance and approval.

8. Implementation.

LISTING OF CAL FIRE CONTRACTS IN FRESNO COUNTY

City Fire Protection Services Provided by Agreement or by Jurisdictional Authority:

Parlier, pop. 14,777

1 station, 2 personnel

Mendota, pop. 11,398

1 station, 2 personnel

Huron pop. 6,798

1 station, 2 personnel

San Joaquin pop. 3,998

1 station, 2 personnel

LISTING OF CITY FIRE PROTECTION IN FRESNO COUNTY

Fresno, pop. 505,882

24 fire stations, contracts with North Central to provide fire protection.

Clovis, pop. 98,638

5 fire stations, automatic aid with adjoining agencies.

Reedley, pop. 24,842

1 fire station, paid administrative staff, volunteer fire suppression/EMS

Sanger, pop 24,567

1 fire station, 3 fire personnel, 4 ambulance personnel daily

Selma, pop 23,778

2 fire stations, 6 fire personnel, AMS contract for EMS service

Kingsburg, pop 11,588

1 station, no fire protection if ambulance is out, relies on FCO

Firebaugh, pop. 7,946

1 station, volunteer fire department, automatic aid agreement with FCO

In Table 1 below there are three options presented for comparison and evaluation.

The *Contract EMS Only* columns show what would happen if we entered into a contract with American Ambulance to provide ALS to the City of Coalinga and its rural area.

The *Discontinue EMS Transport* shows the costs of getting out of the ambulance transport service in its entirety.

The *Contract Fire and EMS* columns uses our current budget expenses less personnel salaries and benefits. The Personnel Service Totals reflect the cost of both contracts.

Table 1

Description	2015 Requested	Contract EMS Only		Discontinue EMS Transport			Contract Fire And EMS	
		Staffing 3	Staffing 2	Staffing 3 (BLS)	Staffing 3 (ALS)	Staffing 2	Staffing 3	Staffing 2
REVENUES TOTALS:	$ 1,530,500	$ 1,430,500	$ 1,430,500	$ 500	$ 500	$ 500	$ 1,531,000	$ 1,531,000
PERSONNEL SERVICE Totals	$ 2,446,957	$ 2,479,402	$ 2,174,420	$ 1,479,402	$ 1,738,447	$ 1,174,420	$ 2,174,456	$ 1,879,080
MAINT. & OPERATIONS Totals:	$ 458,707	$ 304,031	$ 299,805	$ 249,031	$ 249,031	$ 244,805	$ 259,679	$ 257,679
CAPITAL EXPENDITURES Total:	$ 88,522	$ 88,522	$ 88,522	$ 88,522	$ 88,522	$ 88,522	$ 88,522	$ 88,522
	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
EXPENDITURES TOTALS:	$ 2,994,186	$ 2,871,955	$ 2,562,747	$ 1,816,955	$ 2,076,000	$ 1,507,747	$ 2,522,657	$ 2,225,281
	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
DEPT REVENUES	$ 1,530,500	$ 1,430,500	$ 1,430,500	$ 500	$ 500	$ 500	$ 1,531,000	$ 1,531,000
DEPT EXPENSES	$ 2,994,186	$ 2,871,955	$ 2,562,747	$ 1,816,955	$ 2,076,000	$ 1,507,747	$ 2,522,657	$ 2,225,281
Fire Department Savings	$ -	$ 122,231	$ 431,439	$ 1,177,231	$ 918,186	$ 1,486,439	$ 471,529	$ 768,905
		Lay Off of 9-12 Personnel		Lay Off of 9-12 Personnel			No Loss of Personnel	

Public Safety Operations in Similarly Sized Regional Communities

(Ranked by General Fund - Fund Balance)

City	Population (2012)	Gen Fund Ending Fund Balance FY13	Budget Year	General Fund Revenues	General Fund Expenses	Revenues All Funds	Expenses All Funds	Number of Full Time Employees	Number of Part Time Employees	Police Deprtmnt Employees	Police Deprtmnt Budget	Police Deprtmnt Budget as % of Gen Fund	Fire Deprtmnt Employees	Fire Deprtmnt Budget	Fire Deprtmnt Budget as % of Gen Fund	Pct of General Fund Spent on Public Safety
Shafter	17,117	$ 49,614,325	FY14	$ 16,243,991	$ 18,426,689 (includes CIP)	$ 31,003,702	$ 35,443,977 (includes CIP)	83	39	33	$ 4,507,733	24.5%	None Kern Cnty	$ 157,422	0.9%	25.3% Rank = 13
Lemoore	24,738	$ 7,745,892	FY14	$ 7,473,693	$ 9,290,237	$ 24,204,414	$ 26,590,266	95	Not shown	36	$ 4,272,346	46.0%	1	$ 438,372	4.7%	50.7% Rank = 9
Tehachapi	13,784	$ 6,913,036	FY14	$ 5,995,010	$ 5,991,051	$ 16,243,685	$ 19,749,555 (includes CIP)	50	4	16	$ 2,793,762	46.6%	None Kern Cnty	$ 79,346	1.3%	48.0% Rank = 10
Taft	8,954	$ 6,430,000 as of FY10	FY12	$ 6,586,780	$ 6,586,780	$ 22,174,617	$ 22,174,617	127 65 @ CCF	N/A	25	$ 2,329,073	35.4%	None Kern Cnty	$ 405,245 Cnty contract $500K rsrv trnsfr	6.2%	41.5% Rank = 12
Lindsay	12,833	$ 5,705,825	FY14	$ 4,808,278	$ 4,701,794	$ 14,358,167	$ 13,258,167 (includes CIP)	71	$ 50	26	$ 2,469,808	52.5%	Not City	No Information on website		52.5% Rank = 8
Chowchilla	17,925	$ 2,662,254	FY14	$ 5,867,456	$ 5,701,958	$ 20,409,463	$ 20,136,030	61	34	23	$ 2,327,137	40.8%	1 15 voltrs	$ 258,162	4.5%	45.3% Rank = 11
Kerman	14,306	$ 2,228,508	FY14	$ 4,397,472	$ 3,975,435	$ 12,050,275	$ 16,702,110 (includes CIP)	56	Not shown	22	$ 2,502,576	63.0%	None Fresno City	Special District Property Tax		63.0% Rank = 5
Livingston	13,538	$ 843,900	FY14	$ 4,560,000	$ 4,560,000	$ 11,600,000	$ 16,000,000 (includes CIP)	76	44	29 7 vacancies 9 unpd Rsrv	$ 2,673,530	58.6%	1 20 voltrs	$ 49,040	1.1%	59.7% Rank = 6
Greenfield	16,793	$ 683,757	FY14	$ 6,195,107	$ 5,194,600	$ 21,461,100	$ 21,228,500 (includes CIP)	46	Not shown	18.5	$ 2,930,600	56.4%	Not City	No Information on website		56.4% Rank = 7
Soledad	26,478	$ 620,500	FY14	$ 5,986,034	$ 6,103,437	$ 18,810,739	$ 20,360,889	55	Not shown	19 FY12=21.3	$ 3,124,377	51.2%	None CalFIRE FY12=8.5	$ 850,783	13.9%	65.1% Rank = 4
Corcoran	23,551	$ 261,862	FY14	$ 5,200,810	$ 5,200,810	$ 11,638,719	$ 16,099,255	71	1	35	$ 3,479,437	66.9%	None Kings Cnty	$ 417,420	8.0%	74.9% Rank = 3
Selma	23,778	$ 44,831	FY14	$ 8,721,455	$ 10,582,743	$ 23,201,088	$ 23,499,248	88	Not shown	43	$ 5,141,586	48.6%	21.5	$ 4,025,519	38.0%	86.6% Rank = 1
Exeter	10,446	Not shown	FY13	Not shown	$ 3,558,983	Not shown	$ 7,286,705	<40	Not shown	Not shown	$ 2,085,510	Not shown	Not City	No Information on website		Rank = unknwn
Coalinga	16,789	($1,963,493)	FY14	$ 7,720,726	$ 7,720,726	$ 28,677,946	$ 33,052,171 (includes CIP)	102	27	32 2 vacancies	$ 3,190,670	41.3%	23 3 vacancies	$ 2,730,711	35.4%	76.7% Rank = 2

Public Safety Operations in Similarly Sized Regional Communities

(Comparing: Public Safety Costs as Percentage of General Fund)

City	Population (2012)	Budget Year	General Fund Revenues	General Fund Expenses	Gen Fund Ending Fund Balance FY13	Revenues All Funds	Expenses All Funds	Number of Full Time Employees	Number of Part Time Employees	Police Deprtmnt Employees	Police Deprtmnt Budget	Police Deprtmnt Budget as % of Gen Fund	Fire Deprtmnt Employees	Fire Deprtmnt Budget	Fire Deprtmnt Budget as % of Gen Fund	Pct of General Fund Spent on Public Safety
Selma	23,778	FY14	$ 8,721,455	$ 10,582,743	$ 44,831	$ 23,201,088	$ 23,499,248	88	Not shown	43	$ 5,141,586	48.6%	21.5	$ 4,025,519	38.0%	86.6% Rank = 1
Coalinga	16,789	FY14	$ 7,720,726	$ 7,720,726	($1,963,493)	$ 28,677,946	$ 33,052,171 (includes CIP)	102	27	32 2 vacancies	$ 3,190,670	41.3%	23 3 vacancies	$ 2,730,711	35.4%	76.7% Rank = 2
Corcoran	23,551	FY14	$ 5,200,810	$ 5,200,810	$ 261,862	$ 11,638,719	$ 16,099,255	71	1	35	$ 3,479,437	66.9%	None Kings Cnty	$ 417,420	8.0%	74.9% Rank = 3
Soledad	26,478	FY14	$ 5,986,034	$ 6,103,437	$ 620,500	$ 18,810,739	$ 20,360,889	55	Not shown	19 FY12=21.3	$ 3,124,377	51.2%	None CalFIRE FY12=8.5	$ 850,783	13.9%	65.1% Rank = 4
Kerman	14,306	FY14	$ 4,397,472	$ 3,975,435	$ 2,228,508	$ 12,050,275	$ 16,702,110 (includes CIP)	56	Not shown	22	$ 2,502,576	63.0%	None Fresno Cnty	Special District Property Tax		63.0% Rank = 5
Livingston	13,538	FY14	$ 4,560,000	$ 4,560,000	$ 843,900	$ 11,600,000	$ 16,000,000 (includes CIP)	76	44	29 7 vacancies 9 unpd Rsrv	$ 2,673,530	58.6%	1 20 voltrs	$ 49,040	1.1%	59.7% Rank = 6
Greenfield	16,793	FY14	$ 6,195,107	$ 5,194,600	$ 683,757	$ 21,461,100	$ 21,228,500 (includes CIP)	46	Not shown	18.5	$ 2,930,600	56.4%	Not City	No information on website		56.4% Rank = 7
Lindsay	12,833	FY14	$ 4,808,278	$ 4,701,794	$ 5,705,825	$ 14,358,167	$ 13,258,167 (includes CIP)	71	$ 50	26	$ 2,469,808	52.5%	Not City	No information on website		52.5% Rank = 8
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Exeter	10,446	FY13	Not shown	$ 3,558,983	Not shown	Not shown	$ 7,286,705	<40	Not shown	Not shown	$ 2,085,510	Not shown	Not City	No information on website		Rank = unknwn

Questions that Could be Asked of Chief Johnson (Cal-FIRE)

1. Have cities out-sourced their fire suppression labor to Cal-FIRE?

2. If so, where locally have this been done? If not Cal-FIRE, who else might do?

3. Based on your knowledge/experience, why have cities out-sourced their fire suppression labor?

4. When this has happened, does Cal-FIRE hire the city employees?

5. Can you speak to how Cal-FIRE's salary compares to most cities, in general?

6. What kind of benefits and training would employees receive as Cal-FIRE employees?

7. In general, would response time or level of service change?

8. What other types of fire services become available to community (like fire investigator, etc.) when Cal-FIRE assumes the role?

9. What happens to a city's fire station and equipment?

10. Does Cal-FIRE also provide Emergency Medical Services?

11. Could Cal-FIRE labor, in City equipment, respond to wild land fires, a source of revenue to General Fund for City, and still maintain service levels?

12. Would a city ever be able to re-start their fire department in future?

13. What is necessary to begin a formal evaluation?

14. How long does the evaluation process take?

15. If a city decides to go forward with a change, how long does it take?

16. If you had to make this decision, what kinds of questions would you ask?