

ORDINANCE NO. 2020-45

AN ORDINANCE AMENDING CHAPTER 2.12 OF THE ALAMEDA COUNTY ORDINANCE CODE TO EXTEND THE UTILITY USERS TAX, CLARIFY THE PURPOSE AND UPDATE THE DEFINITIONS, REFERENCES, AND GENERAL ORGANIZATION OF THE ORDINANCE

WHEREAS, in November 1996, November 2000, and June 2008 the voters of Alameda County approved by majority vote the Utility Users Tax, contained in Chapter 2.12 of the Alameda County Ordinance Code; and

WHEREAS, the Utility Users Tax expires on June 30, 2021 unless extended by the voters; and

WHEREAS, the Board of Supervisors finds it desirable to approve an extension of the Utility Users Tax to June 30, 2033, maintain the 6.5 percent tax rate, clarify the purpose, and update the definitions, references, and general organization of the Utility Users Tax ordinance, and submit the matter to the voters; and

WHEREAS, an amendment to extend the Utility Users Tax must be approved by the voters pursuant to Article XIII C, section 2 of the California Constitution and Government Code sections 53720, *et seq.*;

NOW, THEREFORE, the Board of Supervisors of the County of Alameda ordains as follows:

SECTION I:

Chapter 2.12 of the Alameda County Ordinance Code is amended to read:

2.12.010 Short title.

This chapter shall be known as the utility users tax ordinance.

2.12.020 Tax imposed.

There is established and imposed, on the effective date of the ordinance codified in this section, a utility user tax in the manner and at the rates set forth in this chapter.

2.12.030 Purpose of this chapter.

This chapter is enacted to raise revenues to offset the cost of providing county services, including in the unincorporated areas. The funds shall be deposited in the county general fund and there is no legal obligation that the funds raised be used for any particular purpose.

2.12.040 Definitions.

The following words and phrases shall be construed as defined in this section:

“Agricultural user” means an agricultural business that is exempt from the county business license tax in the unincorporated area pursuant to Section 3.04.630 of the General Ordinance Code of Alameda County.

“County” means the County of Alameda.

“Gas” means natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefore.

“Government agency” means the United States, the state of California, or any political subdivision of either, a county, city, city and county, school district, community college district, county board of education, county superintendent of schools, or any public or municipal corporation.

“Life support system” means a mechanical device whose operation is required to sustain and support a person’s life.

“Low-income rate assistance program” (LIRA) means that program offered by PG&E pursuant to public utilities commission regulations.

“Month” means a calendar month.

“Person” means, without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and non-profit), cooperative, receiver, trustee, guardian, or other representative appointed by order of any court, or other legal entity; or municipal corporations, and other public entities or public districts.

“Service supplier” means any entity which receives taxes paid and remits those taxes as imposed by this chapter.

“Service user” means a person required to pay a tax imposed by this chapter.

“Tax administrator” means the treasurer and tax collector of the County of Alameda.

“Telephone corporation,” “electrical corporation,” and “gas corporation” shall have the same meaning as defined in the California Public Utilities Code except that these terms shall also be construed to include any municipality, public agency or person engaged in the selling or supplying of electrical power or gas or water to a service user.

"Telephone communication services" means access to a telephone system and the privilege of telephonic-quality communications with substantially all persons having telephone or radio telephone stations which are part of such telephone system. "Telephone communication services" shall not include land mobile services or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations, as said Section existed on January 1, 1970. Notwithstanding this exclusion, "telephone communication services" shall include cellular telephone and enhanced specialized mobile radio communication services.

"Utility tax year" means the period beginning on the effective date of the ordinance codified in this chapter and ending June 30, 1993, for the entire utility year. Thereafter, the utility tax year shall be the twelve (12) month period beginning July 1st, and ending June 30th of the next succeeding calendar year.

"Video service supplier" means any person, company, or service which provides one or more channels of video programming, including any communications that are ancillary, necessary or common to the use and enjoyment of the video programming, to or from an address in the unincorporated portion of the County, including to or from a business, home, condominium, or apartment, 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.A. Section 522(13)]; open video systems (OVS) suppliers; suppliers of cable television; master antenna television; satellite master antenna television; multichannel multipoint distribution services (MMDS); direct broadcast satellite to the extent Federal law permits taxation of its video services, now or in the future; and other suppliers of video programming or communications (including two-way communications), whatever their technology.

"Video services" means any and all services related to the providing of video programming (including origination programming), including any communications that are ancillary, necessary or common to the use or enjoyment of the video programming, regardless of the content of such video programming or communications. "Video services" do not include services for which a tax is paid under section 2.12.070 of this Chapter.

2.12.050 Exemptions.

A. Nothing in this chapter shall be construed as imposing a tax upon any person when imposition of such tax upon that person would be in violation of federal or California statute, the Constitution of the United States or the Constitution of the State of California.

- B. Government agencies are exempt from the taxes levied pursuant to this chapter.
- C. Exempt from this tax are persons qualifying for the low income rate assistance program (LIRA) offered by the Pacific Gas & Electric Corporation (PG&E).
- D. Exempt from this tax are gas and electrical charges for persons on life support systems who do not already qualify for the LIRA program.
- E. Exempt from this tax are charges for separately billed and metered electrical energy and gas provided by the service providers to agricultural users for nonresidential agricultural use.

2.12.060 Claiming an agricultural exemption.

Any agricultural user claiming the agricultural exemption shall submit to the treasurer-tax collector an affidavit giving information including the name and business address of the entity claiming the exemption, the numbers of the separate meters through which electrical energy and gas will be provided, and that the meters identified do not provide electrical energy or gas for residential use.

The affidavit shall be filed once and shall continue in effect until the claimant's business license tax exemption terminates or there is a nonexempt use of the electrical energy or gas. The claim shall apply to charges for utility services rendered for the first regular billing period commencing thirty (30) working days after the filing of the claim.

2.12.070 Telephone users tax.

A. There is hereby imposed a tax on every person, other than a telephone corporation, for the use of intrastate, interstate, and/or international telephone communication services in the unincorporated areas of the county including all two-way mobile communications service for which a license is required utilizing any wireless or cellular device but excluding private one-way or two-way land or marine mobile radio communications by eligible users over designated areas of operation. The tax imposed by this section shall be at the rate of six and one-half percent of the charges made for such services and shall be paid by the person paying for such services. The telephone users tax is intended to, and does, apply to all charges billed to a communication services account having a situs in the unincorporated areas of the county, irrespective of whether a particular communication service originates and/or terminates within the unincorporated areas of the county.

B. As used in this section, the term "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones except that where such coin-operated 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, nor shall the term "charges" include charges for any type of service or equipment furnished by a service supplier subject to public utility regulations during any period in which the same or similar services or equipment are also available for sale or lease from persons other than a service supplier subject to public utility regulation.

C. The tax imposed by this section shall be collected from the service user by the person providing the intrastate, interstate, and/or international telephone communication services, or the person providing two-way mobile communications service for which a license is required utilizing any wireless or cellular device, or the person receiving payment for such services. The amount of the tax collected in one month shall be remitted by U.S. mail to the tax administrator postmarked on or before the last day of the following month; or with the written approval of the tax administrator and at the option of the person required to collect and remit the tax, an estimated amount of tax collected, measured by the tax bill in the previous month, shall be remitted by U.S. mail to the tax administrator postmarked on or before the last day of each month. Notwithstanding the foregoing, the tax administrator shall have the power to adopt at the tax administrator's discretion a regulation permitting electronic remittance and/or reporting of the taxes collected.

D. Notwithstanding the provisions of subsection A of this section, the tax imposed under this section shall not be imposed upon any person for using intrastate telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under Division 2, Part 20 of the California Revenue and Taxation Code as amended from time to time; or as in effect on the date of original adoption of this ordinance the tax imposed under Section 4251 of Title 26 of the United States Code, the Federal Communications Excise Tax, as such section existed on August 28, 1970, and as such section was interpreted by the Internal Revenue Service prior to the issuance of Revenue Notice 2006-50.

2.12.080 Electricity users tax.

A. There is hereby imposed a tax on every person other than an electric or gas corporation for the use of electrical energy in the unincorporated areas of the county. The tax imposed by this section shall be at the rate of six and one-half percent of the charges made for such energy and shall be paid by the person paying for such energy. "Charges," as used in this section, shall include charges made for metered energy and minimum charges for service, including customer charges, service charges, demand charges, standby charges, annual and monthly charges, and

any other charges authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission.

B. As used in this section, the term “using electrical energy” shall not be construed to mean the storage of such energy by a person in a battery owned or possessed by the person for use in an automobile or other machinery device apart from the premises upon which the energy was received, provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; nor shall the term include electricity used and consumed by an electric utility supplier in the conduct of its business; nor shall the term include the mere receiving of such energy by an electric corporation or governmental agency at a point within the unincorporated areas of the county for resale; nor shall the term include the use of such energy in the production or distribution of water by a water utility or a governmental agency.

C. The tax imposed in this section shall be collected from the service user by the service supplier or the person receiving payment for such services. The amount of the tax collected by a service supplier in one month shall be remitted by U.S. mail to the tax administrator, postmarked on or before the last day of the following month, or with the written approval of the tax administrator and at the option of the person required to collect and remit the tax, an estimated amount of tax measured by the tax billed in the previous month, shall be remitted by U.S. mail to the tax administrator, postmarked on or before the last day of each month. Notwithstanding the foregoing, the tax administrator shall have the power to adopt at the tax administrator's discretion a regulation permitting electronic remittance and/or reporting of the taxes collected.

2.12.090 Gas users tax.

A. There is hereby imposed a tax on every person other than a gas corporation or electrical corporation, using, in the unincorporated areas of the county, gas which is transported through mains or pipes or by mobile transport. The tax imposed by this section shall be at the rate of six and one-half percent of the charges made for the gas and shall be paid by the person paying for the gas. “Charges” as used in this section shall include charges made for gas which is delivered through mains or pipes, gas transportation charges, demand charges, service charges, customer charges, minimum charges, annual and monthly charges, and any other charge authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission.

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

1. Charges made for gas which is to be resold and delivered through mains or pipes;

2. Charges made for gas sold for use in the generation of electrical energy or for the production or distribution of water by a public utility or governmental agency;
3. Charges made for gas used in the propulsion of a motor vehicle, as that phrase is defined in the Vehicle Code of the state, utilizing natural gas, including separately metered natural gas delivered through mains or pipes for ultimate use in motor vehicles; and
4. Charges made for gas used by a nonutility supplier to generate electrical energy for its own use, or for sale to others, provided the electricity so generated is subject to the tax in accordance with Section 2.12.080 of this chapter, as amended from time to time.

C. The tax imposed in this section shall be collected from the service user by the person selling the gas or the person receiving payment for such services. The amount of tax collected in one month shall be remitted by U.S. mail to the tax administrator postmarked on or before the last day of the following month or with the written approval of the tax administrator and at the option of the person required to collect and remit the tax, an estimated amount of tax billed in the previous month, shall be remitted by U.S. mail to the tax administrator, postmarked on or before the last day of each month or other date predicted on a formula based upon the payment pattern of the supplier's customers. Notwithstanding the foregoing, the tax administrator shall have the power to adopt at the tax administrator's discretion a regulation permitting electronic remittance and/or reporting of the taxes collected.

2.12.095 Video Services Tax.

A. There is hereby imposed a tax upon every person using video services in the unincorporated area of the County from a video services supplier. The tax imposed by this section shall be at the rate of six and one-half percent of the charges made for such video services.

B. As used in this section, the term "charges" applies to all services, components, and items that are: (1) necessary for or common to the receipt, use, or enjoyment of video service; or (2) currently are or historically have been included in a single or bundled rate for video service by a local video service supplier to a class of retail customers. The term "charges" includes, but is not limited to, the following charges:

1. Franchise fees and access fees (PEG), whether designated on the customer's bill or not;
2. Initial installation of equipment necessary for provision and receipt of video services;
3. Late fees, collection fees, bad debt recoveries, and return check fees;
4. Activation fees, reactivation fees, and reconnection fees;

5. All programming services (e.g., basic services, premium services, audio services, video games, pay-per-view services, video on demand, and electronic program guide services);

6. Equipment leases (e.g., converters, remote devices); and,

7. Service calls, service protection plans, name changes, changes of services, and special services.

C. As used in this section, the term “charges” includes the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the video services.

D. The tax administrator, from time to time, may survey the video service suppliers in the unincorporated areas of the County to identify the various components of video service that are being offered to customers within the unincorporated areas of the County, and the charges therefore. The tax administrator, thereafter, may issue and disseminate to such video service suppliers an administrative ruling identifying those components: (1) that are necessary for or common to the receipt, use or enjoyment of video service; or, (2) which currently are or historically have been included in a bundled rate for video service by a local distribution company. Charges for such components shall be subject to the tax of subsection A of this section.

E. The tax imposed by this section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video service (e.g., an apartment owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of the video service. The amount of tax collected in one month shall be remitted by U.S. mail to the tax administrator postmarked on or before the last day of the following month or with the written approval of the tax administrator and at the option of the person required to collect and remit the tax, an estimated amount of tax billed in the previous month, shall be remitted by U.S. mail to the tax administrator, postmarked on or before the last day of each month or other date predicted on a formula based upon the payment pattern of the supplier’s customers. Notwithstanding the foregoing, the tax administrator shall have the power to adopt at the tax administrator’s discretion a regulation permitting electronic remittance and/or reporting of the taxes collected.

2.12.100 – Reserved

2.12.110 Interest and penalty.

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

Should the due date occur on a weekend or legal holiday, the tax remittance may be postmarked on the first regular working day following a Saturday/Sunday, or legal holiday.

B. Any person who fails to remit taxes collected in the time required by this chapter shall pay a penalty of five percent of the amount of the tax, and if not remitted within ten working days after the date of delinquency, shall pay a total penalty of twenty (20) percent of the amount of tax owed. Such penalty shall attach to the amount of tax due and shall be paid by the person required to collect and remit the tax.

C. Any person required to remit to the tax administrator delinquent taxes as required in this section, shall pay interest at the rate of one and one-half percent per month, or portion thereof, on the amount of tax owed exclusive of penalties, from the date on which the tax first became delinquent until paid. Such interest shall attach to the amount of tax due and shall be paid by the person required to collect and remit the tax.

D. When fraud or gross negligence in reporting and remitting tax collections is discovered, the tax administrator shall have power to impose the penalty and interest imposed by subsections B and C of this section upon the taxes owed. Such penalty and interest shall attach to the amount of tax due and shall be paid by the person required to collect and remit the tax.

E. Notwithstanding the provisions of subsections B and C of this section, no penalty or interest shall be applied if delinquencies are the result of natural disasters or other phenomena beyond the control of the person charged with collecting and remitting the tax, provided the person being delinquent notifies the tax administrator as soon as normal communication permits.

2.12.120 Actions to collect.

Any tax, accrued penalty and interest, 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 county. Any such tax collected from a service user, and accrued penalty and interest, which has not been remitted to the tax administrator shall be deemed a debt owed to the county by the person required to collect and remit. Any person owing money to the county under the provisions of this chapter shall be liable to an action brought in the name of the county for the recovery of such amount.

2.12.130 Duty to collect--Procedures.

The duty to collect and remit the taxes imposed by 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 practices of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the service charge and tax which has accrued for the billing period, such amount and any subsequent payments by a service user shall be applied to the utility charge first until such charge has been fully satisfied. Any remaining balance shall be applied to taxes due. In those cases where a service user has notified the service supplier of the service user's refusal to pay the tax imposed on said energy charges Section 2.12.150 of this chapter shall apply.
- B. The duty to collect tax from a service user shall commence with the beginning of the first full 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.

2.12.140 Additional power and duties of tax administrator.

- A. The tax administrator shall have the power and duty, and is hereby directed to enforce each and all of the provisions of this chapter.
- B. The tax administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such rules and regulations shall be kept on file in the tax administrator's office.
- C. The tax administrator may make administrative agreements to vary the strict requirements of this chapter so that collection of any tax imposed may be made in conformance with the billing procedures of a particular service supplier so long as said agreements result in collection of the tax in conformance with the general purpose and scope of this chapter. A copy of each such agreement shall be kept on file in the tax administrator's office.
- D. The tax administrator shall determine the eligibility of any person who asserts a right to exemption from the tax imposed by this chapter. The tax administrator shall provide the service supplier with the name of any person who the tax administrator determines is exempt from the tax imposed hereby, together with the address and account number to which service is supplied to any such exempt person. The tax administrator shall notify the service supplier of termination of any person's right to exemption hereunder, or the change of any address to which service is

supplied to any exempt person.

E. The tax administrator shall provide notice to all service suppliers, at least ninety (90) days prior to any annexation or other change in the county's boundaries. Said notice shall set forth the revised boundaries by street and address, along with a copy of the final annexation order from LAFCO.

2.12.150 Collection by tax administrator from service user.

A. The tax administrator may collect from the service user the taxes not paid to the service supplier.

B. 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 that a service user has refused to pay the amount of tax, such person may be relieved of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods as set forth below.

C. The service supplier shall provide the county with amounts refused and/or unpaid along with the names and addresses of the service users neglecting to pay the tax imposed under provisions of this chapter. Whenever the service user has failed to pay the amount of tax for a period of two or more billing periods, the service supplier shall be relieved of the obligation to collect the taxes billed.

D. The tax administrator shall notify the service user that the tax administrator has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served by handing it to the service user personally or by deposit of the notice in the U.S. mail, postage prepaid thereon, 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's address change, to the last known address. If a service user fails to remit the tax to the tax administrator within fifteen (15) days from the date of the service of the notice upon the service user, which shall be the date of mailing if service is not accomplished in person, a penalty of twenty-five (25) percent of the amount of the tax set forth in the notice shall be imposed, but not less than twenty-five dollars (\$25.00). The penalty shall become part of the tax herein required to be paid.

2.12.160 Records.

A. It shall be the duty of every person required to collect and remit to the county any tax imposed by this chapter to keep and preserve for a period of seven years all records as may be

necessary to determine the amount of such tax as the person may have been liable for the remittance to the tax administrator, which records the tax administrator shall have the right to inspect at all reasonable times.

B. On behalf of the county, the board of supervisors delegates to the tax administrator authority to issue an administrative subpoena to compel a person to deliver copies of all records deemed necessary by the tax administrator to establish compliance with this section, 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 county on or before the due date, provided that such person shall reimburse the county for all reasonable travel expenses incurred by the county to inspect those records, including traveling, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the county to conduct the inspection.

C. The tax administrator, or the tax administrator's designated representative, may execute a non-disclosure agreement in a form approved by the county counsel to protect the confidentiality of customer information pursuant to California Revenue and Taxation Code Sections 7284.6 and 7284.7. The tax administrator, or the tax administrator designated representative, may request from a person providing transportation or distribution services of gas or electricity to service users within unincorporated areas of the county, a list of the names, billing and service addresses, quantities of gas or electricity delivered, and other pertinent information, of its transportation customers within unincorporated areas of the county pursuant to Section 6354(e) of the California Utilities Code.

D. If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: (i) provide 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 county; and (ii) upon request of the tax administrator, deliver, or effect the delivery of, any information or records in the possession of each 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 county.

E. If any person subject to the 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 (\$500.00) on such person for each day following: i) the initial date that the person refuses to provide such assess; 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 section.

2.12.170 Refunds.

A. Whenever the amount of any tax, interest or penalty has been overpaid, paid more than once or erroneously or illegally collected or received by the tax collector under this chapter, it may be refunded as provided in this section. The party that paid the tax, interest, or penalty or that party's guardian, collector, or conservator must file a claim for refund as described below. No other person may file the claim on behalf of the party that paid the tax, interest, or penalty. Such person must verify claim under penalty of perjury of the laws of the state of California. No other person, including an attorney or other representative, may sign the refund claim on behalf of the person who paid the tax or that person's guardian, executor, or administrator. The claim must set forth the facts and legal theories under which the claimant believes he or she has a right to a refund. The facts and legal theories must be sufficiently detailed so that the basis of the claim may be understood and evaluated.

B. Notwithstanding the provisions of subsection A of this section, a service supplier may claim a refund, or take as credit against taxes remitted, the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established that the service user from whom the tax has been collected did not owe the tax. However, the previous sentence applies only if the person required to collect and remit has already refunded or credited to the service user the amount of the tax erroneously or illegally collected and for which the service supplier now seeks the refund.

C. No refund shall be paid under the provisions of this section unless the claimant established the claimant's right thereto by written records showing entitlement thereto.

D. The period for filing a claim for refund shall be six months from the time the tax, interest, or penalty was paid; provided, however, that in no event shall the period to file such claim expire prior to the shortest period allowable for filing a tax refund claim under Title 1, Division 3.6, Part 3, Section 911.2 of the California Government Code or any successor provision, as amended from time to time. For purposes of this section, a claim shall be deemed to accrue on the date

the tax was paid. Claims for refund shall be filed with the clerk or the board or supervisors on a form prescribed by the tax collector and shall describe all theories under which the claimant believes that the amounts paid should be refunded.

E. The auditor may refund so much of the amount claimed as the tax collector recommends. If the tax collector does not recommend a refund of the entire amount claimed, the clerk shall set the claim for a hearing before the hearing officer created pursuant to Chapter 2.116 of the Alameda County Administrative Code. The hearing officer may increase or decrease the amount of fees, taxes, penalties or interest consistent with the requirements of this ordinance.

F. Refunds under this section shall be entitled to interest from the date of payment to the date of refund at the county pool apportioned rate. For purposes of this subsection, "county pool apportioned rate" means the annualized rate of interest earned on the total amount of pooled idle funds from all accounts held by the county treasurer, in excess of the county treasurer's administrative costs with respect to that amount, as of June 30 of the preceding fiscal year for which the refund is calculated.

G. No lawsuit shall be commenced or maintained unless the person who paid the tax, interest, or penalty, or that person's guardian, executor, or administrator has filed a claim for refund pursuant to this section and pursued their right to a hearing as described above. Any such lawsuit must be limited to the grounds for refund set forth in the claim for refund.

H. Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this chapter on the amount of such refunded charges shall also be refunded to service users, and the service supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly returns.

I. In the event this chapter is repealed, the amounts of any refundable taxes will be borne by the county.

2.12.180 Termination or suspension of utility users tax.

A. The service supplier shall, upon notification from the clerk of the board of supervisors, terminate or suspend collection of any utility user tax, commencing with the first full billing period that occurs after the effective date of such action by the board of supervisors.

B. This chapter shall remain in effect only until June 30, 2033, and as of that date is repealed unless a later ordinance is adopted and approved by the voters prior to June 30, 2033 that either deletes or extends that date.

2.12.190 Limitations of tax.

The tax shall not apply in any case where its application would be prohibited by the United States Constitution, the California Constitution, or the laws of the United States or the state of California.

2.12.200 Savings clause.

If any provision of this tax is deemed invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

SECTION II

This ordinance shall become effective only upon affirmative passage by a majority of the eligible voters at the election of November 3, 2020, pursuant to Article XIII C, section 2 of the California Constitution; California Government Code section 53724; California Revenue & Taxation Code section 7284.2; California Elections Code section 9140; and other applicable law.

Before the expiration of 15 days after its adoption by the Board of Supervisors, this ordinance shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on July 28, 2020, by the following called vote:

AYES: Supervisors Carson, Chan, Haggerty, Miley & President Valle – 5

NOES: None

EXCUSED: None

ABSTAINED: None

RICHARD VALLE

President of the Board of Supervisors
County of Alameda, State of California

ATTEST: ANIKA CAMPBELL-BELTON

Clerk of the Board of Supervisors, County of Alameda

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By: Farand C. Kan