

## ORDINANCE NO. 1765

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING CHAPTER 3.32 OF THE PALM SPRINGS MUNICIPAL CODE TO (A) REDUCE THE TELEPHONE USERS TAX TO 4.5%; (B) MODERNIZE AND UPDATE THE TELEPHONE USERS TAX; (C) ELIMINATE THE CURRENT EMERGENCY RESPONSE FEE AND ADOPT AN ACCESS LINE TAX IN LIEU AND EQUAL TO THE EMERGENCY RESPONSE FEE; (D) MAKE CONFORMING CHANGES IN CHAPTERS 3.32 AND 3.39 OF THE PALM SPRINGS MUNICIPAL CODE; AND (E) RATIFY PAST COLLECTION OF THE TELEPHONE USERS TAX AND THE EMERGENCY RESPONSE FEE.**

THE PEOPLE OF THE CITY OF PALM SPRINGS, CALIFORNIA, ORDAIN:

### **SECTION 1. Findings.**

A. Since 2005, the City of Palm Springs has imposed on telephone access lines an Emergency Response Fee ("ERF") to fund improvements to and operation of the City's 911 communication system.

B. The ERF ordinance includes complex provisions to ensure that ERF revenues fund only "eligible costs" related to the City's emergency response program.

C. To ease administration and provide budgetary flexibility, the City desires to replace the ERF with a general tax, the access line tax ("ALT"), that would supply general fund revenues that could support emergency services, as well as other essential City services.

D. To minimize disruption and confusion, the City desires to apply the ALT in the same manner as the ERF was applied.

E. The ALT will be imposed at the current ERF monthly rates. Future increases will be limited to the inflation rate.

F. As under the ERF, low-income telecommunications customers who receive discounted "Lifeline" telecommunications service, nonprofit hospitals, nonprofit educational organizations, and certain other persons are exempt from the ALT.

G. Since 1970, the City of Palm Springs has collected a Utility Users Tax on charges for telephone communications services ("Telephone Users Tax").

H. Telephone communications services have changed dramatically since 1970. Technology, carrier marketing plans, and federal and state regulation have changed significantly and continue to do so.

I. The Telephone Users Tax should be modernized and clarified to include current technologies, accommodate future technologies, and reflect current marketing and regulatory realities.

J. Amending the Telephone Users Tax (TUT) will ensure that users of various telephone communications services are treated equitably, regardless of the technology used.

K. Adoption of a TUT requires voter approval.

L. The TUT rate will be 4.5%, a reduction from the Telephone Users Tax of 5%.

M. The TUT will not apply to video programming services; digital downloads, such as music, books, ringtones, and games.

**SECTION 2.** Section 3.32.010 of the Palm Springs Municipal Code is amended to read:

**3.32.010 Definitions.**

Except where the context otherwise requires, the definitions contained in this Section shall govern the construction of this Chapter.

"Ancillary Telephone Communications Services" shall mean services associated with or incidental to the provision, use or enjoyment of telephone communications services, including but not limited to:

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

(2) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(3) "Directory assistance" means an ancillary service of providing telephone number information and/or address information.

(4) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features

that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(5) "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service

"Billing Address" shall mean the mailing address to which a telephone communications service supplier submits invoices or bills for payment by a service user.

"City" means the City of Palm Springs.

"Cogenerator" means any corporation or person employing cogeneration technology (as defined in Section 281.5 of the California Public Utilities Code) for producing power from other than a conventional power source for the generation of electricity for self use or sale to others.

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

"Electrical corporation," "gas corporation," and "telephone corporation" shall have the same meanings as defined in Sections 218, 222 and 234, respectively, of the Public Utilities Code of the State of California, as may be amended from time to time.

"Mobile Telecommunications Service" has the meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations thereunder.

"Month" means a calendar month.

"Non-utility supplier" means: (1) a service supplier, other than an electrical corporation franchised to serve the city, which generates electrical energy in capacities of at least fifty kilowatts for its own use or for sale to others, including those using cogeneration or fuel cell technologies; or (2) a gas supplier other than a gas corporation, that sells or supplies gas to other users within the city.

"Paging Service" shall mean a telephone communications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

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

“Place of Primary Use” means the street address representative of where the customer's use of the communications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

"Post-paid telecommunication service" means the telecommunication service obtained by making a payment on a communication-by-communication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.

"Prepaid telecommunication service" means the right to access telecommunication services, which must be paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

"Private telecommunication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points (*i.e.*, the location where the customer either inputs or receives the communications).

"Service Address" means either:

- (1) The location of the service user's communication equipment from which the communication originates or terminates, regardless of where the communication is billed or paid; or,
- (2) If the location in subsection (1) of this definition is unknown (*e.g.*, mobile telecommunications service or VoIP service), the service address means the location of the service user's place of primary use.

For prepaid telecommunication service, “service address” means the location associated with the service number or, if not known, the point of sale of the services.

“Service user” shall mean a person required to pay a tax imposed under the provisions of this Chapter.

“Streamlined Sales and Use Tax Agreement” means the multi-state agreement commonly known and referred to as the Streamlined Sales and Use Tax Agreement, as it is amended from time to time.

“Tax administrator” means the City Manager of the City, or the City Manager’s designee.

“Telephone communication services” includes telecommunications services,” “ancillary telecommunication services”, and “communication services,”

"Telephone communications services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used. The term “telecommunications services” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that is functionally integrated with “telecommunication services”. “Telecommunications services” include, but are not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; intrastate, interstate, and international telecommunication services; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to pre-recorded or live service).

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

"800 Service" shall mean a telephone communications service that allows a caller to dial a toll-free number without incurring a charge for the call, "800 service" includes without limitation services marketed as "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

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

**SECTION 3.** Section 3.32.020 of the Palm Springs Municipal Code is amended to read:

**3.32.020 Exemptions.**

(a) Nothing in this Chapter shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such person or service would be in violation of a federal or state statute, the Constitution of the United States or the Constitution of the State.

(b) Any service user that is exempt from the tax imposed by this Chapter pursuant to subsection (a) of this section shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a state or federal agency or subdivision with a commonly recognized name for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all communication service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in communication service suppliers so that the Tax Administrator can properly notify the new communication service supplier of the service user's tax exempt status. A service user that fails to comply with this section shall not be entitled to a refund of a communication users' tax collected and remitted to the Tax Administrator from such service user as a result of such noncompliance.

The decision of the Tax Administrator may be appealed pursuant to Section 3.32.215 of this Chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 3.32.215 of this Chapter is a prerequisite to a suit thereon.

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

**SECTION 4.** Section 3.32.030 of the Palm Springs Municipal Code is amended to read:

**3.32.030 Telephone Users' Tax.**

(a) There is hereby imposed a tax upon every person in the City using telephone communications services. The tax imposed by this section shall be at the rate of four and one-half percent (4.5%) of the charges made for such services and shall be collected from the service user by the telephone communications services supplier or its billing agent. There is a rebuttable presumption that telephone communications services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this Chapter. There is also a rebuttable presumption that prepaid telecommunication services sold within the city are used, in whole or in part, within the City and are

therefore subject to taxation under this Chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this Section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telephone communications services.

(b) “Mobile Telecommunications Service” shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (*4 U.S.C. Section 124*). The Tax Administrator may issue and disseminate to communication service suppliers, which are subject to the tax collection requirements of this Chapter, sourcing rules for the taxation of other telephone communications services, including but not limited to post-paid telephone communications services, prepaid telephone communications services, VoIP and private telephone communications services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation (*e.g.*, Streamlined Sales and Use Tax Agreement).

(c) The Tax Administrator may issue and disseminate to communication service suppliers, which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those telephone communications services, or charges therefor, that are subject to or not subject to the tax of subsection (a) above.

(d) As used in this section, the term “telecommunication services” shall include, but is not limited to, charges for: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; all regulatory and administrative fees and surcharges, and other cost recovery charges; local number portability charges; and text and instant messaging. “Telecommunication services” shall not include digital downloads that are not “ancillary telecommunication services”, such as music, ringtones, games, and similar digital products.

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

(f) The tax on telephone communications services imposed by this Section shall be collected from the service user by the service supplier. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be

received by the Tax Administrator on or before the twentieth (20<sup>th</sup>) day of the following month.

**SECTION 5.** Section 3.32.031 is added to the Palm Springs Municipal Code to read:

**3.32.031 Bundling Taxable Items with Non-Taxable Items.**

If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation and apportionment of taxable and non-taxable charges. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation of the taxable and non-taxable services.

**SECTION 6.** Section 3.32.032 is added to the Palm Springs Municipal Code to read:

**3.32.032 Substantial Nexus / Minimum Contacts.**

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Chapter, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the communication users' tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any communication service (including VoIP) used by a person with a service address in the City, which service is capable of terminating a call to another person on the general telephone network, shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this Chapter. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the City, directly or through an agent, affiliate, or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents or other representatives; solicits business in the City on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter with the City or distributed from a location with the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the



service supplier's ability to establish and maintain a market in the City for the provision of telephone communications services that are subject to a tax under this Chapter.

**SECTION 7.** Section 3.32.170 of the Palm Springs Municipal Code is amended to read:

**3.32.170 Actions to Collect.**

Any tax required to be paid by a service user under the provisions of this Chapter shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the City under the provisions of this Chapter shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this Chapter, along with any collection costs incurred by the City as a result of the person's noncompliance with this Chapter, including, but not limited to, reasonable attorneys fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under *11 U.S.C.A. Section 507(a)(8)(C)*. Service suppliers who seek to collect charges for service in bankruptcy proceedings shall also include in any such claim the amount of taxes due the City for those services, unless the Tax Administrator determines that such duty is in conflict with any federal or state law, rule, or regulation or that such action would be administratively impractical.

**SECTION 8.** Section 3.32.171 is added to the Palm Springs Municipal Code to read:

**3.32.171 Deficiency Determination and Assessment – Tax Application Errors.**

(a) The Tax Administrator shall make a deficiency determination if he or she determines that any person required to pay or collect taxes pursuant to the provisions of this Chapter has failed to pay, collect, and/or remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3.32.171 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) The Tax Administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) calendar days after the date of service of such notice, the person may request in writing to the Tax Administrator for a hearing on the matter.

(c) If the person fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the City. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled

within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

(d) At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.32.215 of this Chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 3.32.215 of this Chapter is a prerequisite to a suit thereon.

(e) Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Chapter shall commence from the date of delinquency as provided in this subsection (e).

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

**SECTION 9.** Section 3.32.180 of the Palm Springs Municipal Code is amended to read:

**3.32.180 Additional Powers and Duties of the Tax Administrator.**

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

(b) The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this Chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. The administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this Section, or increase an existing tax, except as allowed by *California Government Code Section 53750(h)(2)*. A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office. To the extent that the

Tax Administrator determines that the tax imposed under this chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of *Government Code Section 53750* or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of *Government Code Section 53750* and the City does not waive or abrogate its ability to impose the communication users' tax in full as a result of promulgating administrative rulings or entering into agreements.

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

(d) The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this Chapter, of any person required to collect and/or remit a tax pursuant to this Chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 3.32.171 of this Chapter for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

(e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Chapter for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of 75/100ths percent (0.75%) per month, prorated for any portion thereof.

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

(g) Notwithstanding any provision in this Chapter to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to

collect and/or remit for failure to collect the tax imposed by this Chapter, or require prospective application of the tax, if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration industry practice or other precedence.

**SECTION 10.** Section 3.32.200 of the Palm Springs Municipal Code is amended to read:

**3.32.200 Records.**

(a) It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at a reasonable time.

(b) The City may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this Chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the City on or before the due date, provided that such person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.

(c) The Tax Administrator is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to *California Revenue and Tax Code Sections 7284.6 and 7284.7*.

(d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: i) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and, ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

(e) If any person subject to record-keeping under this section unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax

Administrator may impose a penalty of \$500 on such person for each day following: i) the initial date that the person refuses to provide such access; or, ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Chapter.

**SECTION 11.** Section 3.32.210 of the Palm Springs Municipal Code is amended to read:

**3.32.210 Refunds.**

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter from a person or service supplier, it may be refunded as provided in this section as follows:

(a) **Written Claim for Refund.** The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter from a person or service supplier, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim under penalty of perjury as provided by this subsection. It is the intent of the City Council that the one year written claim requirement of this subsection be given retroactive effect; provided, however, that any claims which arose prior to the commencement of the one year claims period of this subsection, and which are not otherwise barred by a then applicable statute of limitations or claims procedure, must be filed with the Tax Collector as provided in this subsection within ninety days following the effective date of this ordinance.

(b) **Compliance with Claims Act.** The filing of a written claim pursuant to *Government Code Section 935* is a prerequisite to any suit thereon. Any action brought against the City pursuant to this section shall be subject to the provisions of *Government Code Sections 945.6 and 946*. The Tax Administrator, or the City Council where the claim is in excess of five thousand dollars (\$5,000), shall act upon the refund claim within the time period set forth in *Government Code Section 912.4*. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the time prescribed by *Government Section 912.4*, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in *Government Code Section 912.4*. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in *Government Code Section 913*.

(c) Refunds to Service Suppliers. Notwithstanding the notice provisions of subsection (a) of this Section, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this Chapter, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator, provided that: i) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; ii) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, iii) in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

**SECTION 12.** Section 3.32.215 is added to the Palm Springs Municipal Code to read:

**3.32.215 Appeals.**

(a) The provisions of this Section apply to any decision (other than a decision relating to a refund pursuant to Section 3.32.210 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.32.210 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

(b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.32.210 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

(c) The matter shall be scheduled for hearing before an independent hearing officer selected by the City Manager, no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

(d) Based upon the submission of such evidence and the review of the City's files, the hearing officer shall issue a written notice and order upholding, modifying or

reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with *Code of Civil Procedure Section 1094.6*.

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

**SECTION 13.** Section 3.32.216 is added to the Palm Springs Municipal Code to read:

**3.32.216 No Injunction/Writ of Mandate.**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected and/or remitted.

**SECTION 14.** Section 3.32.217 is added to the Palm Springs Municipal Code to read:

**3.32.217 Notice of changes to ordinance; Effect of State and Federal Reference and Authorization.**

(a) If a tax under this Chapter is added repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of *California Public Utilities Code Section 799*.

(b) Unless specifically provided otherwise, any reference to a state or federal statute in this Chapter shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease (as a result of excluding all or a part of a communication service, or charge therefor, from taxation). Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

(c) To the extent that the City's authorization to collect or impose any tax imposed under this Chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this Chapter shall be required to conform

the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this Chapter.

**SECTION 15.** Section 3.32.218 is added to the Palm Springs Municipal Code to read:

**3.32.218 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure.**

The City shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted in accordance with this Chapter, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

**SECTION 16.** Section 3.32.219 is added to the Palm Springs Municipal Code to read:

**3.32.219 Collection of Tax by Service Providers.**

Service providers shall begin to collect the tax imposed by this Chapter as soon as feasible after the effective date of the Chapter, but in no event later than permitted by *Section 799 of the California Public Utilities Code*.

**SECTION 17.** Section 3.32.250 is added to the Palm Springs Municipal Code to read:

**3.32.250 Tax Incentives and Rebates for Energy Conservation and Reduction of Greenhouse Gases.**

The City Council is authorized to create appropriate tax incentives and rebates to encourage the reduction of gas and electricity in the City through energy efficiency and energy conservation, and to encourage the reduction or mitigation of greenhouse gases. In creating such tax incentives and rebates, the City shall consult with the electric and gas service providers and local conservation organizations to achieve effective programs that are easily administered. The City may adopt, modify, discontinue, and create new tax incentives and rebates from time to time, without obtaining voter approval. The Tax Administrator may adopt rules and forms for implementing such tax incentives and rebates.

**SECTION 18.** Chapter 3.39 of the Palm Springs Municipal Code is amended to read:

**3.39.010 Purpose.**

The tax imposed and levied by this Chapter is intended to provide revenue for such general fund services as may be determined by the City Council including, without limitation, police, fire, and emergency services.



### **3.39.020 Definitions.**

When used in this Chapter, the following terms shall have the following meanings:

"Access line" means any connection whether by wire or by wireless technology, from a customer location to a provider of telephone communications services offered to the public for compensation. "Access line" includes the assignment of a 10-digit telephone number under the North American Numbering Plan for the purpose of providing telephone communications services, including without limitation voice over internet protocol telephone communications services, using such telephone number.

"Billing address" has the meaning given in Chapter 3.32 of this Code.

"High capacity trunk line," shall mean a trunk line with a capacity of at least 24 channels over a light capacity service.

"Lifeline service" means discounted telephone communications service available to eligible low income residential customers.

"Prepaid calling service" means the right to access telephone communications service, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount, without the provisioning of an access line.

"Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service without the provisioning of an access line.

"Service address" has the meaning given in Chapter 3.32 of this Code.

"Telephone communications service" has the meaning given in Chapter 3.32 of this Code.

"Service supplier" means any person supplying an access line to any telephone communications service subscriber within the City of Palm Springs or the billing agent of any such person.

"Telephone communications service subscriber" means any person required to pay a tax under this Chapter.

"Trunk line" means a line between a service supplier's switching device and a private branch exchange or automatic call distributing system, or other similar device, at a telephone communications service subscriber location, provided however that "trunk line" shall not include any such line which is marketed to customers and configured by the service supplier to deliver only calls to the subscriber location and cannot be used by the subscriber to originate outgoing calls from the subscriber location (e.g., direct inward dial lines).

**3.39.030 Imposition of Access Line Tax.**

(a) There is hereby imposed a tax as provided in this Chapter on every person who subscribes to telephone communications services within the City of Palm Springs, to the extent permitted by Federal and State law. The tax shall apply to each access line within the City's tax jurisdiction, including, without limitation, access lines billed to a telephone account having a situs in the City, as permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. § 116 et seq. There is a rebuttable presumption that service billed to a billing address or provided to a service address in the City is used, in whole or in part, within the City's boundaries and that such service is subject to taxation under this Chapter. The tax shall not apply to a prepaid calling service or a post-paid calling service.

(b) The amount of the tax imposed by this Section shall be paid, on a per-access-line basis, by the person paying for telephone communications service.

(c) Only one payment of the tax shall be required for any access line, trunk line or high capacity trunk line, notwithstanding that access lines of more than one person are used in furnishing telephone communications service to a telephone communications service subscriber.

**3.39.040 Exemptions.**

Nothing in this Chapter shall be construed as imposing a tax upon the access lines of:

- (a) A customer receiving Lifeline service; or
- (b) A service supplier; or
- (c) Coin-operated telephones; or
- (d) A nonprofit hospital which is exempt from federal income tax under Section 501(a) of the United States Code; or
- (e) A nonprofit educational organization which is exempt from income tax under Section 501(a) of the United States Code; or

(f) Any person when imposition of such 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.

**3.39.050 Tax Schedule.**

The amount of the tax shall be \$1.13 per month per access line and \$8.48 per month per trunk line. These amounts shall be adjusted annually in accordance with the increase in the Consumer Price Index: All Urban Consumers for the Los Angeles-Riverside-Orange County Standard Metropolitan Statistical Area for All Items as reported by the United States Bureau of Labor Statistics, or any successor to that index, as of December 31st of each year, beginning with December 31, 2010, and such increase shall take effect 1) when notice of the increase is given by the Finance Director in the manner generally used by the Finance Director for notification of fee or tax changes and 2) such increase is approved by the City Council by resolution.

**3.39.060 Collection and Administration of Tax.**

(a) The tax imposed by this Chapter shall be collected from the telephone communications service subscriber by the service supplier.

(b) The tax required to be collected by service suppliers under this ordinance shall be added to and stated separately in the service supplier's billings to telephone communications service subscribers. The charge in such billings shall include only the amount authorized by this Chapter, and shall not include any additional charges or fees which may be imposed by the service supplier to recover the cost of collecting the tax.

(c) Nothing in this Chapter is intended to regulate the ability of a service supplier to recover any costs of collecting the tax imposed under this Chapter, to the extent such that recovery may be authorized by state or federal law.

(d) Except as otherwise stated in this Chapter, the tax imposed by this Chapter shall be collected and remitted at the same time as and in the same manner as the tax imposed by Chapter 3.32 of this Code.

(e) Except as otherwise stated in this Chapter, the tax imposed by this Chapter shall be administered in the same manner as the tax imposed by Chapter 3.32 of this Code.

(f) Any person aggrieved by any decision or administrative ruling of any kind of the Tax Administrator in the collection and administration of the tax provided under this Chapter, shall be required to comply with the appeals procedure of Section 3.32.215 of this Code. Compliance with Section 3.32.215 shall be a prerequisite to a suit thereon. Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

**SECTION 19.** Effective Date. This ordinance, if approved by the electorate of the City of Palm Springs at the Municipal Election of November 3, 2009, shall become effective immediately upon the declaration of the results of that election by the City Council of the City of Palm Springs.

**SECTION 20.** Amendment or Repeal. Chapters 3.32 or Chapter 3.39 of the Palm Springs Municipal Code, or any portion thereof, may be repealed or amended by the City Council without a vote of the people. However, as required by Chapter XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied or otherwise provided pursuant to this Ordinance. The People of the City of Palm Springs affirm that the following actions shall not constitute an increase of the rate of a tax:

- (1) The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of the tax;
- (2) An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as such interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance;
- (3) The establishment a class of persons 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 Ordinance); and
- (4) The collection of the tax imposed by this Ordinance, even if the City had, for some period of time, failed to collect the tax.

**SECTION 21.** Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The People hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

**SECTION 22.** Ratification of Prior Tax or Fee. The People of the City of Palm Springs hereby ratify and approve Chapters 3.32 and 3.39 of the Palm Springs Municipal Code as such Chapters existed prior to the effective date of this Ordinance, and the past collection of the Telephone Users Tax and the Emergency Response Fee.

**ADOPTED BY THE PEOPLE OF THE CITY OF PALM SPRINGS AT THE  
REGULAR MUNICIPAL ELECTION HELD THE 3<sup>RD</sup> DAY OF NOVEMBER, 2009.**

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STEPHEN P. POUCKET, MAYOR

ATTEST:

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JAMES THOMPSON, CITY CLERK

CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) ss.  
CITY OF PALM SPRINGS )

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, California, do hereby certify that Ordinance No. 1765 is a full, true, and correct copy, and was adopted by a vote of the People of the City of Palm Springs, at the Regular Municipal Election held the 3<sup>rd</sup> day of November, 2009, as appears by the official returns of said election, and the statement of votes cast as declared by the City Council, Resolution No. 22626, adopted the 2<sup>nd</sup> day of December, 2009.

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James Thompson, City Clerk  
City of Palm Springs, California