

**ORDINANCE NO. 2001 - 168**

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF CALABASAS, CALIFORNIA,  
AMENDING THE MUNICIPAL CODE, TITLE 3,  
REVENUE AND FINANCE, BY AMENDING  
CERTAIN PROVISIONS OF CHAPTER 3.20 TO  
UPDATE DEFINITIONS AND TERMS, CLARIFY  
PROCEDURES FOR COLLECTION AND  
PROVIDE A PROCESS FOR TEMPORARY  
REBATES OF THE UTILITY USER TAX**

**WHEREAS**, the City has imposed a tax for many years on the use of telephone, electricity and gas utility services in order to provide a portion of the general fund revenues required to provide police, fire, general government and a host of other essential services to the community; and

**WHEREAS**, state and federal regulators are encouraging competition in the provision of traditional utility services by deregulating monopoly providers and by unbundling the billing charges for the various components of these services; and

**WHEREAS**, in recent years there has been a substantial increase in the number of providers of telephone, electric, and gas services in the City, and in the technologies used; all of which has caused dramatic changes in the manner in which the services are produced, marketed and distributed; and

**WHEREAS**, in view of these changes and in order to give guidance to the many new utility service providers regarding their collection and remittance obligations, it is appropriate for the City to update its utility user tax ordinance with needed clarifications regarding the scope of the City's existing taxes and the responsibilities of the various utility service providers; and

**WHEREAS**, to assure fair and equal application of the law, the City's utility user tax ordinance should be applied to similar utility services, regardless of the provider or the technology used to provide it; and,

**WHEREAS**, while modifying the City's utility user tax ordinance in the manner provided herein, it is not the intent of the City Council either to increase the tax percentage imposed on charges for utility use, or to expand the base of the tax.

**THE CITY COUNCIL OF THE CITY OF CALABASAS DOES ORDAIN AS  
FOLLOWS:**

**Section 1. Chapter 3.20 of Title III of the Calabasas Municipal Code is hereby amended to read in its entirety as follows:**

## Chapter 3.20

### UTILITY USER TAX

#### 3.20.010 Short title.

This Chapter shall be known as the "Utility User Tax Ordinance."

#### 3.20.020 Tax imposed.

There is established and imposed, on January 22, 1991, the effective date of the ordinance codified in this Chapter, a utility user tax in the manner and at the rates set forth in this Chapter.

#### 3.20.030 Purpose of this Chapter.

This Chapter is enacted solely to raise revenue for the general governmental purposes of the City. All of the proceeds from the tax imposed by this Chapter shall be placed in the City's general fund and used for the usual current expenses of the City.

#### 3.20.040 Definitions.

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

"Billing Address" shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

"City" shall mean the City of Calabasas.

"City Administrator" shall mean the City Manager, or his or her authorized representative.

"Electrical Corporation" shall mean a corporation or person as defined in Public Utilities Code Section 218.

"Exempt Wholesale Generator" shall have the same meaning as set forth in the Federal Power Act (15 U.S.C. Section 79z-5a) and the regulations thereunder.

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

"Month" shall mean a calendar month.

"Non-utility Service Supplier" shall mean:

- (1) a service supplier, other than a supplier of electric distribution services to all or a significant portion of the city, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator, municipal utility

- district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;
- (2) an electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a provider of electric distribution services to all or a significant portion of the city, which sells or supplies electricity or supplemental services to electricity users within the city; and
  - (3) a gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the city, which sells or supplies gas or supplemental services to gas users within the city.

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

"Service Address" shall mean the residential street address or the business street address of the service user's primary place of usage.

"Service Supplier" shall mean any entity or person, or its billing agent, that provides telephone communication, electric or gas service to a user of such services within the city, and includes an entity or person, required to collect, or self-collect under Section 3.20.100 of this Chapter, and remit a tax as imposed by this ordinance, including its billing agent in the case of electric and gas suppliers.

"Service User" shall mean a person required to pay a tax imposed by this Chapter.

"State" shall mean the State of California.

"Tax Administrator" shall mean the treasurer and/or tax collector of the city, or his or her designated representative.

"Telephone Corporation" shall mean a corporation or person as defined in Public Utilities Code Section 234.

"Telephone Communication Services" shall mean "communications services" as defined in Sections 4251 and 4252 of the Internal Revenue Code, and the regulations thereunder, and shall include any telephonic quality communication for the purpose of transmitting messages or information (including but not limited to voice, telegraph, teletypewriter, data, facsimile, video, or text) by electronic, radio or similar means through "interconnected service" with the "public switched network" [as these terms are commonly used in the Federal Communications Act and the regulations of the Federal Communications Commission - see 47 U.S.C.A. Section 332(d)], whether such transmission occurs by wire, cable, fiber-optic, light wave, laser,

microwave, radio wave [including, but not limited to, cellular service, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service – see 47 U.S.C.A. Section 332(c)(7)(C)(i) – regardless of radio spectrum used], switching facilities, satellite or any other similar facilities.

### 3.20.050 Constitutional exemptions.

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

- (1) any person or service when imposition of such tax upon that person or service would be in violation of a federal or California statute, the Constitution of the United States, or the Constitution of the State of California; and,
- (2) the city.

B. Any Service User that is exempt from the tax imposed by this Chapter pursuant to subsection (A) shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a Service User that is a state or federal agency or subdivision with a commonly recognized name, or is a Service User of Telephone Communication Services that has received a federal excise tax exemption certificate for such service. Such application shall be made upon a form ~~supplied~~ approved by the tax administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all utility service providers serving that service user. If deemed exempt by the tax administrator, such service user shall give the tax administrator timely written notice of any change in utility service providers so that the tax administrator can properly notify the new utility service provider of the service user's tax exempt status. A service user that fails to comply with this section shall not be entitled to a refund of utility users taxes collected and remitted to the tax administrator from such service user as a result of such non-compliance. Upon request of the tax administrator, a service supplier or non-utility supplier, or their billing agents, shall provide a list of names and addresses of those customers which, according to their billing records, are deemed exempt from the utility users tax. With respect to a service user of telephone communication services, a service supplier of such telephone communication services doing business in the City shall, upon request of the Tax Administrator, provide a copy of the federal exemption certificate for each exempt customer within the City that is served by such service supplier.

### 3.20.051 Senior citizen exemption.

A. The taxes imposed by this Chapter shall not apply to any person who is the head of a household and both:

1. Is 62 years old or older; and
2. Receives supplemental social security benefits.

B. To qualify for the exemption set forth in this section, the person shall file an application in the form, time and manner prescribed by the Tax Administrator.

C. The tax administrator shall, within sixty (60) days of receipt of an application for exemption, determine whether the exemption is granted, and if so, notify the service supplier.

D. The exemption granted to a person pursuant to this section shall become effective on the beginning of the first regular billing period which commences after the Tax Administrator has notified the service supplier that an exemption has been granted.

3.20.052. UUT Exemption if Eligible for CARE Program.

As of January 1, 2002, the tax imposed on the use of electricity/gas pursuant to this Chapter shall not apply to any individual who qualifies, and has been accepted, for the California Alternate Rates for Energy (CARE) Program pursuant to Public Utilities Code Sections 327 and 739.1 et.seq., and as it may be amended from time to time. In the event that the CARE Program is repealed or otherwise ceases to exist in a substantially similar form, the exemption granted under this subsection shall automatically terminate. Notwithstanding any other provision of this subsection, this exemption shall expire automatically on July 1, 2003 and shall no longer be in effect as of said date.

3.20.060 Telephone user tax.

A. There is hereby imposed a tax on every person who uses telephone communication services in the City, including intrastate, interstate and international telephone communication services. The tax imposed by this section shall be at the rate of five percent (5%) of all charges made for such telephone communication services and shall be collected from the service user by the telephone communication services provider. To the extent allowed by law, the tax on telephone communication services shall apply to a service user if the billing or service address of the service user is within the City's boundaries. If the billing address of the service user is different from the service address, the service address of the service user shall be used.

B. As used in this section, the term "charges" shall include the value of any other services, credit, property of every kind or nature, or other consideration provided by the service user in exchange for the telephone communication services. The term "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due; nor shall the term "charges" include charges for any type of service or equipment furnished by a service supplier subject to public utility regulation during any period in which the same or similar services or equipment are also available for sale or lease from persons other than a service supplier subject to public utility regulation.

C. The Tax Administrator, from time to time, may issue and disseminate to telecommunication service suppliers which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those telecommunication services that are subject to the tax of subsection (a) above. This administrative ruling shall be consistent with legal nexus and the federal excise tax rules, regulations, and laws pertaining to "communications services" and shall not impose a new tax, revise an existing tax methodology, or increase an existing tax.

D. As used in this section, the term "telephone communication services" shall not include "private mobile radio service" [as defined in Part 20 of Title 47 of the Code of Federal Regulations] or "private mobile service" [as defined in 47 U.S.C.A. Section 332(d)]

which is not interconnected to the public switched network. The tax imposed under subsection (a), above, shall not be imposed upon any person for using telephone communication services to the extent that, pursuant to Sections 4252 and 4253 of the Internal Revenue Code, the amounts paid for such communication services are not subject to or are exempt from the tax imposed under Section 4251 of the Internal Revenue Code. In the event that the federal excise tax on "communication services" as provided in Sections 4251, 4252 and 4253 of the Internal Revenue Code is subsequently repealed, any reference in this Section 3.20.060 and in Section 3.20.040 to such law, including any related federal regulations, private letter rulings, case law, and other opinions interpreting these sections, shall refer to that body of law that existed immediately prior to the date of repeal, as well as to any judicial or administrative decision interpreting such federal excise tax law which is published or rendered after the date of repeal.

E. To prevent actual multi-jurisdictional taxation of telephone communication services subject to tax under this section, any service user, upon proof to the tax administrator that the service user has previously paid the same tax in another state or city on such telephone communication service, 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. For purposes of establishing sufficient legal nexus for the imposition and collection of utility users tax on charges for telephone communication services pursuant to this chapter, "minimum contacts" shall be construed in favor of the imposition and collection of the utility users tax to the fullest extent permitted by California and federal law, and as it may change from time to time.

F. The tax on telephone communication services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the last day of the following month.

### 3.20.080 Electricity user tax.

A. There is hereby imposed a tax on every person other than a telephone corporation, electrical corporation, or gas corporation, using electricity in the city. The tax imposed by this section shall be at the rate of five percent (5%) of the charges made for such electricity, and for any supplemental services or other associated activities directly related and/or necessary for the provision of electricity to the end-user, which are provided by a service supplier or non-utility supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

B. As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary or common to the receipt, use or enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term "charges" shall include:

- (1) energy charges;
- (2) distribution or transmission charges;

- (3) metering charges;
- (4) stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar services minimum charges for services;
- (5) customer charges, services charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees, and surcharges which are necessary to or common for the receipt, use or enjoyment of electric service; and,
- (6) charges, fees, or surcharges for electricity services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

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

D. The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use or enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above. This administrative ruling shall not impose a new tax, revise an existing tax or increase an existing tax.

- E. As used in this section, the term "using electricity" shall not be construed to mean:
1. Electricity used in the production or distribution of water by a public utility or a government agency;
  2. The mere receiving of such electricity by an electrical corporation or governmental agency at a point within the city for resale;
  3. Electricity used in the conduct of business by a telephone corporation, electrical corporation, or gas corporation; and
  4. Electricity used after February 28, 1991, by a farmer using such electricity for the sole purpose of pumping water for irrigating food and fiber crops raised for commercial sale; provided that said farmer has applied for and received written confirmation from the tax administrator that the farmer's operations are commercial in nature and that the electricity is used solely for the purpose of pumping water for agricultural irrigation.

F. The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 3.20.100. All other taxes on charges for electricity imposed by this section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the last day of the following month; or, at the option of the person required to collect or remit that tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the tax administrator on or before the last day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

3.20.090 Gas user tax.

A. There is hereby imposed a tax upon every person, other than a telephone corporation, electrical corporation, or gas corporation, using gas in the city which is transported and delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of five percent (5%) of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

B. As used in this section, the term "charges" shall apply to all services, components and items for gas service that are: i) necessary or common to the receipt, use or enjoyment of gas service; or, ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

- (1) the commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;
- (2) gas transportation charges (including interstate charges to the extent not included in commodity charges);
- (3) storage charges; provided, however, that the service provider shall not be required to apply the tax to any charges for gas storage services when the service provider cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service provider and to remit the tax to the appropriate jurisdiction;
- (4) capacity or demand charges, service establishment or reestablishment charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary or common to the receipt, use, and enjoyment of gas service; and,
- (5) charges, fees, or surcharges for gas services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory



Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

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

D. The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use or enjoyment of gas service; or, ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above. This administrative ruling shall not impose a new tax, revise an existing tax or increase an existing tax.

E. There shall be excluded from the calculation of the tax imposed in this section:

1. Charges made for gas which is to be resold and delivered through a pipeline distribution system;
2. Charges made for gas used in the production of electricity by a cogenerator, an electric corporation, a public agency that supplies or sells electricity, or an exempt wholesale generator;
3. Charges made for gas used in the production or distribution of water by a public utility or governmental agency;
4. Charges for propane or other alternate hydrocarbon fuels which are sold in quantities of twenty five gallons or less to be used in motor vehicles;
5. Charges made for gas used by a non-utility service supplier to generate electricity for its own use, or for sale to others, provided the electricity so generated is subject to the tax in accordance with Section 3.20.080; and
6. Charges made for gas which is consumed after February 28, 1991, by a commercial farmer using gas for the sole purpose of pumping water for irrigating food and fiber crops raised for commercial sale, provided that said farmer has applied for and received written confirmation that the farmer's operations are commercial in nature and that the gas is used solely for the purpose of pumping water for commercial irrigation.

F. The tax that is calculated on charges for gas provided by self-production or by a non-utility supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 3.20.100. All other taxes on charges for gas imposed by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the last day of the following month; or, at the option of the person required to collect or remit the tax, such person shall

remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the tax administrator on or before the last day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

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

A. Any service user subject to the tax imposed by Sections 3.20.080 or 3.20.090 hereof, which produces gas or electricity for self-use; which receives gas or electricity directly from a service supplier not under the jurisdiction of this ordinance; or which otherwise is not having the full tax collected and remitted by a service supplier or a non-utility service supplier on its use of gas or electricity in the city, shall report said fact to the tax administrator and shall remit the remaining tax due directly to the tax administrator within thirty (30) days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the tax administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the pattern payment of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the tax administrator, may be applied against any subsequent tax bill that becomes due.

B. The tax administrator may require said service user to identify its non-utility supplier and provide, subject to audit, invoices, books of account, or other satisfactory evidence documenting the quantity of gas or electricity used and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax, in the opinion of the tax administrator, is excessive, the tax administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used had been provided by the service supplier, which is the primary provider of gas or electricity within the city. Rate schedules for this purpose shall be available from the city.

3.20.105. Effect of commingling non-taxable items with taxable items.

If one or more non-taxable items are bundled or billed together with one or more taxable items (as provided for by this Chapter) under a single charge on a customer's bill, the entire single charge shall be deemed taxable unless, upon the written request of the customer, the service supplier can reasonably identify the non-taxable component of the single charge based upon one or more of the following methodologies, as selected by the Tax Administrator: i) the average industry charges for the individual non-taxable items included in the entire single charge; ii) the amount of the entire single charge less the average industry charges for the individual taxable items included in the entire single charge; or, iii) the service supplier's books and records that are kept in the regular course of business, which must be consistent with generally accepted accounting principles.

3.20.109. Temporary rebates.

A. The City Council, by resolution, may grant a temporary utility users tax rebate to any class of service users for the purpose of easing the tax burden on such customer

class, which is due to an unusually large increase in the service charges for a particular utility industry subject to the utility users tax. The City Council may rebate an appropriate percentage of the tax prospectively for a period of no more than twelve (12) months. If applicable, the Tax Administrator shall implement the temporary tax rebate by giving sixty (60) day written notice to all affected service suppliers as required by Public Utilities Code Section 799.

B. The City Council may consider the following factors in determining whether to grant a temporary tax rebate under this Section:

- 1) the amount of the increase in the average billing for the utility service for which a rebate is being considered;
- 2) the severity of the burden that the increased billing and associated tax imposes on the customer class for which a rebate is being considered;
- 3) the increased expense to the City as a utility customer, which occurs as a result of the increase in the cost of such utility service;
- 4) the estimated time period that the billing increase will likely persist;
- 5) the forecasted and historical increases or decreases in the other sources of utility users tax;
- 6) the forecasted and historical increases or decreases in municipal tax revenues other than the utility users tax;
- 7) the overall inflation rate during relevant time periods, as measured by the Consumer Price Index (CPI); and/or,
- 8) any other factor that affects the fairness or equity of granting such a temporary rebate.

C. In a resolution granting a temporary tax rebate, the City Council shall make the following findings:

- 1) the temporary tax rebate is necessary to abate a significantly increased tax burden on a class of service users; or,
- 2) the temporary tax rebate shall not adversely affect the City's ability to meet its financial obligations as contemplated in its current budget.

D. Nothing herein shall prohibit the City Council from granting consecutive temporary rebates, provided that the City Council reconsiders the factors enumerated in subsection (b), above, for each subsequent temporary rebate, and makes appropriate findings for each resolution. As stated in Government Code Section 9611, the enactment of a temporary tax rebate by the City Council shall not constitute a repeal of one or more of the original provisions of this Chapter. Upon the expiration of the time of the temporary tax rebate, the original provisions of this Chapter shall have the same force and effect as if the temporary tax rebate had not been enacted. Nothing herein is intended to constitute a decrease in a tax, or an increase in a tax requiring an election approval under California Constitution Article XIII C; and to the extent that any aspect of a temporary tax rebate resolution is found to invoke such a requirement, the entire temporary rebate resolution shall be deemed null and void *ab initio*, and there shall be no entitlement to a rebate for any service user.

### 3.20.110 Duty to collect: - Procedures.

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

A. The tax shall be collected insofar as practicable at the same time as, and along with, the collection of charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 3.20.170(ÐB) shall apply.

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

### 3.20.120 Filing return and payment.

Each person required by this Chapter to remit a tax shall make a return to the tax administrator on forms approved by the tax administrator on or before the due date. The full amount of the tax owed shall be included with the return and filed with the tax administrator. The tax administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code Section 7284.6, the tax administrator, and its agents, shall maintain such filing returns as confidential information, and not subject to the Public Records Act.

### 3.20.130 Interest and penalty.

A. Taxes collected from a service user, or owed by a service user subject to Section 3.20.100 of this Chapter, which are not received by the tax administrator on or before the due dates provided in this chapter are delinquent and are subject to penalties and interest. Should the due date occur on a weekend or legal holiday, the return must be received by the tax administrator on the first regular working day following a Saturday/Sunday or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on or before the following business day.

B. If the person required to collect and/or remit the utility users tax fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, or, in the case of a service user that fails to properly self-collect and remit the tax under Section 3.20.100 on or before the due date, the tax administrator shall attach a penalty for such delinquencies or deficiencies at the rate of five percent (5%) of the total tax that is delinquent or deficient in the remittance, and if not remitted within two working days after the date of the

delinquency, shall pay a total penalty of twenty percent (20%) of the amount of tax owed. Notwithstanding the foregoing, a person required to collect and/or remit the utility users' tax shall not be subject to the 15% penalty and interest for an "improper assessment", if such "improper assessment" is voluntarily disclosed to the Tax Administrator, or its agent, and promptly corrected thereafter by such person, whether the disclosure occurs in the course of a Tax Administrator survey under Sections 3.20.060(c), 3.20.080(d) and 3.20.090(d) or the disclosure is voluntarily initiated by such person. For purposes of this subsection, the term "voluntarily disclosed" shall mean information freely offered by a service supplier to the City for the purpose of increasing the accuracy of the service supplier's tax collection and/or remittances before the issue has been raised or an inquiry has been initiated by the City or any other California municipality.

C. The tax administrator shall have power to impose additional penalties upon persons required to collect and/or remit taxes under the provisions of this chapter for fraud or gross negligence in reporting or remitting at the rate of fifteen percent (15%) of the amount of the tax collected and/or required to be remitted, or as recomputed by the tax administrator.

D. In addition to any other penalties imposed by this Chapter, any person required to collect and/or remit any tax imposed by the provisions of this Chapter who fails to collect the tax (by failing to properly assess the tax on the customer's billing) or fails to remit the tax collected, or, in the case of a service user that fails to properly self-collect and remit the tax under Section 3.20.100 of this Chapter, shall pay interest at the rate of three-quarters of one percent ( $\frac{3}{4}\%$ ) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

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

#### 3.20.140 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 in an action brought in the name of the city for the recovery of such amount, 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.

#### 3.20.150 Additional powers 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 that are consistent 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. Upon a proper showing of good cause, the tax administrator may make administrative agreements, with appropriate conditions, to vary the strict requirements of this chapter and thereby: i) conform to the billing procedures of a particular service supplier (or service user subject to section 3.20.100 of this chapter) so long as said agreements result in collection of the tax in conformance with the general purpose and scope of this chapter; or, ii) 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 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 the termination of any person's right to exemption hereunder, or the change of any address to which service is supplied to any exempt person.

#### 3.20.170 Administrative remedy - Service users.

A. Whenever the tax administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or that a service user has refused to pay the amount of tax to such person for a period of two or more billing periods, or whenever the tax administrator deems it in the best interest of the city, he or she may relieve such person of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods.

The service supplier shall provide the city with amounts refused, along with the names, addresses and reasons of the service users refusing to pay the tax imposed under provisions of this chapter.

B. The tax administrator shall notify the service user that he or she has 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 or her personally or by deposit of the notice in the United States 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 have changed his or her address, to his or her last known address.

C. 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 or her, 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, the tax administrator shall assess the delinquent service user for the required tax pursuant to Section 3.20.175 of this Chapter.

#### 3.20.175 Assessments and Appeal.

A. The Tax Administrator may make an assessment for taxes not paid or remitted by a person required to pay or remit. The Tax Administrator shall mail a notice of such assessment, which shall refer briefly to the amount of the taxes, penalties and interest imposed and the time and place where the assessment may be contested, to the service supplier and/or the service user at least ten (10) days prior to the date of the hearing and shall post such notice for at least five (5) continuous days prior to the date of the hearing. A penalty of twenty-five percent (25%) of the amount of the tax set forth in the notice shall be imposed, along with interest at the rate of three-quarters of one percent ( $\frac{3}{4}\%$ ) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid, but not less than five dollars (\$5.00). Any interested party having any objections may appear and be heard at the hearing provided his or her objection is filed in writing with the Tax Administrator prior to the time of the hearing. At the time fixed for considering such assessment, the Tax Administrator shall hear the same, together with any objections filed as provided in this subsection, and thereupon may confirm or modify such assessment.

### 3.20.180 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 or she may have been liable for the collection of and/or remittance to the tax administrator, which records the tax administrator, or the tax administrator's designated representative, 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. The tax administrator may request from a person providing transportation or distribution services of gas or electricity to service users within the city a list of the names, billing and service addresses, and other pertinent information, of its transportation customers within the city pursuant to Section 6354(e) of the Public Utilities Code.

D. If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: 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, or the tax administrator's designated representative, access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, the tax administrator may impose a penalty of five hundred dollars (\$500.00) on such person for each day following: i) the initial date that the person refuses to provide such access; or, ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Chapter.

### 3.20.190 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. The Tax Administrator may refund any tax that has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor or administrator has submitted a written claim 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. Where the amount of any individual refund claim is in excess of twenty five thousand dollars (\$25,000), City Council approval shall be required in addition to approval by the Tax Administrator.

C. 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 administrator as provided in this subsection within ninety (90) days following the effective date of this ordinance.

D. The Tax Administrator, or the City Council where the claim is in excess of twenty five thousand dollars (\$25,000) and the Tax Administrator has approved the claim, shall act upon the refund claim within forty-five (45) days of the initial receipt of the refund claim. Said decision shall be final. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the forty-five (45) day period, the claim shall be deemed to have been rejected by the Tax Administrator/City Council on the forty-fifth (45th) day. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in Government Code Section 913.



E. The filing of a written claim is a prerequisite to any suit thereon. Any action brought against the City pursuant to this Section shall be subject to the provisions of Government Code Sections 945.6 and 946.

F. Notwithstanding other provisions of this Section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission, 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 return. In the event this ordinance is repealed, the amounts of any refundable taxes shall be borne by the City.

G. Notwithstanding subsections (B) and (C) above, a service supplier shall be entitled to take any overpayment as a credit against an underpayment whenever such overpayment has been received by the City within the three (3) years next preceding a notice of tax deficiency or assessment by the Tax Administrator, or during any year for which the service supplier, at the request of the Tax Administrator, has executed a waiver of the defense of the statute of limitations with regard to any claim the City may have for a utility users tax. Under no circumstances shall an overpayment taken as a credit against an underpayment pursuant to this subsection qualify a service supplier for a refund to which it would not otherwise be entitled under the one-year written claim requirement of this section.

#### 3.20.200 Appeals.

A. The provisions of this section apply to any assessment, decision or administrative ruling of the Tax Administrator, other than a decision relating to a refund pursuant to Section 3.20.190 of this Chapter. Any person aggrieved by any assessment, decision or administrative ruling of the Tax Administrator, other than a decision relating to a refund, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. [See Government Code Section 935(b).] Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

B. If any person is aggrieved by any assessment, decision or administrative ruling of the Tax Administrator, other than a decision relating to a refund; or with the failure of the Tax Administrator to grant an exemption as provided for under this Chapter; he or she may appeal to the City Council by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the assessment, decision or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

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

D. Based upon the submission of such evidence and the review of the City's files, the City Council shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6. If the City Council fails or refuses to act on a refund claim within the fourteen (14) day period, the claim shall be deemed to have been rejected by the City Council on the fourteenth (14th) day. The action of the City Council shall be final and conclusive.

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

#### 3.20.210 Termination or suspension of utility user tax.

The service supplier shall, upon notification, terminate or suspend any utility user tax commencing with the first full billing period which occurs after the effective day of such action by the City.

#### 3.20.220 Notice of changes to ordinance.

If a tax under this ordinance is added, repealed, increased, reduced, or the tax base is changed, the tax administrator shall follow the notice requirements of Public Utilities Code Section 799. Prior to the effective date of the ordinance change, the service supplier shall provide the tax administrator with a copy of any written procedures describing the information that the service supplier needs to implement the ordinance change. If the service provider fails to provide such written instructions, the tax administrator, or its agent, shall send, by first class mail, a copy of the ordinance change to all collectors and remitters of the city's utility users' taxes according to the latest payment records of the tax administrator.

#### 3.20.230 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.), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

#### 3.20.240 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, and the decision not to enforce such shall not affect the validity of the remaining portion of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

**Section 2. No increase in tax or expansion of tax base.**

The City Council declares that these amendments to the Calabasas Municipal Code are not intended to and have not increased, extended or imposed any new tax, as those terms are defined in Section 53750 of the Government Code. Should any provision, section, paragraph, sentence, or word of this ordinance be deemed to constitute an increased, extended or new tax, as defined by Government Code Section 53750, by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, the specific amendments enacted by this ordinance deemed to have increased, extended or imposed any new tax shall be of no force or effect, however, the remaining provisions, sections, paragraphs, sentences, and words of these chapters shall remain unmodified and in full force and effect.

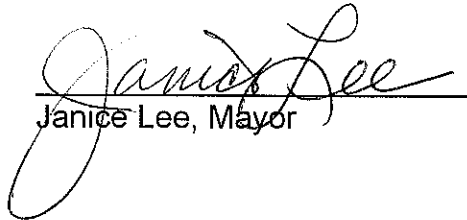
**Section 3. Effective Date.**

This ordinance shall take effect 30 days after its passage and adoption pursuant to California Government Code § 36937 and shall supersede any conflicting provision of any City of Calabasas ordinance.


**Section 4. Certification.**

The City Clerk shall certify to the passage and adoption of this ordinance and shall cause the same to be published or posted according to law.


**PASSED, APPROVED AND ADOPTED** this 5th day of December, 2001.

  
Janice Lee, Mayor

ATTEST:

  
Robin Parker, City Clerk  
Administrative Services Director

APPROVED AS TO FORM:

  
Charles Vose, City Attorney

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES) SS  
CITY OF CALABASAS )

I, **ROBIN PARKER**, City Clerk of the City of Calabasas, California, **DO HEREBY CERTIFY** that the foregoing resolution, being **Ordinance No. 2001-168** was duly adopted by the City Council of the City of Calabasas at the City Council meeting held December 5, 2001, and that it was adopted by the following vote, to wit:

AYES: Mayor Lee, Mayor pro Tem Devine, Councilmembers Bozajian, Harrison, Washburn.

NOES: None.

ABSTAIN: None.

ABSENT: None.

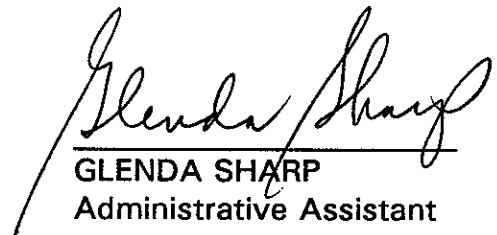


Robin Parker, CMC  
City Clerk/Administrative Services Director  
City of Calabasas, California

## DECLARATION OF POSTING

I, GLENDA SHARP, declare that I am an employee of the City of Calabasas, California; that on August 17 , 2001 five (5) days in advance of the City Council meeting of August 22, 2001 I posted **INTRODUCTION OF ORDINANCE NO. 2001-167 AN ORDINANCE OF THE CITY COUNCIL CITY OF CALABASAS CALIFORNIA ESTABLISHING AN EDUCATION COMMISSION**, at City Hall, the Calabasas Tennis and Swim Center, Juan Bautista de Anza Park and Gelson's Market in the City of Calabasas.

I declare under penalty of perjury that the foregoing is true and correct. Executed in the City of Calabasas, County of Los Angeles, State of California this 17th day of August 2001.

  
\_\_\_\_\_  
GLENDA SHARP  
Administrative Assistant