CITY OF ARVIN
Agenda Report

Meeting Date: August 1, 2018

TO:	**Arvin City Council**
FROM:	**Jeff Jones, Finance Director** **Jerry Breckinridge, Interim City Manager** **Shannon Chaffin City Attorney**
SUBJECT:	**Consideration to Adopt a Resolution Calling a Municipal Election to present a Utility Users Tax on Telecommunications, Video, Gas and Electricity Services to the Voters to Approve Ordinance Describing Tax and Approving Required Actions for Consolidating Election with Statewide Election on November 6, 2018**

RECOMMENDED ACTION

It is recommended that the City Council adopt the attached Resolution, which would provide the voters with the opportunity to decide whether they would prefer to approve and ordinance authorizing certain taxes that could be used for public safety, parks, streets and other matters.

BACKGROUND

The City of Arvin has suffered a decline in amounts available for general fund expenditures and a depletion of its reserve funds due to, among other causes, increased expenditures, the 2008 recession and beyond, substantially reduced economic activity in the central valley during the last 10 years, and reductions in transfers from other city funds. The City faces a shortfall of funds of approximately $1 Million for the fiscal year 2018-19 and will face shortfalls in the future and will have to make substantial reductions in services without additional sources of revenues.

The City Council previously directed staff to prepare a Utility User Tax ordinance for consideration to send to the voters for approval at the regular election to be held on November 6, 2018. The California Constitution requires that new taxes be approved by voters. (Cal Const art XIIIC, XIIIA.)

At the City Council's direction, staff and the City Attorney have prepared the required materials to place a general tax on utility users before the voters of Arvin on November 6, 2018. Specifically, if the attached Resolution is approved by the City Council, it would direct the placement of the Utility User on the November 6, 2018 general election. Additionally, staff has prepared an Ordinance that would be placed on the ballot for consideration by the voters of Arvin and, if approved, would establish the specific provision of a Utility User Tax within a new Chapter 3.14 (Utility Users Tax) of Title 3 (Revenue And Finance) of the Municipal Code.

The deadline for Council to place such a measure on the ballot is August 10, 2018.

The City Council is one of few cities that does not currently have a utility users tax.

ISSUES/ANALYSIS

The attached Resolution would place the Utility Users Tax before Arvin City voters on the November 6, 2018 general election ballot. This Resolution outlines the requirements, actions and obligations of the City of Arvin and Kern County Election Officials. Essentially this Resolution (a) calls election on the utility tax measure, (b) authorizes the filing of and dates for arguments, rebuttals and the City Attorney analysis, (c) requests the county to consolidate the election and describes the relative responsibilities, and (d) approves the ordinance which will be approved by the voters as the measure. Arguments and the City Attorney analysis are due August 15, and any rebuttal is due August 24. The Resolution authorizes the City Manager to file an argument on behalf of the Council.

The ballot measure question to be submitted to the voters is as follows:

MEASURE ___, ARVIN UTILITY USERS TAX ORDINANCE

Shall the measure establishing a utility users tax of up to a maximum of 7% on charges for telecommunications, video, electricity and gas services to raise approximately $700,000 to be spent for city services, including police, fire, and other emergency services, and street, sidewalk, sewer, public works improvements and other unrestricted purposes, be adopted?	**Yes**
	No

Pursuant to the elections code, the ballot measure must be neutral and provide certain information, including the expected revenues.

The Ordinance to be approved by the Council which talks to the rates and mechanisms of the utility users tax is entitled:

AN ORDINANCE OF THE PEOPLE OF THE CITY OF ARVIN APPROVING ADDING CHAPTER 3.12 (UTILITY USERS TAX) OF TITLE 3 (REVENUE AND FINANCE) TO THE ARVIN MUNICIPAL CODE TO ENACT A UTILITY USERS TAX ON TELECOMMUNICATIONS, VIDEO, ELECTRICITY AND GAS.

Pertinent Points related to the Ordinance as follows:

1. The tax applies to telecommunications, video, gas and electrical services. The tax does not apply to refuse, sewer or water services. The tax is intended to apply to phone service, including mobile phones, voice over internet protocol, cable and satellite TV, electrical and gas services. Persons who generate their own electricity for sale or its own use will also be required to pay the tax.
2. The ordinance allows the City Council to establish exemptions in the future without going to the voters. The ordinance also exempts public entities and all persons not subject to the utility tax pursuant to applicable law. In order to claim an exemption, a utility user would need to fill in an exemption application.
3. The tax will be collected from the utility service supplier – i.e. telephone companies, cable company, electrical company, etc. There is also the ability for the City to collect it from the user. The utility supplier will fill out a monthly tax return and remit it to the City monthly.
4. The rate of the tax will be 7%. However, the Council may in its discretion determine to levy a lower rate. The Council may return to the maximum rate at any time.
5. Penalties are set at up to 15% and interest of 1% per month on past due payments. Additional penalties may apply in certain instances.
6. The City Council may establish exemptions, incentives, or other reductions, and penalties and interest charges or determinations of tax due for failure to pay the tax in a timely manner, as otherwise allowed by the Code or California law. If the City Council does not change anything, rates and penalties are set at the maximum per the ordinance.
7. The ordinance establishes time periods for refunds and/or challenging decisions of the tax administrator. It also provides for a method of appeals.

A two-thirds (*i.e.*, 4 Councilmembers) vote of all members of the City Council (Gov't Code § 53724(b)) will be required to pass the resolution to order the submission of the proposed utility users tax ordinance to the voters.

Passage of the utility tax measure will require approval by a majority of the voters. (The proposed taxes will generate revenue, deposited in the general fund, available for any general governmental purpose. Thus the taxes are considered "general taxes." Under Proposition 218, the levy of a new general tax must be approved by a majority of voters. (Cal. Const. art. 13C, § 2(b).).)

FINANCIAL IMPACT:

Fiscal Impact. The utility users tax is expected to generate approximately $700,000 per year for the general fund based upon current estimates of utility services in Arvin subject to the tax. These consist of telephone (mobile, VOIP, and landline), video (cable and satellite TV), electricity and gas.

The cost of inserting the measures (utility tax and cannabis tax) at the county level will be around $25,000.

ATTACHMENTS

1. A Resolution Of The City Council Of The City Of Arvin, California, Calling An Election And Submitting To The Voters At The General Municipal Election To Be Consolidated With The Statewide General Election Held On Tuesday, November 6, 2018, A Measure Relating To A Utility Users Tax And A Measure Relating To A Commercial Cannabis Tax And Requesting Consolidation With The County Of Kern (with Ordinance attached).

CITY OF ARVIN
Agenda Report

Meeting Date: August 1, 2018

TO:	**Arvin City Council**
FROM:	**Jeff Jones, Finance Director** **Jerry Breckenridge, Interim City Manager** **Shannon Chaffin, City Attorney**
SUBJECT:	**Consideration to Adopt a Resolution Calling a Municipal Election to Present a Commercial Cannabis Tax Measure to the Voters to Consider Approving an Ordinance Describing Tax and Approving Required Actions for consolidating election with Statewide Election on November 6, 2018**

RECOMMENDED ACTION

It is recommended that the City Council adopt the attached Resolution, which would provide the voters with the opportunity to decide whether they would prefer to assess a commercial cannabis tax approve and ordinance authorizing certain taxes that could be spent for unrestricted purposes, including police, fire, and public improvements.

BACKGROUND

The City Council, pursuant to Chapter 17.64 of the Arvin Municipal Code provided for a commercial cannabis regulatory program. The program establishes regulation of commercial cannabis activities within the city including cultivation, manufacture, distribution, delivery and sale in certain circumstances, which businesses may operate in the City subject to issuance of a City regulatory permit and compliance with the operating requirements applicable to such business.
The City Council previously directed staff to prepare a Commercial Cannabis Tax ordinance for consideration to send to the voters for approval at the regular election to be held on November 6, 2018. The California Constitution requires that new taxes be approved by voters. (Cal Const art XIIIC, XIIIA.)

At the City Council's direction, staff has prepared the required materials to place a general tax on cannabis businesses before the voters of Arvin on November 6, 2018. Specifically, if approved by the City Council, the Resolution would direct the placement of the Commercial Cannabis Tax on the November 6, 2018 general election. Additionally, staff has prepared an Ordinance (Ordinance) that would be placed on the

ballot for consideration by the voters of Arvin and, if approved, would establish the specific provision of a Commercial Cannabis Tax within a new Chapter 3.19 (Commercial Cannabis Tax) of Title 3 (Revenue And Finance) of the Municipal Code.

The deadline for Council to place such a measure on the ballot is August 10, 2018

ISSUES/ANALYSIS

The Resolution would place the Commercial Cannabis Tax before Arvin City voters on the November 6, 2018 general election ballot. This resolution stipulates the requirements, actions and obligations of the City of Arvin and Kern County Election Officials. Essentially this resolution (a) calls election on the cannabis tax measure, (b) authorizes the filing of and dates for arguments, rebuttals and the City Attorney analysis, (c) requests the county to consolidate the election and describes the relative responsibilities of the City and the County, and (d) approves the ordinance which will be approved by the voters as the measure. Arguments and the Ccty attorney analysis are due August 15, and any rebuttal by August 24. The resolution authorizes the City Manager to file an argument on behalf of the Council

The ballot measure question to be submitted to the voters is as follows:

ARVIN COMMERCIAL CANNABIS TAX MEASURE Shall the measure establishing a tax of up to 6% of gross revenues on commercial cannabis business operations, excepting cultivation, and a tax of up to $6 per square foot of space used for commercial cannabis cultivation, as adjusted annually by CPI, all as described in the Ordinance enacting the tax, to raise approximately $150,000 to $300,000 annually to be spent for unrestricted purposes, including police, fire, and public improvements, be adopted?	**Yes**
	No

Pursuant to the elections code, the ballot measure must be neutral and provide certain information, including the expected revenues.

The Ordinance to be considered by the voters for approval which talks to the rates and mechanisms of the cannabis tax is entitled:

> **ORDINANCE OF THE PEOPLE OF THE CITY OF ARVIN, CALIFORNIA APPROVING A TAX ON COMMERCIAL CANNABIS ACTIVITIES BY ADDING CHAPTER 3.19 (COMMERCIAL CANNABIS TAX) TO TITLE 3 (REVENUE AND FINANCE) OF THE ARVIN MUNICIPAL CODE**

Pertinent Points related to the Ordinance as follows:

1. The tax applies to all commercial cannabis businesses in the City whether currently allowed under the Zoning Code or allowed in the future e.g. cultivation, retail, distribution, delivery, manufacture, etc. even though only retail sales and outdoor cultivation is not currently authorized. If these items are allowed in the future or carried on illegally, they are subject to the tax.

2. The Non-Cultivation tax rate is based on proceeds (i.e. gross receipts from the cannabis operation, including sales and services) as follows:

   (a) For Testing, 2% of proceeds;

   (b) For manufacturing:

   6% of proceeds up to and including $625,000;
   3.75% of Proceeds over $625,000 and up to and including $2,500,000;
   2.8% of Proceeds over $2,500,000.

   (c) For wholesale distribution, 2% of proceeds;

   (d) For retail, 3.75% of proceeds; and

   (e) For other operations, 4% of proceeds.

   The tax will be collected on a term determined by the finance director (either monthly, quarterly or annually). The initial term is quarterly (and the numbers in (b) are based on quarterly).

3. The Cultivation tax rate is $4 per square foot per fiscal year (July 1 to June 30) for space utilized as cultivation area for mixed light cultivation, and $6 per square foot for all other cultivation. While this is an annual tax, it will be collected on a term determined by the finance director, initially each quarter. This rate is increased annually by CPI.

4. Penalties are set at up to 25% and interest of 1% per month on past due payments.

5. The taxes may be set below the maximum taxes allowed by the City Council by resolution or ordinance of the council but can be raised back to the maximum at any time. The City Council may establish exemptions, incentives, or other reductions, and penalties and interest charges or determinations of tax due for failure to pay the tax in a timely manner, as otherwise allowed by the Code or California law. If the City Council does not change anything, rates and penalties are set at the maximum per the Ordinance. The City Council may exempt a business from the tax for a period of time by development agreement.

6. The Ordinance establishes time periods for refunds and/or challenging decisions of the tax administrator. It also provides for a method of appeals.

7. The Ordinance allows for prosecution as a misdemeanor for failure to comply.

A two-thirds (*i.e.*, 4 Councilmembers) vote of all members of the City Council (Gov't Code § 53724(b)) will be required to pass the resolution to order the submission of the proposed cannabis tax ordinance to the voters.

Passage of the cannabis tax measure will require approval by a majority of the voters. (The proposed taxes will generate revenue, deposited in the general fund, available for any general governmental purpose. Thus the taxes are considered “general taxes.” Under Proposition 218, the levy of a new general tax must be approved by a majority of voters. (Cal. Const. art. 13C, § 2(b).).)

FINANCIAL IMPACT:

Fiscal Impact. The cannabis tax is expected to generate approximately $150k to 300k per year for the general fund based upon anticipated uses in Arvin. Actual amounts may vary. As of the drafting of this report no licenses have been issued. Thus, it is difficult to predict the future revenue that may be generated by the tax measure

The cost of inserting the measures (utility tax and cannabis tax) at the county level will be around $25,000.

ATTACHMENTS

1. A Resolution Of The City Council Of The City Of Arvin, California, Calling An Election And Submitting To The Voters At The General Municipal Election To Be Consolidated With The Statewide General Election Held On Tuesday, November 6, 2018, A Measure Relating To A Utility Users Tax And A Measure Relating To A Commercial Cannabis Tax And Requesting Consolidation With The County Of Kern(with Ordinance attached).

RESOLUTION NO. 2018-54

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN, CALIFORNIA, CALLING AN ELECTION AND SUBMITTING TO THE VOTERS AT THE GENERAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION HELD ON TUESDAY, NOVEMBER 6, 2018, A MEASURE RELATING TO A UTILITY USERS TAX AND A MEASURE RELATING TO A COMMERCIAL CANNABIS TAX AND REQUESTING CONSOLIDATION WITH THE COUNTY OF KERN

WHEREAS, the City of Arvin ("City") is a general law city located in the County of Kern ("County"), State of California ("State"); and

WHEREAS, a California Statewide General Election is to be held on November 6, 2018 (hereinafter the "Statewide Election"); and

WHEREAS, a general municipal election is also to be held on November 6, 2018, for the election of municipal officers of general law cities throughout the State; and

WHEREAS, on June 19, 2018 and July 3, 2018, respectively, the City Council ("City Council") adopted Resolution Nos. 2018-42 and 2018-48 calling a general municipal election to be held on November 6, 2018, for the election of certain members of the City Council, and requesting that said election be consolidated with the Statewide Election; and

WHEREAS, the City has encountered financial difficulties over the past ten years and is facing severe budget shortfalls in the coming years without an additional source of revenue to the City; and

WHEREAS, pursuant to Chapter 17.64 of the Municipal Code of the City ("Code"), the City has adopted a robust regulatory scheme for the cultivation, operation, manufacture, distribution and sale of cannabis and cannabis products in the City and desires to enact a cannabis business tax to raise revenue to protect the health, welfare and safety of City residents; and

WHEREAS, the City Council has prepared, and seeks to submit to the voters of the City, an ordinance that would establish taxes applicable to all commercial cannabis operations in the City, whether or not such operations are appropriately allowed, authorized or permitted pursuant to the Code (the "Cannabis Tax Ballot Measure"); and

WHEREAS, the City also desires to enact a utility users tax to raise funds for the health, welfare and safety of City residents; and

WHEREAS, the City Council has prepared, and seeks to submit to the voters of the City, an ordinance that would establish taxes applicable to telecommunication services, video services, gas services, and electricity services in the City (the "Utility User

Tax Ballot Measure" and, together with the Cannabis Tax Measure, the "City Measures"); and

WHEREAS, pursuant to Elections Code Section 10400, whenever two or more 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 10002, the City Council may by resolution request the County Board of Supervisors to permit the County elections official to render specified services to the City relating to the conduct of an election, and said resolution shall specify the services requested; and

WHEREAS, pursuant to Elections Code Section 10002, unless other arrangements satisfactory to the County have been made, the City shall reimburse the County in full for the services performed upon presentation of a bill to the City; and

WHEREAS, the City Council desires to call an election on the Cannabis Tax Ballot Measure and the Utility Users Tax Measure, and to consolidate said election with the general municipal election and Statewide Election to be held on November 6, 2018, and to request the County Board of Supervisors to direct the County's designated elections official (hereinafter the "County Elections Official") to take any and all necessary steps to conduct said consolidated election within the City; 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 6, 2018; and

WHEREAS, the City Council also desires to call the election on the measures and consolidate the Cannabis Tax Ballot Measure and the Utility Users Tax Ballot Measure with the Statewide general election to be held on November 6, 2018.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ARVIN DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. That the Recitals hereto are true and correct and incorporated herein by this reference.

Section 2. That the City Council, pursuant to its right and authority, does order submitted to the voters at the General Municipal Election to be held and consolidated with the Statewide general election on Tuesday, November 6, 2018, the following question relating to the Cannabis Tax Ballot Measure.

ARVIN COMMERCIAL CANNABIS TAX MEASURE Shall the measure establishing a tax of up to 6% of gross revenues on commercial cannabis business operations, excepting cultivation, and a tax of up to $6 per square foot of space used for commercial cannabis cultivation, as adjusted annually by CPI, all as described in the Ordinance enacting the tax, to raise approximately $150,000 to $300,000 annually for unrestricted purposes, including police, fire, and public improvements, be adopted?	**YES**
	NO

Section 3. That the proposed complete text of the Ordinance related to the Cannabis Tax Ballot Measure submitted to the voters is attached hereto as Exhibit A and is hereby approved and adopted and by this reference incorporated herein.

Section 4. That pursuant to its right and authority under the Elections Code, the City Council does hereby submit to the voters at the General Municipal Election to be held and consolidated with the Statewide general election on Tuesday, November 6, 2018, the following question relating to the Utility Tax Ballot Measure.

ARVIN UTILITY USERS TAX MEASURE Shall the measure establishing a utility users tax of up to a maximum of 7% on charges for telecommunications, video, electricity and gas services to raise approximately $700,000 to be spent for city services, including police, fire, and other emergency services, and street, sidewalk, sewer, public works improvements and other unrestricted purposes, be adopted?	**YES**
	NO

Section 5. That the proposed complete text of the Ordinance related to the Utility Users' Tax Ballot Measure submitted to the voters is attached hereto as Exhibit B and is hereby approved and adopted and by this reference incorporated herein.

Section 6. That the Board of Supervisors of the County of Kern is hereby requested to consent and agree to the consolidation of the election on these City Measures and the City's general municipal elections for councilmembers with the Statewide general election to be held on November 6, 2018, and to direct the Kern County Registrar of Voters/Election Official to take any and all necessary steps to conduct the consolidated election.

Section 7. That the Election Department of the County of Kern and Board of Supervisors/Registrar of Voters is authorized to canvass the returns of the election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

Section 8. That the City recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for its share of the costs.

Section 9. That the City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election in accordance with the Elections Code and the laws of the State of California.

Section 10. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and Election Department of the County of Kern.

Section 11. That the deadline for filing arguments on each of the ballot measures with the City Clerk of the City shall be the close of business on Wednesday August 15, 2018. That in accordance with the requirements of Division 9, Chapter 3, Article 4 of the California Elections Code, all written arguments for or against each of the foregoing measures: (1) shall not exceed three hundred (300) words in length for each measure; (2) shall be filed with the City's elections official (i.e. city clerk); (3) shall be accompanied by the printed name(s) and signature(s) of the person(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of the principal officers who is the author of the argument; and (4) shall be accompanied by the Form of Statement to be Filed by Author(s) of Argument as provided for in California Elections Code § 9600. All written arguments may be changed or withdrawn until and including the date fixed by the City's elections official, being the close of business on Wednesday, August 15, 2018, after which time no arguments for or against each of the foregoing measures may be submitted to the elections official. Pursuant to Elections Code 9285, the City Council is authorized file a written argument and the City Manager is hereby authorized to prepare an argument on behalf of the City Council for each measure.

That in the event that more than one argument for or against any of the foregoing measures is timely submitted, the City's elections official shall give preference and priority first, to arguments submitted by member(s) of the City Council, as authorized by this

Resolution, and second, to individual voters, bona fide associations, or a combination thereof, in the order set forth at California Elections Code § 9287.

Section 12. That the deadline for filing of rebuttal arguments on each of the ballot measures with the City Clerk shall be at the close of business August 24, 2018. Rebuttals for each measure shall not exceed 250 words in length. The rebuttal arguments for each measure shall be accompanied by the Form of Statement to be Filed by Author(s) of Argument as provided for in California Elections Code § 9600. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

Section 13. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections and in accordance with the requirements for consolidated elections, including Election Code 10418. The City Council hereby acknowledges that the consolidated election shall be held and conducted in the manner prescribed in Elections Code Section 10418.

Section 14. That, pursuant to Elections Code Section 9280, the City Clerk is hereby directed to transmit a copy of the measures to the City Attorney. The City Attorney shall prepare an impartial analysis of each of the measures, not to exceed 500 words in length for each measure, showing the effect of each measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk by the close of business on August 15, 2018. The analysis on each measure shall include a statement indicating whether each measure was placed on the ballot by a petition signed by the requisite number of voters or by the governing body of the city. In the event the entire text of each of the the measures is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-point bold type, a legend substantially as follows: "The above statement is an impartial analysis of Ordinance or Measure ____. If you desire a copy of the ordinance or measure, please call the elections official's office/city clerk at (661) 854-3134 and a copy will be mailed at no cost to you."

Section 15. That City Council of Arvin hereby orders an election be called and consolidated with any and all elections also called to be held on November 6, 2018 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 requests the Board of Supervisors of the County of Kern to order such consolidation under Elections Code Section 10401 and 10403.

Section 16. That the City Council hereby requests the Board of Supervisors to permit the Kern County Elections Department to provide any and all services necessary for conducting the election and agrees to pay for said services.

Section 17. That the Kern County Elections Department shall conduct the election for the measures delineated in Section 2 and Section 4 to be voted on at the election on November 6, 2018.

Section 18. The Elections Departments of Kern County is hereby requested not to print the attached full measure text of Exhibit A and Exhibit B hereto in the Voter Guide, but send a copy of each measure to voters upon request at the cost of the City. The

contact number to be printed in the Voter Guide is (661) 854-3134 (EC §§ 9160, 9312, 9280).

In addition, the full text will be available at the following web site address: https://www.arvin.org/

Section 19. The voter approval requirement for each of the measures is a majority.

Section 20. The adoption of this Resolution is exempt from the California Environmental Quality Act, Public Resources Code §§ 21000 et seq. ("CEQA") and 14 Cal. Code Reg. §§ 15000 et seq. ("CEQA Guidelines"). The calling and noticing of a General Municipal Election for the submission of ballot measures to voters is not a project within the meaning of CEQA Guidelines Section 15378. The transactions and use tax submitted to the voters is a general tax that can be used for any governmental purpose; it is not a commitment to any particular action or actions. As such, under CEQA Guidelines Section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.

Section 21. That the City Clerk and City Manager are hereby authorized to take all actions as necessary to effectuate the purposes of this resolution and the election.

Section 22. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

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I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Arvin at a special meeting thereof held on the 01st day of August, 2018 by the following vote:

AYES: CM Robles, CM Madrigal[1], CM Martinez, MPT Ortiz, Mayor Gurrola

NOES: _____

ABSTAIN: _____

ABSENT: _____

ATTEST

CECILIA VELA, City Clerk

CITY OF ARVIN

By: _____

~~**JOSE GURROLA**, Mayor~~

Jess Ortiz, Mayor Pro Tem

APPROVED AS TO FORM:

By: _____

SHANNON L. CHAFFIN, City Attorney

Aleshire & Wynder, LLP

I, _____, City Clerk of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Resolution passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.

[1] CM Madrigal voted "no" for the utility users tax measure component of this Resolution, including Sections 4, 5 and 6.

Exhibit A to Resolution No. 2018-54

AN ORDINANCE OF THE PEOPLE OF THE CITY OF ARVIN, CALIFORNIA APPROVING A TAX ON COMMERCIAL CANNABIS ACTIVITIES BY ADDING CHAPTER 3.19 (COMMERCIAL CANNABIS TAX) TO TITLE 3 (REVENUE AND FINANCE) OF THE ARVIN MUNICIPAL CODE

[See Attached]

ORDINANCE NO. _____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF ARVIN, CALIFORNIA APPROVING A TAX ON COMMERCIAL CANNABIS ACTIVITIES BY ADDING CHAPTER 3.19 (COMMERCIAL CANNABIS TAX) TO TITLE 3 (REVENUE AND FINANCE) OF THE ARVIN MUNICIPAL CODE

WHEREAS, pursuant to Ordinance No. 447 adopted on June 19, 2018, Chapter 17.64 ("Commercial Cannabis Activity") was added to the Arvin Municipal Code ("AMC"); and

WHEREAS, AMC Chapter 17.64 establishes a comprehensive regulatory program applicable to commercial cannabis land uses, including businesses engaged in the cultivation, manufacture, distribution, delivery and sale of cannabis throughout the City of Arvin (the "City"); and

WHEREAS, pursuant to AMC Chapter 17.64, certain businesses may operate in the City subject to issuance of a City regulatory permit, conditional use permit, and other specified entitlements, and to compliance with the operating requirements applicable to such businesses as set forth in said Chapter 17.64; and

WHEREAS, if other cannabis business activities are permitted in the City by AMC Chapter 17.64 or a future Arvin City Council ("City Council") ordinance, or by the voters of the City through a future ballot measure, then the City Council desires that a commercial cannabis tax be in place and imposed on all such future cannabis business activities; and

WHEREAS, pursuant to subdivision (b) of Section 2 of Article XIII C of the California Constitution and Section 53720 *et seq*. of the Government Code, the City Council is authorized to impose a general tax upon submission of such general tax to the voters of the City and approval by a majority of the voters voting on the issue, at an election consolidated with a regularly scheduled general election for members of the governing body of the local government; and

WHEREAS, in 1996 the California voters approved Proposition 215, the Compassionate Use Act, codified as Health and Safety Code Section 11362.5, to exempt certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of cannabis for medical purposes; and

WHEREAS, in 2003 the California legislature enacted Senate Bill 420, the Medical Marijuana Program Act, codified as Health and Safety Code Section 11362.7 *et seq.*, and as later amended, to clarify the scope of the Compassionate Use Act of 1996 relating to the possession and cultivation of cannabis for medical purposes, and to authorize local governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, in 2015, the California legislature enacted AB 243, AB 266, and SB 643, collectively referred to as the Medical Marijuana Regulation and Safety Act, later renamed the

Medical Cannabis Regulation and Safety Act ("MCRSA"), to establish a framework for regulating medical cannabis; and

WHEREAS, at the November 8, 2016 statewide general election, a statewide ballot measure to legalize, regulate and tax nonmedical cannabis, the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"), was approved by California voters as Proposition 64, which established a comprehensive regulatory and licensing scheme for commercial adult-use cannabis operations, and which legalized limited adult-use personal cannabis cultivation and use, thereby allowing for the legal cultivation, sale, manufacture, use and possession of non-medicinal cannabis under California state law; and

WHEREAS, on June 27, 2017, Governor Brown signed Senate Bill 94, the Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA"), which merged the regulatory schemes of MCRSA and AUMA; and

WHEREAS, presently the City has no local tax on cannabis commercial operations or activities; and

WHEREAS, MAUCRSA and AUMA do not preempt local taxation of cannabis businesses; and

WHEREAS, although presently the City permits only certain commercial cannabis land uses, it may in the future permit other types of commercial cannabis land uses; and

WHEREAS, while the City Council does not desire nor does it intend by this ordinance to allow any other commercial cannabis land uses in the City other than the currently allowed uses, the City Council does desire to seek voter approval for a broad cannabis tax that is applicable to both presently-allowed commercial cannabis uses and any potential commercial cannabis uses that may be allowed in the future; and

WHEREAS, the City Council desires that a tax be submitted to the voters for approval so that every commercial cannabis operation shall pay a commercial cannabis tax to the City, regardless of whether such operation has a valid permit pursuant to the AMC; and

WHEREAS, the City Council desires that revenue generated from said commercial cannabis taxes can be spent for unrestricted general revenue purposes; and

WHEREAS, the City Council further finds that tax revenue from cannabis operations can provide funds for additional City services to protect the general health and welfare of the citizens of the City.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ARVIN, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. RECITALS. The foregoing recitals are true and correct and are incorporated herein by this reference.

SECTION 2. ADDITION OF CHAPTER 3.19 (COMMERCIAL CANNABIS TAX).

Chapter 3.19 (Commercial Cannabis Tax) is hereby added to Title III (Revenue and Finance) of the Arvin Municipal Code to read in full as follows:

"CHAPTER 3.19 COMMERCIAL CANNABIS TAX

Section 3.19.010 Definitions.

Section 3.19.020 Tax.

Section 3.19.030 Operation of Tax.

Section 3.19.040 Returns and Remittances.

Section 3.19.050 Failure to Pay Tax.

Section 3.19.060 Refunds.

Section 3.19.070 Enforcement.

Section 3.19.080 Debts; Deficiencies; Determinations; Hearings.

Section 3.19.090 Unrestricted Use of Revenues.

Section 3.19.100 City Council Authority to Amend.

Section 3.19.010 Definitions.

The following definitions apply to this chapter unless the context clearly denotes otherwise. Terms not defined herein shall be given the meanings assigned thereto in Chapter 17.64 of this Code.

A. "Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or

preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.

B. "Cannabis product(s)" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

C. "Cultivation" means any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

D. "Delivery" means the commercial transfer of cannabis or cannabis products to a customer at the customer's home or other location remote from the premises of the commercial cannabis business making the delivery, and includes the use by a retailer of any technology platform. "Delivery" does not mean or include storefront sales.

E. "Distribution" means the procurement, sale, and transport of cannabis and cannabis products between persons and/or operations.

F. "Finance Director" shall mean the Director of Finance of the City and her/his designee, or such other officer as may be designated by the City Council to administer this chapter.

G. "Manufacturing" means the activities conducted by a manufacturer, including the propagation, production, preparation, compounding, blending, extracting, infusing, or otherwise making or preparing a cannabis product or cannabis products.

H. "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis or otherwise at a fixed location that packages or repackages cannabis or cannabis products or labels or re-labels its container.

I. "Marijuana" has the same definition as provided in this chapter for the term "cannabis."

J. "Mixed-Light Cultivation" means the cultivation of cannabis in a greenhouse, hoop-house, glasshouse, conservatory, hothouse, or other similar structure using light deprivation and/or artificial lighting at a rate below or equal to twenty-five watts per square foot.

K. "Operation" means a person that conducts, transacts, or engages in commercial activity relating to cannabis or cannabis products (whether or not such activity is appropriately permitted or allowed at the time of enactment of this chapter or at any time thereafter under Chapter 17.64 or other provisions of this Code), including but not limited to the retail sale (including storefront sales and sales by delivery), cultivation, manufacturing, testing, and distribution of cannabis and cannabis products, and all attendant or related activities

including transportation, packaging, labeling, and storage. Operation includes commercial cannabis activity or commercial cannabis operation as defined in Chapter 17.64 of this Code.

L. "Permit" means any permit or entitlement issued pursuant to this Code pertaining to or authorizing commercial cannabis uses or activities.

M. "Person" means any natural person, individual, firm, corporation, partnership, joint venture, limited liability company, estate, trust, business trust, receiver, syndicate, nonprofit organization, club, or any association or combination of natural persons or group, whether acting by themselves, or through any servant, agent or employee, and includes the plural as well as the singular.

N. "Premises" means a structure or structures or portion thereof and/or any land that is owned, leased, or otherwise held under the control of an operation where commercial cannabis activity will be or is conducted.

O. "Proceeds" means: (1) the total gross revenues and amount actually received or receivable by an operation from all sales; and (2) the total amount of compensation actually received or receivable by an operation for the performance of any act or service, whatever nature it may be, from which a charge is made or credit allowed, whether such service is done separately or as part of or in connection with the sale of materials; goods, wares or merchandise; discounts, rents royalties, fees, commissions, dividends and other amounts realized from the services. Services, for purposes of this definition, includes but is not limited to manufacturing, testing, distribution, delivery, transportation, processing, storing, labeling, and other services rendered in connection with an operation. Proceeds includes all receipts, cash, credits and property of any kind or nature without any deduction therefrom on account of the cost of property sold, the cost of materials used, labor or services costs, interest paid or payable or losses or other expenses whatsoever. Notwithstanding the foregoing, the following shall be excluded from proceeds: (1) cash discounts where allowed and taken on sales; (2) any taxes required by law to be added to the purchaser and collected from the consumer or purchaser; (3) such part of the sales price of any property returned by the purchaser to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in proceeds; and (4) such other amounts as may be determined by the Finance Director not to constitute proceeds within the meaning of this definition. The Finance Director may promulgate administrative rules or regulations interpreting or applying this definition.

P. "Quarterly" means the four calendar quarters which fall within a calendar year, i.e. January through March, April through June, July through September, October through December.

Q. "Retail" means that part of an operation engaged in the retail sale of cannabis or cannabis products to a customer, whether by storefront sales or by delivery. A retailer may be a storefront or non-storefront (delivery only) retailer.

R. "Space utilized as cultivation area" means any space or ground, floor or other surface area (whether horizontal or vertical) which is used during the cannabis germination, seedling, vegetative, pre-flowering, flowering and/or harvesting phases, including without limitation any space used for activities such as growing, planting, seeding, germinating, lighting, warming, cooling, aerating, fertilizing, watering, irrigating, topping, pinching, cropping, trimming, curing or drying cannabis, or any such space used for storing any plants, products, supplies or equipment related to any such activities, no matter where such storage may take place or such storage space may be located. Space utilized as cultivation area may be non-contiguous and shall include space used to cultivate cannabis on platforms and/or stack them in multiple layers on top of each other (i.e. vertical). Space utilized as cultivation area shall be calculated in square feet and measured using clearly identifiable and/or apparent boundaries, and shall include all space within the boundaries. Each discrete area shall be separated or demarcated by an identifiable or apparent boundary, including but not limited to interior walls, shelves, greenhouse walls, nursery walls, canopy walls, hoop house walls, garden benches, hedgegrows, fencing, garden beds, garden plots, or other plot-type planting. Space utilized as cultivation area includes space which is immediately available for the activities described herein even if not being used at the time of determination. Space utilized as cultivation area shall be determined by the Finance Director during the initial Term of the operation, and at least annually thereafter, in accordance with this definition. The Finance Director may promulgate administrative rules or regulations interpreting or applying this definition.

S. "Tax" means and refers to the commercial cannabis tax provided for in this chapter, including the commercial cannabis cultivation tax and the commercial cannabis proceeds tax described in Section 3.19.020 hereof.

T. "Term" means such term or period of time as may be designated by the Finance Director for reporting and/or payment of tax, provided, however, that if no express term is designated by the Finance Director, Term shall mean one calendar quarter. Notwithstanding the foregoing, the Term for payment of tax may be set on a monthly, quarterly, semi-annual or annual basis by the Finance Director. Taxes may be prorated for collection to the extent the Finance Director provides for a Term other than that specified herein, and to the extent an operation commences on a date other than the first day of a given Term.

U. "Testing Laboratory" means an operation that offers or performs tests of cannabis or cannabis products. Testing means the activity of offering or performing tests of cannabis and cannabis products.

Section 3.19.020 Tax.

A. Commercial Cannabis Cultivation Tax. Subject to annual adjustment as provided below, every operation conducting, transacting or engaging in commercial cultivation of cannabis in the City shall pay a tax at one of the following maximum rates, as applicable:

(i) For all space utilized as cultivation area where Mixed-Light Cultivation is used – up to four dollars ($4) per square foot;

(ii) For all space utilized as cultivation area other than as specified in subparagraph (i) – up to six dollars ($6) per square foot.

The tax rate pursuant to this subsection (A) is an annual tax rate. Notwithstanding the foregoing, to the extent the tax is paid and/or collected on a semi-annual, quarterly or monthly Term, the tax shall be prorated for the applicable Term. For example, for a quarterly term, the tax for the initial fiscal year pursuant to subparagraph (i) shall be one dollar ($1) per square foot per quarter, and the tax for the initial fiscal year pursuant to subparagraph (ii) shall be one dollar and fifty cents ($1.50) per square foot per quarter.

The tax pursuant to this subsection (A) shall be based on a fiscal year (July 1 to June 30) and shall be adjusted annually on July 1 of each year, commencing July 1, 2020, based on the Consumer Price Index ("CPI") for all urban consumers in the Los Angeles-Long Beach-Anaheim areas as published by the United States Government Bureau of Labor Statistics, (based on the prior calendar year increase).

B. Commercial Cannabis Proceeds Tax. Every operation conducting, transacting or engaging in commercial cannabis activity(ies) in the City other than cultivation pursuant to subsection (A), including but not limited to retail sale (including storefront sales and sales by delivery), distribution, manufacturing, or testing, shall pay a tax at one of the following maximum rates, as applicable:

(i) For testing – up to two percent (2%) of Proceeds.

(ii) For manufacturing, up to the following tiered rate, based on a quarterly term:

a. Six percent (6%) of Proceeds up to and including $625,000;
b. Three point seven five percent (3.75%) of Proceeds over $625,000 and up to and including $2,500,000;
c. Two point eight percent (2.8%) of Proceeds over $2,500,000.

(iii) For distribution – up to two percent (2%) of Proceeds.

(iv) For retail sales – up to three point seven five percent (3.75%) of Proceeds.

(v) For all operations subject to this subsection (B) other than as specified in subparagraphs (i) - (iv) – up to four percent (4%) of Proceeds.

The tax rates pursuant to this subsection (B) are quarterly tax rates. To the extent of any adjustment of Term from a quarterly term, said rates shall adjust to reflect the same percentage over the new term (e.g., for testing, up to 2% per year for an annual term). The rate specified in subparagraph (ii) shall be adjusted to multiply the Proceeds dollar amount thresholds to reflect any adjustment from a quarterly term, while the percentage rates shall

remain the same (for example, for an annual Term, multiply the dollar amounts by 4, or divide them by 3 for a monthly Term). Adjustments pursuant to this subsection (B) shall not constitute an increased tax or change in methodology for purposes of Article XIII C of the California Constitution.

C. Operations which engage in commercial cannabis activities specified in both subsection (A) and subsection (B) shall pay all applicable taxes for each such activity under both subsections.

Section 3.19.030 Operation of Tax.

A. Each person, upon or prior to commencing an operation in the City, shall notify the Finance Director of the commencement of the operation.

B. Failure to pay the tax shall be subject to penalties, interest charges, and determinations of tax due as set forth in this chapter, or as the City Council may establish, and the City may use any or all other enforcement remedies provided for in this Code, or pursuant to state law.

C. The City Council, by resolution or ordinance, may impose the tax at a lower rate than the maximum authorized by this chapter, and may establish such tax exemptions, exceptions incentives, or other reductions, and may charge such penalties and interest or make determinations of tax due for failure to pay the tax in a timely manner, as allowed by this Code or California law. No action by the Council under this section shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and thereby restoring the maximum tax rates specified in this chapter. No adjustment shall decrease any maximum tax rate authorized to be imposed by this chapter. The tax shall automatically be set at the maximum rates specified in this chapter upon enactment hereof and shall continue at said rate, unless and until a different rate is set or imposed by the City Council.

D. The City Council, by Ordinance or resolution, may exempt a commercial cannabis operation from the tax for a period of time by a development agreement approved pursuant to Government Code Sections 65864- 65869.5 or similar provision.

E. Payment or collection of the tax shall not be construed as authorizing the conduct or continuance of any illegal business under federal, state or local law, or of a legal business in an illegal manner. Nothing in this chapter shall be construed to authorize an operation.

F. The tax provided for in this chapter is not a sales or use tax and shall not be calculated or assessed as such. The tax shall not be separately identified or otherwise specifically assessed or charged to any individual member, consumer or customer; rather, the tax is imposed upon the operation.

G. The Finance Director shall promulgate rules, regulations, and procedures to implement and

administer this chapter to ensure the efficient and timely collection of the tax, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the tax as provided.

Section 3.19.040 Returns and Remittances.

The tax shall be due and payable as follows:

A. Each operation owing tax, within forty-five (45) days of the last business day of each Term (as established by the Finance Director), shall prepare and submit a tax return to the Finance Director pertaining to the preceding Term (i.e. the Term concluding 45 days prior, which is the subject of the tax return). The tax return shall include all information necessary to determine the Proceeds (for the commercial cannabis proceeds tax), the total space utilized as cultivation area (specifically identifying the location of all such areas) and total square footage of the operation (for the commercial cannabis proceeds tax), and the amount of tax due for the preceding Term. At the time the tax return is filed, the full amount of the tax owed for the preceding Term shall be remitted to the City. Where the Term is set on an annual basis, the Finance Director may require prorated payments or estimated tax payments on more frequent intervals during the Term, as such intervals may be established by the Finance Director and instructions provided to an operation.

B. All tax returns shall be completed on forms provided by the Finance Director.

C. Tax returns and payments for all outstanding tax owed to the City are immediately due to the Finance Director upon cessation of an operation for any reason and upon the sale of the operation.

D. Whenever any payment, statement, report, request or other communication received by the Finance Director is received after the time prescribed by this section for the receipt thereof, but is in an envelope bearing a postmark showing that it was mailed on or prior to the date prescribed in this section for the receipt thereof, or whenever the Finance Director is furnished substantial proof that the payment, statement, report, request, or other communication was in fact deposited in the United States mail on or prior to the date prescribed for receipt thereof, the Finance Director may regard such payment, statement, report, request, or other communication as having been timely received. If the due day falls on a date that City Hall is closed, or on a Saturday, Sunday, or federal holiday, the due date shall be the next business day on which the City Hall is open to the following the due date.

E. Unless otherwise specified in other provisions of this chapter, the tax shall be deemed delinquent if not paid on or before the due date specified by this section.

F. The Finance Director is not required to send a delinquency or other notice or bill to any person or operation subject to payment of tax, and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

Section 3.19.050 Failure to Pay Tax.

Any operation which fails or refuses to pay any tax on or before the due date shall incur and pay penalties and interest, in addition to the principal amount of unpaid tax, as follows:

A. A penalty, not to exceed twenty-five percent (25%) of the amount of the unpaid tax, plus interest on the unpaid tax calculated from the due date of the tax at a rate of not more than twelve percent (12%) per year or one percent (1%) per month. Such penalties and interest may be set or imposed at a lower rate by resolution of the City Council, and such action shall not affect the authority of the City Council to thereafter adjust or restore the rates up to the maximum rates set forth herein without voter approval. Penalties and interest shall automatically be set at the maximum rates allowed herein unless and until otherwise set or imposed by the City Council.

B. Whenever a check is submitted in payment of tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the unpaid tax amount plus penalties and interest as provided for in this section plus any amount allowed under state law.

C. The tax obligation shall commence on, and shall be calculated from, the operative date of this chapter, for operations existing as of the operative date of this chapter, or the date of commencement of the operation, for operations commencing after the operative date of this chapter.

D. The Finance Director may waive all or some of the penalties and/or interest imposed upon any operation if:

    1. The operation provides evidence satisfactory to the Finance Director that failure to pay timely was due to circumstances beyond the control of the operation and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the operation paid the delinquent tax and accrued interest owed the City prior to applying to the Finance Director for a waiver.

    2. The waiver provisions specified in this subsection shall be granted no more than once during any twenty-four (24) month period unless some other time is permitted by the City Council.

Section 3.19.060 Refunds.

A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in this section.

B. No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of an operation.

C. Any operation entitled to a refund of tax paid pursuant to this chapter may elect in writing to have such refund applied as a credit against such operation's tax for the next term.

D. Whenever the amount of any tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City under this chapter, such amount may be refunded to the claimant who paid the tax, provided that a written claim for refund is filed with the City Clerk and Finance Director. Refund claims must be filed as set forth above within one year of the subject tax payment pursuant to Government Code Section 911.2. Each person or operation requesting a refund or making a claim shall file the claim as provided herein. The submission of a written claim, which shall be acted upon by the City Council, shall be a prerequisite to suit thereon. (See Section 935 of the California Government Code). The City Council shall act upon the refund claim within the time period set forth in Government Code Section 912.4. If the City Council fails or refuses to act on a refund claim within the time prescribed by Government Section 912.4, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in Government Code Section 912.4. The Finance Director or City Clerk or other officer charged with such duty shall give notice of the action in a form that substantially complies with that set forth in Government Code Section 913. To the extent allowed by law, nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim as provided by this section.

E. The Finance Director shall have the right and authority to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant therefor refuses to allow such examination of claimant's books and business records after request by the Finance Director to do so.

F. In the event that the tax was erroneously paid and the error is attributable to the City, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall deduct and retain the amount set forth in this chapter from the amount to be refunded to cover expenses.

G. The Finance Director shall initiate a refund of any tax which has been overpaid or erroneously collected whenever the overpayment or erroneous collection is uncovered by a City audit of tax receipts. In the event that the tax was erroneously paid and the error is attributable to the City, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall retain the amount set forth in this chapter from the amount to be refunded to cover expenses.

Section 3.19.070 Enforcement.

A. It shall be the duty of the Finance Director to enforce this chapter.

B. For purposes of administration and enforcement of this chapter generally, the Finance Director, with the assistance of the City Attorney, may from time to time promulgate administrative rules and regulations.

C. The Finance Director shall have the power to audit and examine all books and records of any person or operation relating to the Proceeds of an operation or the square footage or space utilized as cultivation area of the operation, including state and federal income tax returns, California sales tax returns, logs, receipts, bank records, or other documentation, for the purpose of ascertaining the amount of tax, if any, required to be paid pursuant to this chapter and/or verifying any statement or representation made by any person or operation in a tax return or otherwise pursuant to this chapter. If such person or operation, after written demand by the Finance Director, refuses to make available for audit, examination or verification any book or record specified in this subsection, the Finance Director may, after full consideration of all information within the Finance Director's knowledge concerning the operation and activities of the person or operation so refusing, make a determination of tax due in the manner provided in Section 3.19.080.

D. The Finance Director shall have the power to enter upon the premises of an operation, upon reasonable notice to the operation, for the purpose of determining space utilized as cultivation area, to review items requested in subsection (C) or as otherwise needed for enforcement of this chapter.

E. The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt any person or operation from any civil action for recovery of any unpaid taxes, penalties or interest owed by such person or operation. No civil action shall prevent a criminal prosecution for violation of any provision of this chapter or state law requiring the payment of all taxes.

F. Any person or operation violating any provision of this chapter or any regulation or rule passed in accordance herewith, or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact, either concerning the operation and administration of this chapter, or in procuring permits from the City as provided for in this chapter, shall be deemed guilty of a misdemeanor. Notwithstanding the foregoing, the city prosecutor, in his or her discretion, may elect to charge and prosecute any violation as an infraction in lieu of a misdemeanor or not to charge and prosecute at all.

Section 3.19.080 Debts; Deficiencies; Determinations; Hearings.

A. The amount of any tax, penalties, and interest pursuant to this chapter shall be deemed a debt to the City, and any person or operation that fails to make payment to the City of any required tax, penalty or interest pursuant to this chapter shall be liable in an action in the name of the City in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such operation.

B. If the Finance Director is not satisfied that any statement filed pursuant to this chapter is

correct, or that the amount of tax is correctly computed, the Finance Director may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When an operation ceases, a deficiency determination may be made at any time within three years thereafter as to any liability arising from such operation, whether or not a deficiency determination is issued prior to the date the tax would otherwise be due.

C. Under any of the following circumstances, the Finance Director may make and give notice of a determination of the amount of tax owed pursuant to this chapter:

1. If the operation has not filed any statement or return required under this chapter.

2. If the operation has not paid any tax due under this chapter.

3. If the operation has not, after demand by the Finance Director, filed a corrected statement or return, or furnished to the Finance Director adequate substantiation of the information contained in a statement or return already filed, or paid any additional amount of tax due.

4. If the Finance Director determines that the nonpayment of any tax due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties and interest otherwise provided for in this chapter.

5. The notice of determination shall separately set forth the amount of any tax known by the Finance Director to be due, or estimated to be due by the Finance Director, after consideration of all information within the Finance Director's knowledge concerning the business and activities of the operation assessed, under each applicable section of this chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of determination.

6. The notice of determination shall be served upon the operation either by personal service upon the operation's agent for service of process or other responsible person known to the City or designated by the operation, or by depositing the notice in the United States mail, postage prepaid, addressed to the operation at the address appearing on the face of the business tax certificate issued under this Code or to such other address as the operation shall register with the Finance Director for the purpose of receiving notices provided under this chapter; or, should the operation have no business tax certificate issued and no address registered with the Finance Director for such purpose, then to such operation's last known address. For purposes of this section, service by mail is complete at the time of deposit in the mail.

D. Within ten (10) days after the date of service of a determination of the amount of tax owed

by an operation or any other determination by the Finance Director as specified in subsection (D)(5) of this section, the operation may apply in writing to the Finance Director for a hearing on the determination. If application for a hearing before the City is not timely made, the tax assessed by the Finance Director shall become final. The procedures for conducting such a hearing shall be as required by law and as follows:

1. The hearing shall be conducted by an independent hearing officer appointed by the Finance Director. The compensation of the hearing officer shall not depend on any particular outcome of the appeal. The hearing officer shall have full authority and duty to preside over the hearing in the manner set forth herein and as required by law.

2. Within thirty (30) days of the receipt of any application for a hearing pursuant to this section, the Finance Director shall cause the matter to be set for hearing before the independent hearing officer, unless a later date is agreed to by the Finance Director and the applicant.

3. Notice of the hearing shall be given by the Finance Director to the applicant not later than five (5) days prior to the date of the hearing. For good cause, the hearing officer may continue the administrative hearing from time to time. At the hearing, the applicant may appear and offer evidence to show why the determination as made by the Finance Director should not be confirmed and fixed as the tax due, or to show why such other determination of the Finance Director pursuant to subsection (D)(5) should not be confirmed. In conducting the hearing, the hearing officer shall not be limited by the technical rules of evidence. Failure of the applicant to appear shall not affect the validity of the proceedings or order issued thereon.

4. Upon conclusion of the hearing, or no later than ten (10) days after the conclusion of the hearing, the hearing officer shall determine and reassess the proper tax to be charged or make such other determination as provided in subsection (D)(5), and shall give written notice to the applicant in the manner prescribed in this chapter for giving notice of determination, and the hearing officer shall submit its decision and the record to the City Clerk. The decision of the hearing officer shall be final.

5. The provisions of this section apply to any decision, deficiency determination, assessment, or other decision or ruling of the Finance Director, except decisions made pursuant to Section 3.19.060. Any person or operation aggrieved by any decision subject to this section shall comply with the hearing procedure of this section. Pursuant to Government Code Section 935(b), compliance with this section shall be a prerequisite to a suit thereon. To the extent allowed by law, nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

Section 3.19.090 Unrestricted Use of Revenues.

Revenues from the cannabis tax shall be expended by the City for unrestricted general revenue purposes.

Section 3.19.100. City Council Authority to Amend.

The City Council has the right and authority to amend this chapter, to further its purposes and intent (including but not limited to amendment for more efficient administration as determined by the City Council), in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution, pursuant to Elections Code Section 9217.

Section 3.19.100. Oversight Committee.

The city council shall establish an oversight committee comprised of city residents to assist the City through advisory review of the expenditures of revenues from the cannabis tax."

SECTION 3. EFFECTIVE DATE.

If a majority of the voters of the City of Arvin voting at the General Municipal Election of November 6, 2018 vote in favor of this Ordinance, then this Ordinance shall become a valid and binding ordinance of the City of Arvin, and shall be considered as adopted upon the date that the vote is declared by the City Council of the City of Arvin, and this Ordinance shall go into effect ten (10) days after that date, pursuant to Election Code section 9217.

SECTION 4. CITY COUNCIL AUTHORITY TO AMEND

Pursuant to Section 9217 of the California Elections Code, the City Council expressly reserves, retains, has, and is granted the right and authority to amend the provisions of this Ordinance to further the purposes and intent of the Ordinance (including but not limited to amendment for more efficient administration as determined by the City Council) in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

SECTION 5. SEVERABILITY.

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

SECTION 6. EXECUTION.

The Mayor of the City of Arvin is hereby authorized and ordered to attest to the adoption of the Ordinance by the voters of the City of Arvin by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Arvin, California voting on the ___th day of November, 2018.

_____
Jose Gurrola, Mayor
City of Arvin

Attest:

_____
Cecilia Vela, CMC, City Clerk
City of Arvin

01159.0007/494464.1

Exhibit B to Resolution No. 2018-54

AN ORDINANCE OF THE PEOPLE OF THE CITY OF ARVIN APPROVING ADDING CHAPTER 3.12 (UTILITY USERS TAX) OF TITLE 3 (REVENUE AND FINANCE) TO THE ARVIN MUNICIPAL CODE TO ENACT A UTILITY USERS TAX ON TELECOMMUNICATIONS, VIDEO, ELECTRICITY AND GAS

[See Attached]

ORDINANCE NO. _____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF ARVIN APPROVING ADDING CHAPTER 3.12 (UTILITY USERS TAX) OF TITLE 3 (REVENUE AND FINANCE) TO THE ARVIN MUNICIPAL CODE TO ENACT A UTILITY USERS TAX ON TELECOMMUNICATIONS, VIDEO, ELECTRICITY AND GAS

WHEREAS, the City of Arvin (the "City") has suffered a decline in amounts available for general fund expenditures and a depletion of its reserve funds due to, among other causes, increased expenditures, the 2008 recession and beyond, substantially reduced economic activity in the central valley during the last ten (10) years, and reductions in transfers from other city funds; and

WHEREAS, the City projects that there will be a one million dollar shortfall in general fund revenues for fiscal year 2018-19 and shortfalls in general fund revenues in the next several fiscal years; and

WHEREAS, the City Council of the City (the "City Council") has determined that, without an additional source of revenues in fiscal year 2018-2019 and beyond, it will be necessary for the City to make substantial reductions in the City's municipal services and projects; and

WHEREAS, pursuant to subdivision (b) of Section 2 of Article XIIIC of the California Constitution and Section 53720 *et. seq.* of the California Government Code (the "Government Code"), the City Council is authorized to impose a general tax upon submission of such general tax to the voters of the City and approval by a majority of the voters voting on the issue; and

WHEREAS, subdivision (b) of Section 2 of Article XIIIC of the California Constitution provides that the election required by such subdivision be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body of the local government; and

WHEREAS, the City Council desires to submit to the voters of the City proposition to levy a general utility users tax on certain utilities in the City as described herein (the "Utility Users Tax"), the proceeds of which Utility Users Tax will be deposited in the City's general fund for general government purposes; and

WHEREAS, the City has determined to adopt this Ordinance and submit it to the people of the city of Arvin.

NOW THEREFORE, THE PEOPLE OF THE CITY OF ARVIN DO ORDAIN AS FOLLOWS:

SECTION 1. Chapter 3.14 (Utility Users Tax) of Title 3 (Revenue and Finance) is hereby added to the Municipal Code to read as follows:

"Chapter 3.14.

UTILITY USERS TAX

3.14.010.	**Title.**
3.14.020.	**Authority.**
3.14.030.	**Definitions.**
3.14.040.	**Exemptions.**
3.14.050.	**Taxes—Effective date.**
3.14.060.	**Communication users tax: Telecommunication services and video services.**
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3.14.080.	**Gas users tax.**
3.14.090.	**Collection of tax from service users receiving direct purchase of gas or electricity.**
3.14.100.	**Effect of Commingling Taxable Items with Nontaxable Items.**
3.14.110.	**Substantial Nexus/Minimum Contacts.**
3.14.120.	**Collection of Tax—Duty—Procedures.**
3.14.130.	**Collection Penalties; Service Suppliers or Self-Collectors.**
3.14.140.	**Additional Powers and Duties of Tax Administrator.**
3.14.150.	**Deficiency Determination and Assessment; Tax Application Errors.**
3.14.160.	**Administrative Remedy; Non-paying Service Users.**
3.14.170.	**Actions to Collect.**
3.14.180.	**Appeals.**
3.14.190.	**Records—Retention period—Access.**
3.14.200.	**Refunds.**
3.14.210.	**No Injunction/Writ of Mandate.**
3.14.220.	**Remedies Cumulative.**
3.14.230.	**Notice of Changes to Ordinance.**
3.14.240.	**Future Amendment to Cited Statute.**
3.14.250.	**No Increase in Tax Percentage or Change in Methodology Without Voter Approval; Amendment or Repeal.**
3.14.260	**Unrestricted Use of Revenues.**
3.14.270	**Rates.**

3.14.010. **Title.** The Title of this chapter is the Utility Users Tax.

3.14.020. **Authority.** This chapter is adopted pursuant to Government Code Section 37100.5, Article XIIIC of the California Constitution, and applicable law.

3.14.030. **Definitions.**

A. Except where the context otherwise requires, the definitions contained in this section shall govern the construction of this chapter. The word "may" is always directory and discretionary and not mandatory; the word "shall" is always mandatory and not directory or discretionary.

B. The terms herein shall have the following meanings:

1. "Ancillary telecommunications 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:

   a. "Conference bridging service," which means an ancillary service that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

   b. "Detailed telecommunications billing service," which means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

   c. "Directory assistance," which means an ancillary service of providing telephone number information, and/or address information.

   d. "Vertical service," which means an ancillary service that is offered in connection with one (1) or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

   e. "Voice mail service," which 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.

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

3. "City" means the city of Arvin, California.

4. "Cogenerator" means any corporation or person employing cogeneration (as defined in Section 218.5 of the California Public Utilities Code) for producing power for the generation of electricity for self use or sale to others from a qualified cogeneration facility (as defined in the federal Public Utility Regulatory Policies Act of 1978 and the regulations thereunder).

5. "Communications services" means telecommunications services and video services.

6. "Electrical corporation" and "gas corporation" shall have the same meanings as defined in §§ 218 and 222, respectively, of the California Public Utilities Code, as the same may be amended from time to time. Electrical corporation includes the city's current electricity supplier, Pacific

Gas & Electric. Gas corporation includes the city's current gas supplier, Southern California Gas Company.

7. "Gas" means natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.

8. "Mobile telecommunication service" shall mean commercial mobile radio service as defined in defined in §20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999, and/or has the meaning and usage assigned to commercial mobile radio service as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. §§116-124) and the regulations promulgated thereunder, and/or has the meaning defined in Public Utilities Code §216.8, which includes mobile data service, mobile satellite telephone service and mobile telephony service, as defined in Public Utilities Code §224.2, and/or all as may be amended from time to time.

9. "Month" means a calendar month or such other period as designated by the Tax Administrator (e.g. the 15 day of the month to the 15th day of the next month).

10. "Non Utility Supplier" means (a) an electricity service supplier, other than an electrical corporation franchised to serve the city or providing service to all or a significant portion of the city, which generates electrical energy for its own use or for sale to others, including those using cogeneration or fuel cell technologies and including but not limited to any publicly owned electric utility, investor owned utility, cogenerator, municipal utility district, federal power marketing authority, electric rural cooperative or other supplier of electricity; (b) an electric service provider (ESP), electricity broker, marketer, aggregator, pool operator or other electrical supplier other than a service supplier franchised to serve the city or providing service to all or a significant portion of the city, which sells and supplies electricity or supplemental services to electricity users within the city; or (c) a gas service supplier, aggregator, marketer or broker other than a gas corporation franchised to serve the city or providing service to all or a significant portion of the city, that sells or supplies gas to other users within the city. The city may be a Non-Utility Supplier.

11. "Person," means, without limitation, any natural person; all domestic, nonprofit and foreign corporation(s); firm; entity; association; syndicate; joint venture; joint stock company; club; trust, common law trust or other trust; estate; partnership of any kind; limited liability company; cooperative; society; and any officer, agent, receiver, trustee, guardian or other appointed representative thereof; joint power agency, municipal district or municipal corporation, including the city.

12. "Place of primary use" means the street address representative of where the customer's use of the telecommunication service or video service primarily occurs, which must be the residential street address or the primary business street address of the customer.

13. "Post-paid telecommunication service" shall mean 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.

14. "Prepaid telecommunication service" means the right to access telecommunication services, which must be paid for in advance. Prepaid telecommunication service may enable the origination of communications using an access number or authorization code, whether manually or electronically dialed. Prepaid telecommunication service shall include but not be limited to "prepaid mobile telephony services" as defined in Revenue and Taxation Code §42004(k).

15. "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).

16. "Service address" means the residential street address or the business street address of the service user. For a telecommunication service user or video service user, "service address" means either:

    a. The location of the service user's telecommunication or video equipment from which the communication originates or terminates, regardless of where the communication is billed or paid; or,

    b. If the location in paragraph (i) of this definition is unknown (e.g. VoIP service), the service address shall mean the location of the service user's place of primary use.

    c. For prepaid telecommunication service, "service address" means the point of sale of the services where the point of sale is within the city, or if unknown, the known address of the service user (e.g., billing address or location associated with the service number), which locations shall be presumed to be the place of primary use.

    d. Such other place as may be required under applicable law.

17. "Service supplier" means any person or entity including the city, who provides or sells communication services, telecommunication services, video services, electric, or gas service or other services

provided for hereunder to a user of such services within the city. The term shall include any person required to collect, self impose or self-collect under this chapter, and remit a tax as imposed by this chapter, including its billing agent in the case of any such entity or person.

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

19. "State" means State of California.

20. "Tax administrator" means the director of finance or his or her designee or such other officer designated as the Tax Administrator by the City Council of the city.

21. "Telecommunication service(s)" 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 but is not limited to 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 "telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such 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 are not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; intrastate, interstate and international telecommunication services; all forms of VoIP service; mobile telecommunication service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; text messaging, local number portability, value added non voice data services, 800 service (or any other toll-free numbers designated by the Federal Communications Commission); and 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to prerecorded or live service). The term "telecommunication service" also includes, but is not limited to, charges for: connection, reconnection, termination or early termination charges; movement or change of telecommunication services; late payment fees, central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges;

regulatory or administrative fees, charges or surcharges, including charges or surcharges for programs imposed by state or federal law (whether such charges or surcharges are imposed on the service supplier or the customer); local number portability charges; and text and instant messaging. "Telecommunication services" shall not include digital downloads that are not "ancillary telecommunication services" such as music, ringtones, games, and similar digital products.

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

23. "Video programming" programming provided by or generally considered comparable to programming provided by, a television broadcast station, whatever the technology, and 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, interactive services, 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.

24. "Video services" means all video programming, any and all services related to the supplying, providing, recording delivering and use and enjoyment of video programming (including origination programming and programming using Internet Protocol e.g. IP-TV and IP Video), and video communications (including two-way communications), regardless of the content of the video programming or communications, and shall include, without limitation, the leasing of channel access (e.g., home shopping) and all services which ancillary, necessary, or common to the use or enjoyment of the video programming or communications and any service that is 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. Video Services are provided by a video service supplier regardless of technology used to deliver, store or provide such services and regardless of the manner or basis on which such services are billed and includes ancillary video services, data services, telecommunication services or interactive communication services that are functionally integrated with video services. Charges for video services that are taxable under this chapter also include, but are not limited to, charges for the following:

a. Franchise fees and access fees (PEG), whether designated on the customer's bill or not;

b. Initial installation of equipment necessary for provision and receipt of video services;

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

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

e. Service calls, service protection plans, name changes, changes of service, and special services (e.g., no promotional mail); and

f. The leasing of channel access.

25. "Video service supplier" shall mean any person, company, or service which provides video services, including one or more channels of video programming or video communications, any communications that are necessary or common to the use and enjoyment of video programming or video communications (including the leasing of channel access to provide such video programming or communications) to or from an address in the city, 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. Video service supplier includes, but is not limited to, multichannel video programming distributors as defined in 47 U.S.C. §522(13), open video system suppliers (OVS), suppliers of cable television, master antenna television, satellite master antenna television, multichannel multipoint distribution services, direct broadcast satellite (to the extent allowed by federal law), and other suppliers of video programming or video communications (including two-way communications) now or in the future, whatever their technology. Video service suppliers include Arvin's current cable and satellite television service suppliers: Spectrum cable, Dish TV and AT&T Direct TV. A video service supplier may also be a service supplier that provides telecommunications services.

26. "800 Service" means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

27. "900 Service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.

3.14.040. Exemptions.

A. The taxes imposed by this chapter shall not apply to:

1. Any person or service if imposition of such tax upon that person or service would be in violation of a Federal or State statute or the Constitution of the State of California, or the Constitution of the United States; or

2. Any person, utility or particular charges exempt from the tax under any applicable federal or state law or

3. The city, and the State of California and its subdivisions.

B. Any service user that is exempt from the tax imposed by this chapter pursuant to subsection (a) of this Section 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 for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all 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 service suppliers so that the Tax Administrator can properly notify the new service supplier of the service user's tax exempt status. A service user that fails to apply and obtain an exemption pursuant to this Section 3.14.040 shall not be entitled to a refund of a users tax collected and remitted to the Tax Administrator from such service user as a result of such noncompliance.

C. The City Council may, by resolution, establish one or more classes of persons or one or more classes of utility service suppliers or other persons 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. The Tax Administrator may establish forms and procedures for claiming such exemptions. Any party not completing the process and form established by the Tax Administrator may not be allowed to claim the exemption. Following the period of exemption or exception, the tax may be levied again on such Persons or utilities. A service user that fails to apply and obtain an exemption pursuant to this Section 3.14.040 shall not be entitled to a refund of a users tax collected and remitted to the Tax Administrator from such service user as a result of such noncompliance.

D. The decision of the Tax Administrator may be appealed pursuant to Section 3.14.180 (Appeals) of this chapter. Filing an application with the Tax Administrator and appeal to the City Manager, or designee, pursuant to Section 3.14.180 is a prerequisite to a suit thereon.

3.14.050. Taxes—Effective date. The taxes initially imposed by this chapter shall become operative at the earliest date following adoption of the Ordinance by the voters of the city of Arvin on November 6, 2018, and as provided pursuant to applicable law.

3.14.060. Communication users tax: Telecommunication services and video services.

A. There is hereby imposed a tax upon every person using communication services in the city. The tax imposed by this section shall be at the rate described in Section 3.14.270 for the charges made for such services, and shall be collected from the service user by the telecommunication services supplier, video services supplier or its billing agent, or as otherwise provided by law. To the extent allowed by federal and state law, the tax on communication services is intended to, and does, apply to all charges within the city's tax jurisdiction, such as charges billed to a telephone account having a situs in the city as permitted by the Mobile Telecommunications Sourcing Act of 2000, *4 U.S.C. §§116 et seq.* 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 section. Subject to subsection (g) hereof, there is also a rebuttable presumption that prepaid telecommunication services sold within the city are primarily used, in whole or in part, within the city and are therefore subject to taxation under this Section. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the communication services. Communication services includes all communication service for which there is a charge regardless of means of technology to provide such 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 §§116 et. seq.*)

C. The Tax Administrator may issue and disseminate to communication service suppliers, including video services supplier and telecommunication service suppliers or others which are subject to the tax collection requirements of this section, sourcing rules for the taxation of other communication services, including but not limited to post-paid telecommunication services, prepaid telecommunication services, VoIP, and private telecommunication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation. In addition, the tax administrator may, from time to time, issue and disseminate to telecommunication service suppliers or video service suppliers, which are subject to the tax collection requirements of this chapter, an administrative ruling identifying those communication services, or charges for such services, that are subject and/or not subject to taxation under this chapter. These administrative rulings shall implement the intent of the City Council that the communications services tax be imposed without regard to the type of technology that exists on the

effective date of this section or which may be developed in the future. The administrative rules shall not impose a new tax, revise an existing tax methodology as stated in this section, or increase an existing tax, except as allowed by California Government Code sections 53750(h)(2)(A).

D. 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.

E. The tax on telecommunication services imposed by this section shall be collected from the service user by the service supplier, its billing agent or reseller of such services. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the last day of the following month.

F. The tax on video services 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 bulk video services (e.g. apartment owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of video service. The amount collected in one month shall be remitted to the tax administrator on or before the last day of the following month.

G. Notwithstanding anything herein to the contrary, collection of the utility users tax on prepaid mobile telephony services shall be in accordance with the Prepaid Mobile Telephony Services Surcharge Collection Act (constituting Revenue & Taxation Code §§42001 *et. seq.*) and the Local Prepaid Mobile Telephony Services Collection Act (constituting Revenue & Taxation Code §§ 42100 *et. seq*) for the duration of said act, as amended and as applicable. The city may enter into any agreements required by said acts.

3.14.070. Electricity users tax.

A. There is hereby imposed a tax upon every person using electricity or electrical energy in the city. The tax imposed by this section shall be at the rate at the rate described in Section 3.14.270 hereof for the charges made for such electricity or energy, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service users, which are provided by a service supplier or non utility supplier to a service user. The tax applicable to electrical energy provided by a nonutility supplier to the extent permissible by law shall be determined by applying the tax rate to the equivalent charges the service user would have incurred if the energy used had been provided by the electrical service supplier franchised by or providing service in the city. Rate schedules for this purpose shall be available from the

city. Nonutility suppliers shall install and maintain an appropriate utility-type metering system which will enable compliance with this section, or may arrange another methodology for applying the tax acceptable to the tax administrator.

B. The tax imposed in this section shall be collected from the service user by any energy service supplier or nonutility supplier or its billing agent. The tax on energy provided by self-production or by a non utility supplier or electric corporation not under the jurisdiction of this section shall be collected and remitted in the manner set forth in Section 3.14.090. The amount of tax collected in one month shall be remitted to the tax administrator, on or before the last day of the following month; or, at the option of the person required to collect or remit the tax, an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the customers of the service supplier, shall be remitted; provided, however that appropriate adjustments are made to account for actual taxes paid in future periods, and as may be requested by the Tax Administrator.

C. As used in this section, the term "charges" shall apply to all services, components and items that are (i) necessary or common to the receipt, use and enjoyment of electric service, or (ii) currently, 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 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, including but not limited to:

1. Energy charges;

2. Distribution or transmission charges;

3. Metering charges;

4. Stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar minimum charges for services;

5. Customer charges, 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), trust transfer, amounts (bond financing charges), franchise fees, franchise surcharges, which are necessary or common to the receipt, use and enjoyment of electric service;

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

7. 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. As used in this section, the term "using electricity" shall not include the mere receiving of such electricity by an electric public utility, or governmental agency at a point within the city for resale.

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

3.14.080. Gas users tax

A. There is imposed a tax upon every person using gas in the city which is transported through a pipeline distribution system or by mobile transport. The tax imposed by this section shall be at the rate described in Section 3.14.270 hereof for the charges made for such gas and shall be paid by the person using the gas. The tax applicable to gas provided by nonutility suppliers shall be determined by applying the tax rate to the equivalent charges the service user would have incurred if the gas or gas transportation had been provided by the gas corporation franchised by or providing service within the city.

B. As used in this section, the term "charges" shall apply to all services, components and items for gas service that are (1) necessary or common to the receipt, use and enjoyment of gas service, or (2) currently, or historically have been included in a single or bundled rate for gas service by a local distribution company or gas service supplier to a class of retail customers. The term charges shall include but is not limited to: (1) the charge for gas which is delivered through a gas pipeline distribution system or by mobile transport; (2) gas transportation, delivery and storage charges; (3) capacity charges, demand charges, service charges, customer charges, minimum charges, annual and monthly charges, late charges, and any other charges authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission or other regulator; and (4) 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.

C. The tax administrator may, from time to time, 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 may, thereafter, issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use and enjoyment of gas service; or, ii) currently, 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.

D. Exclusions: There shall be excluded from the tax imposed in this section:

1. Charges made for gas which is to be resold and delivered through a gas pipeline distribution system or mobile transport;

2. Charges made for natural gas used in the propulsion of a motor vehicle, as that phrase is defined in the Vehicle Code of the state of California; and

3. Charges made for gas to be used in the generation of electricity by an electrical corporation;

4. Charges made by a gas corporation for gas used and consumed in the conduct of the business of the gas corporation.

E. Tax imposed in this section shall be collected from the service user by the energy service supplier and nonutility supplier. An energy service supplier providing transportation services for delivery of gas through a pipeline distribution system shall collect the tax from the service user based upon the cost of transporting the gas. The tax on energy provided by self-production or by a nonutility supplier not under the jurisdiction under this chapter shall be collected and remitted in the similar manner set forth in Section 3.14.090. The amount of tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month; or, at the option of the person required to collect or remit the tax, an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the customers of the service supplier, shall be remitted.

3.14.090 Collection of tax from service users receiving direct purchase of gas or electricity.

A. Any service user subject to the tax imposed by Sections 3.14.070 through 3.14.080, who produces electricity or gas for self-use or who receives electricity or gas directly from a nonutility supplier not under the jurisdiction of this chapter or otherwise not having the full tax due on the use of gas or electricity in the city directly billed and collected by the service supplier, shall report said fact to the tax administrator and remit the tax due directly to the city within thirty days of such use.

B. The tax administrator may require said service user to identify its nonutility supplier and provide, subject to audit, filed tax returns or other satisfactory evidence documenting the quantity or electricity or gas used and the price thereof.

3.14.100. Effect of Commingling Taxable Items with Nontaxable Items.

If any non-taxable service 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 is able to establish reasonable values for the portions of the combined charge that are nontaxable and taxable. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, the service supplier shall assign reasonable values for the taxable and non-taxable services. In assigning reasonable values for taxable and non-taxable services under this Section 3.14.100, the service supplier may use reasonable and verifiable standards such as: (i) the books and records kept in the regular course of business and in accordance with generally accepted accounting principles (not created and maintained for tax purposes); (ii) the market value of such taxable and non-taxable services when offered on a stand-alone basis by the supplier or its competitors; or (iii) other similar evidence of value. The service supplier has the burden of proving to the satisfaction of the Tax Administrator the reasonable valuation and proper apportionment of taxable and non-taxable charges under this Section 3.14.100.

3.14.110. 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, including *South Dakota v. Wayfair, Inc.* (Decided June 20, 2018). Any communication service (including VoIP) used by a person with a service address in the city 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.

3.14.120. Collection of Tax—Duty--Procedures.

A. Collection by Service Suppliers. The duty of service suppliers to collect and remit the taxes imposed by the provisions of this chapter shall be performed as follows:

1. The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax that 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 3.14.160 (Administrative Remedy; Non Paying Service Users) shall apply.

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

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

3.14.130. Collection Penalties; Service Suppliers or Self-Collectors.

A. Taxes collected from a service user or self collected pursuant to Section 3.14.090, are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this Section shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the city's account on the following business day.

B. If the person required to collect and/or remit the utility users tax fails to collect the tax (by failing to properly assess the tax on one (1) or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of up to fifteen (15%) percent of the total tax that is delinquent or deficient in the remittance and interest at the rate of up to one (1.00%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid. The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes pursuant to the provisions of this chapter for fraud or gross negligence in reporting or remitting at the rate of up to fifteen (15%) percent of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

C. 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.

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

3.14.140. 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 consistent with provisions of this chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. The administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this chapter, or increase an existing tax, except as allowed by California Government Code §53750. A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office. To the extent that the Tax Administrator determines that the tax imposed under this chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of Government Code §53750 or otherwise. The Tax Administrator is not authorized to amend the city's methodology for purposes of Government Code §53750 and the city does not waive or abrogate its ability to impose the utility users tax in full as a result of promulgating administrative rulings or entering into agreements.

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

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 or 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 3.14.150 (Deficiency Determination and Assessment; Tax Application Errors) for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If

said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to be 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 one (1%) percent 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 approval of the City Council, may compromise such a claim.

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 the uniqueness of the product or service, industry practice or other precedence, or whether the person offers to voluntarily disclose its tax liability. The Tax Administrator may also participate with other utility users tax public agencies in conducting coordinated compliance reviews with the goal of achieving administrative efficiency and uniform tax application determinations, where possible. To encourage voluntary full disclosure and on-going cooperation on tax collection and remittance, the Tax Administrator, and its agents, may enter into agreements with the tax-collecting service suppliers and grant prospective only effect on any changes regarding the taxation of services or charges that were previously deemed by the service provider, in good faith and without gross negligence, to be non-taxable. In determining whether the non-collection was in good faith and without gross negligence, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, and whether the disclosure was voluntarily made by the service provider or its agent.

3.14.150. Deficiency Determination and Assessment; Tax Application Errors.

A. The Tax Administrator may make a deficiency determination if he or she determines that any person required to pay or collect taxes pursuant to the provisions of this chapter has failed to pay, collect, and/or remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3.14.150 if, in the opinion of the Tax

Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. The Tax Administrator shall mail a notice of such deficiency determination to the person 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 up to one percent (1%) 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.

C. 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. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty (30) 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 3.14.180 (Appeals). Filing an application with the Tax Administrator and appeal to the City Manager, or designee, pursuant to Section 3.14.180 (Appeals) 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 up to fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of up to one percent (1.00%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the city seeking payment of a tax assessed under this chapter shall commence from the date of delinquency as provided in this subsection (e).

F. All notices under this chapter 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.

3.14.160. Administrative Remedy; Non-paying Service Users.

A. Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the city, he or she may relieve such person of the obligation to collect the taxes due under this Section 3.14.160 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 Section 3.14.160. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3.14.160 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of up to fifteen (15%) percent of the total tax that is owed, and shall pay interest at the rate of up to one (1%) percent per month percent 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 nonpaying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.

D. If the service user fails to remit the tax to the Tax Administrator within thirty (30) days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of fifteen (15%) percent of the amount of the total tax that is owed.

3.14.170. 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 attorney's fees.

3.14.180. Appeals.

A. The provisions of this section apply to any decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator (other than a decision relating to a refund pursuant to Section 3.14.200 (Refunds)). Any person aggrieved by any decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator (other than a decision relating to a refund pursuant to Section 3.14.200), shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. [See Government Code §935(b)]. To the extent allowed by law, 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, deficiency determination, assessment, or administrative ruling of the Tax Administrator (other than a decision relating to a refund pursuant to Section 3.14.200); 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 scheduled for hearing before an independent hearing officer selected by the City Manager, or designee, 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 independent hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6.

E. 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.

3.14.190. Records—Retention period—Access.

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 Tax Administrator 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 nondisclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code §§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 §6354(e) of the California Public 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: (1) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the city; and, (2) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the city .

E. If any person subject to record-keeping under this chapter 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 ($500.00) dollars 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.

3.14.200. Refunds.

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

A. The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this 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 to the Tax Administrator within one (1) year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. To the extent allowed by law, nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim.

B. The submission of a written claim, which is acted upon by the City Council, shall be a prerequisite to a suit thereon. (See §935 of the California Government Code). The City Council shall act upon the refund claim within the time period set forth in Government Code §912.4. If the City Council fails or refuses to act on a refund claim within the time prescribed by Government §912.4, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in Government Code §912.4. The Tax Administrator shall give notice of the action in a form that substantially complies with that set forth in Government Code §913.

C. The Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this chapter, to claim credit for such overpayment against the amount of tax which is due the city upon a subsequent monthly return(s) to the Tax Administrator, provided that, prior to taking such credit by the service supplier: (1) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; (2) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, (3) in the case of an overpayment by a service user to the service supplier that has been remitted to the city, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

3.14.210. 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.

3.14.220. Remedies Cumulative.

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

Professions Code §§17070 *et seq.*), are cumulative. The use of one (1) 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.

3.14.230. Notice of Changes to Ordinance.

If a tax under this chapter is changed, the Tax Administrator shall follow the notice requirements of Public Utilities Code §799 if applicable.

3.14.240. 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. 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 an amendment or new enactment of a State or Federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter.

3.14.250. No Increase in Tax Percentage or Change in Methodology Without Voter Approval; Amendment or Repeal.

This chapter of the Arvin 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, provided however, the following actions shall not constitute an increase of the rate of a tax:

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

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

C. The establishment a class of persons, service supplier(s) or others that are exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Ordinance); and

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

3.14.260 Unrestricted Use of Revenues.

Revenues from the utility users tax shall be expended by the city for unrestricted general revenue purposes.

3.14.270 Rates.

A. The taxes imposed by this chapter on charges for the utilities provided for by this chapter shall be at the rate of seven percent (7%) for such charges with respect to each utility, commencing on January 1, 2019 or as soon thereafter as practical, unless a lesser rate is established by the city council by resolution or ordinance from time to time.

B. The City Council may establish such lesser rate (any rate lower than seven percent (7%) with respect to any Person or utility or all persons and utilities; provided, however that, at any time, the rate may be increased to the rate allowed by this chapter.

3.14.280 Oversight Committee.

The city council shall establish an oversight committee comprised of city residents to assist the City through advisory review of the expenditures of revenues from the utility users tax."

SECTION 2. TIMING OF COLLECTION BY SERVICE SUPPLIERS. Service providers shall begin to collect the tax imposed by this code as soon as feasible after the effective date of this code, but in no event later than permitted by §799 of the California Public Utilities Code.

SECTION 3. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, that this ordinance does not constitute a "project" with the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines §§15378(b)(4) and 15378(b)(5) in that it is a fiscal and governmental organizational or administrative activity that will not result in direct or indirect changes in the environment and does not involve any commitment to any specific project which may result in a potential significant impact on the environment

SECTION 4. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid, unlawful, or unconstitutional, such decision or decisions, and the decision not to enforce such provision, shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, subdivision, paragraph, sentence, clause and 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.

SECTION 5. CITY COUNCIL AUTHORITY TO AMEND. This is a City Council sponsored Ordinance which otherwise would only be subject to amendment by the voters of the City. However, pursuant to Section 9217 of the California Elections Code, the City Council expressly reserves the right and authority to amend the Ordinance to further the purposes and intent of the Ordinance (including but not limited to amendment for more efficient administration as determined by the City Council) in any manner that does not increase a tax rate, or otherwise

constitute a tax increase for which voter approval is required by Article XIIIC of the California Constitution.

SECTION 6. EFFECTIVE DATE. If a majority of the voters of the City voting at the General Municipal Election of November 6, 2018 vote in favor of this Ordinance, then this Ordinance shall become a valid and binding ordinance of the City, and shall be considered as adopted upon the date that the vote is declared by the City Council, and this Ordinance shall go into effect ten (10) days after that date, pursuant to Election Code §9217. In implementing this Ordinance, the City shall comply with Public Utilities Code §799.

SECTION 7. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City and to cause publication once in the official newspaper for publication of legal notices of the City of Arvin, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copes of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

SECTION 8. EXECUTION. The mayor is hereby authorized to attest to the adoption of this Ordinance by the voters of the City by signing where indicated below.

I HEREBY CERTIFY that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Arvin, California voting on the ___th day of November, 2018.

CITY OF ARVIN

_____

JOSE GURROLA, Mayor

ATTEST:

_____

CECILIA VELA, CMC, City Clerk