# ARTICLE X - REVENUE AND TAXATION

## CHAPTER 1 - LOCAL SALES AND USE TAX REGULATIONS AND LAW

Sec. 10000. Short Title. This chapter shall be known as the Uniform Local Sales and Use Tax Ordinance of the City of Grover City. (Ord. 1)

Sec. 10001. Purpose. The City Council of the City of Grover City hereby declares that this ordinance is adopted to achieve the following, among other, purposes and directs that the provisions hereof be interpreted in order to accomplish those purposes. (Ord. 1)

Sec. 10001.1. Same. To adopt a sales and use tax ordinance which complies with the requirements and limitations contained in Part 1.5 of Division 2 of the Revenue and Taxation Code of the State of California. (Ord. 1)

Sec. 10001.2. Same. To adopt a sales and use tax ordinance which incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.5 of Division 2 of the said Revenue and Taxation Code. (Ord. 1)

Sec. 10001.3. Same. To adopt a sales and use tax ordinance which imposes a one (1) percent tax and provides a measure thereof that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practical to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes. (Ord. 1)

Sec. 10001.4. Same. To adopt a sales and use tax ordinance which imposes a one (1) percent tax and provides a measure thereof that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practical to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes. (Ord. 1)

Sec. 10001.5. Same. To adopt a sales and use tax ordinance which can be administered in a manner that will, to the degree possible consistent with the provisions of Part 1.5 of Division 2 of the said Revenue and Taxation Code, minimize the cost of collecting city sales and use taxes and at the same time minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance. (Ord. 1)

Sec. 10001.6. Same. To adopt a sales and use tax ordinance which can be administered in a manner that will exclude the receipts of particular sales from the measure of the sales tax imposed by this City which have been included in the measure of the sales tax imposed by any other city and county, county other than the county in which this City is located, or city in this State, and avoid imposing

a use tax on the storage, use or other consumption of tangible personal property in this City when the gross receipts from the sale of, or the use of, that property has been subject to a sales or use tax by any other city and county, county other than the county in which this City is located, or city in this State, pursuant to a sales and use tax ordinance enacted under the provisions of Part 1.5 of Division 2 of the said Revenue and Taxation Code. (Ord. 1)

Sec. 10002. Operative Date, Contract with State. This ordinance shall become operative on January 1, 1960, and prior thereto this City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this sales and use tax ordinance, provided, that if this City shall not have contracted with the said State Board of Equalization as above set forth, prior to January 1, 1960, this ordinance shall not be operative until the first day of the first calendar quarter following the execution of such a contract by the City and by the State Board of Equalization. (Ord. 1)

Sec. 10003. Sales Tax. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the City at the rate of one (1) percent of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in the City of Grover City on and after the operative date of this ordinance. (Ord. 1)

Sec. 10003.1 Same. For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-State destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the State sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the Board of Equalization. (Ord. 1; Am. Ord. 30)

Sec. 10003.2 Same. Except as hereinafter provided and except insofar as they are inconsistent with the provisions of Part 1.5 of Division 2 of said Revenue and Taxation Code, all of the provisions of Part 1 of Division 2 of said Code as amended and in force and effect on January 1, 1960, applicable to sales taxes are hereby adopted and made a part of this section as though fully set forth herein. (Ord. 1)

Sec. 10003.3. Same. Wherever, and to the extent that, in Part 1 of Division 2 of the said Revenue and Taxation Code the State of California is named or referred to as the taxing agency, the City of Grover City shall be substituted therefor. Nothing in this subdivision shall be deemed to require the substitution of the name of the City of Grover City for the word "State" when that word is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Board of Equalization or the name of the State Treasury, or of the Constitution of the State of California; nor shall the name of the City be substituted for that of the State in any section when the result of that substitution would require action to be taken by or against the City or any agency thereof, rather than by or against the State Board of Equalization in performing the functions incident to the administration or operation of this ordinance; and neither shall the substitution be deemed to have been made in those sections, including, but not necessarily limited to, sections referring to the

exterior boundaries of the State of California, where the result of the substitution would be to provide an exemption from this tax with respect to certain gross receipts which would not otherwise be exempt from this tax while those gross receipts remain subject to the tax by the State under the provisions of Part 1 of Division 2 of the said Revenue and Taxation Code; nor to impose this tax with respect to certain gross receipts which would not be subject to tax by the State under the said provisions of that Code; and, in addition, the name of the City shall not be substituted for that of the State in Sections 6701, 6702, (except in the last sentence thereof), 6711, 6715, 6737, 6797 and 6828 of the said Revenue and Taxation Code as adopted. (Ord. 1)

Sec. 10003.4. Same. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional seller's permit shall not be required by reason of this chapter. (Ord. 1; Amd. Ord. 73-12)

Sec. 10003.5. Same. There shall be excluded from the gross receipts by which the tax is measured:

(A) The amount of any sales or use tax imposed by the State of California upon a retailer or consumer;

(B) The gross receipts from the sale of tangible personal property to operators of waterborne vessels to be used or consumed principally outside the City in which the sale is made and directly and exclusively in the carriage of persons or property in such vessels for commercial purposes.

(C) The gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the City in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government. (Ord. 1; Amd. Ord. 30; Amd. Ord. 73-12)

Sec. 10004. Use Tax. An excise tax is hereby imposed on the storage, use or other consumption in the City of Grover City of tangible personal property purchased from any retailer on or after the operative date of this ordinance, for storage, use or other consumption in the City at the rate of one (1) percent of the sales price of the property. The sales price shall include delivery charges when such charges are subject to State sales or use tax regardless of the place to which delivery is made. (Ord. 1)

Sec. 10004.1 Same. Except as hereinafter provided and except insofar as they are inconsistent with the provisions of Part 1.5 of Division 2 of the said Revenue and Taxation Code, all of the provisions of Part 1 of Division 2 of said Code, as amended, and in force and effect on January 1, 1960, applicable to use taxes are hereby adopted and made a part of this section as though fully set forth herein. (Ord. 1)

Sec. 10004.2. Same. Wherever, and to the extent, that in Part 1 of Division 2 of the said Revenue and Taxation Code the State of California is named or referred to as the taxing agency, the City of Grover City shall be substituted therefor. Nothing in this subdivision shall be deemed to require the substitution of the name of the City of Grover City for the word "State" when that word is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Board of Equalization, or the name of the State Treasury, or of the Constitution of the State of

California; nor shall the name of the City be substituted for that of the State in any section when the result of that substitution would require action to be taken by or against the City or any agency thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this ordinance; and neither shall the substitution be deemed to have been made in this section as though fully set forth herein. (Ord. 1)

Sec. 10004.3 Same. Whenever, and to the extent that, in Part 1 of Division 2 of the said Revenue and Taxation Code the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. Nothing in this subdivision shall be deemed to require the substitution of the name of this City for the word "State" when that word is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Board of Equalization, or the name of the State Treasury, or of the Constitution of the State of California; nor shall the name of the City be substituted for that of the State in any section when the result of that substitution would require action to be taken by or against the City or any agency thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this ordinance; and neither shall the substitution be deemed to have been made in those sections, including but not necessarily limited to, sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to provide an exemption from this tax with respect to certain storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such storage, use or other consumption remains subject to tax by the State under the provisions of Part 1 of Division 2 of the said Revenue and Taxation Code, or to impose this tax with respect to certain storage, use or other consumption remains subject to tax by the State under the provisions of Part 1 of Division 2 of the said Revenue and Taxation Code, or to impose this tax with respect to certain storage, use or other consumption of tangible personal property which would not be subject to tax by the State under the said provisions of that Code; and in addition, the name of the City shall not be substituted for that of the State in Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 and 6828 of the said Revenue and Taxation Code as adopted, and the name of the City shall not be substituted for the word "State" and the phrase "retailer engaged in business in this State" in Section 6203 nor in the definition of that phrase in Section 6203. (Ord. 1; Amd. Ord. 30)

Sec. 10004.4. Same. There shall be exempt from the tax due under Section 10004:

(A) The amount of any sales or use tax imposed by the State of California upon a retailer or consumer;

(B) The storage, use or other consumption of tangible personal property, the gross receipts from the sale of which has been subject to sales tax under a sales and use tax ordinance enacted in accordance with Part 1.5 of Division 2 of the Revenue and Taxation Code by any city and county, county, or city in this State.

(C) The storage, use or other consumption of tangible personal property purchased by operators of waterborne vessels and used or consumed by such operators directly and exclusively in the carriage of persons or property in such vessels for commercial purposes.

(D) In addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code, the storage, use or other consumption of tangible personal property purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a

certificate of public convenience and necessity issued pursuant to the laws of this State, the United State, or any foreign government. (Ord. 1; Amd. Ord. 30; Amd. Ord. 73-12)

Sec. 10005. Amendments. All amendments of the said Revenue and Taxation Code enacted subsequent to the effective date of this ordinance which relate to the sales and use tax and which are not inconsistent with Part 1.5 of Division 2 of the said Revenue and Taxation Code shall automatically become a part of this ordinance. (Ord. 1)

Sec. 10006. Enjoining Collection Forbidden. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any Court against the State or this City, or against any officer of the State or this City to prevent or enjoin the collection under this ordinance, or Part 1.5 of Division 2 of the Revenue and Taxation Code, or any amount of tax required to be collected. (Ord. 1)

## CHAPTER 2 - BUSINESS CERTIFICATE TAX

Sec. 10200. Definitions. The following definitions shall apply throughout this Chapter:

(A) "Business" shall mean and include professions, trades, vocations, rentals, leases, enterprises, establishments, and occupations and all and every kind of calling, any of which is conducted for the purpose of earning in whole, or in part, a profit or livelihood, whether or not a profit or a livelihood actually is earned thereby, whether paid in money, goods, labor, or otherwise.

(B) "Business Floor Space" means rentable square feet of an office, place of business or lodging within the City of Grover Beach and includes the proportionate share of the building service areas such as lobbies, corridors and other common areas in a building. The rental square footage shall be computed by measuring to the inside finish of permanent outer building walls and shall include space used by columns and projections necessary to the building. Business floor space does not include vertical penetrations through the building such as stairs, elevators, or heating ventilation, air conditioning, utility, or telephone systems. If the Business Floor Space is owned by the taxpayer, the Business Floor Space will be calculated in the same manner as above and as if the area was rented. Business Floor Space for purposes of defining rentable square feet of an auto dealership or any business which the principal income is derived from selling vehicles shall include the building and facilities along with the area of the dealer lot that contains the inventory of vehicles or where vehicles are parked. The dealer lot may consist of parking areas on the same or separate lot from the dealer's facilities or buildings. For purposes of defining business floor space of any business operated out of a personal residence the Square Footage Tax shall be based on the amount of square foot used for business as designated in the Home Occupation Permit application. Business floor space for purposes of calculating Square Footage Taxes shall be based upon the square footage of each vending machine operated within the city and the applicant shall submit a separate business tax certificate application for each vending machine(s) location.

(C) "Business License Tax"means a tax payable when the City issues a Business Tax Certificate by every person conducting, carrying on, or managing any business within the City of Grover Beach but does not lease, own, occupy or otherwise maintain an office or place of business within the jurisdictional boundaries of the City.

(D) "Business Square Footage Tax" is defined within Section 10217.

(E) "Business Tax" shall include both Business License Taxes and Business Square Footage Taxes.

(Ord. 18-07)

Sec. 10201. Nature of Certificate. The term Business Tax Certificate as used in this Chapter shall not be construed to mean a permit. The taxes prescribed by this Chapter constitute a tax for revenue purposes, and are not regulatory permit fees. The payment of the Business License Tax or Business Square Footage Tax required by the provisions of this Chapter and its acceptance by the City, and the issuance of such certificate to any person, shall not entitle the holder thereof to carry on any business unless they have complied with all of the requirements of this Chapter and all other applicable provisions of the Grover Beach Municipal Code, or to carry on any business in any building or on any premises designated in such certificate in the event that such building or premises are situated in a zone or locality in which the conduct of such business is in violation of this Code. (Ord. 18-07)

Sec. 10202. Tax Certificate Procurement and Compliance with Regulations. Except as otherwise expressly provided in this Chapter, no person, whether as principal or agent, clerk or employee either for himself or for any other person or for anybody corporate, or as an officer of any corporation, or otherwise, shall commence or carry on any trade, calling, profession or occupation in the City, in this Chapter specified, without first having procured a Business Tax Certificate, and without complying with any and all regulations of such trade, calling, profession or occupation contained in this Chapter. Any person procuring a Business Tax Certificate shall pay the tax as defined within this Chapter. (Ord. 18-07)

Sec. 10203. Tax as Debt. (A) Any person carrying on any trade, calling, profession or occupation without having a Business Tax Certificate to do so shall be liable for the amount of the tax imposed by this Chapter on such trade, calling, profession or occupation. The amount of such tax, including any penalty or interest thereon, shall be a debt owed to the City.

(B) The City Attorney may file suit in the name of the City, in any court of competent jurisdiction, for any unpaid Business License Tax or Business Square Footage Tax imposed by this Chapter, within three (3) years from the delinquency date thereof.

(C) The conviction and punishment of any person for transacting any trade, calling, profession or occupation without a Business Tax Certificate shall not excuse or exempt such person from the payment of any Business License Tax or Business Square Footage Tax due and unpaid at the time of such violation of the provisions of this Chapter. (Ord. 18-07)

Sec. 10204. Issuance of Tax Certificate. (A) Each applicant for a Business Tax Certificate shall properly fill in an application in such form as the Administrative Services Director, or his/her designee, may prescribe.

(B) A certificate, in such form as the Administrative Services Director, or his/her designee, may prescribe, shall be issued on payment of the Business License Tax or Business Square Footage Tax prescribed in this Chapter and shall be in full force and effect until:

(1) Certificate holder fails to make payments as required by this Chapter;

(2) Revoked by the Administrative Services Director, or his/her designee;

(3) Business changes address;

(4) Business is discontinued;
(5) Business ownership changes;
(6) The Business Tax Certificate expires.

(C) A certificate holder with no permanent business address within the City shall be issued a Business Tax Certificate for each Business Tax Certificate period, with such Business Tax Certificate showing the expiration date and shall pay the amount of Business License Tax, as required in this Chapter.

(D) No Business Tax Certificate granted or issued under any provision of this Chapter shall in any manner be transferred or assigned.

(E) In no case shall any mistake made by the Administrative Services Director, or his/her designee, in stating the amount of the Business License Tax or Business Square Footage Tax rate prevent or prejudice the collection of what shall be actually due from anyone carrying on any trade, calling, profession or occupation subject to a Business Tax Certificate under this Chapter.

(F) No Business Tax Certificate shall be issued to any holder of a delinquent Business License Tax or Business Square Footage Tax until both the Business License Tax or Business Square Footage Tax and penalty or interest shall have been paid. (Ord. 18-07)

Sec. 10205. Payment of Business Square Footage Tax. (A) All Business License Tax or Business Square Footage Taxes, as applicable under this Chapter, shall be paid in advance at the Administrative Services Department. Where a Business Tax Certificate holder conducts several branches or places of business of the same class, a separate Business Tax Certificate shall be secured covering each branch of such business.

(B) The annual Business License Tax or Business Square Footage Tax in this Chapter provided shall be due and payable on the first business day of January of each year based upon the methodology of calculation of the Tax as defined within this Chapter.

(C) No greater or less amount of money shall be charged or received for any Business Tax Certificate than is provided in this Chapter.

(D) The Administrative Services Director, or his/her designee, if he/she deems it necessary in order to ensure payment or facilitate collection of Business License Taxes or Business Square Footage Taxes, may require returns and payment of such taxes for other than the time periods specified in this Chapter. (Ord. 18-07)

Sec. 10206. Posting and Exhibition of Business Tax Certificates. Every person having a Business Tax Certificate under the provisions of this Chapter, and carrying on a trade, calling, profession or occupation at a fixed place of business, shall keep such Business Tax Certificate posted and exhibited while in force in some conspicuous place where such business is being conducted. Every person having a Business Tax Certificate, and not having a fixed place of business within the City, shall carry such Business Tax Certificate with him/her at all times while carrying on the trade, calling, profession or occupation for which the same was granted. Every person having a Business Tax Certificate under the provisions of this Chapter shall produce and exhibit the same whenever requested to do so by any police officer, or by any person authorized to issue, or inspect Business Tax Certificates or certificates for the City, or to collect Business License Taxes or Business Square Footage Taxes for the City. (Ord. 18-07)

Sec. 10207. Certificate Inspectors. A police officer or the code compliance officer may enter free of charge, during regular business hours, any place of business for which a Business Tax Certificate is required by this Chapter and demand the exhibition of any such Business Tax Certificate by any person engaged or employed in the transaction of such business. The police officer or code compliance officer shall further have the authority to inspect and verify the pertinent square footage of the any building or structure subject to this Chapter. (Ord. 18-07)

Sec. 10208. Information in Business Tax Certificate Application. (A) Every person required to have a Business Tax Certificate pursuant to the provisions of this Chapter shall make a written application to the Administrative Service Director, or his/her designee, and submit the following information:

(1) The nature or kind of business for which the Business Tax Certificate is requested.

(2) The place where the business is to be conducted whether within or outside of the City and, if the business is not to be conducted at a permanent location, the residence address, identified as such, of the owners of the business. For purposes of this Chapter, a post office box is not considered a place of business or a permanent location for purposes of imposing any tax in accordance with this Chapter.

(3) If the application is made for the issuance of Business Tax Certificate to a person to do business under a fictitious name, the names, the last four digits of their social security numbers, and residence addresses of the owners of the business.

(4) If the application is made for the issuance of a Business Tax Certificate to a corporation or partnership, the names, franchise tax number, and residence addresses of the officers or partners thereof.

(5) Any further information that the Administrative Service Director, or his/her designee, may require to enable the issuance of the Business Tax Certificate.

The Administrative Service Director, or his/her designee, will not issue the Business Tax Certificate unless the applicant has submitted the information required within this Section and paid the appropriate tax as required under this Chapter as well as any other unpaid Business License Tax or Business Square Footage Tax amount due.

(B) No Business Tax Certificate shall be issued except on the filing of the application herein provided for; and in the event it shall appear that incorrect information is contained in such application and that the Business Tax Certificate collected was not in the correct amount, the City shall be entitled to collect any unpaid balance of such Business Licensed Tax or Business Square Footage Tax or if any Business Tax Certificate holder has overpaid, to refund the excess amount collected.

(C) No statements in the application shall be conclusive upon the City, or upon any officer thereof, as to the matters therein set forth, and the same shall not prejudice the right of the City to examine or audit the books or accounts of any person subject to Business Tax Certificate or to recover any amount that may be ascertained to be due, in case such statement should be found to be incorrect. If any person hereby required to make any such statement shall fail to do so, such person shall be required to pay the Business License Tax or Business Square Footage Tax at such rate as the Administrative Services Director, or his/her designee, may after investigation, fix as the proper rate to be paid by such person, and shall also be deemed guilty of a violation of this Chapter. The tax shall be at a rate defined within this Chapter, as amended by Sections 10217 or 10218. (Ord. 18-07)

Sec. 10209. Confidential Character of Information Obtained. (A) The Administrative Services Director, or his/her designee, or any person having an administrative duty under the provisions of this article to the extent permitted by law, will not make known in any manner whatsoever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to obtain a Business Tax Certificate, or pay a Business License Tax or Business Square Footage Tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person. Provided that nothing in this subsection shall be construed to prevent:

(1) The disclosure to, or the examination of records and equipment by another city official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this article; or collecting taxes imposed hereunder;

(2) The disclosure of information to, or the examination of records by, federal, or state officials, or the tax officials of another city, or county, or city and county, if a reciprocal arrangement exists; or to a grand jury or court of law, upon subpoena;

(3) The disclosure of information and results of examination of records of particular taxpayers, or relating to particular taxpayers, to a court of law in a proceeding brought to determine the existence or amount of any Business Tax liability of the particular taxpayers to the City;

(4) The disclosure after the filing of a written request to that effect, to the taxpayer, or to his/her successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to the items included in the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest, and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Administrative Services Director, or his/her designee, may refuse to make any disclosure referred to in this paragraph when in his/her opinion the public interest would suffer thereby;

(5) The disclosure of the names and addresses of persons to whom registration certificates have been issued, the names of officers of corporations and members of partnerships to whom registration certificates have been issued, and the general type or nature of their business;

(6) The disclosure to the City Council by way of public meeting or otherwise of such information as may be necessary in order to permit it to be fully advised as to the facts when a taxpayer files a claim for refund of Business License Taxes or Business Square Footage Taxes, or submits an offer of compromise with regard to a claim asserted against him/her by the City for Business License Taxes or Business Square Footage Taxes, or when acting upon any other matter;

(7) The disclosure of general statistics regarding taxes collected or business done in the City when reported in the aggregate. (Ord. 18-07)

Sec. 10210. Penalties and Interest. (A) Penalties on Deficiency Determinations Made Because of Underpayment.

(1) The Administrative Services Director, or his/her designee, shall add the penalty designated in the Master Fee Schedule, computed as a percentage of the amount of the additional assessment, to any additional assessment imposed as a result of a deficiency determination made because of underpayment if any part of the deficiency is due to negligent or intentional disregard of any provision of this Chapter.

(2) The Administrative Services Director shall add the penalty designated in the Master Fee Schedule, computed as a percentage of the amount of the additional assessment, to any additional assessment imposed as a result of a deficiency determination made because of underpayment if any part of the deficiency is due to fraud.

(B) Penalties on Deficiency Determinations Made Because of Failure to File.

(1) The Administrative Services Director, or his/her designee, shall add the penalty designated in the Master Fee Schedule, computed as a percentage of the amount of the unpaid Business Tax, to a deficiency determination made because of failure to file a return if such failure to file is due to negligent disregard of any provision of this Chapter.

(2) The Administrative Services Director, or his/her designee, shall add the penalty designated in the Master Fee Schedule, computed as a percentage of the amount of the unpaid Business Tax, to a deficiency determination made because of failure to file a return if the person against whom the deficiency determination is made has previously held a Business Tax Certificate in the City of Grover Beach, or if such failure is due to intentional disregard of any provision of this Chapter.

(3) The Administrative Services Director, or his/her designee, shall add the penalty designated in the Master Fee Schedule, computed as a percentage of the amount of the unpaid Business Tax, to a deficiency determination made because of failure to file a return if such failure is due to fraud.

(C) Penalties for Delinquent Payment of Business Tax and Deficiency Determinations.

(1) The Administrative Services Director, or his/her designee, shall, immediately after one (1) calendar month from the date that Business Tax, including deficiency determinations are payable, add to all Business Taxes remaining unpaid the delinquency penalty designated in the Master Fee Schedule, computed as a percentage of the amount of such delinquent Business Tax, excluding penalties and interest.

(2) The Administrative Services Director, or his/her designee, shall immediately after two (2) calendar months from the date that Business Taxes, including deficiency determinations, are payable, add to all taxes still remaining unpaid the additional delinquency penalty designated in the Master Fee Schedule, computed as a percentage of the amount of such delinquent taxes, excluding penalties and interest.

(D) Interest on Deficiency Determinations. In addition to the penalty or penalties imposed, interest at the rate of three-quarters of one per cent per month, or fraction thereof, shall be paid on the amount of the Business Tax, exclusive of penalties, from the last day of the first month of the Business Tax Certificate period or periods for which a deficiency determination is imposed until the date of payment.

(E) Extensions of Time to Make Payment. Prior to the due date, the Administrative Services Director, or his/her designee, may extend, for good cause, for a period not to exceed one (1) calendar month, the time to make any return or payment of taxes. No further extension shall be granted. Any person to whom an extension is granted who makes a return and pays the taxes within the period of extension shall not pay any penalty or interest on the amount of the taxes.

(F) Holidays. In the event the last day of the calendar month falls on a Saturday, Sunday or legal holiday, Business Taxes may be paid without penalty on the first succeeding business day. Thereafter, the penalty, penalties or interest provided in this section shall be added. (Ord. 18-07)

Sec. 10211. Deficiency Determinations. (A) If the Administrative Services Director, or his/her designee, is not satisfied with the return or returns of Business Taxes, or the amount of the Taxes paid to the City by any person, he/she may compute and determine the amount required to be paid upon the basis of the facts
contained in the return or returns or upon the basis of any information within his/her possession or that may

come into his/her possession. One or more deficiency determinations may be made of the amount due for one or more than one annual period. The amount of each deficiency determination is immediately due and payable. Each determination shall become final and delinquent one (1) calendar month after notice thereof as herein provided.

(B) In making a determination, the Administrative Services Director, or his/her designee, shall offset overpayments previously made, if any, together with interest on the overpayments, against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in this Chapter.

(C) The Administrative Services Director, or his/her designee, shall give written notice of a deficiency determination to each person against whom a determination is made. The notice may be served personally or by mail. In case of service by mail of any notice required by this Chapter, the service is complete at the time of deposit in the United States Post Office.

(D) Except in the case of fraud, intent to evade this Chapter or authorized rules and regulations, or failure to make a return, every deficiency determination shall be made and notice thereof mailed within three (3) years after the last day of the month following the close of the Business Tax Certificate period for which the amount is determined or within three (3) years after the return is filed, whichever period expires the later.

(E) If any person fails or refuses to make, within the time provided in this Chapter, any return and payment of said Taxes or any portion thereof required by this Chapter or makes a fraudulent return or otherwise willfully attempts to evade this Chapter, the Administrative Services Director, or his/her designee, shall proceed in such manner as he/she may deem best to obtain facts and information on which to base his/her estimate of the Taxes due. As soon as the Administrative Services Director, or his/her designee, procures facts and information upon which to base the assessment of any tax imposed by this Chapter, he/she shall determine and assess against such person the Taxes, interest and penalties provided for by this Chapter. When such a determination is made, the Administrative Services Director, or his/her designee, shall give written notice of the amount so assessed. Such determination and notice shall be made and mailed within three (3) years after discovery by the Administrative Services Director, or his/her designee, of any fraud, intent to evade or failure to file return. The amount of each deficiency determination is immediately due and payable. Any determination shall become final and delinquent one (1) calendar month after notice thereof as herein provided.

(F) If the Administrative Services Director, or his/her designee, believes that the collection of any Business Tax will be jeopardized by delay, or if any determination will be jeopardized by delay, he/she shall thereupon make a determination of the taxes due. The amount determined is immediately due and payable. If the amount specified in the determination is not paid within ten (10) days after service of notice thereof upon the person against whom the determination is made, the amount becomes final and delinquent, and the delinquency penalty or penalties and the interest provided in Section 10210 shall attach to the amount of the Taxes, unless a petition for redetermination is filed within the ten days. (Ord. 18-07)

Sec. 10212. Redeterminations. (A) Any person against whom a determination is made under Section 10211 or any person directly interested may petition for a redetermination within one (1) calendar month after service of notice thereof; provided, however, that a petition for redetermination of a determination made under subsection (F) of Section 10211 shall be filed within ten (10) days after service of notice thereof. If a petition for redetermination is not filed within the applicable period, the determination becomes final and delinquent at the expiration of the period.

(B) If a petition for redetermination is filed within the applicable period, the Administrative Services Director shall reconsider the determination, and, if the person has so requested in his/her petition, shall grant the person an oral hearing and shall give him ten (10) days notice of the time and place of the hearing. The Administrative Services Director may continue the hearing from time to time as may be necessary.

(C) The Administrative Services Director, or his/her designee, may decrease or increase the amount of the determination before it becomes final but the amount may be increased only if a claim for the increase is asserted by the Administrative Services Director, or his/her designee, at or before the hearing.

(D) The decision of the Administrative Services Director, or his/her designee, upon a petition for redetermination becomes final and delinquent fifteen days after service upon the petitioner of notice thereof.

(E) No petition for redetermination shall be effective for any purpose unless at or before the filing thereof the amount found due in the original determination is paid, or a bond or other security satisfactory to the Administrative Services Director, or his/her designee, is filed with him/her guaranteeing payment of any amount finally determined to be due. (Ord. 18-07)

Sec. 10213. Records for Determination by Department of Administrative Services. All sellers, consumers and holders of City of Grover Beach Business Tax Certificates shall keep complete records of all business transactions, including sales, receipts, purchases and other expenditures, and shall retain all such records for purposes of examination by the Department of Administrative Services or their agent or contract services of the City of Grover Beach. Such records shall be maintained for a period of at least three (3) years and shall be submitted to the City or their delegated agent or contractor upon request by the City. (Ord. 18-07)

Sec. 10214. Refunds. (A) Whenever a Business License Tax or Business Square Footage Tax has been paid to the City under a mistake of law or a mistake of fact, the tax shall be refunded when a demand for refund has been made on a form prescribed by the Administrative Services Director. No refund shall be approved after three (3) years from the date of receipt by the City of the money to be refunded. For purposes of this Chapter, a mistake of law or fact shall be defined as follows:

(1) Mistake of Law. When the money was either paid by the demandant or received by the City through mistake as to the legal necessity for making the payment, refund thereof may be made upon a demand for refund. The demand shall be promptly transmitted to the head of the department involved for his/her recommendation and his/her statement of the facts upon which the recommendation is based. The demand and recommendation shall be presented to the City Attorney for his/her decision thereon.

(2) Mistake of Fact. When the money was either paid by the demandant or received by the City because of a mistake of fact when such payment or receipt would not have been made if such mistake had not been made, then refund thereof may be made upon a demand for refund, provided that if the mistake was wholly or partly the City's and the mistake was induced by an act or statement of the demandant, or if the mistake was wholly the demandant's and the City has made an investigation, inspection or examination, or done any similar work or rendered services, the head of the department, division or bureau may ascertain the value or cost of such and order it deducted from the amount to be refunded. His/her determination shall be final when approved by the Administrative Services Director, or his/her designee, but there shall be added thereto the amount designated for handling charges in the Master Fee Schedule.

(B) If the Administrative Services Director, or his/her designee, determines that any overpayment has been made intentionally or by reason of carelessness, he/she shall not allow any interest thereon. (Ord. 18-07)

Sec. 10215. Exemptions. (A) Exempt Business and Entities:

(1) Nothing in this Chapter shall be construed as applying to any person conducting any business or occupation exempt from taxation, Business License Tax or Business Square Footage Tax by virtue of Sec. 14 of Art XIII of the Constitution of the State of California, or the Constitution of the United States, nor shall it be construed to authorize any act prohibited by any law of California or by the provisions of this Code, or to authorize the conduct of any business for which a permit from the City Council is required, until such permit is obtained.

(2) The provisions of this Chapter shall not apply to commercial travelers or selling agents selling their goods to dealers for future deliveries.

(3) The provisions of this Chapter shall not apply to the renting, letting or subletting of property by an individual to himself or to an entity wholly owned by him.

(4) The provisions of this Chapter shall not be deemed or construed to require the payment of a Business License Tax or Business Square Footage Tax to conduct, manage or carry on any business, occupation or activity, or require the payment of any Business License Tax or Business Square Footage Tax from any institution or organization, which is conducted, managed or carried on wholly for the benefit of charitable, religious, or benevolent purposes.

(5) The provisions of this Chapter shall not apply to credit union corporations.

(6) Any grower or producer of any articles of ranch products who grows or produces said products in the City shall be entitled to a Business Tax Certificate without tax unless the grower or producer sells said products from a produce stand on property located within the City. Any grower or producer qualified by the terms of this Chapter to claim a Business Tax Certificate exemption provided herein shall first file with the Administrative Services Director, or his/her designee, an affidavit setting forth his/her name and address, the amount and variety of produce he/she proposes to sell, the place where said produce was grown or produced, and that such produce was grown or produced by him.

(7) The provisions of this Chapter shall not apply to any Commercial Cannabis Businesses as defined within Grover Beach Municipal Code, Section 4000.20, as amended, that are licensed by the City of Grover Beach as a Commercial Cannabis Business and have a state cannabis license. (Ord. 18-07)

Sec. 10216. Establishment of Tax. Business License Tax and Business Square Footage Tax shall be paid, as applicable, by every person conducting, carrying on or managing any business or profession within the City of Grover Beach not otherwise exempted by Section 10215. This includes businesses located outside of the City of Grover Beach but conducting business within the City and businesses that are owned, leased, occupied or maintained within the City. Employees of a business owner that receive a W-2 Statement are not subject to this Chapter. (Ord. 18-07)

Sec. 10217. Business Square Footage Tax Based Upon Business Floor Space. (A) A Business Square Footage Tax for the act of privilege of engaging in business activity within the City is hereby levied upon and shall be collected from every person that leases, owns, occupies or otherwise maintains an office or place of business within the City.

The Business Square Footage Tax shall be measured by the number of square feet of business floor space for each office or place of business leased, owned, occupied or otherwise maintained within the City during their reporting period.

(B) Every person conducting, carrying on or managing any business or profession, not otherwise specifically licensed by or exempted by other sections of this Chapter, shall pay an annual Business Square Footage Tax based on the applicable Business Floor Space schedule(s) consistent with this section, whether retail, wholesale or both. Business Square Footage Taxes shall be based upon the total Business Floor Space as recorded on the records of the business. The following tax amounts in Table 1 below are the amounts imposed by the City for each calendar year after adoption of this ordinance based upon the total applicable Business Floor Space:

*Table 1 - Business Square Footage Tax Rates*

| Business Floor Space | BTC Rate |
|---|---|
| 1 - 1,000 | $60 |
| 1,001 - 2,000 | $125 |
| 2,001 - 5,000 | $200 |
| 5,001 - 10,000 | $350 |
| 10,001 - 20,000 | $500 |
| 20,001 - 40,000 | $650 |
| 40,001 - 60,000 | $800 |
| 60,001 and up | $950 |

(Ord. 18-07)

Sec. 10218. Business License Tax Based Upon a Flat Rate. (A) A Business License Tax for the act of privilege of engaging in business activity within the City is hereby levied in the amount of $60.00 per calendar year starting January 1, and shall be collected from every person that conducts a business within the City but does not lease, own, occupy or maintain an office or place of business within the City. (Ord. 18-07)

Sec. 10219. Rooming Houses. (A) For every person conducting, carrying on or managing the business of a lodging or rooming house consisting of any rooms available for rent, the Business Square Footage Rate shall be determined by the Business Floor Space as defined within this Chapter. Rooming house shall be defined for purposes of this section as any house where lodging is provided for rent.

(B) If any person conducting, carrying on or managing a lodging or rooming house shall use or permit to be used such lodging or rooming house for the purpose of lewdness, assignation or prostitution, and shall be convicted for such offenses or any of them in any court of the State of California, then and in

either event the Business Tax Certificate, as provided herein, for such lodging or rooming house shall be revoked and shall not hereafter be renewed for a period of one (1) year from and after the date of the final judgment of such conviction. (Ord. 18-07)

Sec. 10220. Apartments, Flats and Courts. (A) For every person conducting, carrying on or managing the business of apartments, flats or courts consisting of four or more individual living units available for rent or lease at one (1) location, the Business Square Footage Rate shall be determined by Table 1 schedule designated in this Chapter as amended.

(B) For the purpose of this section, "one location" is defined to mean one (1) or more lots that are contiguous. (Ord. 18-07)

Sec. 10221. Evidence of Doing Business. When any person shall by use of signs, circulars, cards, Internet websites, or newspapers advertise, hold out, or represent that he/she is in business in the City, or when any person holds an active Business Tax Certificate or permit issued by a governmental agency indicating that he/she is in business in the City, and such person fails to deny by a sworn statement given to the Administrative Services Director, or his/her designee, that he/she is not conducting a business in the City, after being requested to do so by the Administrative Services Director, or his/her designee, then these facts shall be considered prima facie evidence that he/she is conducting a business in the City. (Ord. 18-07)

Sec. 10222. Severability. Should any provision of this Chapter, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Chapter or the application of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable. (Ord. 18-07)

Sec. 10223. Violation Deemed Misdemeanor - Penalty. Any person violating any of the provisions of this Chapter or any regulation or rule passed in accordance herewith, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars ($500) or by imprisonment for a period of not more than six (6) months, or by both such fine and imprisonment. (Ord. 18-07)

Sec. 10224. Conviction for Chapter Violation -Taxes Not Waived. The conviction and punishment of any person for failure to pay the required tax in accordance with this Chapter shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any state law requiring the payment of all taxes. (Ord. 18-07)

Sec. 10225. Remedies Cumulative. All remedies and penalties prescribed by this Chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter. (Ord. 18-07)

Sec. 10226. Amendment or Repeal. Chapter 2 of Article X of the City of Grover Beach 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 Chapter or change the methodology of how the tax is levied if such action would increase the amount of the tax approved by the voters. The people of the City of Grover Beach affirm that the following actions shall not constitute an increase of the rate of a tax:

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

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

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

The collection of the tax imposed by this Chapter, even if the City had, for some period of time, failed to collect the tax. (Ord. 18-07)

## CHAPTER 3 - FRANCHISES

Sec. 10300. Definitions. Whenever in this chapter the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following

[Continued on page 9.]

definitions (unless, in the given instance, the context wherein they are used shall clearly import a different meaning):

(A) Grantee shall mean the corporation to which the franchise contemplated in this chapter is granted and its lawful successors or assigns.

(B) City shall mean the City of Grover City, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated or reincorporated form;

(C) Streets shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within said City;

(D) Engineer shall mean the City Engineer of the City;

(E) Gas shall mean natural or manufactured gas, or a mixture of natural and manufactured gas;

(F) Pipes and Appurtenances shall mean pipe, pipeline, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, appliance, attachment, appurtenance and any other property located or to be located in, upon, along, across, under or over the streets of the City, and used or useful in transmitting and distributing gas.

(G) Lay and Use shall mean to lay, construct, erect, install, operate, maintain, use, repair, replace or remove. (Ord. 18)

Sec. 10301. South Counties Gas Company Franchise. (A) That the right, privilege and franchise, subject to each and all of the terms and conditions contained in this Chapter, and pursuant to the provisions of Division 3 of Chapter 2 of the Public Utilities Code of the State of California, known as the Franchise Act of 1937, be and the same is hereby granted to SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, a corporation organized and existing under and by virtue of the laws of the State of California, herein referred to as the "Grantee," to lay and use pipes and appurtenances for transmitting and distributing gas for any and all purposes, under, along, across or upon the streets, of the City, for an indeterminate term or period from and after the effective date hereof, that is to say, this franchise shall endure in full force and effect until the same shall, with the consent to the Public Utilities Commission of the State of California, be voluntarily surrendered or abandoned by its possessor, or until the State of California or some municipal or public corporation thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of this franchise, and situate within the territorial limits of the State, municipal or public corporation purchasing or condemning such property, or until this franchise shall be forfeited for noncompliance with its terms by the possessor thereof.

(B) The Grantee shall pay to the City at the times hereinafter specified, in lawful money of the United States, a sum annually which shall be equivalent to two (2) percent of the gross annual receipts of Grantee arising from the use, operation or possession of said franchise; provided, however, that such payment shall in no event be less than one (1) percent of the gross annual receipts of the Grantee derived from the sale of gas within the limits of the City under this franchise.

The Grantee of this franchise shall file with the Clerk of the City within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the grant of this franchise, and within three (3) months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross receipts of the Grantee, its successors or assigns, during the preceding calendar year, or such fractional calendar year, from the

sale of the utility service within the City for which this franchise is granted. It shall be the duty of the Grantee to pay to the City within fifteen (15) days after the time for filing such statement, in lawful money of the United States, the specified percentage of its gross receipts for the calendar year, or such fractional calendar year, covered by such statement. Any neglect, omission or refusal by said Grantee to file such verified statement, or to pay said percentage, at the times or in the manner hereinbefore provided, shall be grounds for the declaration of a forfeiture of this franchise and of all rights thereunder.

(C) This grant is made in lieu of all other franchises, rights, or privileges owned by the Grantee, or by any successor of the Grantee to any rights under this franchise, for transmitting and distributing gas within the limits of the City, as said limits now or may hereafter exist, and the acceptance of the franchise hereby granted shall operate as an abandonment of all such franchises, rights and privileges within the limits of this City as such limits now or may hereafter exist, in lieu of which this franchise is granted.

(D) The franchise granted hereunder shall not become effective until written acceptance thereof shall have been filed by the Grantee thereof with the Clerk of the City. When so filed, such acceptance shall constitute a continuing agreement of the Grantee that if and when the City shall thereafter annex or consolidate with, additional territory, any and all franchise rights and privileges owned by the Grantee therein shall likewise be deemed to be abandoned within the limits of such territory.

(E) The franchise granted hereunder shall not in any way or to any extent impair or affect the right of the City to acquire the property of the Grantee hereof either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the City's right of eminent domain in respect to the Grantee or any public utility. Nor shall this franchise ever be given any value before any court or other public authority in any proceeding of any character in excess of the cost to the Grantee of the necessary publication and any other sum paid by it to the City therefor at the time of the acquisition thereof.

(F) The Grantee of this franchise shall:

(1) Construct, install and maintain all pipes and appurtenances in accordance with and in conformity with all of the ordinances, rules and regulations heretofore or hereafter adopted by the legislative body of this City in the exercise of its police powers and not in conflict with the paramount authority of the State of California, and, as to the State highways, subject to the provisions of general laws relating to the location and maintenance of such facilities;

(2) Pay to the City, on demand, the cost of all repairs to public property made necessary by any operations of the Grantee under this franchise;

(3) Indemnify and hold harmless the City and its officers from any and all liability for damages proximately resulting from any operations under this franchise; and be liable to the City for all damages proximately resulting from the failure of said Grantee well and faithfully to observe and perform each and every provision of this franchise and each and every provision of Division 3, Chapter 2 of the Public Utilities Code of the State of California; and

(4) Remove or relocate, without expense to the City, any facilities installed, used and maintained under this franchise if and when made necessary by any lawful change of grade, alignment or width of any public street, way, alley or place including the construction of any subway or viaduct by the City; and

(5) File with the legislative body of the City within thirty (30) days after any sale, transfer, assignment or lease of this franchise, or any part thereof, or of any of the rights or privileges granted thereby, written evidence of the same, certified thereto by the Grantee or its duly authorized officers;

(G) The Engineer shall have power to give the Grantee such directions for the location of any pipes and appurtenances as may be reasonably necessary to avoid sewers, water pipes, conduits or other structures lawfully in or under the streets; and before the work of constructing any pipes and appurtenances is commenced, the Grantee shall file with said Engineer plans showing the location thereof, which shall be subject to the approval of said Engineer (such approval not to be unreasonably withheld); and all such construction shall be subject to the inspection of said Engineer and done to his reasonable satisfaction. All street coverings or openings of traps, vaults and manholes shall at all times be kept flush with the surface of the streets; provided, however, that vents for underground traps, vaults and manholes may extend above the surface of the streets when said vents are located in parkways, between the curb and the property line.

Where it is necessary to lay any underground pipes through, under or across any portion of a paved or macadamized street, the same, where practicable and economically reasonable shall be done by a tunnel or bore, so as not to disturb the foundation of such paved or macadamized street; and in the event that the same cannot be so done, such work shall be done under a permit to be granted by the Engineer upon application therefor.

(H) If any portion of any street shall be damaged by reason of defects in any of the pipes and appurtenances maintained or constructed under this grant, or by reason of any other cause arising from the operation or existence of any pipes and appurtenances constructed or maintained under this grant, said Grantee shall, at its own cost and expense, immediately repair any such damage and restore such street, or portion of street, to as good a condition as existed before such defect or other cause of damage occurred, such work to be done under the direction of the Engineer, and to his reasonable satisfaction.

(I) If the Grantee of this franchise shall fail, neglect or refuse to comply with any of the provisions or conditions hereof, and shall not, within ten (10) days after written demand for compliance, begin the work of compliance, or after such beginning shall not prosecute the same with due diligence to completion, then the City, by its legislative body, may declare this franchise forfeited.

(J) The City may sue in its own name for the forfeiture of this franchise, in the event of noncompliance by the Grantee, its successors or assigns, with any of the conditions thereof.

(K) The Grantee of this franchise shall pay to the City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of this franchise; such payment to be made within thirty (30) days after the City shall furnish such Grantee with a written statement of such expenses.

(L) Not later than thirty (30) days after the publication of this ordinance, the Grantee shall file with the City Clerk a written acceptance of the franchise hereby granted, and an agreement to comply with the terms and conditions hereof. (Ord. 18)

Sec. 10302. Community Antenna Television System Franchise. (Repealed by Ordinance 98-2)

Sec. 10303. Special Provisions Applicable to Holders of State Video Franchise. (A) Franchise Fees. A state video franchise holder operating in the City shall pay to the City a franchise fee that is equal to five (5%) percent of the gross revenues of that state video franchise holder. The term "gross revenue" shall be defined as set forth in Public Utilities Code Section 5860. Each state video franchise holder shall remit the

franchise fee to the City quarterly, within forty-five (45) days after the end of the quarter for that calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the franchise fee. If the state video franchise holder does not pay the franchise fee when due, the state video franchise holder shall pay a late payment charge at a rate per year equal to the highest prime lending rate during the period of delinquency, plus one (1%) percent. If the state video franchise holder has overpaid the franchise fee, it may deduct the overpayment from its next quarterly payment.

(B) Audit Authority. Not more than once annually, the City may examine and perform an audit of the business records of a holder of a state video franchise to the extent reasonably necessary to ensure compliance with all applicable statutes and regulations related to the computation and payment of franchise fees. A state video franchise holder shall keep all business records reflecting any gross revenues, even if there is a change in ownership, for at least four (4) years after those revenues are recognized by the state video franchise holder on its books and records. If the examination discloses that the state video franchise holder has underpaid franchise fees by more than five (5%) percent during the examination period, the state video franchise holder shall pay all of the reasonable and actual costs of the examination in addition to the underpaid franchise fees and interest imposed under subsection (A) above. If the examination discloses that the state video franchise holder has not underpaid franchise fees, the City shall pay all of the reasonable and actual costs of the examination. In every other instance, each party shall bear its own costs of the examination.

(C) Customer Service Penalties Under State Video Franchises.

(1) The holder of a state video franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service.

(2) The City shall monitor the compliance of state video franchise holders with respect to state and federal customer service and protection standards. The City will provide to the state video franchise holder written notice of any material breaches of applicable customer service and protection standards, and will allow the state video franchise holder thirty (30) days from receipt of the notice to remedy the specified material breach. A material breach for the purposes of assessing penalties shall be deemed to have occurred for each day within the City, following the expiration of the thirty (30)-day time period specified herein, that any material breach has not been remedied by the video service provider, irrespective of the number of customers or subscribers affected. Material breaches not remedied within the thirty (30)-day time period will be subject to the following monetary penalties to be imposed by the City in accordance with state law:

a. For the first occurrence of a violation, a monetary penalty of five hundred dollars ($500.00) shall be imposed for each day the violation remains in effect, not to exceed one thousand five hundred dollars ($1,500.00) for each occurrence of a material breach of applicable customer service and protection standards.

b. For a second violation of the same nature within twelve (12) months, a monetary penalty of one thousand dollars ($1,000.00) shall be imposed for each day the violation remains in effect, not to exceed three thousand dollars ($3,000.00) for each occurrence of a material breach of applicable customer service and protection standards.

c. For a third or further violation of the same nature within twelve (12) months, a monetary penalty of two thousand five hundred dollars ($2,500.00) shall be imposed for each day the violation remains in effect, not to exceed seven thousand five hundred dollars ($7,500.00) for each occurrence of a material breach of applicable customer service and protection standards.

(3) A state video franchise holder may appeal a monetary penalty assessed by the City within sixty (60) days. After relevant evidence and testimony is received, and staff reports are submitted, the City Council will vote to either uphold or vacate the monetary penalty. Except as otherwise provided in Public Utilities Code Section 5900, the City Council's decision on the imposition of a monetary penalty shall be final.

(D) City Response to State Video Franchise Applications.

(1) Applicant for state video franchises within the boundaries of the City must concurrently provide to the City complete copies of any application or amendments to applications filed with the California Public Utilities Commission. One (1) complete copy must be provided to the City Clerk.

(2) The City will provide any appropriate comments to the California Public Utilities Commission regarding an application or an amendment to an application for a state video franchise.

(E) PEG Channel Capacity. A state video franchise holder that uses the public rights-of-way shall designate sufficient capacity on its network to enable the carriage of at least three (3) public, educational, or governmental (PEG) access channels.

(1) PEG access channels shall be for the exclusive use of the City or its designees to provide public, educational or governmental programming.

(2) The PEG access channels shall be used only for noncommercial purposes. Notwithstanding the foregoing sentence, advertising, underwriting or sponsorship recognition may be carried on the PEG access channels for the purpose of funding PEG-related activities.

(3) The PEG access channels shall be carried on the basic service tier. The PEG signal shall be receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than the equipment necessary to receive the lowest cost tier of service. The PEG access capacity provided shall be of similar quality and functionality to that offered by commercial channels on the lowest cost tier of service unless the signal is provided to the state cable franchise holder at a lower quality or with less functionality.

(4) To the extent feasible, the PEG access channels shall not be separated numerically from other channels carried on the basic service tier, and the channel numbers for the PEG access channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law.

(5) After the initial designation of PEG access channel numbers, the channel numbers shall not be changed without the prior written consent of the City, unless the change is required by federal law.

(6) Each PEG access channel shall be capable of carrying a National Television System Committee (NTSC) television signal.

(F) PEG Support Fee and Payments. In accordance with Public Utilities Code section 5870(n), state video franchise holders shall pay to the City a PEG support fee in the amount of one and one-half (1.5%) percent of gross revenues. State franchise holders shall remit PEG support fees in the same manner as franchise fees as set forth in subsection (A) above. The PEG support fee may be shown as a separate line item on the regular bill of each subscriber.

(G) Emergency Alert System and Emergency Overrides. A state video franchise holder must comply with the Emergency Alert System requirements of the Federal Communications Commission in order that emergency messages may be distributed over the holder's network.

(H) Interconnection. Where technically feasible, a state video franchise holder and incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG access channel programming. Interconnection may be accomplished by direct cable, microwave link,

satellite, or other reasonable method of connection. State video franchise holders and incumbent cable operators shall provide interconnection of the PEG access channels on reasonable terms and conditions and may not withhold the interconnection. If a state video franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the City may require the incumbent cable operator to allow the state video franchise holder to interconnect its network with the incumbent's network at a technically feasible point on the state video franchise holder's network as identified by the state video franchise holder. If no technically feasible point for interconnection is available, the state video franchise holder shall make an interconnection available to the channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state video franchise holder requesting the interconnection unless otherwise agreed to by the parties.

(I) Applicability of Article X Chapter 5. This Section superseded any inconsistent provisions of Chapter 5 Community Antenna Television Systems. (Ord. 14-02)

Sec. 10304. Phillips 66 Pipeline LLC Franchise.

Sec 10304.1. Grant of Franchise and Terms. (A) That the right, franchise and privilege be and the same hereby is granted to PHILLIPS 66 PIPELINE LLC, a Delaware limited liability company, its predecessor, successors and assigns, for a period of twenty-five (25) years from and after the effective date of this franchise (December 16, 2008), from time to time to construct, maintain, operate, repair, renew, change the size of, and remove or abandon in place a pipeline system for the transportation of petroleum, liquid hydrocarbon substances, gas, natural gasoline, water, waste water, mud, steam, and other substances, together with all manholes, valves, service connections and appurtenances necessary or convenient to properly maintain and operate said pipelines, including facilities necessary for cathodic protection of said pipelines, and together with poles, conduits, wires, cables and other appurtenances and equipment for telephone, telegraph and electrical power lines necessary or convenient for the Grantee's (defined below) business, in, under, over along and across certain said highways (defined below) in the City of Grover Beach in which Phillips now maintains and operates pipelines, and in all those other said highways in the City of Grover Beach in which Phillips from time to time shall make application for permission to place additional pipelines, subject, however, to the requirements of acquiring the necessary excavation permit.

(B) Definitions:

(a) The word "Grantee" as used in this Section 10304 shall mean and include Phillips 66 Pipeline LLC, its predecessors under Ordinance 420, its successor and assigns.

(b) The words "said highways" herein shall mean and include all the public highways, streets, roads, alleys and other public places within the control and limits of City of Grover Beach.

(c) The words "franchise property" herein shall mean all property constructed, maintained or operated pursuant to this franchise in any of said highways, including pipelines, pole lines or conduits, and all appurtenant equipment.

(d) The words "City" herein shall mean the City of Grover Beach, State of California.

(e) The words "Ordinance 420" shall mean Ordinance 420 passed and adopted on November 17, 1958 by the Board of Supervisors of the County of San Luis Obispo on November 17, 1958 awarding a franchise to Union Oil Company of California for a period of 50 years and which inured to the City of Grover Beach pursuant to Section 8 of Ordinance 420.

(C) The term of this franchise shall be for a period of twenty-five (25) years from and after the date on which this ordinance becomes effective (December 16, 2008).

(D) Unless otherwise specifically stated, the following provisions shall govern the interpretation and construction of the franchise granted herein:

(a) This franchise shall supersede any and all prior franchise agreements between the parties and/or their predecessors in interest, and shall include the right, for the period and subject to the conditions hereof, to construct, erect, maintain, operate, repair, renew, abandon and change the size and remove the said pipelines, if any, of Grantee as laid and constructed in said streets.

(b) The terms and conditions of this franchise shall also apply to any pipeline or other facilities of Grantee which are located within the right of way of any public road or street at the time such road or street becomes a City street except in cases where Grantee maintains easement rights that are prior to or pre-date the establishment of such public road or street.

(c) Grantee shall not be relieved of its obligation to promptly comply with any provision of its franchise by failure of the City to enforce prompt compliance.

(d) Any right or power conferred, or duly imposed upon any officer, employee, department, or other City entity, by the terms of this franchise, may be legally transferred to any other City officer, employee, department, or other City entity.

(e) Grantee shall have no recourse whatsoever against the City for the loss, cost, expense or damage suffered by Grantee and arising out of any provision or requirement of this franchise or its lawful enforcement by the City.

(f) This franchise does not relieve Grantee of any applicable requirements of the City of Grover Beach Municipal Code or of any applicable federal, state or county law, ordinance, rule, regulation or specification, including, but not limited to, any requirement relating to street work, street excavation permits, or the use, removal or relocation of property in streets, except as specifically prescribed herein.

(g) This franchise is non-exclusive. Neither the granting of this franchise nor any of the provisions contained herein shall be construed to prevent the City from granting any identical or similar franchise to any other person or entity.

(h) The compensation provided for in this franchise is for (i) the rights and privileges granted by this franchise, and (ii) the right and privilege granted to the Grantee to construct, erect, maintain, operate, repair, renew, abandon and change the size of and remove said pipelines pursuant to this franchise within the City's streets. The City expressly reserves the right to impose and collect from Grantee, on a non-discriminatory basis, processing and inspection fees from street cutting and excavating permits to the extent such fees are imposed generally on all nongovernmental applicants for such permits within the City and the amount of such fees does not exceed the actual expense to the City of processing such permits and inspecting the work done thereunder.

(i) Any activities involving the use of a pipeline system for the transmitting of oil, products thereof, hydrocarbon gases and other gas necessary for the operation and maintenance of the pipelines, water and mixtures thereof, which are not specifically authorized under this franchise, are prohibited under this franchise. Any telecommunication or other uses not authorized in this Franchise Agreement must be approved by the City, in its sole discretion, under a separate franchise.

(j) If any provision of this franchise, or the application of this franchise to any person or circumstance is held invalid by a court of competent jurisdiction or is not in compliance with any requirement of the Public Utilities Commission, the City, or any other federal or state body or agency having jurisdiction over Grantee's franchise activities, the remainder of this Franchise Agreement, or the application of this franchise to persons or circumstances other than those to which it is held invalid or not in such compliance, shall not be affected thereby.

1. Limitation upon Grant.

A. No privilege or exemption is granted or conferred by this franchise, except those specifically prescribed herein.

B. Any privilege claimed under this franchise by Grantee in any street shall be subordinate to any prior lawful occupancy of the street.

C. The rights and privileges of this franchise are granted solely to Grantee, except as provided within this Franchise Agreement. This franchise is not to be sold, transferred, leased, assigned, or disposed of as a whole or in part either by forced sale, merger, consolidation, or otherwise, without the City's prior written consent as described in Sec. 10304.17, infra, or as otherwise expressly provided herein.

2. Rights Reserved to the City.

A. The rights reserved to the City under this are in addition to all other rights of the City, whether authorized by the City of Grover Beach Municipal Code, or any other federal, state, or county law, rule or regulation. No action, proceeding or exercise of a right shall affect any other rights which may be held by the City. Grantee, by acceptance of this franchise, shall be bound thereby and to comply with any action or requirement of the City in its exercise of any such right or power.

B. The City shall have the power and right at all times during the term of this franchise to require Grantee to conform to the laws, rules and regulations governing the operation of pipelines now or hereafter adopted by the City Council to the extent permitted by law.

C. The City may enforce, when not pre-empted by other state or federal authority and to the maximum extent permitted by law, the inspection and testing of pipelines, pursuant to state and federal standards. Failure to meet state and/or federal standards shall result in liquidated damages to the City for each day of noncompliance after the initial ten (10) days of non-compliance, unless the oil pipeline is shutdown. (Ord. 15-03)

Sec. 10304.2. Appurtenances. The Grantee shall have the right, subject to the prior written approval of the City Engineer, to construct and maintain such traps, manholes, conduits, valves, appliances, attachments, and appurtenances (hereinafter for convenience collectively referred to as "appurtenances") as may be necessary for the proper maintenance and operation of the pipelines under said franchise. Said appurtenances shall be so located as to conform to any order of the City Engineer in regard thereto and not to interfere with the use of the streets for travel. The Grantee shall have the right, subject to such ordinances, rules or regulations as are now or may hereafter be in force, to make all necessary excavations in said streets for the construction and repair of said pipelines and appurtenances subject to the prior written approval of the City Engineer.

"Appurtenances" shall also include any adjunct communications lines and/or conduits and coaxial cable, optical fiber, wire, or other transmission lines or forms of transmission, and associated equipment and devices located in, upon, along, across, under or over the streets of the City, the sole function of which is to monitor or control the operation or safety of the pipeline system via the distribution of video, audio, voice or date signals. An adjunct communications line shall not include any facility which distributes, through any means, to subscribers or persons other than Grantee, the signal of one or more broadcast television or radio stations or other sources of video, audio, voice, or data signals. (Ord. 15-03)

Sec. 10304.3. Location of Pipelines. Any pipeline hereinafter laid shall be located as directed in writing by the City Engineer. Repairs to the streets shall be pursuant to the City's law, regulations and policies then in effect. (Ord. 15-03)

Sec. 10304.4. Construction of New Pipelines. (A) Terms of Construction. The pipelines and appurtenances laid, constructed or maintained under the provisions of this franchise shall be installed, maintained, and inspected by the Grantee in a satisfactory, safe and workmanlike manner, of good material, and in conformity with all applicable ordinances, rules or regulations now or hereafter adopted or prescribed by the City Council, state, or federal authorities.

(B) Restoration of Streets. The work of laying, constructing, maintaining, operating, renewing, repairing, changing and moving any of the pipeline system contemplated by this franchise and all other work in exercise of this franchise shall be conducted according to the provision of the City's encroachment ordinances and other rules from time to time to the provisions of the City's encroachment, ordinances and other rules from time to time prevailing, and otherwise in accordance with applicable federal and state law and City ordinances and with the least possible hindrance or interference to the use of City streets by the public, and Grantee shall provide all necessary warning, safety and traffic control devices as are or may be required by City, state or federal regulations. All excavations shall be pursuant to the City's laws, regulations and policies then in effect. The City streets shall be placed in as good and serviceable condition as existed at the beginning of this work, to the satisfaction of the City Engineer and pursuant to the City's laws, regulations and policies then in effect. (Ord. 15-03)

Sec. 10304.5. Commencement of Construction. The Grantee, in good faith, shall commence with the work of laying any new pipelines and appurtenances within four (4) months from the date of the written approval of the work by the City, and if any such pipelines be not so commenced within said time, this franchise shall be declared forfeited; provided, however, that if the Grantee is maintaining and operating an existing pipeline system consistent with this Franchise Agreement over the route referred to in Sec. 10304.1 herein, it shall be deemed to be in compliance with the foregoing. The Grantee shall not commence the construction of any new pipelines under the provision of this franchise or add to such existing pipeline system, if any there be, until it first shall have applied for and obtained a permit therefor from the City Engineer and the Community Development Director where appropriate.

The application of the Grantee for the construction of new pipelines shall show the following facts: the length, approximate depth and proposed location of the pipeline proposed to be laid or constructed, the size and description of the pipeline intended to be used, and such other facts as the City Engineer may require. The Grantee shall pay any and all processing and inspection fees of the City. Upon the completion of the construction of any pipelines constructed pursuant to said franchise, the Grantee shall render a statement to the City showing in detail the permit or permits issued and the total length of pipeline, the construction of which was authorized under such permit, or permits, and the total length of pipeline actually laid, and the Grantee shall accompany said report with payment to the City for the pipelines which have actually been constructed under said franchise at the rate of One Hundred Dollars ($100) per mile. (Ord. 15-03)

Sec 10304.6. Maps and Reports to Be Furnished. (A) Within six (6) months of the effective date of this Franchise for existing pipelines, and within ninety (90) days following the state in which any additional pipelines have been laid or constructed under this franchise, the Grantee shall file a map in such form as

may be required by the City Engineer showing the approximate location and size of all its facilities then in place, and shall, upon installation of any additional facilities or upon removal, change or abandonment of all or any portion thereof, file a revised map or maps showing the location and size of all such additional and/or abandoned facilities as of said date. Cathodic protection is to be used for all facilities installed or maintained pursuant to this franchise. For facilities previously in liquid service and where the liquids have been removed and the facilities inserted, or for facilities previously in gas service that are not pressurized, cathodic protection shall be maintained consistent with City or other legal requirements. A description for all the protective devices shall be furnished to the City Engineer which shall show the location and types of anodes, including a description of methods to be used as a protection against corrosion and electrolytic leakage.

(B) Grantee shall file with the City's Financial Services Director, within sixty (60) days after the expiration of the calendar year, or fractional calendar year, following the date of the granting of this franchise and within sixty (60) days after the expiration of each calendar year thereafter, two copies of a report verified by the oath of Grantee or by the oath of a duly authorized representative of Grantee, showing, for the immediately preceding franchise period, the length of pipelines in streets, the nominal internal diameter of such pipelines, the rate per foot per year (when applicable) and the total amount due to the City. In this report, Grantee shall also show any changes in franchise footage since the last franchise report, segregating such footage as to new pipelines and adjunct communications lines laid, old pipelines and adjunct communications lines removed, and old pipelines and adjunct communications lines abandoned in place.

(C) Grantee shall file with the City Engineer within sixty (60) days after the end of the calendar year a report, in duplicate, showing the permit number of each permit obtained for the installation of new pipelines during the immediately preceding franchise report period, together with the length and size of said pipelines. (Ord. 15-03)

Sec 10304.7. Compensation to the City. (A) During the term of this franchise, Grantee shall pay to the City annual fees for this franchise, said fees to be those fees prescribed by the California Public Utilities Code section 6231.5, provided that the rate shall be increased each calendar year to other maximum rate established in subsequent amendment of the California Public Utilities Code or as allowed by law. Annual payments to be made pursuant to this franchise shall be due and payable in arrears April 1 of each year of this franchise. The first annual fees payment hereunder shall be prorated for the remainder of the current calendar year based on a 365-day year.

At the time of payment of fees by Grantee, Grantee shall file a verified statement with the Director of Administrative Services, with a copy to the City Engineer, showing in detail the number of lineal feet and the diameter thereof, expressed in inches, of pipelines covered by this franchise during the previous calendar year, or portion thereof.

The compensation provided for in this Section shall be increased after the first year of the franchise and each subsequent year during the term of this franchise to the maximum rate established in subsequent amendments of the California Public Utilities Codes or as allowed by law.

In addition to the increase in fees above-described, the compensation provided for in this Section shall be increased annually as provided in Section 6231.5 which provides that the applicable base rate as defined therein, shall be multiplied by the Consumer Price Index for the area, as published by the United States Department of Labor, Office of Information for the month of September immediately preceding the month

in which payment is due and payable, and divided by the Consumer Price Index for June 30, 1989, which is declared to be 100.0. Under no circumstances shall the multiplying factor be less than one.

Notwithstanding the provision as otherwise stated in this Section and franchise, the Grantee shall be liable to pay the City the annual fee for the period to and including the date of either actual removal of the facilities or the effective date of the abandonment "in place" and until the Grantee shall have fully complied with all of the provisions of law relative to such abandonments.

In the event of partial abandonment of facilities as provided in this Franchise, or in the event of partial removal of such facilities by the Grantee, the payment otherwise due the City for occupancy of the streets by such facilities shall be reduced by the length and diameter of pipelines abandoned or the actual pipeline removed beginning with the first day of the next succeeding franchise year, and for each franchise year thereafter; provided, however, that the base rate shall be modified to reflect the adjustment (per this Section) applicable to such abandoned or removed pipeline at the beginning of the next succeeding franchise year following abandonment or removal.

Grantee shall pay to the City, upon demand, the cost of all repairs made by the City to public property arising out of the operations of the Grantee under this Franchise.

Any fees charged or expenses charged to Grantee by City pursuant to this Section or any other provision of this Franchise, unless disputed in good faith, shall be paid when due or shall be deemed delinquent. Any undisputed delinquent amounts shall be charged at 10% penalty and, in addition, shall accrue interest commencing thirty (30) days after the due date, at a rate of one and one-half percent (1.5%) per month (based upon a 30-day calendar month) or any lesser amount if required by law. Any neglect, omission or refusal by said Grantee to pay undisputed delinquent franchise fee with any late charges, with thirty (30) days of delinquency, at the times or in the manner herein provided, shall be grounded for a declaration of forfeiture of this franchise and of all rights hereunder.

Payments are to be made to the City of Grover Beach, Administrative Services Department, 154 South Eighth Street, Grover Beach, CA 93433, or at such place as the City shall, from time to time, designate in writing.

(B) In addition to any other fee specified herein, Grantee shall pay the City a granting fee of $15,000 and an additional $5,000 for City transactional costs associated with this Franchise within thirty (30) days after the date the City approves this Franchise.

(C) Grantee shall pay the City, within sixty (60) days after the end of each calendar year, for each year during the life of this franchise, an initial construction charge calculated at the rate of One Hundred ($100.00) Dollars per mile or fraction thereof for all new pipelines laid pursuant to this Franchise during the preceding year.

(D) The City shall have the right to inspect Grantee's pipeline accounting and other records relating to its annual report and to audit and recompute any and all accounts payable under this franchise. Costs of audit shall be borne by Grantee when an audit results in an increase of more than five (5%) percent of Grantee's annual payments to the City. Acceptance of any payment shall not be construed as a release, waiver, acquiescence, or accord and satisfaction of any claim the City may have for further or additional sums payable under this franchise or for the performance of any other obligation hereunder. (Ord. 15-03)

Sec. 10304.8. Emergency Equipment and Crews. At all times during the term of this franchise, the Grantee shall maintain or arrange for, on a 24 hour a day basis, adequate emergency equipment and a properly trained emergency crew within a reasonable distance so as to provide a response time of no more

than ten (10) minutes from any pipelines, appurtenances and facilities installed or maintained pursuant hereto for the purpose of monitoring the leak detection system and the communications systems if applicable and of shutting off the pressure and the flow of contents of such facilities in the event of an emergency resulting from an earthquake, act of war, civil disturbance, fire, flood or any other cause of nature whatsoever. At all times during the term of this Franchise Agreement, Grantee shall provide City Engineer with the name, address and telephone numbers of Grantee's emergency crew supervisors. (Ord. 15-03)

Sec. 10304.9. Repair or Defective Facilities and Repair of Damage to City Streets. If any portion of any street shall be damaged by any reason related to the Grantee's operations pursuant to this franchise including defective facilities laid or constructed under this franchise, Grantee shall, at its own expense, repair any defect of its facilities and put such street in as good condition as it was before such damage was incurred, to the satisfaction of the City Engineer. Repairs to streets shall be pursuant to the City laws, regulations and policies then in effect shall require repairing the asphalt for at least one-half (1/2) the width of the street in order to assure uniformity of the street section. If Grantee, within ten (10) days after receipt of written notice from the City Engineer instructing it to repair such damage, fails to commence to comply with such instruction or, thereafter, fails diligently to prosecute such work to completion, then the City Engineer immediately may take any actions which are, in the sole judgment and discretion for the City Engineer, necessary to repair such damage. Any and all costs and expenses so incurred shall be the sole responsibility of Grantee including the current rate of overhead being charged by the City for reimbursable work, which cost and expense, by the acceptance of this franchise, Grantee agrees to pay upon demand. If such damage constitutes an immediate danger to public health or safety requiring the immediate repair thereof, the City Engineer, without notice, may repair such damage and Grantee agrees to pay the cost thereof upon demand. (Ord. 15-03)

Sec. 10304.10. Rearrangement of Facilities. Expense of Grantee. 1. If any of the Grantee's facilities, in the opinion of the City Engineer, shall endanger the public or interfere with the use of any street by the public or, for public purposes, the City shall have the right to require the Grantee, and the Grantee shall repair, replace, move, alter or relocate the same (hereinafter called "rearrangement") to avoid such danger, interference or obstruction, in conformity with the written notice of the City Engineer, at the Grantee's sole discretion.

2. The City reserves the right for itself and for all other public entities which are now or may later be established to change the grade, to change the width or to alter or change the location, of any street which is located within the service area for which this franchise is granted. If any of the facilities heretofore or hereafter constructed, installed or maintained by Grantee pursuant to this franchise on, along, under, over, in, upon or across any street are located in a manner which prevents or interferes with the change of grade, traffic needs, operation, maintenance, improvement, repair, construction, reconstruction, widening, alteration or relocation of the street, or any work or improvement upon the street, Grantee shall relocate permanently or temporarily, as directed at the sole discretion of the City Engineer, any such facility at no expense to the City or other public entity upon receipt of a written request from the City Engineer to do so, and shall commence such work, by beginning engineering, surveying, or other pre-construction activities, on or before the date specified in such written request, which date shall be not less than ninety (90) days from receipt of (a) final plans of the public works improvement project approved by the City, and

(b) all requisite governmental permits and authorizations necessary to undertake the pipeline facility location. Grantee shall thereafter diligently prosecute such work to completion. Should Grantee neglect or fail to relocate its facilities in a timely manner after receipt of any such notice, Grantee shall be responsible for and shall reimburse the City for any and all additional and properly incurred costs or expenses incurred by City due to or resulting from such delay in the relocation of the facilities plus the current rate of overhead being charged by the City for reimbursable work. Grantee's obligation for such damages and/or costs will not apply if its failure to relocate arises from the sole proven negligence of the City or a third party. If such street is subsequently constituted a state highway, while it remains a state highway the rights of the State of California shall be as provided in Section 680 of the Streets and Highways Code of the State of California.

3. The City reserves the right, to lay, construct, repair, alter, relocate and maintain subsurface, surface or other improvements of any type or description in a governmental but not proprietary capacity within, over or under the streets over which this franchise is granted. If the City, or other public entity finds that the location or relocation of such subsurface, surface or other improvements conflicts with the facilities laid, constructed or maintained under this franchise, whether such facilities were laid before or after the improvements of the City, or such public entity, Grantee shall relocate permanently or temporarily, as directed at the sole discretion of the City Engineer, any such facility at no expense to the City, or other public entity, upon receipt of a written request from the City Engineer to do so and shall commence such work, by beginning engineering, surveying or other pre-construction activities, on or before the date specified in such written request, while date shall not be less than ninety (90) days from receipt of (a) final plans of the public works improvement project approved by the City, and (b) all requisite governmental permits and authorizations necessary to undertake the pipeline facility location. Repairs to the street shall be pursuant to the City's laws, regulations and policies then in effect. The Grantee shall thereafter diligently prosecute such work to completion. Should Grantee neglect or fail to relocate its facilities in a timely manner after completion. Should Grantee neglect or fail to relocate its facilities in a timely manner after receipt of any such notice in addition to the liquidated damages as set forth in Section 10304.25, Grantee shall be responsible for and shall reimburse the City for any and all additional costs or expenses incurred by City due to or resulting from such delay in the relocation of the facilities plus the current rate of overhead being charged by the City for reimbursable work. Grantee's obligation for such damages and/or costs will not apply if its failure to relocate arises from the sole proven negligence of the City of its agents or contractors. If such street is subsequently constituted a state highway, while it remains a state highway the rights of the State of California shall be as provided in Section 680 of the Street and Highway Code of the State of California.

4. If Grantee, after the notice provided for herein from the City, or other public entity, fails or refuses to relocate permanently or temporarily its facilities located in, on, upon, along, under, over, across or above any street, or to pave, surface, grade, repave, resurface, or regrade as required pursuant to any provision of this Franchise, the City or public entity may cause the work to be done, and shall keep an itemized account of the entire costs thereof, and Grantee shall defend, indemnify and hold harmless the City, its officers and employees from any liability which may arise or be claimed to arise from the moving, cutting or alteration of any of Grantee's facilities, or any necessary relocation of the facilities of other utilities.

5. Grantee agrees to, and shall, reimburse the City or other public entity for such cost within thirty (30) days after presentation to Grantee of an itemized account documenting properly-incurred costs arising out of the action taken in this Section A of Section 10304.10.

(A) Expense of Others.

1. The City shall have the right to require the Grantee to rearrange any part of the Grantee's facilities for the accommodation of the City when such rearrangement is done for the accommodation of any water, electric, gas or other utility system, including storm drains, now or hereafter owned or operated by the City.

Except as otherwise provided in Section 10304.10, such arrangement shall be at the City's expense.

2. The City shall have the right to require the Grantee to rearrange any part of the Grantee's facilities for the accommodation of any person, firm, or corporation. When such rearrangement is done for the accommodation of any person, firm or corporation, other than one of said utility systems owned or operated by the City, the cost of such rearrangement shall be borne by the accommodated party. Such accommodated party, in advance of such rearrangement, shall deposit when the Grantee or the City Clerk cash or a corporate surety bond in an amount, as in the reasonable discretion of the City Public Works Director, shall be required to pay the costs of such rearrangement, and such accommodated party shall execute an instrument agreeing to indemnify and hold harmless the Grantee from any and all damages or claims caused by such rearrangement.

3. The rearrangement referred to in subsection (1) and (2) of Section B of this Section 10304.10 shall be accomplished in conformity with the written notice of the City Public Works Director.

(B) Rearrangement of the Facilities of Others. Nothing in this franchise shall be construed to require the City to move, alter or relocate any of its facilities upon said streets, at its own expense, for the convenience, accommodation or necessity of any other public utility, person, firm or corporation now or hereafter owning a public utility system of any type or nature, to move, alter or relocate any part of its system upon said streets for the convenience, accommodation or necessity of the Grantee.

(C) Notice. The Grantee shall be given not less than sixty (60) days written notice of any rearrangement of facilities, which the Grantee is required to make hereunder. Such notice shall specify in reasonable detail the work to be done by the Grantee and shall specify the time that such work is to be accomplished. In the event that the City shall change the provision of any such notice given to the Grantee, the Grantee shall be given an additional period of not less than thirty (30) days to initiate such work. (Ord. 15-03)

Sec. 10304.11. Grantee's Removal or Abandonment of Facilities. (A) The City reserves the right to require Grantee to remove its facilities, subject to this franchise, from the City streets in the event of the expiration, revocation of termination of this franchise or at any time thereafter with respect to those facilities abandoned in place, or for the facilities affected by the permanent discontinuance of all or a portion of the facilities. Further, so long as any facilities installed under the authority of this franchise remain in a City street, Grantee shall maintain a performance bond, security fund, or other form of collateral, acceptable to the City, sufficient to cover the cost of the removal of all such facilities from the City streets.

(B) At the expiration, revocation or termination of this franchise or of the permanent discontinuance of the use of all or a portion of its facilities, Grantee shall, at the City's discretion, within thirty (30) days thereafter, either (a) grant all or a portion of the facilities to the City at no cost, at which time the City at its discretion becomes free to utilize designated pipelines as it desires for transfer of gray water, sludge or other purposes, or (b) make written application to the City Public Works Director for authority either:

1. To abandon all or a portion of such facilities in place; or

2. To remove all or a portion of such facilities. Such application shall describe the facilities desired to be abandoned, their location with reference to City streets, and shall describe with reasonable accuracy the physical condition of such facilities. As part of the application for removal or abandonment of these facilities, Grantee shall submit a soil test taken within thirty (30) days of the submittal of the application and at Grantee's expense, for those materials to be tested annually pursuant to federal, state and local laws. A soil test shall be taken along that portion of the pipeline to be removed or abandoned at such intervals as directed in writing by the City Public Works Director and reasonably consistent with established sampling protocols. The City Public Works Director shall determine whether any abandonment or removal, which is thereby proposed, may be effected without detriment to the public interest and the conditions under which such proposed abandonment or removal may be effected. The City Public Works Director shall then notify Grantee of the determinations of the City Public Works Director. Grantee shall also obtain, at its expense, permits to abandon or remove the pipeline from the City for all pipelines prior to the removal abandonment or discontinuation of use of all or a portion of Grantee's facilities in place at any time following the expiration, revocation or termination of this franchise. Grantee shall be required to meet the bonding, insurance, indemnification and annual franchise fee requirements of this franchise, for facilities abandoned in place.

(C) Within thirty (30) days after receipt of Notification from the City Public Works Director pursuant to Sec 10304.11.B.2 above, Grantee, at its own expense, shall apply for a permit from the City to abandon or remove the facility.

(D) Grantee shall, within sixty (60) days after obtaining such permit, commence and diligently prosecute to completion the work authorized by the City permit.

(E) In the event Grantee applies to remove its facilities, and the City Public Works Director determines that any or all of the facilities cannot be removed due to a moratorium preventing work in the City streets, the payment of annual franchise fees may be deferred during any such moratorium period, provided that Grantee promptly removes its facilities after notice by the City of the cessation of the moratorium and direction to remove such facilities. In the event Grantee does not promptly remove such facilities as directed, any deferred annual franchise fees shall be due and payable within thirty (30) days of notice to pay.

(F) Failure to comply with the City's Orders Regarding the Removal or Abandonment of Facilities.

1. If any orders or prescribed conditions relating to the abandonment of any facilities are not complied with by the Grantee, the City may impose such additional orders and conditions as the City Public Works Director deems appropriate, including an order that the Grantee remove any or all of such facilities. Grantee shall comply with such additional orders.

2. In the event that Grantee fails to comply with the terms and conditions of abandonment or removal as may be required by this franchise and within such time as may be prescribed by the City Public Works Director, then the City may remove or cause to be removed such facilities at Grantee's expense. Grantee shall pay to the City all of the costs of removing and disposing of these facilities, as well as returning the rights-of-way to the environmental condition they were in immediately prior to the installation of the Grantee's pipelines; including, but not limited to: (a) the cost of all environmental testing the City must conduct to determine the environmental condition of any rights-of-way occupied pursuant to this franchise and to ascertain what procedures the City must undertake, if any, to return any such rights-of-way to the environmental condition they were in immediately prior to the installation of the Grantee's pipelines; (b) all clean-up costs, disposal costs, and any other costs associated with returning

rights-of-way to the environmental condition these rights-of-way were immediately prior to the installation of the Grantee's pipelines; (c) all costs of removing, storing and disposing of the Grantee's facilities; (d) all costs of returning all streets to the structural condition they were in immediately at the beginning of the Grantee's use of these streets pursuant to this franchise; (e) plus the current rate of overhead being charged by the City for reimbursement work.

3. If, at the expiration, revocation or termination of this franchise, or of the permanent discontinuance of the use of all or a portion of its facilities, Grantee, within thirty (30) days thereafter, fails or refuses to make written application for the above-mentioned authority to remove or abandon its facilities, the City Public Works Director shall make the determination as to whether the facilities shall be abandoned in place or removed. The City Public Works Director shall then notify Grantee of his determinations. Grantee shall thereafter comply with the applicable provisions of this Sec. 10304.11.

(G) For those facilities Grantee abandons in place, Grantee shall be required to maintain an acceptable performance bond, letter of credit or security fund, as determined by the City, to cover the costs for the removal of any such abandoned facilities from the City streets for any and all periods of time, including those periods following the expiration, revocation or termination of this franchise, that Grantee's facilities remain in the City streets. Grantee shall be required to maintain insurance and to indemnify the City pursuant to this Section during any periods the abandoned facilities remain within the City streets. Grantee shall be required to maintain insurance and to indemnify the City pursuant to this Section during any periods the abandoned facilities remain within the City streets. Provided, however, that any pipelines which cannot be removed due to a moratorium preventing work in the City streets, may be deferred from the payment of annual franchise fee. The payment of annual franchise fees may be deferred during any such moratorium period. Provided that Grantee promptly removes its facilities after notice by the City of the cessation of the moratorium and direction to remove such facilities. In the event Grantee does not promptly remove such facilities as directed, any deferred annual franchise fees shall be due and payable within thirty (30) days of notice to pay. (Ord. 15-03)

Sec. 10304.12. Completion of Work. In the event that the Grantee fails to commence any work or act and diligently proceed therewith or to complete any such act or work required of the Grantee by the terms of this franchise within the time limits required hereby (and except as is otherwise provided in Sections 10 and 11), the City may cause such act or work to be completed by the City or, at the election of the City, by a private contractor. The Grantee agrees to pay the City, within thirty (30) days after delivery of an itemized bill, the cost of performing such act or work plus an amount equal to fifteen (15%) percent thereof for City administrative costs, including but not limited to, staff and overhead costs. If the Grantee is dissatisfied with any decision made by the City Public Works Director hereunder or the determination of the cost of any work performed by the City pursuant to this franchise, it may petition the City Council to review the same within ten (10) days after such decision or determination. (Ord. 15-03)

Sec. 10304.13. Recovery of Costs of Repairs and Unpaid Fees. If the Grantee has not paid the City for such fees and expenses and/or liquidated damages incurred by or payable to the City as hereinabove set forth, the City may institute the following collection procedures (which procedures are in addition to any other rights, in law or equity, which the City has to collect amounts due under this franchise and to enforce the terms of this franchise.

(A) The City Public Works Director shall keep an itemized account of the expenses incurred by the City pursuant hereto, or the fees unpaid by the Grantee. Sixty (60) days after the presentation of the bill to the Grantee therefore, the City Public Works Director shall prepare and file with the City Clerk a report specifying the work done by the City, or the unpaid fees, the itemized and total cost of the work, a description of the work performed, and the name and address of the Grantee entitled to notice pursuant to this Section.

(B) Upon receipt of said report, the City Clerk shall present it to the City Council for consideration. The City Council shall fix a time, date and place for hearing said report, and any protest or objections thereto. The City Clerk shall cause notice of said hearing to be posted in a newspaper of general circulation in the City, and served by certified mail, postage prepaid, addressed to the Grantee as set forth herein. Such notice shall be given at least ten (10) days prior to the date set for hearing and shall specify the day, hour, and place when the City Council will hear and pass upon the City Public Works Director's report together with any objections or protests which may be filed as hereinafter provided.

(C) The Grantee may file written protests or objections with the City Clerk at any time prior to the time set for the hearing on the report of the City Public Works Director. Any such protest or objection must contain a description of the work or unpaid fee or liquidated damages in which the Grantee is interested and the grounds of such protest or objection and the date notice was received by Grantee. Grantee shall present such protest or objection to the City Council at the time set for the hearing, and no other protest or objection shall be considered.

(D) Upon the day and hour fixed for the hearing, the City Council shall hear and pass upon the report of the City Public Works Director, together with any such objections or protests, make such revision, correction or modification to the charge as it may deem just; and when the City Council is satisfied with the correctness of the charge, the report (as revised, corrected or modified), together with the charge, shall be confirmed or rejected. The decision of the City Council on the report and the charge, and on all protests or objections, shall be the final and conclusive decision of the City.

(E) The City Council may thereupon order that such charge shall be made a personal obligation of the Grantee or assess such charge against the property of the Grantee.

1. If the City Council orders that the charge shall be a personal obligation of the Grantee, it shall direct the City Attorney to collect the same on behalf of the City by use of all appropriate legal remedies.

2. If the City Council orders that the charge shall be assessed against the property of the Grantee, it shall confirm the assessment, cause the same to be recorded on the assessment roll, and thereafter, said assessment shall constitute a special assessment against a lien upon the property.

(F) The validity of any assessment made under the provisions of this franchise shall not be contested in any action or proceeding unless the same is commenced within ninety (90) days after the assessment is placed upon the assessment roll as provided herein.

(G) The City Council, in its discretion, may determine that assessments in amount of $500.00 or more shall be payable in not more than five (5) equal annual installments. The City Council's determination to allow payment of such assessments in installments, the number of installments, whether they shall bear interest, and the rate thereof shall be adopted by a resolution prior to the confirmation of the assessment.

(H) Immediately upon its being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessment shall be liens upon the property of the Grantee in the City of Grover Beach. The lien shall be subordinate to all existing special

assessment liens previously imposed upon the same property, and shall be paramount to all other liens except for state, county, and municipal taxes with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.

1. All such assessments remaining unpaid after thirty (30) days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the highest rate permitted by law from and after said date.

(I) After confirmation of the report, certified copies of the assessment shall be filed with the County Auditor on or before August 10th. The description of the parcels reported shall be those used for the same parcels on the County Assessors map books for the current year.

(J) The amount of the assessment shall be collected at the same time and in the same manner as ordinary county taxes are collected and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy collection and enforcement of taxes shall be applicable to such assessment. If the City Council has determined that the assessment shall be paid in installments, each installment and any interest thereon shall be collected in the same manner as ordinary City taxes are in successive years. If any installment is delinquent, the amount thereof is subject to the same penalties and procedure for sale as provided for ordinary county taxes. (Ord. 15-03)

Sec. 10304.14. Bond. (A) Grantee shall, concurrently with the filing of and acceptance of award of this franchise and yearly thereafter, file with the City Clerk, and maintain in full force and effect at all times, a bond running to the City in the penal sum of One Million ($1,000,000.00) Dollars, with a surety to be approved by the City, conditioned that Grantee, pursuant to Section 6301 of the Code, shall well and truly observe, fulfill, and perform each and every term and condition of this franchise, and in case of a breach of condition of said franchise, at the discretion of the City Public Works Director, a percentage of the amount of the bond shall be paid to the City according to the following schedule, which cumulative amount for any said breach not cured within the time specified below shall not exceed the full amount of the bond, in addition to any damages recoverable by the City and shall be recoverable from the principal and sureties of the bond:

| Following receipt of notice by Certified Mail sent by the City, failure to cure said breach of condition within: | Penal Sum to City: |
|---|---|
| 10 business days | 5% of amount of bond |
| 30 calendar days | 30% cumulative amount of bond |
| 60 calendar days | 70% cumulative amount of bond |
| 90 calendar days | 100% cumulative amount of bond |

The amount of time specified above shall be tolled while the City and Grantee resolve, or until the City Council rules on, any written appeal, protest or objection to the City Public Works Director's decision as set forth in Sections 12, 13, 19 and 25, and elsewhere in this franchise; however, if Grantee's appeal, protest or objection is found by the City Council to be the result of bad-faith actions or tactics that are frivolous or intended to cause unnecessary delay, such amount of time shall not be tolled.

If said bond is not so filled, the award of this franchise and privileges will be set aside and any money paid therefore will be forfeited. Whenever a bond is taken and deemed to be liquidated damages for any breach of a term or condition of this franchise, the Grantee must immediately file another bond of like amount and character, and if the Grantee fails to do so within the term set by the City Public Works Director, the City Council may, by resolution, declare said franchise automatically forfeited. Nothing herein shall insulate Grantee from liability in excess of the amount of said bond or shall be construed as a waiver by the City of any remedy at law against the Grantee for any breach of the terms and conditions of this franchise, or for any damage, loss or injuries suffered by the City in case of any damage, loss or injury suffered by any person, firm, corporation by reason of any work done or any activity conducted by the Grantee in exercise of this franchise.

(B) The faithful performance bond shall continue to exist for one (1) year following the City's approval of any sale, transfer, assignment or other change of ownership of this franchise, or of the expiration or termination of this franchise. The City may release said bond prior to the end of the one (1) year period upon satisfaction by Grantee of all the obligations under this franchise. (Ord. 15-03)

Sec. 10304.15. Insurance. The Grantee shall procure and shall keep in force for the term of the franchise, at the sole cost and expense of the Grantee, the following insurance. All insurance coverages are to be placed either with insurers which have a Best's rating of not less than B+ VII and are admitted insurance companies in the State of California, or with financially sound stock or mutual insurers of recognized responsibility at the sole discretion and approval of the City. Grantee may satisfy the requirements of this Section 10304.15 by showing proof of self-insurance satisfactory to City.

Commercial General Liability Insurance (CGL): Grantee shall maintain in full force and effect Commercial General Liability Insurance with the following coverages:

1. Personal injury and Bodily Injury, including death resulting therefrom.
2. Property Damage.
3. Automobile coverage, which shall include owned, non-owned and hired vehicles.

The amount of insurance shall not be less than the following: single limit on the coverage applying to bodily and personal injury, including death resulting there from, property damage and automobile coverage in the total amount of Ten Million ($10,000,000.00) Dollars.

Pollution Liability Insurance shall be written on a Contractor's Liability form, or other form acceptable to City, providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than $10,000,000 per claim and aggregate.

The following endorsements must be provided in the CGL policy:

1. Grantee agrees to endorse third party liability coverage required herein to include as additional insured the City, its elected and appointed officials, employees and agents, using ISO endorsement CG 20 10 with an edition date prior to 2004. Grantee also agrees to require all contractors, subcontractors and anyone else involved in this franchise on behalf of Grantee to comply with these provisions. If Grantee's contractors or subcontractors have a construction contract related to this franchise, ISO endorsement 20 37 also is required.
2. If the insurance policy covers on an "accident" basis, it must be changed to "occurrence".
3. The policy must cover personal injury as well as bodily injury.
4. Blanket contractual liability must be afforded and the policy must contain a cross-liability or severability of interest endorsement.
5. Broad Form Property Damage Liability must be afforded.

6. Products and Completed Operations coverage must be provided.

7. The City, its officers, its elected and appointed officials, employees and agents shall be named as additional insureds under the policy. The policy shall provide that the insurance will operate as primary insurance. No other insurance effected by the City, whether commercial or self-insurance will be called upon to contribute to a loss hereunder.

The following requirements apply to all insurance to be provided by Grantee:

1. A certificate of insurance shall be furnished to the City. Upon request by the City, Grantee shall provide a certified copy of any insurance policy to the City within forty-five (45) working days of the City's request.

2. Certificates and policies shall state that the City shall be notified, as soon as is reasonably practicable, but no later than thirty (30) days thereafter, of any cancellation, reduction in coverage or change in any other material respect.

(A) Failure on the part of Grantee to procure or maintain required insurance and bonding shall constitute a material breach of this franchise upon which the City may immediately terminate or suspend this franchise. (Ord. 15-03)

Sec. 10304.16. Indemnification by Grantee. The Grantee, by the acceptance or use of the franchise hereby granted and pursuant to section 6296 of the Code, shall defend and indemnify and shall keep and save free and against any and all liability, claims, demands or causes of action which may be asserted, prosecuted or established against them, or any of them, for damage to persons or property, of whatsoever nature, arising out of the activities of the Grantee pursuant to this franchise, whether such damage shall be caused by its sole negligence or negligence concurrent with that of the City, excepting there from, however, any liability, claim, demand, or cause of action which may be asserted, prosecuted or established against the City under the provision of the Worker's Compensation Act for injury to or the death of any of City's officers, agents or employees who act within the scope of their employment. Grantee shall not be responsible for any proven criminal, fraudulent or malicious conduct of the city. (Ord. 15-03)

Sec. 10304.17. Changes in Control of Franchise. (A) On or after the Grantee's acceptance of this franchise as provided in Section 10304.23 herein, Grantee, its partners, its shareholders, or any other person or persons holding an interest in Grantee, shall not transfer any interest in the franchise where such a transfer would lead to another person achieving a twenty-five (25%) percent or greater interest in this franchise or change control of this franchise, unless the City approves such a transfer or change in control. The City shall approve a request for transfer or change in control only if doing so serves the public interest. As used in this franchise, "control" includes actual working control in whatever manner exercised.

1. The City shall deny any such request for transfer or change in control if the transferor or transferee fails to comply with any applicable provision of this Section of this franchise or if the City determines the transferor is in non-compliance with the terms and conditions of this franchise or if a transferee is lacking in experience and/or financial ability to operate the pipelines authorized by this franchise, or if the proposed transfer will be detrimental to the public interest.

(B) Both the Grantee and the proposed transferee shall inform the City of any pending change in control of this franchise or of any pending transfer of an interest in the franchise requiring the City's consent pursuant to this Section, and each shall provide applications containing all documents on which the transfer or change in control is predicated and all documents which the City Public Works Director determines are

necessary to evaluate the transfer or change of control. These applications shall be signed by duly authorized representatives of the Grantee and the proposed transferee, with signatures acknowledged by a notary. The appropriate transfer fee described in Section 10304.17(c), infra, shall accompany these applications.

1. Grantee's application shall include:

a. Identification and ownership of the proposed transferee in the same detail as if the proposed transferee were an applicant for an initial grant;

b. Current financial statements showing the financial condition of the Grantee as of the date of the application. In this application, the Grantee shall also agree to submit financial statements showing the conditions of the franchise as of the closing. Said financial statements shall have been audited and certified by an independent certified public accountant, and shall be submitted within ninety (90) days of the closing.

2. The proposed transferee's application shall contain current financial statements of the proposed transferee and other such information and data, including but not limited to sources of capital, as will demonstrate conclusively that the proposed transferee has all the financial resources necessary to acquire the pipeline(s), carry out all of the terms and conditions of the franchise, remedy any and all defaults and violations of the provisions of this franchise in the Grantee's past and present operations, make such other improvements and additions as may be required or proposed to maintain and conduct the services and facilities required under this franchise. The proposed transferee will be required to authorize release of financial information to the City from financial institutions relating to information supplied by the proposed transferee in support of the application. The proposed transferee's application shall also include:

a. A construction schedule, describing type and placement of construction, detail phases of construction, and include map(s) correlated to the phases of construction. Map(s) shall include detail on the location, length, depth, and internal diameter of any planned pipelines.

b. Copies of any agreements with utility companies for the use of any facilities including, but not limited to, poles, lines and conduits.

c. A description of plans for emergency equipment and personnel enabling the transferee to meet the emergency equipment personnel requirements in Section 10304.8 herein.

d. Any information indicating as specifically as possible that any principal, manager, or associate of the proposed transferee or a parent entity of the proposed transferee has previously been or is currently:

i. A party to a criminal proceeding (involving felonies, embezzlement, tax evasion, bribery, extortion, jury tampering, obstruction of justice (or other misconduct affecting public or judicial officers in the performance of their duties), false/misleading advertising, perjury, antitrust violations (state or federal), violation of environmental laws or regulations or conspiracy to commit any of the foregoing:

ii. A party to a civil proceeding concerning liability for any of the following: unfair or anticompetitive business practice, antitrust violations (state or federal) including instances in which consent decrees were entered, violations of security laws (state or federal), false/misleading advertising, racketeer influences and corrupt organizations, violations of environmental laws or regulations or contraband forfeitures;

iii. Subject to any penalty, criminal or civil involving its franchising authorities;

iv. Involved in instituting legal action against its franchising authorities.

v. Involved in revocation/non-renewal of any other franchise.

e. Any other details, statements information or references pertinent to the subject matter of such application, which shall be required or requested by the City or by any provision of law.

f. An express and unconditional written acceptance of the terms and conditions of this franchise, in its most current form, as a condition of the transfer.

(C) A fee shall be submitted with the applications for the City's consent to transfer or change of control.

1. Where the City's consent to a transfer or a change of control of this franchise does not result in the modification of this franchise by adoption of an amending ordinance, this fee for each application shall be as set forth in the City's fee ordinance.

2. Where the City's consent to a transfer or a change of control of this franchise results in the modification of this franchise by adoption of an amending ordinance this fee shall be as set forth in the City's fee ordinance, or if no provision exists in the fee ordinance, then the fee shall be negotiated between the City and the Grantee based on a time and material basis for City staff time.

3. In the event the costs to process the applications exceed the fees detailed above, the applicant may be required to pay any additional costs incurred by the City in processing the applicants' requests for the City's consent to the transfer or change of control of this franchise. Such costs may include the cost incurred of hiring consultants to assist in evaluating the applications. Such costs shall be paid by the applicant prior to final consideration of the request by the City Public Works Director, or the City Council, as applicable.

(D) Within thirty (30) days of the effective date of the City's approval of the transfer or change of control, or within thirty (30) days of the date of the close of the transfer or change of control, the Grantee shall file with the City (1) a certified copy of each duly executed instrument of such a transfer or change in control; and (2) the submittal of a final accounting and report of all fees due under this franchise. The proposed transferee shall be responsible for any underpayment and shall be entitled to a credit for any overpayment. Within ninety (90) days of the closing of the transfer or change of control, the Grantee shall submit financial statements, audited and certified by an independent certified public accountant, showing the condition of the franchise as of the closing. IF such duly executed instruments are not filed with the City by the deadlines imposed in this Section, or if the final documents are different from the preliminary documents, the City may inform the proposed transferee that the transfer or change in control is not deemed to be in force and effect. The City may then administratively determine that this franchise is forfeited and the City Council may, without notice, repeal this franchise.

(E) As a condition to the granting of consent to such a transfer or change in control, the City Council may impose such additional terms and conditions upon this franchise and upon the proposed transferee as are in the public interest. Such additional terms and conditions shall be imposed by ordinance. Nothing herein contained shall be construed to grant Grantee the right to transfer or change control of this franchise or any part thereof, except in the manner aforesaid. This Sec 10304.17 applies to any transfer of this franchise, or any change in control of this franchise, whether by operation of law, by voluntary act of Grantee, or otherwise. (Ord. 15-03)

Sec. 10304.18. Waiver of Breach. No waiver of breach of any of the covenants, agreements, restrictions, or conditions of this franchise by the City shall be construed to be a waiver of any succeeding breach of the same or other covenant, agreements, restrictions or conditions of this franchise. No delay or omissions of the City in exercising the right, power or remedy herein provided in the event of default shall be construed as a waiver thereof, or acquiescence therein, nor shall the acceptance of any payment made in a manner or at a time other than is herein provided be construed as a waiver of or variation in any of the terms of this franchise. (Ord. 15-03)

Sec. 10304.19. Default. (A) In the event that the Grantee shall default in the performance of any of the terms covenants and conditions herein, the City may give written notice thereof to the Grantee of such default by certified mail. In the event that the Grantee does not commence the work necessary to cure such default within five (5) business days after such notice is received or prosecute such work diligently to completion, the City may declare this franchise forfeited by giving written notice thereof the Grantee, whereupon this franchise shall be void and the rights of the Grantee hereunder shall terminate and the Grantee shall execute an instrument of surrender and deliver the same to the City. If the City Council declares this franchise forfeited, it may thereupon and thereafter exclude the Grantee from further occupancy or use of all City roads authorized under this franchise. A forfeiture of said franchise shall not of itself operate to release any bond filed for said franchise. Upon declaring a franchise forfeited, the City Council may elect to take and accept any bond as liquidated damages therefore or pursue any other legal remedy for any damage, loss or injury suffered by the City as a result of such breach or both. After forfeiture, any bond shall remain in full force and effect for a period of one (1) year unless exonerated by the City Council. No bond shall be exonerated unless a release is obtained from the Public Works Director and is filed with the City Clerk. The release shall state whether all excavations have been back filled, all obstructions removed, and whether the substratum or surface of City streets occupied or used have been placed in good and serviceable condition. Release shall not constitute a waiver of any right or remedy which the City may have against the Grantee or any person, firm or corporation for any damage, loss or injury suffered by the City as a result of any work or activity performed by the Grantee in the exercise of this franchise.

(B) No provisions herein made for the purpose of securing the enforcement of the terms and conditions of this franchise shall be deemed an exclusive remedy or to afford the exclusive procedure, for the enforcement of said terms and conditions, but the remedies and procedure herein provided, in addition to those provided by law, shall be deemed to be cumulative. (Ord. 15-03)

Sec. 10304.20. Scope of Reservation. Nothing herein contained shall ever be construed so as to exempt the Grantee from compliance with all applicable ordinances of the City now in effect or which may be hereafter adopted which are not inconsistent with the terms of this franchise. The enumeration herein of specific rights reserved shall not be construed as exclusive; or as limiting the general reservation herein made or as limiting such rights as the City may now or hereafter has in law. (Ord. 15-03)

Sec. 10304.21. Notice. Any notice required to be given under the terms of this franchise, the manner of service of which is not specifically provided for, may be served as follows:

Upon the City, by serving the City Administrative Services Director, personally or by addressing a written notice to the City Administrative Services Director of the City of Grover Beach, 154 S. Eighth Street, Grover Beach, CA 93433, and depositing such notice in the United States mail, postage prepaid.

Upon the Grantee, by addressing a written notice to Grantee addressed to ConocoPhillips Pipeline Company (a Delaware Corporation), a wholly owned subsidiary of ConocoPhillips Company, a Delaware corporation, 600 North Dairy Ashford, Houston, Texas 77079, or such other address as may from time to time be furnished in writing by one party to the other and depositing said notice in the United States mail, postage prepaid. When service of any such notice is made by mail, the time of such notice shall begin with and run from the date of the deposit of same in the United State mail. (Ord. 15-03)

Sec. 10304.22. Successors. The terms herein shall inure to the benefit of and shall bind, as the case may be, the successors and assigns of the parties hereto, subject, however to the provisions of Section 10304.17. (Ord. 15-03)

Sec. 10304.23. Acceptance of Franchise. (A) This franchise is granted and shall be held and enjoyed only upon the terms and conditions herein contained.

(B) Grantee shall within thirty (30) days after the passage of this franchise, file with the City Clerk an express and unconditional written letter of acceptance of, and consent to, the terms and conditions of this franchise, in its current version, and as subsequently amended.

(C) The parent entity, or entities, of Grantee shall file a letter with the City, concurrent with Grantee's letter of acceptance, which guarantees the performance of each and every term, covenant and condition imposed on Grantee pursuant to this franchise.

(D) Grantee's letter of acceptance shall be signed by two (2) duly authorized representatives of Grantee, whose signatures shall be acknowledged by a notary, and shall be accompanied by the performance bond and evidence of insurance required by this franchise. (Ord. 15-03)

Sec. 10304.24. Force Majeure. The time within which Grantee is obligated hereunder to construct, erect, maintain, operate, repair, renew, change the size of and remove pipelines or other improvements shall be extended for a period of time equal in duration to, and performance in the meantime shall be excused on account of, and for, and during the period of, any delay caused by strikes, threats of strikes, lockouts, war, threats of war, insurrection, invasion, acts of God, calamities, violent action of the elements, fire, action or regulation of any governmental agency law or ordinance, impossibility of obtaining materials, or other things beyond the reasonable control of Grantee. (Ord. 15-03)

Sec. 10304.25. Liquidated Damages. (A) By acceptance of this Franchise, Grantee understands and acknowledges that failure to timely comply with any performance requirements stipulated in this franchise will result in damages to the City, and that it is and will be impractical to determine the actual amount of such damage in the event of delay or nonperformance. Each of the amounts set forth below has been set in recognition of the difficulty of affixing actual damages arising from breach of these time performances requirements. Each of said amounts constitutes a reasonable estimate of these damages. This section does not limit the rights and remedies available to the City for damages other than the time compliance with performance requirements as described in this Section. The liquidated damages set forth below shall be chargeable to the bond letter of credit or security fund provided for in Section 10304.14, supra, should Grantee not make payment within thirty (30) days of written notice by certified mail by the City that the following amounts are due for the following concerns:

1. Failure to provide data, documents, or reports within ten (10) business days after written request by the City, by certified mail, or such longer time as may be specified in said request: Two Hundred Fifty ($250.00) Dollars per day for each day, or part thereof, that each violation continues.

2. Failure to provide to the City within ten (10) business days after written request by the City, by certified mail, current evidence of insurance and bonding: Two Hundred Fifty ($250.00) Dollars per day for each day, or part thereof, that each noncompliance continues. Nothing in this Section shall preclude immediate termination or suspension of this franchise as provided for under Section 10304.15B, supra.

3. Failure by Grantee to timely restore public or private property after performance of work, after ten (10) business days' written request by the City, by certified mail: Two Hundred Fifty ($250.00) Dollars per day or part thereof, that each non-compliance continues. Any fines paid pursuant to this Subsection 3 shall be paid solely to the Street Fund of the City Public Works Director.

4. Failure to timely comply with any performance requirements stipulated in this franchise within ten (10) business days after written request or notice by the City, by certified mail: Two Hundred Fifty ($250.00) Dollars per day, or part thereof that each non-compliance continues.

(B) If the City Public Works Director determines that Grantee is liable for liquidated damages, the City Public Works Director shall issue to Grantee by certified mail written notice of intention to charge liquidated damages. Liquidated damages shall begin to accrue as of the date of the written notice and as set forth in said notice. The notice shall set forth the basis for the liquidated damages and shall give Grantee a reasonable time in which to remedy the violation.

(C) Grantee shall have the right to appeal any notice to the City Public Works Director by certified mail within twenty (20) days after issuance of the notice by the City Public Works Director. The City shall make a determination within sixty (60) days after receipt of an appeal. The City Council's decision shall be the final decision of the City. If Grantee does not appeal the notice within said twenty (20) day period, Grantee shall pay the amount(s) of liquidated damages as stated in the notice. If payment is not paid as provided for in this Section, the City may withdraw against the bond provided for in Section 10304.14 herein. (Ord. 15-03)

Sec. 10304.26. Attorney's Fees. In the event the City or Grantee brings legal action against the other, or against Grantee's bonding companies or insurance carrier to compel performance of, or to recover for breach of, any covenant, agreement or condition contained in this franchise, or for damages, the prevailing party shall be entitled to, in addition to any other relief obtained, such reasonable attorney's fees as fixed by the judge of the court in which such action is brought. (Ord. 15-03)

Sec. 10304.27. Condemnation. Notwithstanding anything to the contrary contained herein and pursuant to section 6261 of the Code, this franchise shall not in any way affect the right of the City to acquire the property of the Grantee either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or to abridge either for a term or in perpetuity the City's right of eminent domain with respect to any public utility. The City reserves the right to purchase the property of such utility at an agreed price. In fixing the price to be paid by the City for any utility, no allowance shall be made for franchise value (other than the actual amount paid to the City at the time of the franchise acquisition), goodwill, going concern, earning power, increased cost of production, severance damage, or increased value of right-of-way. (Ord. 15-03)

# CHAPTER 4 — CARD TABLE LICENSES AND REGULATIONS

Sec. 10400. Card Table Defined. The term "card table," as used in this Chapter, shall mean a card table within a business premises where there is carried on any card game for hire or for compensation, which game is not unlawful under the provisions of California Penal Code §330, or any other provision of law. (Ord. 19; Amd. Ord. 79-6)

Sec. 10401. Card Table Licenses. It is unlawful for any person, firm, association, corporation or partnership to engage in or carry on the business of conducting or operating one or more card tables unless there is in effect a card table license covering each such card table, issued pursuant to the provisions of this Chapter. (Ord. 19: Amd. Ord. 79-6)

Sec. 10402. Standards for Issuance of Card Table Licenses. (A) No more than a total of nine (9) card tables shall be licensed to operate within the City under the provisions of this Chapter.

(B) No one (1) permittee shall be authorized to operate more than a total of six (6) card tables within the City.

(C) No more than six (6) card tables shall be operated or maintained within any single business premises within the City.

(D) No card table license shall be transferable to another location or permittee.

(E) No card table license shall be issued to any person who has been convicted of any felony, nor to any association, partnership, or corporation of which any owner thereof has been convicted of a felony.

(Amd. Ord. 06-13; Amd. Ord. 13-02)

Sec. 10403. Applications for Licenses. Any person desiring to obtain a card table license shall apply to the City Clerk and shall furnish such information as is requested by the City Clerk which pertains to the identification and background of the applicant and the owners thereof, and to the nature and location of the proposed business for which the application is made. The City Clerk shall deliver such application to the Chief of Police for his investigation and for a report to the City Council thereon. The Chief of Police shall have the power to require the applicant and/or any of the owners thereof to submit to fingerprinting and to furnish such additional information as he deems necessary to assist in such investigation.

Upon receipt of the report of the Chief of Police the City Council shall grant a card table license or licenses to the applicant if the City Council determines the following:

(A) That the applicant and its members are of good moral character and otherwise qualified to carry on such business under the terms of this Chapter;

(B) That the carrying on of a card table at the location proposed is in compliance with all applicable zoning and building ordinances and regulations of the City;

(C) That the issuance of the permit is not contrary to the public health, safety or welfare. (Ord. 19; Amd. 79-6)

Sec. 10404. Revocation of Licenses. The City Council shall have the right to revoke any card table license when the possessor thereof has violated, or permitted the violation of, any of the terms of this chapter or if the license is unused for a period longer than two (2) years. The City Council may also revoke any card

table license when the business being operated is not implementing the approved Security Plan for the protection of its patrons, or is not being conducted in accordance with the public health, safety or welfare or when, in the discretion of the City Council, it is found that the continued operation of said business will create or is creating a policing problem to the City. Prior to revoking any card table license, the City Council shall cause to be served on the applicant a notice of its intention to do so at least five (5) days prior to the date upon which it intends to consider the matter of such revocation, and also stating the right of the licensee to appear before the City Council and to show cause why such license should not be revoked. The decision of the City Council with respect to the revocation shall be final. (Ord. 19; Am. Ord. 79-6; Am. Ord. 04-05; Am. Ord. 13-02)

Sec. 10405. Card License Fee. There shall be an annual fee in the amount set forth in the Master Fee Schedule for each card table licensed pursuant to the terms of this Chapter. (Ord. 19; Amd. Ord. 79-6; Amd. Ord. 06-13)

Sec. 10406. Access to Premises. The City Council finds that it is necessary and in the public interest that law enforcement officers have access to any premises in which a card table is being operated under the terms of this Chapter, in order to insure that the terms of this Chapter are being complied with. Any premises for which a license has been issued under the provisions of this Chapter shall be deemed to constitute a public place, and all police officers and peace officers shall at all times have access thereto during business hours. (Ord. 19: Amd. Ord. 79-6)

Sec. 10407. Hours of Operation. Subject to conditions of a Conditional Use permit, the licensee may operate the card room twenty-four (24) hours per day, seven (7) days per week, and three hundred sixty-five (365) days per year. The actual hours of operation shall be posted in a manner sufficient to give patrons adequate notice of the hours during which the card room will remain open for business. (Ord. 14-06)

Sec. 10408. Attendance by Minors. No person under the age of twenty-one (21) shall be employed in or allowed to frequent, remain in or visit any room or premises wherein is conducted or operated any card table licensed under the provisions of this chapter. (Ord. 19: Amd. Ord. 79-6)

Sec. 10409. Conflict with Other Laws and Savings Clause. The City Council expressly finds and declares that it is not the intent of the Ordinance codified in this Chapter to authorize or permit any form of gaming which is contrary to any provisions of state law, and in the event of any such conflict state law shall control. The provisions of this Chapter shall control all matters pertaining to the licensing, control, and regulation of card games and card tables, regardless of the provisions of any other law of the City, and in the case of direct conflict shall supersede any other such law.

If any section, subsection, clause, or portion of this Chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. (Ord. 19; Amd. Ord. 79-6)

Sec. 10410. Wagering Limits. There are no wagering limits on the amount wagered in any permitted games. However, with respect to poker games, in any one hand of play, no player may wager or be required to wager a monetary amount in excess of the value of chips the player has in his or her possession. (Ord. 99-7; Am. Ord. 15-05)

Sec. 10411. Patron Security and Safety. Any holder of a card table licenses shall submit a Security Plan for the premise where a card table or tables are operated. Said Security Plan must be reviewed and approved by the Chief of Police prior to issuance or renewal of a Business Tax Certificate. The holder of a card table license must pay a full cost recovery fee for the review and approval of a Security Plan as may be established by the City Council in the Master Fee Schedule. (Ord. 04-05)

## CHAPTER 4.20 - LICENSING OF TOBACCO RETAILERS

Sec. 10420. Purpose. It is the purpose and intent of this Chapter to discourage violations of laws which prohibit or regulate the sale or distribution of tobacco products and tobacco paraphernalia, but not to expand or reduce the degree to which the acts regulated by state or federal law are criminally proscribed or to alter the penalty provided therefor. (Ord. 05-06; Am. Ord. 16-03; Am. Ord. 19-01)

Sec. 10421. Definitions. The following words and phrases, whenever used in this Chapter, shall have the meanings defined in this Section unless the context clearly requires otherwise:

(A) "Person" means any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(B) "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share, ultimate control over the day-to-day operations of a business.

(D) "Tobacco paraphernalia" means any cigarette papers or wrappers, blunt wraps, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products as defined in Business and Professions Code Section 22962(a)(2) and Penal Code Section 308(a).

(D) "Tobacco product" means any of the following:

(1) A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.

(2) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.

(3) Any component, part, or accessory of a tobacco product, whether or not sold separately.

(4) "Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

(E) "Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, or tobacco products; "tobacco retailing" shall mean engaging in any of these activities.

(F) "Licensing Agent" means a City employee designated by the City Manager to serve in this capacity.

(G) "Enforcement Agency" means the Grover Beach Police Department.

(H) "Hearing Officer" means the City employee designated by the City Manager to serve in that capacity. (Ord. 05-06; Am. Ord. 16-03; Am. Ord. 19-01)

Sec. 10422. Requirement for Tobacco Retailer License. (A) It shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's license issued pursuant to this Chapter for each location at which that activity is to occur.

(B) No license will be issued to authorize tobacco retailing at other than a fixed location; itinerant tobacco retailing and tobacco retailing from vehicles are prohibited.

(C) No license will be issued to authorize tobacco retailing at any location that is licensed under state law to serve alcoholic beverages for consumption on the premises (e.g., an "on-sale" license issued by the California Department of Alcoholic Beverage Control); tobacco retailing in bars and restaurants serving alcoholic beverages is prohibited.

(D) No person shall sell a tobacco product without first examining the identification of the purchaser and confirming that the proposed sale is to a purchaser who is at least the minimum age in state law for being sold the tobacco product.

(E) Licenses issued hereunder are valid for one (1) year and each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license prior to its expiration. A tobacco retailer license does not confer any new rights under any other law and does not exempt any business that otherwise would be subject to the smoke-free work place provisions of Labor Code Section 6404.5.

(F) A tobacco retailer operating legally on the date that the ordinance enacting this Chapter was first introduced and that would otherwise be entitled to receive a license may receive a license and may continue to operate so long as (1) the license is renewed continually without lapse; (2) the tobacco retailer is not closed for business for more than sixty (60) consecutive days; (3) the tobacco retailer does not substantially change the business premises or business operation; and (4) the tobacco retailer maintains the right to operate under the terms of other applicable laws, including without limitation, the zoning ordinance, building codes, and business tax certificate ordinance. (Ord. 05-06)

Sec. 10423. Application Procedure. An application for a tobacco retailer's license shall be submitted to the Licensing Agent in the name of each Proprietor/Person proposing to conduct retail tobacco sales and shall be signed by such person or an authorized agent thereof. All applications shall be submitted on a form supplied by the Licensing Agent and shall contain the following information:

(A) The name, address, and telephone number of the applicant;

(B) The business name, address, and telephone number of each location for which a tobacco retailer's license is sought;

(C) Such other information as the Licensing Agent deems necessary for enforcement of this Chapter;

(D) Whether or not any Proprietor has previously been issued a license pursuant to this Chapter that is, or was at any time, revoked and, if so, the dates of the revocation and the period of revocation. (Ord. 05-06)

Sec. 10424. Issuance of License. The Licensing Agent shall issue a tobacco retailer's license unless substantial record evidence demonstrates one of the following bases for denial:

(A) The application is incomplete or inaccurate; or

(B) The application seeks authorization for tobacco retailing by a person or at a location for which a revocation is in effect pursuant to Section 10430 of this Chapter; or

(C) The application seeks authorization for tobacco retailing in an area that is in violation of City zoning pursuant to Article IX, Chapter 1 of this Code or that is unlawful pursuant to any other local, State, or Federal law. (Ord. 05-06)

Sec. 10425. Display of License. Each licensee shall prominently display the license in a public place at each location where tobacco retailing occurs. (Ord. 05-06)

Sec. 10426. Fees for License. The fee for a tobacco retailer's license shall be established by Resolution of the City Council amending the Master Fee Schedule. The fee shall be calculated so as to recover the total cost, but no more than the total cost, of license administration and enforcement, including, for example, but not limited to, issuing the license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violation, and prosecution of violators. The fee for tobacco retailer's license shall be paid to the Licensing Agent. (Ord. 05-06)

Sec. 10427. Licenses Nontransferable. A tobacco retailer's license is nontransferable to a different person or a different location. For example, if a Proprietor to whom a license has been issued changes business location, that Proprietor must apply for a new license prior to acting as a tobacco retailer at the new location. Or if the business is sold, the new owner must apply for a license for that location before acting as a tobacco retailer. (Ord. 05-06)

Sec. 10428. License Violation. It shall be a violation of a license for a licensee or his or her agents or employees to violate any local, State, or Federal tobacco-related law. (Ord. 05-06)

Sec. 10429. License Compliance Monitoring. Compliance with this Chapter shall be monitored by the Grover Beach Police Department. At least four compliance checks of each tobacco retailer shall be conducted during each twelve-month period. The cost of compliance monitoring shall be incorporated into the license fee. (Ord. 05-06)

Sec. 10430. Revocation of a License. In addition to any other penalty authorized by law, a tobacco retailer's license may be revoked if the City finds, after notice to the licensee and opportunity to be heard, that the licensee or his or her agents or employees has violated the conditions of the license imposed pursuant to this Chapter.

(A) After revocation for a first violation of this Chapter at a location within any five-year period, no new license may be issued for the location until thirty (30) days have passed from the date of revocation.

(B) After revocation for a second violation of this Chapter at a location within any five-year period, no new license may be issued for the location until ninety (90) days.

(C) After revocation for a third violation of this Chapter at a location within any five-year period, no new license may be issued for the location until one (1) year.

(D) After revocation for four or more violations of this Chapter at a location within any five-year period, no new license may be issued for the location until five (5) years have passed from the date of revocation. (Ord. 05-06)

Sec. 10430.1. Revocation of License Issued In Error. A tobacco retailer's license shall be revoked if the City finds, after the licensee is afforded reasonable notice and opportunity to be heard, that one or more of the bases for denial of a license under Section 10424 existed at the time application was made or at any time before the license issued. The decision by the Department shall be the final decision of the City. The revocation shall be without prejudice to the filing of a new application for a license. (Ord. 05-06)

Sec. 10431. Appeal of Suspension and/or Revocation. (A) A decision of the City to revoke a license is appealable to a Hearing Officer and must be filed with the Hearing Officer at least ten (10) working days prior to the commencement date of the license revocation. An appeal shall stay all proceedings in furtherance of the appealed action. Following appeal, the decision of the Hearing Officer may be appealed to the City Manager or his/her designee. A decision of the City Manager or his/her designee shall be the final decision of the City.

(B) During a period of license revocation, the tobacco retailer must remove from public view all tobacco products and shall not display any advertisement relating to tobacco products that promotes the sale or distribution of such products from the tobacco retailer's location or that would lead a reasonable consumer to believe that such products can be obtained at the tobacco retailer's location. (Ord. 05-06)

Sec. 10432. Penalties, Enforcement. (A) Any violation of the provisions of this Chapter by any person is a misdemeanor and is punishable as provided in Chapter 1200 of this Code.

(B) Each day that an unlicensed person offers tobacco products or tobacco for sale or exchange shall constitute a separate violation.

(C) Violations of this Chapter are hereby declared to be a public nuisance.

(D) In addition to other remedies provided by this Chapter or by other law, any violation of this Chapter may be remedied by a civil action brought by the City Attorney, including but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity. (Ord. 05-06)

## CHAPTER 5 - COMMUNITY ANTENNA TELEVISION SYSTEMS

(Ordinance No. 80 repealed and replaced by Ordinance No. 98-1)

Sec. 10501. Intent. (A) The City of Grover Beach, pursuant to applicable Federal and State law, is authorized to grant one or more non-exclusive franchises to construct, operate, maintain and reconstruct cable television systems within the City limits.

(B) The City Council finds that the development of cable television and communications systems has the potential of having great benefit and impact upon the residents of Grover Beach. Because of the complex and rapidly changing technology associated with cable television, the City Council further finds

that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the City or such persons as the City may designate. It is the intent of this Chapter and subsequent amendments to provide for and specify the means to attain the best possible cable television service to the public and any franchises issued pursuant to this Chapter shall be deemed to include this as an integral finding thereof. (Ord. 98-1)

Sec. 10502. Definitions. For the purposes of this Chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. Words not defined shall be given their common and ordinary meaning.

(A) "Basic Cable Service" means any service tier which includes the retransmission of local television broadcast signals.

(B) "Cable Television" or "System," also referred to as 'Cable Communications System" or "Cable System," means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

(1) A facility that serves only to transmit television signals of one (1) or more television broadcast stations;

(2) A facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control, or management, unless such facility uses any public rights-of-way;

(3) A facility of a common carrier, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or

(4) Any facilities of any electric utility used solely for operating its electric utility system.

(C) "Cable Service" means the total of the following:

(1) The one-way transmission to subscribers of video programming of other programming service; and

[Continued on page X-15.]

(2) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

(D) "Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system which is capable of delivering a television channel as defined by the Federal Communications Commission.

(E) "Council" means the City Council of the City of Grover Beach.

(F) "Franchise" means an initial authorization, or renewal thereof, issued by the Council, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

(G) "Franchise Agreement" means a franchise grant ordinance or a contractual agreement, containing the specific provisions of the franchise granted, including references, specifications, requirements and other related matters.

(H) "Franchise Fee" means any tax, fee or assessment of any kind imposed by the City on a Grantee as compensation for the Grantee's use of the public rights-of-way. The term "franchise fee" does not include:

(1) Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers);

(2) Capital costs which are required by the franchise to be incurred by Grantee for public, educational, or governmental access facilities;

(3) Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(4) Any fee imposed under Title 17, United States Code.

(I) "Grantee" means any "person" receiving a franchise pursuant to this Chapter and under the granting franchise ordinance or agreement, and its lawful successor, transferee or assignee.

(J) "Grantor" or "City" means the City of Grover Beach as represented by the Council or any delegate acting within the scope of its jurisdiction.

(K) "Gross Annual Receipts" means the annual gross receipts received by a Grantee from all sources of operations of the Cable Television System within the City utilizing the public streets and rights-of-way for which a franchise is required in order to deliver such cable service, excluding refundable deposits, rebates or credits, except that any sales, excise or other taxes or charges collected for direct payment or pass-through to local, State or Federal government, other than the franchise fee, shall not be included.

(L) "Initial Service Area" means the area of the City which will receive service initially, as set forth in any Franchise Agreement.

(M) "Installation" means the connection of the system to subscribers' terminals, and the initiation of service.

(N) "Person" means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.

(O) "Public". Educational or Government Access Facilities" or "PEG Access Facilities" means the total of the following:

(1) Channel capacity designated for noncommercial public, educational, or government use; and

(2) Facilities and equipment for the use of such channel capacity.

(P) "Section" means any section, subsection or provision of this Chapter.

(Q) "Service Area" or "Franchise Area" means the entire geographic area within the City as it is now constituted or may in the future be constituted, unless otherwise specified in the franchise granting ordinance or agreement.

(R) "Service Tier" means a category of cable service or other services provided by a Grantee and for which a separate rate is charged by the Grantee.

(S) "State" means the State of California.

(T) "Street" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the Grantor shall permit to be included within the definition of street from time to time.

(U) "Subscriber" means any person who or which elects to subscribe to, for any purpose, a service provided by the Grantee by means of or in connection with the cable system, and who pays the charges therefor. (Ord. 98-1)

Sec. 10503. Franchise to Install and Operate. A franchise granted by the City under the provisions of this Chapter shall encompass the following purposes:

(A) To authorize Grantee to engage in the business of providing cable television service, and such other services as may be permitted by law, which Grantee chooses to provide, to subscribers within the designated service area.

(B) To authorize Grantee to erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain, cable lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of the cable system in, on, over, under, upon, along and across streets or other public places within the designated service area.

(C) To authorize Grantee to maintain and operate its properties for the origination, reception, transmission, amplification, and distribution of television and radio signals and for the delivery of cable services, and such other services as may be permitted by law.

(D) To set forth the respective obligations of a Grantee and the City under the franchise. (Ord. (98-1)

Sec. 10504. Franchise Required. It shall be unlawful for any person to construct, install or operate a cable television system in the City within any public street without a properly granted franchise awarded pursuant to the provisions of this Chapter. (Ord. 98-1)

Sec. 10505. Term of the Franchise. (A) A franchise granted hereunder shall be for a term established in the franchise agreement, commencing on the date established in the franchise agreement.

(B) A franchise granted hereunder may be renewed upon application by the Grantee pursuant to the provisions of applicable State and Federal law and of this Chapter. (Ord. 98-1)

Sec. 10506. Franchise Territory. Any franchise shall be valid within all the territorial limits of the City, and within any area added to the City during the term of the franchise, unless otherwise specified in this Chapter or the franchise agreement. (Ord. 98-1)

Sec. 10507. Federal or State Jurisdiction. This Chapter shall be construed in a manner consistent with all applicable Federal and State laws and shall apply to all franchises granted or renewed after the effective date of this Chapter to the extent permitted by applicable law. (Ord. 98-1)

Sec. 10508. Franchise Non-Transferable. (A) Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the franchise or any of the rights or privileges therein granted, without the prior consent of the Council and then only upon such terms and conditions as may be reasonably prescribed by the Council, which consent shall not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise without the consent of the Council shall be null and void. The granting of a security interest in any Grantee assets, or any mortgage or other hypothecation, shall not be considered a transfer for the purposes of this Section.

(B) The requirements of Subsection A. shall apply to any change in control of Grantee. The word "control" as used herein is not limited to major stockholders or partnership interests, but includes actual working control in whatever manner exercised. In the event that Grantee is a corporation, prior authorization of the Council shall be required where ownership or control of more than ten percent (10%) of the voting stock of Grantee is acquired by a person or group of persons acting in concert, none of whom own or control the voting stock of the Grantee as of the effective date of the franchise, singularly or collectively.

(C) Grantee shall notify Grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the franchise property of the Grantee or upon the termination of any lease or interest covering all or a substantial part of said franchise property. Such notification shall be considered by Grantor as notice that a change in control of ownership of the franchise has taken place and the provisions under this Section governing the consent of Grantor to such change in control of ownership shall apply.

(D) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, Grantor may inquire into the qualifications of the prospective transferee or controlling party, and Grantee shall assist Grantor in such inquiry. In seeking Grantor's consent to any change of ownership or control, Grantee shall have the responsibility of ensuring that the transferee completes an application in form and substance reasonably satisfactory to Grantor, which application shall include the information required under Subsections A. through C. of Section 10513 of this Chapter. An application shall be submitted to Grantor not less than sixty (60) days prior to the date of transfer. In addition to the information included in the application, Grantor also may require from the proposed transferee such additional information as Grantor may reasonably deem to be applicable. The transferee shall be required to establish that it possesses the qualifications and financial and technical capability to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. If the legal, financial, character, and technical qualifications of the applicant are satisfactory, the Grantor shall consent to the transfer of the franchise. The consent of the Grantor to such transfer shall not be unreasonably denied or delayed.

(E) Any financial institution having a pledge of the Grantee or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the Grantor that it or its designee satisfactory to the Grantor shall take control of and operate the cable television system, in the event of a Grantee default of its financial obligations. Further, said financial institution shall also submit a plan for such operation within thirty (30) days of assuming such control that will ensure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one (1) year unless extended by the Grantor in its discretion and during said period of time it shall have the right to petition the Grantor to transfer the franchise to another Grantee.

(F) Upon transfer, Grantee shall reimburse Grantor for Grantor's reasonable processing and review expenses in connection with a transfer of the franchise or of control of the franchise, including without limitation, costs of administrative review, financial, legal and technical evaluation of the

proposed transferee, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication costs and document preparation expenses, not to exceed any maximum that may be specified in the franchise agreement. Any such reimbursement shall not be charged against any franchise fee due to Grantor during the term of the franchise. (Ord. 98-1)

Sec. 10509. Geographical Coverage. (A) Grantee shall design, construct and maintain the cable television system to have the capability to pass every dwelling unit in the City, subject to any service area line extension requirements of the franchise agreement.

(B) After service has been established by activating trunk and/or distribution cables for any service area, Grantee shall provide service to any requesting subscriber within that service area within thirty (30) days from the date of request, provided that the Grantee is able to secure any additional rights-of-way necessary to extend service to such subscriber within such thirty (30) day period on reasonable terms and conditions. (Ord. 98-1)

Sec. 10510. Nonexclusive Franchise. Any franchise granted shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional franchises for a cable television system or any component thereof, as it deems appropriate, subject to applicable State and Federal law, provided that no such additional franchise shall be granted on terms materially more favorable or less burdensome than any other franchise granted hereunder. (Ord. 98-1)

Sec. 10511. Multiple Franchises. (A) Grantor may grant any number of franchises subject to applicable State or Federal law. Grantor may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations, such as:

(1) The capacity of the public rights-of-way to accommodate multiple cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewerage.

(2) The benefits that may accrue to cable subscribers as a result of cable system competition, such as lower rates and improved service.

(3) The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the rights-of-way.

(B) Each Grantee awarded a franchise to serve the entire City shall offer service to all residences in the City, in accordance with construction and service schedules mutually agreed upon between Grantor and Grantee, and consistent with applicable law.

(C) Developers of new residential housing with underground utilities shall provide conduit to accommodate cables for at least two (2) cable systems in accordance with the provisions of Section 10520.

(D) Grantor may require that any new Grantee be responsible for its own underground trenching and the costs associated therewith, if, in Grantor's opinion, the rights-of-way in any particular area cannot feasiblely and reasonably accommodate additional cables. (Ord. 98-1)

Sec. 10512. Franchise Applications. Any person desiring an initial franchise for a cable television system shall file an application with the City. A reasonable nonrefundable application fee established by the City shall accompany the application to cover all costs associated with processing and reviewing the application, including without limitation, costs of administrative review, financial, legal and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the application and document preparation expenses. In the event such costs exceed the application fee, the

selected applicant(s) shall pay the difference to the City within thirty (30) days following receipt of an itemized statement of such costs. (Ord. 98-1)

Sec. 10513. Applications - Contents. An application for an initial franchise for a cable television system shall contain, where applicable:

(A) A statement as to the proposed franchise and service area;

(B) Resume of prior history of applicant, including the expertise of applicant in the cable television field;

(C) List of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each stockholder, if a corporation which is not publicly traded;

(D) List of officers, directors and managing employees of applicant, together with a description of the background of each such person;

(E) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant;

(F) A current financial statement of applicant verified by a Certified Public Accountant audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the City;

(G) Proposed construction and service schedule; and

(H) Any additional information that the City deems reasonably necessary. (Ord. 98-1)

Sec. 10514. Consideration of Initial Applications. (A) Upon receipt of any application for an initial franchise, the City Manager shall prepare a report and make recommendations respecting such application to the City Council.

(B) A public hearing shall be set prior to any initial franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing the Council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise(s) should be granted, and, if granted, subject to what conditions. The Council may grant one (1) or more franchises, or may decline to grant any franchise. (Ord. 98-1)

Sec. 10515. Franchise Renewal. Franchise renewals shall be in accordance with applicable law. Grantor and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. Upon mutual execution of a franchise renewal agreement, Grantee shall reimburse Grantor for costs incidental to the franchise renewal award, not to exceed any maximum specified in the franchise agreement. Any such reimbursement shall not be charged against any franchise fee due to the Grantor during the term of the franchise. (Ord. 98-1)

Sec. 10516. Minimum Consumer Protection and Service Standards. (A) Except as otherwise provided in the Franchise Agreement, Grantee shall maintain a local office or offices to provide the necessary facilities, equipment and personnel to comply with the following consumer protection and service standards under normal conditions of operation:

(1) Sufficient toll-free telephone line capacity during normal business hours, and excepting unusual events such as system outages, to assure that a minimum of ninety-five percent (95%) of all calls will be answered before the fourth (4th) ring and ninety percent (90%) of all callers for service will not be required to wait more than thirty (30) seconds, after the call pickup and the conclusion of any automated telephone response procedures before being connected to a service representative.

(2) Emergency telephone line capacity on a twenty-four (24) hour basis, including weekends and holidays.

(3) A local business and service office open during normal business hours and at least some period weekly on evenings and/or weekends, and adequately staffed to accept subscriber payments and respond to service requests and complaints.

(4) An emergency system maintenance and repair staff, capable of responding to and repairing major system malfunction on a twenty-four (24) hour per day basis.

(5) An installation staff, capable of installing service to any subscriber within seven (7) working days after receipt of a request, in all areas where trunk and feeder cable have been activated.

(6) At the subscriber's request, Grantee shall schedule, within a specified four (4) hour time period, all appointments with subscribers for installation of service.

(B) Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the cable system, preferably between midnight and six A.M. (6:00 A.M.).

(C) The Grantee shall maintain a repair force of technicians normally capable of responding to subscriber requests for service within the following time frames:

(1) For a system outage: Within two (2) hours, including weekends, of receiving subscriber calls or requests for service which by number identify a system outage of sound or picture of one (1) or more channels, affecting at least ten percent (10%) of the subscribers of the system.

(2) For an isolated outage: Within twenty-four (24) hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture for one (1) or more channels that affects three (3) or more subscribers. On weekends, an outage affecting fewer than three (3) subscribers shall result in a service call no later than the following Monday morning.

(3) For inferior signal quality: Within forty-eight (48) hours, including weekends, of receiving a request for service identifying a problem concerning picture or sound quality.

Grantee shall be deemed to have responded to a request for service under the provisions of this Section when a technician arrives at the service location and begins work on the problem. In the case of a subscriber not being home when the technician arrives, the technician shall leave written notification of arrival. Three (3) successive subscriber failures to be present at an appointed time shall excuse Grantee of the duty to respond. Grantee shall not charge for the repair or replacement of defective equipment provided by Grantee to subscribers, except when the damage resulted from the subscriber's wilful or deliberate act.

(D) Unless excused, Grantee shall determine the nature of the problem within forty-eight (48) hours of beginning work and resolve all cable system related problems within five (5) business days unless technically infeasible.

(E) Upon request, Grantee shall provide appropriate credits to subscribers whose service has been materially interrupted due to cable system problems.

(F) Upon five (5) days notice, Grantee shall establish its compliance, on an average monthly basis, with any or all of the standards required above. Grantee shall provide sufficient documentation to permit Grantor to verify the compliance.

(G) A repeated and verifiable pattern of non-compliance with the consumer protection standards of A-F above, after Grantee's receipt of due notice and an opportunity to cure, may be deemed a material breach of the franchise agreement.

(H) Grantee shall establish written procedures for receiving, acting upon and resolving subscriber complaints without intervention by the Grantor. The written procedures shall prescribe the manner in which a subscriber may submit a complaint either orally or in writing specifying the subscriber's grounds for dissatisfaction. Grantee shall file a copy of these procedures with Grantor.

(I) Following prior written notice to Grantee, Grantor shall have the right to review Grantee's response to subscriber complaints in order to determine Grantee's compliance with the franchise requirements, subject to the subscriber's right to privacy.

(J) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to rebuild, modify' or sell the system, or the Grantor gives notice of intent to terminate or not to renew the franchise, the Grantee shall act so as to ensure that all subscribers receive service so long as the franchise remains in force. In the event of a change of control of Grantee, or in the event a new operator acquires the system, the original Grantee shall cooperate in all reasonable respects with the Grantor, new Grantee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system.

(K) In the event Grantee fails to operate the system for seven (7) consecutive days without prior approval or subsequent excuse of the Grantor, the Grantor may, at its sole option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the Grantor or a permanent operator is selected. If the Grantor should fulfill this obligation for the Grantee, then during such period as the Grantor fulfills such obligation, the Grantor shall be entitled to collect all revenues from the system, and the Grantee shall indemnify the Grantor against any damages Grantor may suffer as a result of such failure.

(L) All officers, agents or employees of Grantee who, in the normal course of work require entry onto subscribers' premises shall carry a photo-identification card in a form approved by Grantor. Grantee shall account for all identification cards at all times. Every vehicle of the Grantee utilized for field maintenance shall be clearly identified. (Ord. 98-1)

Sec. 10517. Additional Service Standards. Additional service standards and standards governing consumer protection and response by Grantee to subscriber complaints not otherwise provided for in this Chapter may be established in the franchise agreement, and Grantee shall comply with such standards in the operations of the cable television system. A verified and continuing pattern of noncompliance may be deemed a material breach of the franchise, provided that Grantee shall receive due process, including written notification, an opportunity to be heard and an opportunity to cure, prior to any sanction being imposed. (Ord. 98-1)

Sec. 10518. Franchise Fee. (A) Following the issuance and acceptance of the franchise, the Grantee shall pay to the Grantor a franchise fee in the amount set forth in the franchise agreement.

(B) The Grantor, on an annual basis, shall be furnished a statement within sixty (60) days of the close of the calendar year, either audited and certified by an independent Certified Public Accountant or certified by an officer of the Grantee, reflecting the total amounts of gross receipts and all franchise fee payments, deductions and computations for the period covered by the payment. Upon thirty (30) days prior written notice, Grantor shall have the right to conduct an independent audit of Grantee's records for the preceding three (3) calendar years, in accordance with Generally Accepted Auditing Standards, and if such audit indicates a franchise fee underpayment of two percent (2%) or more, the Grantee shall assume all reasonable costs of such an audit and the audit may be extended to include the preceding five (5) year period.

(C) Except as otherwise provided by law, no acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further or additional sums payable as a franchise fee under this Ordinance or for the performance of any other obligation of the Grantee.

(D) In the event that any franchise payment or recomputed amount is not made on or before the dates specified in the franchise agreement, Grantee shall pay as additional compensation:

(1) An interest charge, computed from such due date, at an annual rate equal to the prime lending rate published in the Wall Street Journal on the due date plus one percent (1 %) during the period for which payment was due; and

(2) If the payment is late by forty-five (45) days or more, a sum of money equal to five percent (5%) of the amount due in order to defray those additional expenses and costs incurred by the Grantor by reason of delinquent payment.

(E) Franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement. (Ord. 98-1)

Sec. 10519. Security Fund. (A) Grantor may require Grantee to provide a security fund, in an amount and form established in the franchise agreement. The amount of the security fund shall be established based on the extent of the Grantee's obligations under the terms of the franchise.

(B) The security fund shall be available to Grantor as provided in Section 10534 to satisfy all claims, liens and/or taxes due Grantor from Grantee which arise by reason of construction, operation, or maintenance of the system, and to satisfy any actual or liquidated damages arising out of a franchise breach, subject to the procedures and amounts designated in the franchise agreement.

(C) If the security fund is drawn upon by Grantor in accordance with the procedures established in this Ordinance and the franchise agreement, Grantee shall cause the security fund to be replenished to the original amount no later than thirty (30) days after each withdrawal by Grantor. Failure to replenish the security fund shall be deemed a material breach of the franchise. (Ord. 98-1)

Sec. 10520. Design and Construction Requirements. (A) Grantee shall not construct any cable system facilities until Grantee has secured the necessary permits from Grantor, or other cognizant public agencies.

(B) In those areas of the City where transmission lines or distribution facilities of the public utilities providing telephone and electric power service are underground, the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

(C) In those areas of the City where the Grantee's cables are located on the aboveground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground at full cost to such public utilities, then the Grantee likewise shall reconstruct, operate and maintain its transmission and distribution facilities underground, at Grantee's cost. Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground enclosures, unless otherwise provided in the franchise agreement.

(D) Any changes in or extensions of any poles, anchors, wires, cables, conduits, vaults, laterals or other fixtures and equipment (herein referred to as "structures"), or the construction of any additional structures, in, upon, along, across, under or over the streets, alleys and public ways shall be made under the direction of Grantor's City Engineer or a designee, who shall, if the proposed change, extension or construction conforms to the provisions hereof, issue written permits therefor. The height above public thoroughfares of all aerial wires shall conform to the requirements of the California Public Utilities Commission or other regulatory body having jurisdiction thereof.

(1) All transmission and distribution structures, lines and equipment erected by the Grantee shall be located so as not to interfere with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places, and not to interfere with existing public utility installations.

(2) In the event that any property or improvement of the Grantor in the public rights-of-way is disturbed or damaged by the Grantee or any of its contractors, agents or employees in connection with undertaking any and all work pursuant to the right granted to the Grantee pursuant to

this Chapter, the Grantee shall promptly, at the Grantee's sole cost and expense, restore as nearly as practicable to their former condition said property or improvement which was so disturbed or damaged, and in the event that any such property or improvement shall at any later time become uneven, unsettled or otherwise require restoration, repair or replacement because of such disturbance or damage by the Grantee, then the Grantee, as soon as reasonably possible, shall, promptly upon receipt of notice from the Grantor and at the Grantee's sole cost and expense, restore as nearly as practicable to their former condition said property or improvement which was disturbed or damaged. Any such restoration by the Grantee shall be made in accordance with such materials and specifications as may, from time to time, be then provided for by Grantor Ordinance.

(3) Prior to commencing any work in the public rights-of-way, the Grantee shall obtain any and all permits lawfully required by such Grantor codes and ordinances of general application for such work. In the event that emergency work may be required by the Grantee, however, the Grantee shall obtain any and all such permits within three (3) working days after the beginning of such emergency work.

(4) There shall be no unreasonable or unnecessary obstruction of the public rights-of-way by the Grantee in connection with any of the work herein provided for, and the Grantee shall maintain such barriers, signs and warning signals during any such work performed on or about the public rights-of-way or adjacent thereto as may be necessary to reasonably avoid injury or damage to life and property.

(5) If at any time during the period of this franchise the Grantor shall lawfully elect to alter or change the grade or location of any street, alley or other public rights-of-way, the Grantee shall, upon reasonable notice by the Grantor, remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at it own expense, and in each instance comply with the requirements of the Grantor; provided, that Grantee shall have no such obligation if other public utilities occupying the same public rights-of-way are not also required to remove, relay or relocate their poles, wires, cables, underground conduits, manholes and other fixtures at their own expense.

(6) The Grantee shall not place poles, conduits or other fixtures above or below ground where the same will interfere with any gas, electric, telephone fixtures, water hydrants or other utility, and all such poles, conduits or other fixtures placed in any street shall be so placed as to comply with all Ordinances of the Grantor.

(7) The Grantee may be required by the Grantor to permit joint use of its utility poles and appurtenances located in the streets, alleys or other public rights-of-way, by utilities insofar as such joint use may be reasonably practicable and upon payment of reasonable rental therefor; provided that in the absence of agreement regarding such joint use, the City Council shall provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefrom, which award shall be final.

(8) The Grantee shall, on request of any person holding a moving permit issued by the Grantor, temporarily move its wires or fixtures to permit the moving of buildings, the expense of such temporary removal to be paid by the person requesting the same, and the Grantee shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary changes.

(9) The Grantee shall have the authority, except when in conflict with existing Grantor Ordinances, to trim any trees upon and overhanging the streets, alleys, sidewalks and public places so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the Grantor, such trimming may be done by it, or under its supervision and direction, at the expense of the Grantee.

(E) In the event of multiple franchisees desiring to serve new residential developments in which the electric power and telephone utilities are underground, the following procedure shall apply with respect to access to and utilization of underground easements.

(1) The developer shall be responsible for contacting and surveying all franchised cable operators to ascertain which operators desire to provide cable television service to that development. The developer may establish a reasonable deadline to receive cable operator responses. The final development map shall indicate the cable operators that have agreed to serve the development.

(2) If one (1) or two (2) cable operators wish to provide service, they shall be accommodated in the joint utilities trench on a nondiscriminatory shared cost basis. If fewer than two (2) operators indicate interest, the developer shall provide conduit to accommodate two (2) sets of cable television cables and dedicate to the City any initially unoccupied conduit. The developer shall be entitled to recover the costs of such initially unoccupied conduit in the event that Grantor subsequently leases or sells occupancy or use rights to any Grantee.

(3) The developer shall provide at least ten (10) working days' notice of the date that utility trenches will be open to the cable operators that have agreed to serve the development. When the trenches are open, cable operators shall have two (2) working days to begin the installation of their cables, and five (5) working days after beginning installation to complete installation.

(4) The final development map shall not be approved until the developer submits evidence that:

(a) It has notified each Grantee that underground utility trenches are to be open as of an estimated date, and that each Grantee will be allowed access to such trenches, including trenches from proposed streets to individual homes or home sites, on specified nondiscriminatory terms and conditions; and

(b) It has received a written notification from each Grantee that the Grantee intends to install its facilities during the open trench period on the specified terms and conditions, or such other terms and conditions as are mutually agreeable to the developer and the Grantee, or has received no reply from a Grantee within ten (10) days after its notification to such Grantee, in which case the Grantee will be deemed to have waived its opportunity to install its facilities during the open trench period.

(5) Sharing the joint utilities trench shall be subject to compliance with State regulatory agency and utility standards. If such compliance is not possible, the developer shall provide a separate trench for the cable television cables, with the entire cost shared among the participating operators. With the concurrence of the developer, the affected utilities and the cable operators, alternative installation procedures, such as the use of deeper trenches, may be utilized, subject to applicable law.

(6) Any cable operator wishing to serve an area where the trenches have been closed shall be responsible for its own trenching and associated costs.

(7) In the event that more than one (1) franchise is awarded, the City reserves the right to limit the number of drop cables per residence, or to require that the drop cable(s) be utilized only by the cable operator selected by the resident to provide service.

(8) The City reserves the right to grant an encroachment permit to a cable franchisee applicant to install conduit and/or cable in anticipation of the granting of a franchise. Such installations shall be at the applicant's risk, with no recourse against the City in the event the pending franchise application is not granted. The City may require an applicant to provide a separate trench for its conduit and/or cable, at the applicant's cost. The construction of such separate trench, if provided, shall be coordinated with, and subject to, the developer's overall construction schedule. (Ord. 98-1)

Sec. 10521. Technical Standards. (A) The Grantee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, FCC technical standards, and any detailed standards set forth in its franchise agreement. In addition the Grantee shall provide to the Grantor, upon request, a written report

of the results of the Grantee's periodic proof of performance tests conducted pursuant to FCC and franchise standards and guidelines.

(B) Repeated and verified failure to maintain specified technical standards shall constitute a material breach of the franchise. (Ord. 98-1)

Sec. 10522. Hold Harmless. Grantee shall indemnify, defend and hold Grantor, its officers, agents and employees harmless from any liability, claims, damages, costs or expenses, to the extent provided in the franchise agreement. (Ord. 98-1)

Sec. 10523. Insurance. (A) On or before commencement of franchise operations, the Grantee shall obtain policies of liability, Workers' Compensation and property insurance from appropriately qualified insurance companies.

(B) The policy of liability insurance shall:

(1) Be issued to Grantee and name Grantor, its officers, agents and employees as additional insureds;

(2) Indemnify for all liability for personal and bodily injury, death and damage to property arising from activities conducted and premises used pursuant to this Chapter by providing coverage therefor, including but not limited to:

(a) Negligent acts or omissions of Grantee, and its agents, servants and employees, committed in the conduct of franchise operations, and/or

(b) Use of motor vehicles;

(3) Provide a combined single limit for comprehensive general liability and comprehensive automobile liability insurance in the amount provided for in the franchise agreement. Such insurance policy shall be subject to review and approval by Grantor's legal counsel; and

(4) Be noncancellable and nonmodifiable without thirty (30) days' prior written notice thereof directed to Grantor.

(C) The policy of Workers' Compensation Insurance shall comply with the laws of the State of California.

(D) The policy of property insurance shall provide fire insurance with extended coverage on the franchise property used by Grantee in the conduct of franchise operations in an amount adequate to enable Grantee to resume franchise operations following the occurrence of any risk covered by this insurance.

(E) Grantee shall file with Grantor, by the deadline provided in the franchise agreement, a certificate of insurance for each of the required policies executed by the company issuing the policy or by a broker authorized to issue such a certificate, certifying that the policy is in force and providing the following information with respect to said policy:

(1) The policy number;

(2) The date upon which the policy will become effective and the date upon which it will expire;

(3) The names of the named insureds and any additional insured required by the franchise agreement;

(4) The subject of the insurance;

(5) The type of coverage provided by the insurance; and

(6) The amount or limit of coverage provided by the insurance.

If the certificate of insurance does not provide all of the above information, Grantor reserves the right to inspect the relevant insurance policies.

(F) In the event Grantee fails to maintain any of the above-described policies in full force and effect, Grantor shall, upon forty-eight (48) hours' notice to Grantee, have the right to procure the

required insurance and recover the cost thereof from Grantee. Grantor shall also have the right to suspend the franchise during any period that Grantee fails to maintain said policies in full force and effect. (Ord. 98-1)

Sec. 10524. Records Required and Grantor's Right to Inspect. (A) Grantee shall at all times maintain:

(1) A record of all service calls and interruptions or degradation of service experienced for the preceding two (2) years, provided that such complaints result in or require a service call, subject to the subscriber's right of privacy.

(2) A full and complete set of plans, records and "as-built" maps showing the locations of the cable television system installed or in use in the City, exclusive of subscriber service drops and equipment provided in subscriber's homes.

(3) If requested by Grantor, a summary of service calls, identifying~the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to the Grantor within thirty (30) days following any Grantor request, in a form reasonably acceptable to the Grantor.

(B) The Grantor may impose reasonable requests for additional information, records and documents from time to time, provided they reasonably relate to the scope of the City's rights under this Chapter or the Grantee's franchise agreement.

(C) Upon reasonable notice, and during normal business hours, Grantee shall permit examination by any duly authorized representative of the Grantor of all franchise property and facilities, together with any appurtenant property and facilities of Grantee situated within or without the City, and all records relating to the franchise, provided they are necessary to enable the Grantor to carry out its regulatory responsibilities under this Chapter or the franchise agreement. Grantee shall have the right to be present at any such examination. (Ord. 98-1)

Sec. 10525. Annual Reports. Within ninety (90) days after the end of the calendar year, if requested by Grantor, Grantee shall submit a written annual report to Grantor with respect to the preceding calendar year in a form approved by Grantor, including, but not limited to, the following information:

(A) A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the cable system, including, but not limited to, services begun or discontinued during the reporting year;

(B) A list of Grantee's officers, members of its board of directors, and other principals of Grantee;

(C) A list of stockholders or other equity investors holding five percent (5 %) or more of the voting interest in Grantee;

(D) An indication of any residences in Grantee's service area where service is not available, and a schedule for providing service;

(E) Information as to the number of homes passed, subscribers, additional television outlets, and the number of basic and pay subscribers;

(F) Information as to the degree of compliance with the provisions contained in Section 10543 herein and all steps required by this Chapter and applicable law have been taken to assure that the privacy rights of individuals have been protected; and

(G) Any other information relevant to franchise regulation which the Grantor shall reasonably request, and which is relevant to its regulatory responsibilities. (Ord. 98-1)

Sec. 10526. Copies of Federal and State Communications. Upon request, Grantee shall submit to Grantor copies of all pleadings, applications and reports submitted by Grantee to, as well as copies of all decisions, correspondence and actions by, any Federal, State or local court, regulatory agency, or

other governmental body which are non-routine in nature and which will materially affect its cable television operations within the franchise area. (Ord. 98-1)

Sec. 10527. Public Reports. If Grantee is publicly held, a copy of each Grantee's annual and other periodic reports and those of its parent, shall be submitted to Grantor within forty-five (45) days of its issuance. (Ord. 98-1)

Sec. 10528. Opinion Survey. Upon request of the Grantor, but not more than once annually, the Grantee shall conduct a subscriber satisfaction survey pertaining to quality of service, which may be in a postcard format that can be transmitted to subscribers in Grantee's invoice for cable services. The results of such survey shall be provided to the Grantor on a timely basis. The cost of such survey shall be borne by the Grantee. (Ord. 98-1)

Sec. 10529. Reports - General. (A) All reports required under this Chapter, except those required to be kept confidential, as provided in Subsection E. below, shall be available for public inspection in the Grantor's offices during normal business hours.

(B) All reports and records required under this Chapter shall be furnished at the sole expense of Grantee, except as otherwise provided in this Chapter or the franchise agreement.

(C) The willful refusal, failure, or neglect of Grantee to file any of the reports required as and when due under this Chapter, may be deemed a material breach of the franchise agreement if such reports are not provided to Grantor within thirty (30) days after written request therefor, and may subject the Grantee to all remedies, legal or equitable, which are available to Grantor under the franchise or otherwise.

(D) Any materially false or misleading statement or representation made knowingly and willfully by the Grantee in any report required under this Chapter or under the franchise agreement may be deemed a material breach of the franchise and may subject Grantee to all remedies, legal or equitable, which are available to Grantor under the franchise or otherwise.

(E) Notwithstanding the provisions of Sections 10524, 10525 and 10526, Grantee shall have no obligation to provide copies of documents or information to Grantor which contain trade secrets of Grantee or which are otherwise of a confidential or proprietary nature to Grantee unless it receives satisfactory assurances from Grantor that such documents or information can and will be held in strictest confidence by the Grantor and- not made available for public inspection. To the extent possible, Grantee will provide Grantor with summaries of any required documents or information or copies thereof with trade secrets and proprietary matters deleted therefrom. The burden of proof shall be on Grantee to establish the confidential nature of any information submitted, to the reasonable satisfaction of the Grantor. (Ord. 98-1)

Sec. 10530. Annual Review of System Performance. Each year throughout the term of the franchise, if requested by the City Council, Grantor and Grantee shall meet publicly to review system performance and quality of service. The various reports required pursuant to this Chapter, results of technical performance tests, the record of subscriber complaints and Grantee's response to complaints, and the information acquired in any subscriber surveys, shall be utilized as the basis for review. In addition, any subscriber may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered. Within thirty (30) days after the conclusion of a system performance review meeting, Grantor may issue findings with respect to the cable system's franchise compliance and quality of service. If Grantor determines that Grantee is not in compliance with the requirements of this Chapter or the Grantee's franchise, Grantor may direct Grantee to correct the areas of noncompliance within a reasonable period of time. Failure of Grantee, after due notice, to correct the

areas of noncompliance within the period specified therefor or to commence compliance within such period and diligently achieve compliance thereafter, shall be considered a material breach of the franchise, and Grantor may exercise any remedy within the scope of this Chapter and the franchise agreement considered appropriate. (Ord. 98-1)

Sec. 10531. Special Review of System Performance. When there have been complaints made or where there exists other evidence which, in the judgment of the Grantor, casts reasonable doubt on the reliability or quality of cable service to the effect that the Grantee is not in compliance with the requirements of this Chapter or its franchise, the Grantor shall have the right to compel the Grantee to test, analyze and report on the performance of the system in order to determine whether the Grantee is in compliance with the terms of this chapter and the franchise agreement. Grantor may not compel Grantee to provide such tests or reports unless and until Grantor has provided Grantee with at least thirty (30) days' notice of its intention to exercise its rights under this Section and has provided Grantee with an opportunity to be heard prior to its exercise of such rights. Such test or tests shall be made and the report shall be delivered to the Grantor no later than thirty (30) days after the Grantor notifies the Grantee that it is exercising such right, and shall be made at Grantee's sole cost. Such report shall include the following information: The perceived problem areas that initiated the special review, the tests performed, what system components were tested, the equipment used and procedures employed in said testing and the results of such tests. Any other information pertinent to the special tests shall be recorded. (Ord. 98-1)

Sec. 10532. Special State-of-the-Art and Services Evaluation Sessions. The Grantor may hold special state-of-the-art and services evaluation sessions at any time during the term of a franchise, provided such sessions are held no more often than once every four (4) years. The intent of this review shall be to review the quantity of services offered to the public, compared to the services available in comparable communities. The Grantee shall be notified of the place, time and date thereof and the topics to be discussed. Such sessions may be open to the public and advertised in a newspaper of general circulation at least thirty (30) days before each session. The sessions may include an evaluation of any items considered relevant to the stated intent of this evaluation. Either the Grantor or the Grantee may propose items for discussion or evaluation. By agreement between the Grantor and the Grantee, this evaluation may be combined with the performance review provided in Section 10530. (Ord. 98-1)

Sec. 10533. Remedies for Franchise Violations. If Grantee fails to perform in a timely manner any material obligation required by this Chapter or a franchise granted hereunder, following notice from the Grantor, an opportunity for Grantee to be heard, and an opportunity to cure such nonperformance in accordance with the provisions of Section 10534 of this Chapter and the franchise, Grantor, by resolution of the City Council, may at its option and in its sole discretion:

(A) Cure the violation and recover the actual cost thereof from the security fund established herein if such violation is not cured within thirty (30) days after written notice to the Grantee of Grantor's intention to cure and draw upon the security fund;

(B) Assess against Grantee liquidated damages in an amount set forth in the franchise agreement for any such violations(s) if such violation is not cured, or if Grantee has not commenced a cure, on a schedule acceptable to Grantor, within thirty (30) days after written notice to the Grantee of Grantor's intention to assess liquidated damages. Such assessment may be withdrawn from the security fund, and shall not constitute a waiver by Grantor of any other right or remedy it may have under the franchise or applicable law, including without limitation, its right to recover from Grantee such

additional damages, losses, costs and expenses, including actual attorney's fees, as may have been suffered or incurred by Grantor by reason of or arising out of such breach of the franchise; and

(C) Exercise its right to revoke the franchise as provided in Section 10535 of this Chapter. (Ord. 98-1)

Sec. 10534. Procedure for Remedying Franchise Violations. Prior to imposing any remedy or other sanction against Grantee specified in this Chapter, Grantor shall give Grantee notice and opportunity to be heard on the matter, in accordance with the following procedures:

(A) Grantor shall first notify Grantee of the violation in writing by personal delivery or registered or certified mail, and demand correction within a reasonable time, which shall not be less than five (5) days in the case of the failure of the Grantee to pay any sum or other amount due the Grantor under this Chapter or the Grantee's franchise and thirty (30) days in all other cases. If Grantee fails to correct the violation within the time prescribed or if Grantee fails to commence correction of the violation within the time prescribed and diligently remedy such violation thereafter, the Grantor shall then give written notice of not less than twenty (20) days of a public hearing to be held before the Council. Said notice shall specify the violations alleged to have occurred.

(B) At the public hearing, the Council shall hear and consider all relevant evidence, and thereafter render findings and its decision.

(C) In the event the Council finds that the Grantee has corrected the violation or has diligently commenced correction of such violation after notice thereof from Grantor and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

(D) In the event the Council finds that the material violations alleged in the notice to Grantee exist and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation after notice thereof from Grantor and is not diligently proceeding to fully remedy such violation, the Council may impose one (1) or more of the remedies provided in this Ordinance and the franchise agreement as it, in its discretion, deems appropriate under the circumstances. (Ord. 98-1)

Sec. 10535. Grantor's Power to Revoke. Subject to limitations imposed by applicable Federal or State law, Grantor reserves the right to revoke any franchise granted pursuant to this Chapter and rescind all rights and privileges associated with it in the following circumstances, each of which shall represent a default by Grantee and a material breach under the franchise grant:

(A) If Grantee shall default in the performance of its material obligations under this Chapter or the franchise agreement and shall continue such default after receipt of due notice and reasonable opportunity to cure the default;

(B) If Grantee shall fail to provide or maintain in full force and effect the insurance coverage or security fund as required in the franchise agreement;

(C) If Grantee shall violate any order or ruling of any regulatory body having jurisdiction over the Grantee relative to the Grantee's franchise, unless such order or ruling is being contested by Grantee by appropriate proceedings conducted in good faith;

(D) If Grantee practices any material fraud or deceit upon Grantor;

(E) Except as provided in Section 10540 herein, if Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt. The termination and forfeiture of the Grantee's franchise shall in no way affect any right of Grantor to pursue any remedy under the franchise or any provision of law. (Ord. 98-1)

Sec. 10536. Force Majeure: Grantee's Inability to Perform. In the event Grantee's performance of any of the terms, conditions or obligations required by this Chapter or a franchise granted hereunder is prevented by a cause or event not within Grantee's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this Section, causes or events not within the control of Grantee shall include without limitation acts of God, strikes, sabotage, riots or civil disturbances, weather conditions, restraints imposed by order of a governmental agency or court, explosions, safety incidents involving nuclear facilities, acts of public enemies, and natural disasters such as floods, earthquakes, landslides and fires, but shall not include financial inability of the Grantee to perform or failure of the Grantee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of Grantee, or the failure of the Grantee to secure supplies, services or equipment necessary for the installation, operation, maintenance or repair of the cable communications system where the Grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment. (Ord. 98-1)

Sec. 10537. Abandonment or Removal of Franchise Property. (A) In the event that the use of any property of Grantee within the public rights-of-way is discontinued for a continuous period of twelve (12) months, Grantee shall be deemed to have abandoned that franchise property. Any part of the cable system that is intended for use only when needed because it is parallel or redundant to other parts the system, or otherwise, shall not be deemed to have been abandoned because of its lack of use.

(B) Grantor, upon such terms as Grantor may impose, may give Grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained under the franchise. Unless such permission is granted or unless otherwise provided in this Chapter, the Grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from Grantor and shall restore any affected street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. Grantor shall have the right to inspect and approve the condition of the pubic ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Chapter and the security fund as provided herein shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this Section.

(C) Upon abandonment of any franchise property in place, the Grantee, if required by the Grantor, shall submit to the Grantor an instrument, satisfactory in form to the Grantor, transferring to the Grantor the ownership of the franchise property abandoned.

(D) At the expiration of the term for which the franchise is granted, or upon its revocation or earlier expiration, as provided herein, in any such case without renewal, extension or transfer, the Grantor shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the cable television system from all streets and public ways within the City within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

(E) Notwithstanding anything to the contrary set forth in this Chapter, the Grantee may abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable Grantee. (Ord. 98-1)

Sec. 10538. Restoration by Grantor: Reimbursement of Costs. In the event of a failure by Grantee to complete any restoration work required herein or by any other law or ordinance, and if such work is not completed within thirty (30) days after receipt of written notice thereof from Grantor or, if more than thirty (30) days are reasonably required therefor, if Grantee does not commence such work within such thirty (30) days period and diligently complete the work thereafter (except in cases of emergency constituting a threat to public health, safety or welfare), Grantor may cause such work to be done and Grantee shall reimburse Grantor the costs thereof within thirty (30) days after receipt of an itemized list of such costs, or Grantor may recover such costs through the security fund provided by Grantee. (Ord. 98-1)

Sec. 10539. Extended Operation and Continuity of Services. Upon expiration or revocation of the franchise, the Grantor shall have the discretion to permit Grantee to continue to operate the cable television system for an extended period of time. Grantee shall continue to operate the system for a reasonable period of tine under the terms and conditions of this Chapter and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time. It shall be the right of all subscribers to continue to receive all available services provided that financial and other obligations to Grantee are honored. The Grantee shall use reasonable efforts to provide continuous, uninterrupted service to its subscribers, including operation of the system during transition periods for a reasonable period of time following franchise expiration or termination. (Ord. 98-1)

Sec. 10540. Receivership and Foreclosure. (A) A franchise granted hereunder shall, at the option of Grantor, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in a receivership, reorganization bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: (1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Chapter and the franchise granted pursuant hereto, and the receivership or trustees within said one hundred twenty (120) days shall have remedied all defaults under the franchise or provided a plan for the remedy of such defaults which is satisfactory to the Grantor; and (2) such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise granted.

(B) Except as provided in Section 10508 (E) herein, in the case of a foreclosure or other judicial sale of the franchise property, or any material part thereof, Grantor may serve notice of termination upon Grantee and the successful bidder at such sale, in which event the franchise granted and all rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless: (1) Grantor shall have approved the transfer of the franchise, as and in the manner that this Chapter provides; and (2) such successful bidder shall have covenanted and agreed with Grantor to assume and be bound by all terms and conditions of the franchise. (Ord. 98-1)

Sec. 10541. Rights Reserved to Grantor. (A) In addition to any rights specifically reserved to the Grantor by this Chapter, the Grantor reserves to itself every right and power which is required to be reserved by a provision of any Ordinance or under the franchise.

(B) The Grantor shall have the right to waive any provision of the franchise, except those required by Federal or State regulation, if the Grantor determines (1) that it is in the public interest to do so, and (2) that the enforcement of such provision will impose an undue hardship on the Grantee or the subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a

duly authorized representative of the Grantor. Waiver of any provision in one (1) instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the franchise unless the statement so recites. (Ord. 98-1)

Sec. 10542. Rights of Individuals. (A) Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex. Grantee shall comply at all times with all other applicable Federal, State and local laws and regulations relating to nondiscrimination.

(B) Grantee shall adhere to the applicable equal employment opportunity requirements of Federal, State and local regulations, as now written or as amended from time to time.

(C) Neither Grantee, nor any person, agency, or entity shall, without the subscriber's consent, tap, or arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for any purpose except routine maintenance of the system, detection of unauthorized service, polling with audience participation, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.

(D) In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, Grantee shall take reasonable steps to prevent the invasion of a subscriber's or general citizen's right of privacy or other personal rights through the use of the system as such rights are delineated or defined by applicable law. Grantee shall not without lawful court order or other applicable valid legal authority utilize the system's interactive two way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen for any purpose unrelated to the operation of the cable system.

(E) No cable line, wire amplifier, converter, or other piece of equipment owned by Grantee shall be installed by Grantee in the subscriber's premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon subscriber's property shall be presumed.

(F) The Grantee, or any of its agents or employees, shall not sell, or otherwise make available to any party for any purpose other than the operation or transfer of the cable system without consent of the subscriber pursuant to State and Federal privacy laws:

(1) Any list of the names and addresses of subscribers containing the names and addresses of subscribers who request in writing to be removed from such list; and

(2) Any list which identifies the viewing habits of individual subscribers. This does not prohibit the Grantee from providing composite ratings of subscriber viewing to any party. (Ord. 98-1)

Sec. 10543. Separability. If any provision of this Ordinance is held by any court or by any Federal or State agency of competent jurisdiction, to be invalid as conflicting with any Federal or State law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, such provision shall be considered a separate, distinct, and independent part of this Chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so-that the provision thereof which had been held invalid or modified is no longer in conflict with such law, rule or regulation, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantor and Grantee, provided that Grantor shall give Grantee thirty (30) days' written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for Grantee to comply with such provision. (Ord. 98-1)

# CHAPTER 6 - TRANSIENT OCCUPANCY TAX

Sec. 10600. Short Title. This ordinance shall be known as the Transient Occupancy Tax Ordinance of the City of Grover City. (Ord. 87)

Sec. 10601. Definitions. Except where the context otherwise requires, the definitions given in this section govern the construction of this ordinance:

(A) Person means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(B) Hotel means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio, hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure or portion thereof.

(C) Occupancy means the use or possession, or the right to the use or possession of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

(D) Transient means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this ordinance may be considered.

(E) Rent means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

(F) Operator means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employ, the managing agent shall also be deemed an operator for the purposes of this ordinance and shall have the same duties and liabilities as his principal. Compliance with the provisions of this ordinance by either the principal or the managing agent shall, however, be considered to be compliance by both.

(G) Tax Administrator means the City Clerk. (Ord. 87)

Sec. 10602. Tax Imposed. For the privilege of occupancy in any hotel/motel, each transient is subject to and shall pay a tax in the amount of twelve (12%) percent of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the City which is extinguished only by payment to the operator or to the City. The transient shall pay the tax to the operator of the hotel/motel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transients ceasing to occupy space in the hotel/motel. If for any reason the tax due is not paid to the operator of the hotel/motel, the Tax Administrator may require that such tax shall be paid directly to the Tax Administrator. (Ord. 87; Amd. Ord. 78-7; Amd. Ord. 91-6; Amd. Ord. 18-06)

Sec. 10603. Exemptions. (A) No tax shall be imposed upon:

(1) Any person as to whom, or any occupancy as to which, it is beyond the power of the City to impose the tax herein provided;

(2) Any federal or State of California officer or employee when on official business;

(3) Any officer or employee of a foreign government who is exempt by reason of express provisions of federal law or international treaty.

(B) No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the Tax Administrator. (Ord. 87)

Sec. 10604. Operator's Duties. Each operator shall collect the tax imposed by this ordinance to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator,

or that it will not be added to the rent, or that if added, any part will be refunded except in the manner hereinafter provided. (Ord. 87)

Sec. 10605. Registration. Within thirty (30) days after the effective date of this ordinance, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register said hotel with the Tax Administrator and obtain from him a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

(A) The name of the operator;

(B) The address of the hotel;

(C) The date upon which the certificate was issued;

(D) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the Tax Administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct an unlawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this City. This certificate does not constitute a permit." (Ord. 87)

Sec. 10606. Reporting and Remitting. Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Tax Administrator, make a return to the Tax Administrator, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Administrator. The Tax Administrator may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax and he may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this ordinance shall be held in trust for the account of the City until payment thereof is made to the Tax Administrator. The information furnished or secured pursuant to this section shall be confidential. Any unwarranted disclosure or use of such information by any officer or employee of the City of Grover City shall constitute a misdemeanor and such officer or employee shall be subject to the penalty provisions of this ordinance. (Ord. 87)

Sec. 10607. Penalties and Interest. (A) Original Delinquency. Any operator who fails to remit any tax imposed by this ordinance within the time required shall pay a penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax.

(B) Continued Delinquency. An operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten (10%) percent of the amount of the tax in addition to the amount of the tax and the ten (10%) percent penalty first imposed.

(C) Fraud. If the Tax Administrator determines that the nonpayment of any remittance due under this ordinance is due to fraud, a penalty of twenty-five (25) percent of the amount of the

tax shall be added thereto in addition to the penalties stated in subparagraphs (A) and (B) of this Section.

(D) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this ordinance shall pay interest at the rate of one-half of one (1%) percent per month or fraction thereof on the amount of the tax, exclusive of
penalties, from the date on which the remittance first became delinquent until paid.

(E) Penalties Merged With Tax. Every penalty imposed and such interest as accrues under the provisions of this Section shall become a part of the tax herein required to be paid. (Ord. 87)

Sec. 10608. Failure to Collect and Report Tax. Determination of Tax Administrator. If any operator shall fail or refuse to collect said tax and to make, within the time provided in this ordinance, any report and remittance of said tax or any portion thereof required by this ordinance, the Tax Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Tax Administrator shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this ordinance and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this ordinance. In case such determination is made, the Tax Administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may within ten (10 days after the serving or mailing of such notice make application in writing to the Tax Administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Tax Administrator shall become final and conclusive and immediately due and payable. If such application is made, the Tax Administrator shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the Tax Administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in Section 10609. (Ord. 87)

Sec. 10609. Appeal. Any operator aggrieved by any decision of the Tax Administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the Council by filing a notice of appeal with the City Clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such operator at his last known place of address. The findings of the Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (Ord. 87)

Sec. 10610. Records. It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this ordinance to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the City, which records the Tax Administrator shall have the right to inspect at all reasonable times. (Ord. 87)

Sec. 10611. Refunds. (A) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this ordinance it may be refunded as provided in subparagraphs (B) and (C) of this Section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Administrator within three (3) years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.

(B) An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Tax Administrator that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

(C) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subparagraph (A) of this Section, but only when the tax was paid by the transient directly to the Tax Administrator, or when the transient having paid the tax to the operator, establishes to the satisfaction of the Tax Administrator that the transient has been unable to obtain a refund from the operator who collected the tax.

(D) No refund shall be paid under the provisions of this Section unless the claimant establishes the right thereto by written records showing entitlement thereto. (Ord. 87)

Sec. 10612. Actions to Collect. Any tax required to be paid by any transient under the provisions of this ordinance shall be deemed a debt owed by the transient to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this ordinance shall be liable to an action brought in the name of the City of Grover City for the recovery of such amount. (Ord. 87)

Sec. 10613. Violations: Misdemeanor. Any person violating any of the provisions of this ordinance shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the County jail for a period of not more than six (6) months or by both such fine and imprisonment. Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the Tax Administrator, or who renders a false or fraudulent return or claim is guilty of a misdemeanor and is punishable as aforesaid. Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this ordinance to be made, is guilty of a misdemeanor and is punishable as aforesaid. (Ord. 87)

Sec. 10614. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance or any part thereof is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional. (Ord. 87)

## CHAPTER 7 - REAL PROPERTY TRANSFER TAX ORDINANCE

Sec. 10701. This ordinance shall be known as the "Real Property Transfer Tax Ordinance of the City of Grover City." It is adopted pursuant to the authority contained in Part 6.7 (commencing with section 11901) of Division 2 of the Revenue and Taxation Code of the State of California. (Ord. 89)

Sec. 10702. There is hereby imposed on each deed, instrument or writing by which any lands, tenements, or other realty sold within the City of Grover City shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrances remaining thereon at the time of sale) exceeds one hundred dollars ($100.00), a tax at the rate of twenty-seven and one-half cents ($0.275) for each five hundred dollars ($500.00) or fractional part thereof. (Ord. 89)

Sec. 10703. Any tax imposed pursuant to Section 10702 hereof shall be paid by any person who makes, signs or issues any document or instrument subject to the tax, or for whose use or benefit the same is made, signed or issued. (Ord. 89)

Sec. 10704. Any tax imposed pursuant to this ordinance shall not apply to any instrument in writing given to secure a debt. (Ord. 89)

Sec. 10705. The United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, or the District of Columbia shall not be liable for any tax imposed pursuant to this ordinance with respect to any deed, instrument, or writing to which it is a party, but the tax may be collected by assessment from any other party liable therefor. (Ord. 89)

Sec. 10706. Any tax imposed pursuant to this ordinance shall not apply to the making, delivering or filing of conveyances to make effective any plan of reorganization or adjustment:

(A) Confirmed under the Federal Bankruptcy Act, as amended;

(B) Approve in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended;

(C) Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 506 of Title 11 of the United States Code, as amended; or

(D) Whereby a mere change in identity, form or place of organization is effected.

Subdivisions (A) to (D), inclusive, of this section shall only apply if the making, delivery or filing of instruments of transfer or conveyances occurs within five (5) years from the date of such confirmation, approval or change. (Ord. 89)

Sec. 10707. Any tax imposed pursuant to this ordinance shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:

(A) The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;

(B) Such order specifies the property which is ordered to be conveyed;

(C) Such conveyance is made in obedience to such order. (Ord. 89)

Sec. 10708. (A) In the case of any realty held by a partnership, no levy shall be imposed pursuant to this ordinance by reason of any transfer of an interest in a partnership or otherwise, if:

(1) Such partnership (or another partnership) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and

(2) Such continuing partnership continued to hold the realty concerned.

(B) If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this ordinance, such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination.

(C) Not more than one tax shall be imposed pursuant to this ordinance by reason of a termination described in subdivision (B), and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination. (Ord. 89)

Sec. 10709. The County Recorder shall administer this ordinance in conformity with the provisions of Part 6.7 of Division 2 of the Revenue and Taxation Code and the provisions of any County ordinance adopted pursuant thereto. (Ord. 89)

Sec. 10710. Claims for refund of taxes imposed pursuant to this ordinance shall be governed by the provisions of Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of the Revenue and Taxation Code of the State of California. (Ord. 89)

Sec. 10711. This ordinance shall become operative upon the operative date of any ordinance adopted by the County of San Luis Obispo, pursuant to Part 6.7 (commencing with Section 11901) of Division 2 of the Revenue and Taxation Code of the State of California, or upon the effective date of this ordinance, whichever is the later. (Ord. 89)

Sec. 10712. Upon its adoption the City Clerk shall file two (2) copies of this ordinance with the County Recorder of San Luis Obispo County. (Ord. 89)

Sec. 10713. This ordinance, inasmuch as it provides for a tax levy for the usual and current expenses of the City, shall take effect immediately. (Ord. 89)

## CHAPTER 8 - COMMUNITY DEVELOPMENT FEE

Sec. 10800. Definitions. (A) Building shall mean any structure having a roof constructed for the support, shelter or enclosure of persons, animals, chattels or property of any kind. A mobile home shall not be deemed a building.

(B) Construct means the putting together, assembling, erecting or altering of construction materials, components or modules into a structure, or portion of a structure, and includes reconstructing, enlarging or altering any structure. "Construct" also includes the moving and locating of a building, or portion thereof, onto a lot or parcel of land, and also includes the improvement of land as a mobile home space.

(C) Dwelling Unit means a building or portion of a building planned or designed for use as a residence for one family only, living independently of other families or persons, and having its own

bathroom and housekeeping facilities included in said unit (e.g., a one-family dwelling, each unit in a two-family dwelling, and each unit in multiple dwelling).

(D) Family shall mean an individual or two or more persons related by blood or marriage living together as a single housekeeping unit.

(E) Floor Area is the area of the several floors of a building included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts, courts, car ports and garages. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be usable area under the horizontal projection of the roof or floor above.

(F) Mobile home Space shall mean each space in a mobile home, travel trailer or recreational vehicle park designed to be used for parking a mobile home, travel trailer or recreational vehicle on a temporary, semi-permanent or permanent basis, as the area of such space is described on plans submitted for a construction permit.

(G) Person shall mean every person, firm, or corporation constructing a building, or portion thereof, or a mobile home park space directly or through the service of an employee, agent or independent contractor.

(H) City shall mean the City of Grover City, California. (Ord. 135)

Sec. 10801. Fee: Imposition and Application. A fee is hereby imposed in amounts set forth in Section 10802 upon the construction of any building, or portion thereof, or any mobile home space, in the City for which a building permit or a construction permit by the State is issued after the effective date of this Chapter. (Ord. 135)

Sec. 10802. Fee: Rates. The fee imposed by this Chapter is as follows, and in the event of a problem in the interpretation or construction of said fee to a particular application, said fee shall be determined by the Grover City Building Department whose findings shall be conclusive:

(A) An amount equal to .3% of the value of the construction of any building;

(B) An amount equal to 1.2% of the assessed value of land for developments not consisting of buildings. (Ord. 135)

Sec. 10803. Fee: When Payable: Refund. The fee imposed by Section 10802 shall be due and payable upon issuance of the building permit for the construction of any such building, or portion thereof, or prior to the issuance of a construction permit for the construction of any mobile home space. For all buildings, or portions thereof, the fee shall be in addition to the fee required to be paid for the building permit and no such building permit shall be issued until the fee is paid. For all mobile home spaces, the fee shall be in addition to all inspection fees required to be paid in the construction of a mobile home park and no construction permit shall be issued until the fee is paid on all mobile home spaces. Such fee shall be refunded only if the building permit for the construction of any such building, or portion thereof, or the construction permit for the construction of any mobile home spaces has expired and no construction is commenced. (Ord. 135)

Sec. 10804. Place of Payment. Fees imposed under this Chapter shall be paid to the Grover City Clerk. (Ord. 135)

Sec. 10805. Exemptions. The fee imposed under this Chapter shall not apply to the following:

(A) The City of Grover City, the United States or any agency or instrumentality thereof, the State of California or any county, city and county, district or any political subdivision of the State of California, or any other governmental agency or nonprofit organization duly qualified as exempt by the Federal and State taxing authorities:

(B) Enlargement, remodeling and/or alteration of a building, but only if the number of dwelling units therein is not increased and the number of square feet of floor area devoted to any use other than dwelling unit use is not increased. If the number of dwelling units in the building is increased, and/or the number of square feet in the building devoted to any use other than dwelling unit use is increased, then the fee imposed under this ordinance shall apply to such increased number of dwelling units and/or such increased floor area;

(C) Reconstruction of a building which was damaged or destroyed by earthquake, fire, flood, or other cause over which the owner had no control (provided that compliance with any building code or other ordinance requirement of the City or of any other applicable law shall not be deemed a cause over which the owner has no control), but only if the number of dwelling units in the building is not increased and the number of square feet in the building devoted to any use other than dwelling unit use is not increased. If the number of dwelling units in the building and/or the number of square feet in the building devoted to any use other than dwelling unit use is increased, then the fee imposed under this ordinance shall apply to such increased number of dwelling units and/or increased floor area. (Ord. 135)

Sec. 10806. Disposition and Use of Tax Receipts. There is hereby established a Parks Development Fund. All of the sums collected pursuant to this Chapter shall be deposited in said Parks Development Fund and shall be used solely for the acquisition, improvement, expansion and maintenance of public parks, playgrounds and/or recreation facilities. (Ord. 135)

## CHAPTER 9 - INTERIM SCHOOL FACILITIES

Sec. 10900. Title. This Chapter shall be known and may be cited as the "Interim School Facilities Ordinance." (Ord. 84-2)

Sec. 10905. Purpose. The purpose of this Chapter is to provide a method for financing interim school facilities necessitated by conditions of overcrowding caused by new residential developments. (Ord. 84-2)

Sec. 10910. Authority. This Chapter is adopted pursuant to the provisions of Chapter 4.7 (commencing with § 65970) of Division 1 of Title 7 of the Government Code. (Ord. 84-2)

Sec. 10915. General Plan. The City's General Plan provides for the location of public schools. Interim school facilities to be constructed from fees or land required to be dedicated or both shall be consistent with the General Plan. (Ord. 84-2)

Sec. 10920. Regulations. The City Council may from time to time, by resolution, issue regulations to establish fees, administration procedures, interpretation and policy direction for this ordinance. (Ord. 84-2)

Sec. 10925. Definitions. The following terms shall have the following meanings when used in this Chapter:

(A) Attendance area means that area established by the governing board of the school district, within which children must reside to attend a particular school;

(B) City Council means City Council of the City of Grover City;

(C) Conditions of overcrowding means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of such school;

(D) City Clerk means City Clerk of City;

(E) Developer means any person, association, firm, partnership, corporation, other business entity, or public agency establishing, installing, or constructing a residential dwelling unit;

(F) Dwelling unit means a building or portion thereof, or a mobile home, designed for residential occupation by one person or a group of two or more persons living together as a domestic unit. Dwelling unit shall not mean remodels or room additions to existing residential structures nor shall it include hotel or motel units;

(G) Interim school facilities means temporary classrooms not constructed with a permanent foundation and defined as a structure containing one or more rooms, each of which is designed, intended and equipped for use as a place for formal instruction of pupils by a teacher in a school; temporary classroom toilet
facilities not constructed with a permanent foundation; and reasonable site preparation and installation of temporary classrooms and toilet facilities;

(H) Community Development Director means the Community Development Director of City;

(I) Reasonable methods for mitigating conditions of overcrowding include, but are not limited to:

(1) The use of all available revenues, including general fund, to the full extent authorized by law;

(2) Attendance area boundary adjustments;

(3) The use of school district property for temporary use buildings;

(4) The temporary or permanent use of other schools in the district not having overcrowded conditions;

(5) The use of student transportation;

(6) The use of existing and proposed relocatable structures;

(7) The full use of funds which could be available from the sale of surplus school district real property;

(8) Eliminating non-mandated school programs and facilities;

(9) The use of classroom double sessions;

(10) The use of year-round school programs; and

(11) The pursuit and use of available tax, bond and other revenue procedures to the full extent authorized by law.

(J) Residential development means a project requiring a building permit for residential dwellings, including mobile homes, of one or more units. (Ord. 84-2)

Sec. 10930. Notification of Conditions of Overcrowding. Pursuant to Government Code §§ 65970 et seq., the governing board of any school district operating an elementary or high school may, with respect to any of its attendance areas located in whole or in part within the City of Grover City, make and file with the City Council written findings supported by clear and convincing evidence that:

(A) Conditions of overcrowding exist in the school or schools of such attendance area which will impair the normal functioning of educational programs, including the reasons for such conditions existing; and

(B) All reasonable methods for mitigating conditions of overcrowding have been evaluated and no feasible method for reducing such conditions exists.

Sec. 10935. Content of Findings. Findings filed pursuant to § 10930 shall contain the following:

(A) A precise description of the geographic boundaries of the attendance areas to which the findings relate:

(B) A list of the mitigation measures evaluated by the governing board of the school district and a statement of the reasons why such measures were found to be infeasible:

(C) The evidence upon which such findings were based; and

(D) Such other information as may be required by the Community Development Director or City Council to carry out the purposes of this Chapter. (Ord. 84-2)

Sec. 10940. City Council's Public Hearing on Overcrowding. Within thirty (30) days of receipt of a school district's complete notice of overcrowding pursuant to §§ 10930 and 10935, the City Council shall commence a public hearing, and shall thereafter do one of the following:

(A) Concur in the school district's findings of overcrowding;

(B) Request additional information to verify the school district's findings of overcrowding; or

(C) Reject the school district's findings of overcrowding and inform the school district of the reasons for such rejection.

If the City Council concurs with a school district's findings that conditions of overcrowding exist within an attendance area, it shall adopt a
resolution specifying its concurrence based upon the evidence provided in the school district's notice and findings. (Ord. 84-2)

Sec. 10945. School District Plan to Solve Overcrowding. After the City Council's adoption of a resolution of concurrence with the school district's notice and findings, the governing body of the school district shall submit a detailed plan or schedule specifying for such affected attendance area how it will use land or fees, or both, to solve the conditions of overcrowding. The schedule shall include, for each attendance area, the school sites to be used, the classroom facilities to be made available, and the times when such facilities will be available. In addition, the school district shall provide data showing the least expensive methods for financing the district's plan, including the cost of leasing for a maximum period of five (5) years interim use facilities. In the event the governing body of the school district cannot meet the schedule, it shall submit modifications to the City Council together with the reasons for the modifications.

The City Council shall review such plan at a regular meeting, and may report to the school district any recommendations for revisions of the plan. No fees or land dedication shall be required of any developer prior to the City Council's review of the school district's plan adopted pursuant to this section. (Ord. 84-2)

Sec. 10950. Dedication of Land or Payment of Fees by Developers. After the City Council's approval of the school district's plan, no building permit shall be approved in the attendance area described in said notice and findings, until the developer has either dedicated land, paid fees, or provided both dedicated land and fees or agreed to dedicate land, pay fees, or provide both dedicated land and fees to the school district as hereinafter provided.

(A) Fees. The City Council shall establish fees by resolution and may amend such fee schedules from time to time.

The City may require the school district to provide updated information to the City Council from time to time which the City Council may utilize in electing to adjust fees. Such information may consist of, but is not limited to, new census data for the City or portions thereof, school census data for the City or portions thereof, new lease and purchase data for relocatables, and changes in classroom maximums or standards.

The amount of fees to be paid shall bear a reasonable relationship and will be limited to the needs of the community for interim school facilities and shall be reasonably related and limited to the need for schools caused by the development.

(B) Land Dedication. If the developer and the school district propose to agree to land dedication in lieu of fees or a combination of dedicated land and fees, the City Council shall consider the proposal within thirty (30) days of receipt of a written proposal by the school district, and may approve or disapprove the dedication or combination of dedication and fees after considering at least the following factors:

(1) Whether lands offered for dedication will be consistent with the general plan;

(2) The topography, soils, soil stability, drainage, access, location and general utility of land in the development available for dedication;

(3) Any recommendations made by affected school districts concerning the location and amount of lands to be dedicated; and

(4) Whether the location and amount of lands proposed to be dedicated or the combination of dedicated land and fees will bear a reasonable relationship and will be limited to the needs of the community for interim elementary and/or high school facilities and will be reasonably related and limited to the need for schools caused by the development. (Ord. 84-12)

Sec. 10955. Processing of Application. Prior to final approval of a building permit for a residential dwelling unit or units which is located in whole or in part in an attendance area where a school has been determined to be overcrowded pursuant to this Chapter and for which the City Council has approved the school district's plan to solve overcrowding, the applicant shall present to the Community Development Director evidence of one of the following:

(A) Payment to the school district of the fees required by resolution of the City Council adopted pursuant to § 10950 which is in effect at the time the applicant applies for a building permit;

(B) An agreement in writing with the affected school district by which the applicant agrees to dedicate to the school district and the school district agrees to accept land to be used to relieve the overcrowding in the district's schools as an alternative to payment of fees under subsection (A) above;

(C) An agreement in writing with the affected school district by which the applicant agrees to both dedicate land and pay fees to the school district and the school district agrees to accept the combination of dedicated land and fees to relieve the overcrowding in the district's schools as an alternative to only the payment of fees under subsection (A) above and to only the dedication of land under subsection (B) above. The amount of the fees shall be determined by the City Council pursuant to § 10950; or

(D) A written statement of the applicant, with supporting documentation, that there are specific overriding fiscal, economic, social or environmental factors benefiting the city which will justify the approval of such residential development without compliance with the fee payment or land dedication requirements of this Chapter.

If the applicant provides such a statement of overriding factors under subsection (D), the Community Development Director shall place the matter on the agenda of the City Council for public

hearing to be held not less than forty-five (45) days after receipt of the statement, and shall give the school district at least ten (10) days written notice of the hearing along with a copy of the statement.

If after public hearing, the City Council agrees that overriding factors benefiting the City justify approval without the payment of fees or dedication of land, it shall direct the Community Development Director to continue processing the application. If the City Council finds that there are not sufficient overriding factors, it shall direct the Community Development Director to take no further action to process the application until the documentation required by subsections (A), (B), or (C) has been provided.

The Community Development Director shall refuse to grant final approval to a building permit for a residential dwelling unit which is within a school attendance area in which the City Council has found that conditions of overcrowding exist and for which the City Council has approved the school district's plan to solve overcrowding, until the applicant has complied with this section. (Ord. 84-2)

(E) An agreement with the school district for payment of fees pursuant to Section 10965(G), along with evidence of payment to the school district of the fee specified in such agreement. (Ord. 86-1)

Sec. 10960. Use of Land and Fees. Except as provided in Section 10965(G), all fees collected by a school district pursuant to this Ordinance shall be used only for the purpose of providing interim school facilities as defined in Section 10925(G). (Ord. 84-2; Amd. Ord. 86-1)

Sec. 10965. Exemptions. Residential development shall be exempt from the requirements of this ordinance when it consists of any one or more of the following:

(A) Any modification or remodeling of an existing legally established dwelling unit;

(B) The proposed development is located within a redevelopment area designated by a redevelopment agency pursuant to the Community Redevelopment Law, Health and Safety Code §§ 33000, et seq.;

(C) A condominium project converting an existing apartment building into condominiums where no new dwelling units are added or created;

(D) Any rebuilding of a legally established dwelling unit destroyed or damaged by fire, explosion, act of God or other accident or catastrophe;

(E) Any rebuilding of a historical building recognized, acknowledged and designated as such by the City Planning Commission or City Council;

(F) Any residential development where the City Council finds there are specific overriding fiscal, economic, social or environmental factors benefiting the City which, in the sole judgment of the City Council would justify the approval of such development without the payment of fees or dedication of land.

(G) Any residential development where the developer and the school district have entered into a written agreement to mitigate the impacts of overcrowding by providing to the school district, for its use for permanent or interim facilities as it deems best, fees and/or land, at least equal in value to the amounts required by this Ordinance for interim facilities. The City Council finds that such a mitigation measure is a specific overriding fiscal, social, and economic factor benefiting the City which justifies approval of any such development without compliance with the interim facilities fee payment requirements of this Ordinance and without requirement for the hearing process specified in Section 10955(D). This exemption shall also be applicable to previously approved residential developments in the event that the payor of any fee charged for interim facilities pursuant to this Ordinance, enters into a written agreement with the school district authorizing use of such funds for permanent facilities. (Ord. 84-2; Amd. Ord. 86-1)

Sec. 10970. Payment of Fee. If the payment of fees is required, such payment shall be made by the developer to the school district prior to the time of issuance of the building permit. (Ord. 84-2)

Sec. 10975. Refunds of Paid Fees. If a building permit approval is vacated or voided and if the affected school district still retains the land or fees collected therefor, and if the applicant so requests in writing, the governing body of the school district shall order the land or fees returned to the applicant. (Ord. 84-2)

Sec. 10980. Termination. As soon as overcrowding conditions cease to exist or reasonable methods of mitigating conditions of overcrowding are feasible, the school district shall immediately notify the City Council. Upon receiving such notice, or upon City Council's determination that overcrowding conditions cease to exist or that reasonable methods for mitigating conditions of overcrowding are feasible, the City Council shall cease the requirement of fees or land dedication required by this Chapter. (Ord. 84-2)

Sec. 10985. Accounting and Annual Report. Any school district receiving funds or land pursuant to this ordinance shall maintain a separate trust account for any funds paid and shall file a report and an independent audit with the City Council on the balance in the account at the end of the previous fiscal year and the facilities leased, purchased or constructed during the previous fiscal year. In addition, the reports shall specify which attendance areas will continue to be overcrowded when the fall term begins and when and where conditions of overcrowding will no longer exist. Such report shall be filed no later than three months following the close of each fiscal year of the school district and shall be filed more frequently if requested by the City Council. The City may, at any reasonable time, cause an independent audit to be conducted of the fees collected by the governing board of the school district for the purposes authorized by this section. (Ord. 84-2)

## CHAPTER 10 - PLANNING AND ZONING APPLICATION FEE REGULATIONS

Sec. 101001. Title. This Chapter shall be known and may be cited as the "Planning and Zoning Application Fee Regulations". (Ord. 90-8)

Sec. 101002. Council May Establish and/or Modify Rates by Resolution. The City Council of the City of Grover City is hereby authorized to establish Planning and Zoning Application Fees and make such changes and adjustments from time to time as, in its opinion, may be necessary and in the best interests of the City. All such fees may be established and any such changes in said fees may be accomplished by resolution of the City Council adopted in a regular meeting of said Council after notice has been provided as required by State law. (Ord. 90-8)

## CHAPTER 11 - DEDICATION OF LAND, PAYMENT OF FEES, OR BOTH, FOR PARK AND RECREATION LAND IN SUBDIVISIONS

Sec. 101101. Purpose. This ordinance is enacted pursuant to the authority granted by Section 66477 of the Government Code of the State of California. The park and recreational facilities for which

dedication of land and/or payment of a fee is required by this ordinance are in accordance with the Park and Recreation Element of the General Plan of the City of Grover City adopted by the City of Grover City on July 15, 1991. (Ord. 91-5)

Sec. 101102. Requirements. At the time of approval of the tentative map or parcel map, the City Council shall determine pursuant to Section 101104 hereof the land required for dedication or in lieu fee payment. As a condition of approval of a final subdivision map or parcel map, the subdivider shall dedicate land, pay a fee in lieu thereof, or both, at the option of the City, for neighborhood and community park or recreational purposes at the time according to the standards and formula contained in this ordinance. In the event park and recreational services are provided by a public agency other than the City, the amount and location of land to be dedicated or fees to be paid shall be jointly determined by the City and such public agency. (Ord. 91-5)

Sec. 101103. General Standard. It is hereby found and determined that the public interest, convenience, health, welfare, and safety require that five acres of property for each 1,000 persons residing within this City be devoted to neighborhood and community park and recreational purposes. (Ord. 91-5)

Sec. 101104. Formula for Dedication of Land. (A) Where a park or recreational facility has been designated in the Parks and Recreation Element, of the General Plan of the City, and is to be located in whole or in part within the proposed subdivision to serve the immediate and future needs of the residents of the subdivision, the subdivider shall dedicate land for a local park sufficient in size and topography that bears a reasonable relationship to serve the present and future needs of the residents of the subdivision. The amount of land to be provided shall be determined pursuant to the following formula.

The formula for determining acreage to be dedicated has been established pursuant to Section 66477(b) of the Government Code:

| Dwelling | Acres/Dwelling Unit | |
|---|---|---|
| Structure Type | 1990 Census | (5 Acre Standard) |
| Single Family | 2.79 | .0140 |
| 2-4 Plexes | 2.54 | .0127 |
| Apartments | 2.30 | .0112 |
| Mobile Homes | 1.68 | .0084 |

Dedication of land shall be made in accordance with the procedures contained in Section 101111 hereof.

For the purposes of this Section, the number of new dwelling units shall be based upon the number of parcels indicated on the map when in an area zoned for one dwelling unit per parcel. When all or part of the subdivision is located in an area zoned for more than one dwelling unit per parcel, the number of proposed dwelling units in the area so zoned shall equal the maximum allowed under that zone. In the case of a condominium project, the number of new dwelling units shall be the number of condominium units. The term "new dwelling unit" does not include dwelling units lawfully in place prior to the date on which the parcel or final map is filed.

The subdivider shall, without credit:

(1) provide full street improvements and utility connections including, but not limited to, curbs, gutters, street paving, traffic control devices, street trees, and sidewalks to land which is dedicated pursuant to this Section;

(2) provide for fencing along the property line of that portion of the subdivision contiguous to the dedicated land;

(3) provide improved drainage through the site; and

(4) provide other minimal improvements which the City Council determines to be essential to the acceptance of the land for recreational purposes.

In the event proposed subdivision land is required by the General Plan Element in excess of that which is being dedicated to the City, the City may purchase such excess land at appraised value. The appraised value shall be based upon the estimated market value of the excess or additional land and its improvements at the time of the subdivision's final map acceptance. Improvements for the excess land shall be the same as required by the City in the tentative map approval. Purchase shall take place immediately following final map approval.

The land to be dedicated and purchased and the improvements to be made pursuant to this Section shall be approved by the Director of Parks and Recreation. (Ord. 91-5)

Sec. 101105. Formula for Fees in Lieu of Land Dedication.

(A) General Formula. If there is no park or recreational facility designated in the City of Grover City Parks and Recreation Element, to be located in whole or in part within the proposed subdivision to serve the immediate and future needs of the residents of the subdivision, the subdivider shall, in lieu of dedicating land, pay a fee equal to the value of that land, plus 50% toward the costs of off-site improvements, prescribed for dedication in Section 101104 hereof and in an amount determined in accordance with the provisions of Section 101107 hereof, such fee to be used for a local park which bears a reasonable relationship to serve the present and future residents of the area being subdivided.

For the purposes of this ordinance, off-site improvements are defined as those improvements which would have been required if land had been dedicated using the provisions of Section 101104.

(B) Fees in Lieu of Land, 50 Parcels or Less. If the proposed subdivision contains fifty (50) parcels or less, the subdivider shall pay a fee equal to the land value, plus 50% toward costs of off-site improvements, of the portion of the local park required to serve the needs of residents of the proposed subdivision. However, nothing in this Section shall prohibit the dedication and acceptance of land for park and recreation purposes in subdivisions of fifty parcels or less, where the subdivider proposes such dedication voluntarily and the land is acceptable to the City Council.

(C) Use of Money. The money collected hereunder shall be used only for the purpose of acquiring necessary land and developing new or rehabilitating existing park or recreational facilities reasonably related to serving the subdivision. (Ord. 91-5)

Sec. 101106. Criteria for Requiring Both Dedication and Fee. In subdivisions of more than fifty (50) parcels, the subdivider shall both dedicate land and pay a fee in lieu thereof in accordance with the following formula:

(A) When only a portion of the land to be subdivided is proposed on the City of Grover City Parks and Recreation Element as the site for a local park, such portion shall be dedicated for local park purposes and a fee computed pursuant to the provision of Section 101107 hereof shall be paid for the value of any additional land, plus 50% toward costs of off-site improvements, that would have been required to be dedicated pursuant to Section 101104 hereof.

(B) When a major part of the local park or recreation site has already been acquired by the City and only a small portion of land is needed from the subdivision to complete the site, such remaining portion shall be dedicated and a fee computed pursuant to the provision of Section 101107 hereof shall be paid in an amount equal to the value of the land, plus 50% toward costs of off-site improvements, which would otherwise have been required to be dedicated pursuant to Section 101104 hereof, such

fees to be used for the improvement of the existing park and recreation facility or for the improvement of other local parks and recreational facilities in the area serving the subdivision. (Ord. 91-5)

Sec. 101107. Amount of Fee in Lieu of Land Dedication. When a fee is to be paid in lieu of land dedication, value of the amount of such fee shall be based upon the fair market value of the amount of land which would otherwise be required for dedication pursuant to Section 101104, plus 50% toward costs of off-site improvements. The fee shall be determined by the following formula:

DUs x Pop./Du x 5 Acres/1000 People x FMV/Buildable Acre
= Subtotal x 1.5 = In Lieu Fee

WHERE:

DUs = Number of Dwelling Units as defined in Section 101104
Pop = Population per dwelling unit as defined in Section 101104
FMV = Fair Market Value, as determined by Section 101108
Buildable Acre = A typical acre of the subdivision, with a slope less than 10% and located in other than an area on which building is excluded because of flooding, easements, or other restrictions.

Fees to be collected pursuant to this Section shall be approved by the Director of Parks and Recreation. (Ord. 91-5)

Sec. 101108. Determination of Fair Market Value. The fair market value shall be determined by the assessed value of all the land located in the City of Grover City divided by the number of acres within the City limits. The determination shall be made immediately prior to the filing of the final map. The subdivider shall notify the City of the expected filing date at least six (6) weeks prior to filing of the final map. If more than one (1) year elapses prior to filing the final map, the City shall prepare a new determination.

If the subdivider objects to the determined fair market value, he/she may appeal to the City Council who shall hear the appeal under the same rules and obligations current for local Board of Equalization hearings, except that the burden of proof shall lie with the subdivider.

For the purposes of appeal, the determination of the fair market value of a buildable acre, as defined in Section 101107, shall consider, but not necessarily be limited to, the following:

(A) Approval of and conditions of the tentative subdivision map
(B) The General Plan
(C) Zoning
(D) Property location
(E) Off-site and on-site improvements facilitating use of the property
(F) Site characteristics of the property

For the purposes of appeal, the City Council shall consider the estimated or actual costs of on-site and off-site improvements rather than the estimated 50% of land value provision defined in Section 101107. (Ord. 91-5)

Sec. 101109. Determination of Land or Fee. Whether the City Council accepts land dedication or elects to require payment of a fee in lieu thereof, or a combination of both, shall be determined by consideration of the following:

(A) The natural features, access, and location of land in the subdivision available for dedication

(B) The size and shape of the subdivision and land available for dedication
(C) The feasibility of dedication
(D) The compatibility of dedication with the City of Grover City Parks and Recreation Element
(E) The location of existing and proposed park sites and trailways

The determination of the City Council as to whether land shall be dedicated or whether a fee shall be charged or a combination thereof, shall be final and conclusive. (Ord. 91-5)

Sec. 101110. Credit for Private Open Space. No credit shall be given for private open space in the subdivision except as hereinafter provided. Where private open space usable for active recreational purposes is provided in a proposed planned development or real estate development as defined in Sections 11003 and 11003.1 of the Business and Professions Code, partial credit, not to exceed 50%, shall be given against the requirements of land dedication or payment of fees in lieu thereof if the City Council finds that it is in the public interest to do so and that all the following standards are met:

(A) Yards, court areas, setbacks, and other open areas required by the zoning and building ordinances and regulations shall not be included in the computation of such private open space; and

(B) Private park and recreational facilities shall be owned by a home owners association composed of all property owners in the subdivision and being an incorporated nonprofit organization capable of dissolution only by a 100% affirmative vote of the membership, operated under recorded land agreements through which each lot owner in the neighborhood is automatically a member, and each lot is subject to a charge for a proportionate share of expenses for maintaining the facilities; and

(C) Use of the private open space is restricted for park and recreational purposes by recorded covenant which runs with the land in favor of the future owners of the property and which cannot be defeated or eliminated without the consent of the City or its successor; and

(D) The proposed private open space is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and locations; and

(E) Facilities proposed for the open space are in substantial accordance with the provisions of the Recreation Element of the General Plan; and

(F) The open space for which credit is given is generally a minimum of three acres and provides all of the local park basic elements listed below, or a combination of such and other recreational improvements that will meet the specific recreation needs of future residents of the area:

(1) Recreational open spaces, which are generally defined as park areas for active recreational pursuits such as soccer, golf, baseball, softball, and football, and have at least one acre of maintained turf with less than 5% slope.

(2) Court areas, which are generally defined as tennis courts, badminton courts, shuffleboard courts, or similar hard-surfaced areas especially designed and exclusively used for court games.

(3) Recreational swimming areas, which are defined generally as fenced areas devoted primarily to swimming, diving, or both. They must also include decks, lawned area, bathhouses, or other facilities developed and used exclusively for swimming and diving and consisting of no less than 15 square feet of water surface area for each 3% of the population of the subdivision with a minimum of 800 square feet of water surface area per pool together with an adjacent deck and/or lawn area twice that of the pool.

(4) Recreation buildings and facilities designed and primarily used for the recreational needs of residents of the development.

The determination of the City Council as to whether credit shall be given and the amount of credit shall be final and conclusive. (Ord. 91-5)

Sec. 101111. Land Required. At the time of approval of the tentative map or parcel map, the City Council shall determine pursuant to Section 101104 hereof the land required for dedication. If the City Council requires in-lieu fee payment by the subdivider, the City Council will set the amount of land upon which the in-lieu fee will be based at the time of final map approval.

At the time of the filing of the final subdivision map or parcel map, the subdivider shall dedicate the land as required by the City Council. Where the City Council has determined that fees shall be paid in lieu of or in addition to the dedication of land, the City Council shall set the in-lieu fees based on the land dedication requirements as established at the time of the tentative map approval using current land values at the time of final map approval with the formula set forth in Section 101107 and using the process for determining fair market value as set forth in Section 101108. The subdivider shall pay said fees in accordance with the following schedule:

(A) For any subdivision consisting of ten (10) or more lots, fees shall be paid, in their entirety, prior to the issuance of any building permit for any building or structure to be located upon any lot in the subdivision.

(B) For any subdivision consisting of nine (9) or less lots, fees shall be paid on a lot-by-lot basis and prior to the issuance of any building permit for any building or structure to be located upon any one of the lots in the subdivision.

Open space covenants for private park or recreation facilities shall be submitted to the City prior to approval of the final subdivision map or parcel map and shall be recorded contemporaneously with the final subdivision map or parcel map. (Ord. 91-5)

Sec. 101112. Disposition of Fees. Fees determined pursuant to Section 101107 shall be paid to the City and shall be deposited into the Park Construction Fund. Money is said fund, including accrued interest, shall be expended solely for acquisition or development of park land, or improvements related thereto.

Collected fees shall be appropriated by the local agency to which the land or fees are conveyed or paid for a specific project to serve residents of the subdivision in a budgetary year within five years upon receipt of payment or within five years after the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later.

If such fees are not so committed, these fees, less an administrative charge, shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots in the subdivision. (Ord. 91-5)

Sec. 101113. Exemptions. Subdivisions containing less than five parcels and not used for residential purposes shall be exempted from the requirements of this ordinance; provided, however, that a condition shall be placed on the approval of such parcel map that if a building permit is requested for construction of a residential structure or structure on one or more of the parcels the fee may be required to be paid by the owner of each such parcel as a condition to the issuance of such permit.

The provisions of the ordinance do not apply to commercial or industrial subdivisions; nor do they apply to condominium projects or stock cooperatives which consist of the subdivision of airspace in an existing apartment building which is more than five years old when no new dwelling units are added. (Ord. 91-5)

Sec. 101114. Subdivider Provided Park and Recreation Improvements. The value of on-site park and recreation improvements provided by a subdivider to the dedicated land shall be credited against the fees or dedication of land and off-site improvement costs required by this ordinance. The City Council reserves the right to approve such on-site improvements prior to agreeing to accept the dedication of

land and to require in-lieu fee payments should the land and improvements be unacceptable. (Ord. 91-5)

Sec. 101115. Agency to Accept Land and Fees. Land or fees required under this ordinance shall be conveyed or paid directly to the local public agency which provides park and recreational services on a community-wide level and to the area within which the proposed development will be located, if such agency elects to accept the land or fee. At the time of tentative map approval, the City Council shall determine whether the City is the appropriate local agency. The City, County, or other local public agency, to which the land or fees are conveyed or paid shall develop a schedule pursuant to Section 66477 of the Government Code specifying how, when, and where it will use the land or fees, or both, to develop park and recreational facilities to serve residents of the subdivision. (Ord. 91-5)

Sec. 101116. Access. All land offered for dedication to local park or recreational purposes shall have access to at least one existing or proposed public street. This requirement may be waived by the City Council if the City Council determines that public street access is unnecessary for the maintenance of the park area or use thereof by residents. (Ord. 91-5)

Sec. 101117. Sale of Dedicated Land. If during the ensuing time between dedication of land for park purposes and commencement of first stage development, circumstances arise which indicate that another site would be more suitable for local park or recreational purposes serving the subdivision and the neighborhood (such as receipt of a gift of additional park land, a change in school location or amendment of the General Plan), the land may be sold upon the approval of the City Council with the resultant funds being used for purchase and development of a more suitable site. (Ord. 91-5)

## CHAPTER 12 - UTILITY USERS TAX

Sec. 101201. Description and Purpose. This Chapter shall impose a tax upon the use of utility services in the City. The purpose of this tax is to provide additional general revenue for the City. (Ord. 91-7)

Sec. 101202. Definitions. The following words and phrases whenever used in this Chapter shall be construed as defined in this section:

(A) Person shall mean any domestic or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, Massachusetts business or common law trust, society, or individuals.

(B) City shall mean the City of Grover City.

(C) Gas shall mean natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefore.

(D) Telephone Corporation, Electrical Corporation, Gas Corporation, Water Corporation, and Cable Television Corporation shall have the same meanings as defined in Sections 234, 218, 222, 241, and 215-5, respectively, of the California Public Utilities Code except, Electrical Corporation, Gas Corporation and Water Corporation shall also be construed to include any municipality, public agency or person engaged in the selling or supplying of electrical power or gas or water to a service user.

(E) Tax Administrator shall mean the Finance Director of the City of Grover City.

(F) Service Supplier shall mean any entity required to collect or self-impose and remit a tax as imposed by this Chapter.

(G) Service User shall mean a person required to pay a tax imposed by this Chapter.

(H) Month shall mean a calendar month.

(I) Non-Utility Supplier shall mean:

(1) a service supplier, other than an electrical corporation serving within the City, which generates electrical energy in capacities of at least 50 kilowatts for its own use or for sale to others; or

(2) a gas supplier other than a gas corporation, that sells or supplies gas to users within the City. (Ord. 91-7)

Sec. 101203. Exemptions. (A) Nothing in this Chapter shall be construed as imposing a tax upon any person when imposition of such tax upon that person would be in violation of the Constitution of the United States or that of the State of California.

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

(C) The Tax Administrator shall prepare a list of the persons exempt from the provisions of this Chapter by virtue of this section and furnish a copy thereof to each service supplier. (Ord. 91-7)

Sec. 101204. Telephone Users Tax. (A) There is hereby imposed a tax on the amounts paid for any intrastate telephone services by every person in the City using such services. The tax imposed by this section shall be at the rate of one
percent (1%) of the charges made for such services and shall be paid by the person paying for such services.

(B) As used in this Section, the term "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones except that where such coin-operated service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due; nor shall the term "charges" include charges for any type of service or equipment furnished by a service supplied subject to Public Utility regulations during any period in which the same or similar services or equipment are also available for sale or lease from persons other than a service supplier subject to public utility regulations; nor shall the words "telephone communication services" include land mobile service or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations, as said section existed on January 1, 1970. The term "telephone communication services" refers to that service which provides access to a telephone system and the privilege of telephone quality communication with substantially all persons having telephone stations which are part of such telephone system. The Telephone Users Tax is intended to, and does, apply to all charges billed to a telephone account having a situs in the City, irrespective of whether a particular communication service originates and/or terminates within the City.

(C) The tax imposed by this section shall be collected from the service user by the person providing the intrastate telephone communication services, or the person receiving payment for such services. The amount of the tax collected in one (1) 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 and remit the tax, an estimated amount of tax collected, measured by the tax bill in the previous month, shall be remitted to the Tax Administrator on or before the last day of each month.

(D) Notwithstanding the provisions of subsection (A), the tax imposed under this section shall not be imposed upon any person for using intrastate telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under

Division 2, Part 20 of the California Revenue and Taxation Code, or the tax imposed under Section 4251 of the Internal Revenue Code. (Ord. 91-7)

Sec. 101205. Electricity Users Tax. (A) There is hereby imposed a tax upon every person other than an electric or gas corporation using electrical energy in the City. The tax imposed by this section shall be at a rate of one percent (1%) of the charges made for such energy by an electrical corporation providing service in the City and shall be billed to and paid by the person using the energy. The tax applicable to electrical energy provided by a non-utility supplier shall be determined by applying the tax rate to the equivalent charge the service user would have incurred if the energy used had been provided by the electrical corporation franchised by the City. Rate schedules for this purpose shall be available from the City. Non-utility suppliers shall install, maintain and use an appropriate utility-type metering system which will enable compliance with this section. "Charges", as used in this section, shall include charges made for:

(1) metered energy, and

(2) minimum charges for services, including customer charges, service charges, demand charges, standby charges and all other annual and monthly charges, fuel or other cost adjustments, authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission.

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

(C) The tax imposed in this section shall be collected from the service user by the service supplier or non-utility supplier. The tax imposed in this section on use supplied by self-generation or from a non-utility supplier not subject to the jurisdiction of this Chapter, shall be collected and remitted to the Tax Administrator in the manner set forth in Section 101207. The amount of tax collected by a service supplier or a non-utility supplier in one month shall be remitted by U.S. mail to the Tax Administrator, postmarked on or before the last day of the following month; or at the option of the person required to collect and remit the tax, an estimate amount of tax measured by the tax billed in the previous month, shall be remitted by U.S. mail, to the Tax Administrator, postmarked on or before the last day of each month. (Ord. 91-7)

Sec. 101206. Gas Users Tax. (A) There is hereby imposed a tax upon every person in the City other than a gas corporation or electrical corporation, using, in the City, gas which is transported through mains or pipes or by mobile transport. The tax imposed by this section shall be at the rate of one percent (1%) of the charges made for the gas and shall be billed to and paid by the person using the gas. The tax applicable to gas or gas transportation provided by non-utility 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 the City. "Charges" as used in this section shall include:

(1) that billed for gas which is delivered through mains or pipes;

(2) gas transportation charges; and

(3) demand charges, service charges, customer charges, minimum charges, annual and monthly charges, and any other charge authorized by the California Public Utility Commission or the Federal Energy Regulatory Commission.

(B) The tax otherwise imposed by this section is not applicable to:

(1) charges made for gas which is to be resold and delivered through mains and pipes;

(2) charges made for gas used and consumed by a public utility or governmental agency in the conduct of its business; or

(3) charges made by a gas public utility or gas used and consumed in the course of its public utility business; and

(4) charges made for gas used in the propulsion of a motor vehicle, as authorized in the Vehicle Code of the State of California.

(C) The tax imposed in this section shall be collected from the service user by the person selling or transporting the gas. A person selling only transportation services to a user for delivery of gas through mains or pipes shall collect the tax from the service user based on the transportation charges. The person selling or transporting the gas shall, on or before the 20th of each calendar month, commencing on the 20th day of the calendar month after the effective date of this Chapter, make a return to the Tax Administrator stating the amount of taxes billed during the preceding calendar month. At the time such returns are filed, the person selling or transporting the gas shall remit tax payments to the Tax Administrator in accordance with schedules established or approved by the Tax Administrator. The tax imposed in this section on use supplied by self-production or a non-utility supplier not subject to the jurisdiction of this Chapter, shall be collected and remitted to the Tax Administrator in the manner set forth in Section 101207. (Ord. 91-7)

Sec. 101207. Service Users Receiving Direct Purchase of Gas or Electricity. (A)

Notwithstanding any other provision of this Chapter, a service user receiving gas or electricity directly from a non-utility 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 within thirty (30) days of said use and shall directly remit to the City the amount of tax due.

(B) The Tax Administrator may require said service user to provide, subject to audit, filed tax returns or other satisfactory evidence documenting the quantity of gas or electricity used and the price thereof. (Ord. 91-7)

Sec. 101208. Water Users Tax. (A) There is hereby imposed a tax upon every person in the City using water which is delivered through mains or pipes. The tax imposed by this section shall be at the rate of one percent (1%) of the charges made for such water and shall be paid by the person paying for such water.

(B) There shall be excluded from the base on which the tax imposed in this section is computed charges made for water which is to be resold and delivered through mains or pipes; and charges made by a municipal water department, public utility or a city or municipal water district for water used and consumed by such department, utility or district.

(C) The tax imposed in this section shall be collected from the service user by the person supplying the water. The amount collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month. (Ord. 91-7)

Sec. 101209. Cable Television Users Tax. (A) There is hereby imposed a tax upon every person in the City using cable television service. The tax imposed by this section shall be at the rate of one percent (1%) of the charges made for such service and shall be paid by the person paying for such service.

(B) The tax imposed in this section shall be collected from the service user by the person furnishing the cable television service. The amount collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month.

(C) The tax imposed in this section shall apply to all services, including special programs, tiers, or other similar rate structures or billing arrangements furnished by the cable television corporation (provider) to the service user. (Ord. 91-7)

Sec. 101210. Remittance of Tax. (A) Taxes collected from a service user which are not remitted to the Tax Administrator on or before the due dates provided in this Chapter are delinquent. Should the due date occur on a weekend or legal holiday, the return may be postmarked on the first regular working day following a Saturday, Sunday, or legal holiday. (Ord. 91-7)

Sec. 101211. 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 willfully been withheld from the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit. 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. (Ord. 91-7)

Sec. 101212. Duty to Collect - Procedures. The duty to collect and remit the taxes imposed by this Chapter shall be performed as follows:

(A) Notwithstanding the provisions of Section 101207, the tax shall be collected insofar as practicable at the same time as and along with the charges made in accordance with the regular billing practices of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the service charge and tax which has accrued for the billing period, such amount and any subsequent payments by a service user shall be applied to the utility charge first until such charge has been fully satisfied. Any remaining balance shall be applied to taxes due. In those cases where a service user has notified the service supplier of his refusal to pay the tax imposed on said energy charges Section 101213(C) will apply.

(B) The duty to collect the tax from a service user shall commence with the beginning of the first full regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this Chapter. Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing. (Ord. 91-7)

Sec. 101213. Additional Power and Duties of Tax Administrator. (A) The Tax Administrator shall have the power and duty, and is hereby directed to enforce each and all of the provisions of this Chapter.

(B) The Tax Administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this Chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed.

A copy of such rules and regulations shall be on file in the Tax Administrator's office.

(C) The Tax Administrator may made administrative agreements to vary the strict requirement of this Chapter so that collection of any tax imposed here may be made in conformance with the billing procedures of particular service suppliers so long as said agreements result in collection of the tax in conformance with the general purpose and scope of this Chapter. A copy of each such agreement shall be on file in the Tax Administrator's office.

(D) The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from the tax imposed by this Chapter. The Tax Administrator shall provide the service supplier with the name of any person who the Tax Administrator determines is exempt from the tax imposed hereby, together with the address and account number to which service is supplied to any such exempt person. The Tax Administrator shall notify the service supplier of termination of any person's right to exemption hereunder, or the change of any address to which service is supplied to any exempt person.

(E) The Tax Administrator shall provide notice to all service suppliers, at least 90 days prior to any annexation or other change in the City's bound-aries. Said notice shall set forth the revised boundaries by street and address, along with a copy of the final annexation order from LAFCO. (Ord. 91-7)

Sec. 101214. Assessment - Service User Administrative Remedy. (A) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by him from the amounts remitted to a person required to collect the tax, or that a service user has refused to pay the amount of tax, such person may be relieved of the obligation to collect taxes due under this Chapter from certain named service users for specified billing periods as set forth below.

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

(C) The Tax Administrator shall notify the service user that the Tax Administrator assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the service user by handing it to him personally or by deposit of the notice in the U.S. mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user's address change, to the last known address. If a service user fails to remit the tax to the Tax Administrator within fifteen (15) days from the date of the service of the notice upon him, which shall be the date of mailing if service is not accomplished in person, a penalty of twenty-five percent (25%) of the amount of the tax set forth in the notice shall be imposed, but not less than $5.00. The penalty shall become part of the tax herein required to be paid. (Ord. 91-7)

Sec. 101215. Records. It shall be the duty of every person required to collect and remit to the City any tax imposed by this Chapter to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at all reasonable times. (Ord. 91-7)

Sec. 101216. Refunds. (A) 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 as provided in this section.

(B) Notwithstanding the provisions of subsection (A) of this section, a service supplier may claim a refund; or take as credit against taxes remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established that the service user from whom the tax has been collected did not owe the tax; provided however, that neither a refund nor a credit shall be allowed unless the amount of the tax erroneously or illegally collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the person required to collect and remit. A service supplier that has collected any amount of tax in excess of the amount of

tax imposed by this Chapter and actually due from a service user, may refund such amount to the service user and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns, provided such credit is claimed in a return dated no later than three (3) years from the date of overpayment.

(C) Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this Chapter on the amount of such refunded charges shall also be refunded to service users, and the service supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly returns. In the event this Chapter is repealed, the amounts of any refundable taxes will be borne by the City.

(D) A service supplier may refund the taxes collected to the service user in accordance with this section or by the service supplier's customary practice. (Ord. 91-7)

Sec. 101217. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrases be declared unconstitutional. (Ord. 91-7)

Sec. 101218. Termination or Suspension of Utility Users Tax. The service supplier shall, upon notification, terminate or suspend any utility users tax commencing with the first full billing period which occurs after the effective date of such action by the City Council. (Ord. 91-7)

## CHAPTER 13 - DEVELOPMENT IMPACT FEE ORDINANCE

Sec. 101301. Short Title. This chapter shall be known as the "Grover Beach Development Impact Fee Ordinance". (Ord. 95-10)

Sec. 101302. Purpose. The Council declares that the fees required to be paid hereby are established for the purpose of protecting the public health, safety and general welfare, and implementing the policies of the General Plan, by providing for the provision of adequate public facilities to support orderly development. (Ord. 95-10)

Sec. 101303. Definitions. Unless otherwise required by the context, the following definitions shall govern the construction of this chapter:

(A) "Commercial development" means the development or use of land for any retail, office, service commercial or other business purpose.

(B) "Council" means the City Council of the City of Grover Beach.

(C) "Development" or "development project" means any project undertaken for the purpose of development, and includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(D) "Dwelling Unit" means a structure, or portion of a structure which is used for separate residential occupancy by an individual, a family or a group of unrelated individuals.

(E) "Hotel or Motel" means any development or use of land for temporary lodging purposes.

(F) "Impact fee" means a monetary exaction charged to the applicant in connection with approval of a development project for the purpose of defraying all or a part of the cost of public facilities related to the development project. This definition does not include fees specified in Section 66477, Government Code, or fees for processing applications for permits or approvals.

(G) "Industrial development" means the development or use of land for any manufacturing, storage, or other industrial purpose.

(H) "Mobile Home" means any mobile or manufactured dwelling subject to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.).

(I) "Multi-family residential development" means development or use of land for residential purposes involving more than one dwelling unit in a single structure.

(J) "Public facilities" means public improvements, public services or community amenities.

(K) "Single Family Residential" means development or use of land for residential purposes involving no more than one dwelling unit in a single structure. (Ord. 95-10)

Sec. 101304. Fees - Imposition and Application. This chapter establishes development impact fees which are imposed as a condition of approval upon all development projects for which a building permit is issued after on or after the effective date of this ordinance. Those impact fees are hereby established for the following public facilities:

(A) Transportation improvements.
(B) Water system improvements.
(C) Law enforcement facilities.
(D) Administrative facilities.
(E) Fire protection facilities.

These impact fees are established in order to pay for the capital costs of public facilities reasonably related to the needs of new development in the City . At least once every five years, the Council shall review the basis for the impact fees to determine whether the fees are still reasonably related to the needs of new development.

In establishing these fees, the Council has considered the effects of the fees with respect to the City's housing needs as established in the Housing Element of the General Plan. (Ord. 95-10)

Sec. 101305. Fees to be Set by Resolution. From time to time, the Council shall, by resolution, set forth the specific amount of the impact fees, the specific public facilities to be paid for by the fees and the estimated cost of those facilities, and describe the reasonable relationship between the fees and the developments on which they will be imposed. (Ord. 95-10)

Sec. 101306. Payment of Fees. Except as otherwise provided in Section 66007 of the Government Code, impact fees shall be paid to the City at the time a building permit is issued. In cases where payment or all or part of the required fee is deferred at the time of building permit issuance, the Director of Community Development may require that the applicant, at the applicant's expense, execute a contract with the City to pay all deferred impact fees prior to final inspection and/or issuance of a certificate of occupancy for the project. The contract shall specify the amount of the unpaid fee and a legal description of the property affected. It shall be recorded in the office of the

County recorder, and shall constitute a lien for the payment of the fees, which shall be enforceable against the successors in interest of the property owner. When impact fees are paid in full, the City, at the expense of the applicant or property owner, shall execute a release of any lien securing those impact fees. (Ord. 95-10)

Sec. 101307. Appeals. Any party subject to the fees established by this chapter may appeal the imposition of those fees by meeting the following requirements:

(A) Serving written notice on the Director of Community Development stating the reason for the appeal, including relevant factual and legal considerations. Appeals must be filed within thirty (30) days following notification of the imposition of the fees.

(B) Paying any fee required for the processing of the appeal.

The Council shall consider the appeal at a hearing to be held within sixty (60) days after the filing of the appeal. The decision of the Council shall be final.

If the applicant wishes to receive a building permit for the affected development project prior to a decision on the appeal, the required fee may be paid under protest, or the applicant may make arrangements satisfactory to the Director of Community Development to ensure payment of the fee if the appeal is unsuccessful. (Ord. 95-10)

Sec. 101308. Exemptions. The fees imposed under this chapter shall not apply to the following:

(A) The United States or to any agency or instrumentality thereof, the State of California or any County or other political subdivision of the State of California.

(B) Remodelling or alteration of an existing residential building, but only if the number of dwelling units is not increased or the use changed.

(C) That portion of a structure which existed before the addition of dwelling units or the enlargement of floor area in a non-residential structure. If a structure is destroyed or demolished, and replaced within two years from the date of demolition, the impact fees shall be based on the service requirements of the new development less the service requirements of the development which it replaced. (Ord. 95-10)

Sec. 101309. Credits and Reimbursement. If the applicant for approval of any development project is required by the City, as a condition of approval, to construct facilities whose cost has been used in the calculation of impact fees which apply to that project, the applicant shall receive a credit against those impact fees, up to the amount charged for the same type of facility. If the cost of the improvements constructed by the applicant exceeds the amount of the impact fees charged to the development project for the same type of facility, the excess cost shall be reimbursed to the applicant from other impact fee revenues within a reasonable time. To qualify for reimbursement, the applicant must enter into a reimbursement agreement with the City, and any such agreement must specify the amount to be reimbursed and the approximate schedule of the reimbursement. (Ord. 95-10)

Sec. 101310. Disposition and Use of the Fees. The Director of Finance shall establish a separate fund or account for each type of facility listed in Section 101304. All impact fees collected by the City shall be deposited in the fund or account established for the specific type of facility for which the fee is collected. Any interest earned on funds deposited in a fund or account shall be deposited in that fund or account.

Funds deposited in those accounts shall be used only to pay for design and construction, including construction administration, of projects identified in resolutions adopted pursuant to Section 101305 as the basis for the impact fees, or for reimbursements as provided in Section 101309. (Ord. 95-10)

Sec. 101311. Refunds. If impact fees collected by the City have not been expended for the intended purpose within five (5) years following their collection, the City shall either refund those unexpended fees, together with the pro rata portion of the interest earned thereon by the City, as provided in Section 66001 of the Government Code, or make findings as required by that Section to retain the fees.

The refund provisions of this chapter shall apply only to monies in possession of the City and need not be made with respect to any bonds, letters of credit or other items given to secure payment at a future date. (Ord. 95-10)

## CHAPTER 14 - MASTER FEE SCHEDULE

Sec. 101401. Master Fee Schedule Adopted by Reference. The Master Fee Schedule of the City of Grover Beach, California is hereby adopted by reference as if fully set out herein. (Ord. 03-02)

## CHAPTER 15 - TRANSACTIONS AND USE TAX

Sec. 101500. Title. This chapter shall be known as the "Transactions and Use Tax Ordinance of the City of Grover Beach". The City of Grover Beach hereinafter shall be called "City." This chapter shall be applicable in the incorporated territory of the City. (Ord. 06-12)

Sec. 101501. Purpose. This chapter is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

(A) To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

(B) To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

(C) To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

(D) To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this chapter. (Ord. 06-12)

Sec. 101502. Operative Date. "Operative date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this chapter, the date of such adoption being November 7, 2006. (Ord. 06-12)

Sec. 101503. Contract with State. Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract. (Ord. 06-12)

Sec. 101504. Transactions Tax Rate. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one-half percent (0.5%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City on and after the operative date of this chapter. (Ord. 06-12)

Sec. 101505. Place of Sale. For the purposes of this chapter, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization. (Ord. 06-12)

Sec. 101506. Use Tax Rate. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this chapter for storage, use or other consumption in said territory at the rate of one-half percent (0.5%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made. (Ord. 06-12)

Sec. 101507. Adoption of Provisions of State Law. Except as otherwise provided in this chapter and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this chapter as though fully set forth herein. (Ord. 06-12)

Sec. 101508. Limitations on Adoption of State Law and Collection of Use Taxes. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

(A) Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

(1) The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

(2) The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this chapter.

(3) In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

(a) Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code; or

(b) Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

(4) In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

(B) The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203. (Ord. 06-12)

Sec. 101509. Permit not Required. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this chapter. (Ord. 06-12)

Sec. 101510. Exemptions and Exclusions. (A) There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

(B) There are exempted from the computation of the amount of transactions tax the gross receipts from:

(1) Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

(2) Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

(a) With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

(b) With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

(3) The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this chapter.

(4) A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this chapter.

(5) For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

(C) There are exempted from the use tax imposed by this chapter, the storage, use or other consumption in this City of tangible personal property:

(1) The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

(2) Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

(3) If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this chapter.

(4) If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this chapter.

(5) For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

(6) Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

(7) "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

(D) Any person subject to use tax under this chapter may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax. (Ord. 06-12)

Sec. 101511. Amendments. All amendments subsequent to the effective date of this chapter to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter. (Ord. 06-12)

Sec. 101512. Enjoining Collection Forbidden. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this chapter, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected. (Ord. 06-12)

Sec. 101513. Annual Report. The City shall prepare and make available to the public an annual report, which presents in summary form expenditures from the prior fiscal year from revenue generated from the Transactions and Use Tax and budgeted expenditures for the upcoming fiscal year. (Ord. 06-12)

Sec. 101514. Periodic Review. The City Council shall appoint a citizen committee to review the annual report, and who will provide a report on expenditures of the revenues generated from the Transaction and Use Tax to the City Council. (Ord. 06-12)

# CHAPTER 16 - COMMERCIAL CANNABIS BUSINESS TAX

Sec. 101600. Purpose of chapter. This chapter shall be entitled the "Commercial Cannabis Business Tax" and is enacted solely to raise revenue for the general governmental purposes for the City and not for purposes of regulation or of raising revenues for regulatory purposes. All of the proceeds from the tax imposed by this chapter shall be placed in the City's general fund and used for the purposes consistent with the general fund expenditures of the City. (Ord. 17-04)

Sec. 101601. Tax imposed. There is established and imposed, a commercial cannabis business tax at the rate set forth in this chapter. (Ord. 17-04)

Sec. 101602. Definitions. The definitions set forth in this part shall govern the application and interpretation of this chapter.

(A) "Business" shall include all activities engaged in or caused to be engaged in within the City, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

(B) "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.

(C) "Cannabis business" or "medical marijuana business" or "non-medical marijuana business" means any commercial business activity not limited to, testing, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, wholesale, and/or retail sales of Cannabis and any ancillary products in the city, whether or not carried on for gain or profit which is permitted by both State and local law.

(D) "Cannabis Business Tax", "Business tax" or "Cannabis tax" means the tax due for engaging in Commercial Cannabis business in the city.

(E) "Canopy" means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous on any one site. The plant canopy does not need to be continuous on any premise in determining the total square footage which will be subject to tax.

(F) "Cultivation Facility" or "Grow Site" shall mean the square footage of any place or location where cannabis or any of its derivatives is cultivated, grown, harvested, packaged processed or stored.

(G) "Distributor" or "Distribution" or "Distribution Facility" shall mean a person or facility licensed by the State to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary.

(H) "Employee" means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.

(I) "Engaged in business" means the commencing, conducting, operating, managing or carrying on of a Cannabis business and the exercise of corporate or franchise powers, whether done as

owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities. A person shall be deemed engaged in business within the City if:

(1) Such person or person's employee maintains a fixed place of business within the City for the benefit or partial benefit of such person;

(2) Such person or person's employee owns or leases real property within the City for business purposes;

(3) Such person or person's employee regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of business;

(4) Such person or person's employee regularly conducts solicitation of business within the City:

(5) Such person or person's employee performs work or renders services in the City on a regular and continuous basis involving more than five (5) working days per year;

(6) Such person or person's employee utilizes the streets within the City in connection with the operation of motor vehicles for business purposes. The foregoing specified activities shall not be a limitation on the meaning of "engaged in business".

(J) "Evidence of doing business" means whenever any person shall, by use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or represents to a government agency or to the public that such person is engaged in a Cannabis business in the City, then these facts may be used as evidence that such person is engaged in business in the City.

(K) "Gross Receipts" except as otherwise specifically provided, means the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

(1) Cash discounts allowed and taken on sales;

(2) Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;

(3) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;

(4) Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;

Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business; Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;

Cash value of sales, trades or transactions between departments or units of the same business;

Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;

(5) Transactions between a partnership and its partners;

(a) Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:

(b) The voting and non-voting stock of which is owned at least eighty (80%) percent by such other corporation with which such transaction is had; or

(c) Which owns at least eighty (80%) percent of the voting and non-voting stock of such other corporation; or

(d) At least eighty (80%) percent of the voting and non-voting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had;

(6) Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in Subsection (8) above;

(7) Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar ($1);

(8) Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the Finance Department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

(L) "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container, that holds a valid state license and that holds a valid local license or permit.

(M) "Person" means, without limitation, any natural individual, organization, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and nonprofit), cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

(N) "Sale" means and includes any sale, exchange, or barter.

(O) "Square Foot" or "Square Footage" shall mean the maximum canopy area allowed under permit classification by the local agency and/or licensed by the State and shall be the basis for the tax rate calculations for cultivation.

(P) "Tax Administrator" or "administrator" means the Finance Director or such other designated by the City Manager to administer this chapter.

(Q) "Transporter" means a person issued a state license and local license to transport medical or non-medical cannabis or medical or non-medical cannabis products where permitted by both State and local law in an amount above the threshold determined by the state permitting agency between facilities that have been issued a state license.

(R) "Transport" means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purpose of conducting commercial cannabis activity authorized by the state.

(S) "Testing Laboratory" shall mean a facility, entity, or site in the state and within City limits, that offers or performs tests of medical cannabis or medical cannabis products and is an accredited body by the state and is independent from all other persons involved in the medical cannabis industry. (Ord. 17-04)

Sec. 101603. Other licenses, permits, taxes, fees or charges. Nothing contained in this Chapter 16 shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any license, land use entitlement or permit required by, under or by virtue of any provision of any other title or chapter of this code or any other ordinance or resolution of the city, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or chapter of this code or any other ordinance or resolution of the city. Any references made or contained in any other title or chapter of this code to any licenses, license taxes, fees or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other titles or chapters of this code. (Ord. 17-04)

Sec. 101604. Payment of tax does not authorize unlawful business. (A) The payment of a cannabis tax required by this chapter, and its acceptance by the city, shall not entitle any person to carry on any Cannabis business unless the person has complied with all of the requirements of this code and all other applicable laws, nor to carry on any Cannabis business in any building or on any premises in the event that such building or premises are situated in a zone or locality in which the conduct of such Cannabis business is in violation of any law.

(B) No tax paid under the provisions of this chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any ordinance of the city. (Ord. 17-04)

Sec. 101605. Payment - Location.

The tax imposed under this chapter shall be paid to the administrator in the Grover Beach Finance Department on or before the prescribed date during regular city business hours. (Ord. 17-04)

Sec. 101606. Amount of cannabis tax owed. Every person or entity whether it is a "not for profit", a "nonprofit" or a "Non-Profit Organization" as defined in this Section, or a for-profit entity who is engaged in a Commercial Cannabis Cultivation business in the city shall pay an annual cannabis tax on medical marijuana and non-medical marijuana where it is permissible by both state and local law.

The initial tax for both medical and non-medical marijuana shall be set at a rate of twenty-five dollars ($25) per square foot of permitted or licensed canopy space for the first 5,000 square feet and then ten dollars ($10) per square foot of canopy space for the remaining space licensed by the City for cultivation of marijuana.

Every person or entity listed herein that conducts any other cannabis business shall pay a five (5%) percent tax on all gross receipts of the business for medical marijuana and ten (10%) percent tax on all gross receipts of the business for non-medical marijuana.

Beginning on January 1, 2020 and on January 1 of each succeeding year thereafter, the amount of tax imposed by this Section may be adjusted up to the equivalent to the most recent change in the annual average of the Consumer Price Index ("CPI") for all urban consumers in the San Francisco-Oakland-San Jose areas as published by the United States Government Bureau of Labor Statistics; if the City Council by ordinance increases any such tax however related to the "CPI", no adjustment shall decrease any tax imposed by this Section.

All tax methodology based upon taxable square footage shall be equal to the maximum square footage allowed by permit type issued by the City and/or State. In no case shall the canopy square footage not utilized for the permit type be deducted for the purpose of determining the tax. (Ord. 17-04)

Sec. 101607. Payment - Time limits. The cannabis tax imposed by this chapter shall be due and payable as follows:

(A) Each person owing a Commercial Cannabis Cultivation Tax under this chapter shall, on or before the last day of the month following the close of each calendar quarter, prepare a tax statement and remit to the administrator the tax due on the total square footage of canopy space subject to the tax. The square footage tax due shall be paid based on the type of cultivation permit issued by the state and/or the City and the maximum square footage so permitted or licensed. The tax will not be prorated or adjusted for reduction in the square footage not utilized by the business. Each business shall pay on or before the last day of the month following the close of each calendar quarter in four (4) equal installments of the annual tax due. The City may at its discretion determine other methodologies in determining the payment of such tax in order to promulgate collection of said tax in order to reduce the burden of collection which may also include the form of payment in which the city may except for such tax.

(B) Each person conducting any other commercial cannabis business under this chapter shall, on or before the last day of the month following the close of each calendar quarter, prepare a tax statement to the administrator of the total gross receipts and the amount of tax owed for the preceding calendar quarter. At the time the tax statement is filed, the full amount of the tax owed for the preceding calendar quarter shall be remitted to the administrator.

(C) All tax statements shall be completed on forms authorized by the administrator.

(D) Tax statements and payments for all outstanding taxes owed the city are immediately due to the administrator upon cessation of business for any reason. (Ord. 17-04)

Sec. 101608. Payments and communications made by mail - Proof of timely submittal. Whenever any payment, statement, report, request or other communication received by the administrator is received after the time prescribed by this chapter for the receipt thereof, but there is an envelope bearing a postmark showing that it was mailed on or prior to the date prescribed in this chapter for the receipt thereof, or whenever the administrator 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 administrator may regard such payment, statement, report, request or other communication as having been timely received. If the due day falls on Saturday, Sunday or a holiday, the due day shall be the next regular business day on which the city is open to the public. (Ord. 17-04)

Sec. 101609. Payment - When taxes deemed delinquent. Unless otherwise specifically provided under other provisions of this chapter, the taxes required to be paid pursuant to this chapter shall be deemed delinquent if not paid on or before the due date specified in Section 101607. (Ord. 17-04)

Sec. 101610. Notice not required by city. The administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter 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. (Ord. 17-04)

Sec. 101611. Payment - Penalty for delinquency. (A) Any person who fails or refuses to pay any cannabis tax required to be paid pursuant to this chapter on or before the due date shall pay penalties and interest as follows:

(1) A penalty equal to twenty-five (25%) percent of the amount of the tax in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at a rate established by resolution of the City Council; and

(2) An additional penalty equal to twenty-five (25%) percent of the amount of the tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid tax and on the unpaid penalties, calculated at the rate established by resolution of the City Council.

(3) Interest shall be applied at the monthly rate on the first day the first day of the month for the full month, and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

(B) Whenever a check is submitted in payment of a cannabis 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 tax amount due plus the return check fee; penalties and interest as provided for in this section; and any amount allowed under state law.

(C) The cannabis tax due shall be that amount due and payable from the first date on which the person was engaged in Cannabis business in the city, together with applicable penalties and interest calculated in accordance with Subsection (A) above. (Ord. 17-04)

Sec. 101612. Waiver of penalties. The administrator may waive the first and second penalties of twenty-five (25%) percent each imposed upon any person if:

(A) The person provides evidence satisfactory to the administrator that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent cannabis tax and accrued interest owed the city prior to applying to the administrator for a waiver.

(B) The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any twenty-four-month period. (Ord. 17-04)

Sec. 101613. Refunds - Credits. (A) No refund shall be made of any tax collected pursuant to this chapter, except as provided in Section 101614.

(B) No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution or other termination of a business.

(C) Any person entitled to a refund of taxes paid pursuant to this chapter may elect in writing to have such refund applied as a credit against such person's cannabis taxes for the next calendar quarter. (Ord. 17-04)

Sec. 101614. Refunds and procedures. (A) Whenever the amount of any cannabis 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, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the administrator within one year of the date the tax was originally due and payable, and the provisions of Chapter 9, Article 2 of the Grover Beach Municipal Code are satisfied.

(B) The administrator or the administrator's authorized agent shall have the right 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 refuses to allow such examination of claimant's books and business records after request by the administrator to do so. In the event that the cannabis tax was erroneously paid and the error is attributable to the city, the city shall refund the amount of tax erroneously paid up to one year from when the error was identified. (Ord. 17-04)

Sec. 101615. Exemptions - Application - Issuance conditions. Any person desiring to claim exemption from the payment of the tax set forth in this chapter shall make application upon forms prescribed by the administrator and shall furnish such information and make such affidavits as may be required by the administrator. (Ord. 17-04)

Sec. 101616. Exemptions - General. Except as may be otherwise specifically provided in this chapter, the terms hereof shall not be deemed or construed to apply to any person when imposition of the tax upon that person would violate the Constitution of the United States or that of the State of California or preemptive federal or state law. (Ord. 17-04)

Sec. 101617. Exemptions - Occasional transactions. (A) The provisions of this chapter shall not apply to persons having no fixed place of business within the city who come into the city for the purpose of transacting a specific item of business at the request of a specific patient, client or customer, provided that such person does not come into the City for the purpose of transacting business on more than five (5) days during any calendar year.

(B) For any person not having a fixed place of business within the city who comes into the city for the purpose of transacting business and who is not exempt as provided in Subsection (A) of this section, the cannabis tax payable by such person may be apportioned by the administrator in accordance with Section 101620. (Ord. 17-04)

Sec. 101618. Enforcement - Duties of tax administrator and police department. It shall be the duty of the administrator or his/her designee to enforce each and all of the provisions of this chapter, and the police department shall render such assistance in the enforcement of this chapter as may from time to time be required by the administrator. (Ord. 17-04)

Sec. 101619. Rules and regulations. For purposes of apportionment as may be required by law and for purposes of administration and enforcement of this chapter generally, the administrator, with the concurrence of the City Attorney, may from time to time promulgate administrative rules and regulations. (Ord. 17-04)

Sec. 101620. Apportionment. (A) None of the tax provided for by this chapter shall be applied so as to occasion an undue burden upon interstate commerce or be in violation of the equal protection and due process clauses of the Constitutions of the United States or the State of California.

(B) If any case where a cannabis tax is believed by a taxpayer to place an undue burden upon interstate commerce or be in violation of such constitutional clauses, the taxpayer may apply to the administrator for an adjustment of the tax. It shall be the taxpayer's obligation to request in writing for an adjustment within one (1) year after the date of payment of the tax. If the taxpayer does not request in writing within one year from the date of payment, then taxpayer shall be conclusively deemed to have waived any adjustment for that year and all prior years.

(C) The taxpayer shall, by sworn statement and supporting testimony, show the method of business and the gross volume of business and such other information as the administrator may deem necessary in order to determine the extent, if any, of such undue burden or violation. The administrator shall then conduct an investigation, and shall fix as the tax for the taxpayer an amount that is reasonable and nondiscriminatory, or if the tax has already been paid, shall order a refund of the amount over and above the tax so fixed. In fixing the tax to be charged, the administrator shall have the power to base the tax upon a percentage of gross receipts or any other measure which will assure that the tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the tax as prescribed by this chapter.

(D) Should the administrator determine that the gross receipt measure of tax to be the proper basis, the administrator may require the taxpayer to submit a sworn statement of the gross receipts and pay the amount of tax as determined by the administrator. (Ord. 17-04)

Sec. 101621. Audit and examination of records and equipment. (A) The administrator, or its designee, shall have the power to audit and examine all books and records of persons engaged in Cannabis business including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of persons engaged in Cannabis business, and, where necessary, all equipment, of any person engaged in Cannabis business in the city, for the purpose of ascertaining the amount of cannabis tax, if any, required to be paid by the provisions hereof, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant 101624 through 101626 of any taxes estimated to be due.

(B) It shall be the duty of every person liable for the collection and payment to the City of 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 as he or she may have been liable for the collection of and payment to the City, which records the administrator shall have the right to inspect at all reasonable times. (Ord. 17-04)

Sec. 101622. Tax deemed debt to city. The amount of any tax, penalties and interest imposed by the provisions of this chapter shall be deemed a debt to the city and any person carrying on any Cannabis Business without first having paid such tax 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 business. (Ord. 17-04)

Sec. 101623. Deficiency determinations. If the administrator is not satisfied that any statement filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, he or she 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 within three years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Sections 101624 through 101626. (Ord. 17-04)

Sec. 101624. Tax assessment - Authorized when - Nonpayment - Fraud. (A) Under any of the following circumstances, the administrator may make and give notice of an assessment of the amount of tax owed by a person under this chapter at any time:

(1) If the person has not filed any statement required under the provisions of this chapter;

(2) If the person has not paid any tax due under the provisions of this chapter;

(3) If the person has not, after demand by the administrator, filed a corrected statement, or furnished to the administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this chapter;

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

(B) The notice of assessment shall separately set forth the amount of any tax known by the administrator to be due or estimated by the administrator, after consideration of all information within the administrator's knowledge concerning the business and activities of the person assessed, to be due 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 assessment. (Ord. 17-04)

Sec. 101625. Tax assessment - Notice requirements. The notice of assessment shall be served upon the person either by handing it to him or her personally, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the administrator for the purpose of receiving notices provided under this chapter; or, should the person have no address registered with the administrator for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail. (Ord. 17-04)

Sec. 101626. Tax assessment - Hearing - Application and determination. Within ten (10) days after the date of service the person may apply in writing to the administrator for a hearing on the assessment. If application for a hearing before the city is not made within the time herein prescribed, the tax assessed by the administrator shall become final and conclusive. Within thirty (30) days of the receipt of any such application for hearing, the administrator shall cause the matter to be set for hearing before him or her not later than thirty-five (35) days after the receipt of the application, unless a later date is agreed to by the administrator and the person requesting the hearing. Notice of such hearing shall be given by the administrator to the person requesting such hearing not later than five (5) days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the

administrator should not be confirmed and fixed as the tax due. After such hearing the administrator shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 101625 for giving notice of assessment. (Ord. 17-04)

Sec. 101627. Conviction for chapter violation – Taxes not waived. The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this chapter or of any state law requiring the payment of all taxes. (Ord. 17-04)

Sec. 101628. Violation deemed misdemeanor – Penalty. Any person violating any of the provisions of this chapter or any regulation or rule passed in accordance herewith, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars ($500) or by imprisonment for a period of not more than six months, or by both such fine and imprisonment. (Ord. 17-04)

Sec. 101629. Severability. Should any provision of this chapter, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this chapter or the application of this chapter to any other person or circumstance and, to that end, the provisions hereof are severable. (Ord. 17-04)

Sec. 101630. Effect of state and federal reference/ authorization. (A) Unless specifically provided otherwise, any reference to a state or federal statute in this chapter shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any amendment thereto, or to any change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would, under California law, require voter approval of such amendment or interpretation, or to the extent that such change would result in a tax decrease. To the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

(B) To the extent that the city's authorization to collect or impose any tax imposed under this chapter is expanded as a result of changes in state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter. (Ord. 17-04)

Sec. 101631. Remedies cumulative. All remedies and penalties prescribed by this chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter. (Ord. 17-04)

Sec. 101632. Amendment or repeal. Chapter 16 of Article X of the City of Grover Beach 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 chapter. The people of the City of Grover Beach affirm that the following actions shall not constitute an increase of the rate of a tax:

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

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

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

The collection of the tax imposed by this chapter, even if the city had, for some period of time, failed to collect the tax. (Ord. 17-04)

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