

Utility Users Tax Ordinance

City of El Monte, CA
ORDINANCE NO. 2452

AN ORDINANCE OF THE CITY OF EL MONTE, CALIFORNIA, AMENDING THE 1991 CITY OF EL MONTE UTILITY USER TAX ORDINANCE (CHAPTER 2.1 OF ARTICLE VI OF THE EL MONTE MUNICIPAL CODE COMMENCING WITH SECTION 6270.0 THEREOF) INCLUDING AN INDEFINITE EXTENSION OF THE APPLICATION OF THE EXISTING UTILITY USER TAX ON TELECOMMUNICATION SERVICES, ELECTRICAL SERVICES AND GAS SERVICES AFTER OCTOBER 1, 1997 AND MAKING CERTAIN OTHER CONFORMING CHANGES TO THE 1991 CITY OF EL MONTE UTILITY USER TAX ORDINANCE CONSISTENT WITH THE PROVISIONS OF PROPOSITION 62, SUBJECT TO THE APPROVAL BY THE ELECTORS OF THE CITY OF EL MONTE

WHEREAS, Proposition 62 was adopted as an initiative measure at the November 1986 general election which calls for the levy and collection of certain new or increased general taxes to be approved by a majority vote of the electors of the local agency imposing a new or increased general tax; and

WHEREAS, several California Court of Appeal decisions, including without limitation, the ruling in City of Woodlake vs. Logan (1991), 230 Cal. App. 3rd 1058, subsequently declared Proposition 62 to be unconstitutional insofar as it purported to apply to municipalities; and

WHEREAS, in the good faith belief that Proposition 62 was legally invalid under the State Constitution, the City Council of the City of El Monte, California (the "City") enacted and amended the 1991 City of El Monte Utility User Tax Ordinance (See: Chapter 2.1 of Article VI of the El Monte Municipal Code, commencing with Section 6270.0 thereof) following the completion of public hearings thereon, as a general municipal revenue tax measure; and

WHEREAS, the 1991 City of El Monte Utility User Tax Ordinance imposed and levied a seven percent (7%) utility user service tax for a limited period of time ending on October 1, 1997, on:

- (i) certain telecommunication services described in El Monte Municipal Code ("EMMC") Section 6270.7; and
- (ii) certain electric utility services described in EMMC Section 6270.8; and
- (iii) certain gas utility services described in EMMC Section 6270.9; and

WHEREAS, the recent California Supreme Court decision in Santa Clara County Local Transportation Authority vs. Guardino (1995) 11 Cal 4th 220 - held that Proposition 62 was constitutional and the California Supreme Court also "disapproved" the 1991 decision of the California Court of Appeal in Woodlake vs. Logan; and

WHEREAS, a series of unfunded state and federally mandated programs have been imposed on the City since 1986, and beginning in 1991 and continuing until the present time, City general revenue sources for the current and usual expenses of the City have been further subjected to the adverse fiscal effects of a special series of State ordered reallocations and adjustments of local City tax revenues, all of which State-mandated activity has imposed a cumulatively severe and adverse fiscal impact on the City which is summarized through the close of City Fiscal Year 1994-95 in City Council Resolution No. 7594; and

WHEREAS, the preservation of the public health, safety and welfare of the community requires the City to provide a source of revenue to sustain an appropriate level of funding for current and usual general municipal government services and facilities, including without limitation, the current and usual expenses associated with the delivery of police and fire protection emergency services and other governmental services and facilities by the City after the October 1, 1997 expiration or "sunset" date of the utility user service tax on telecommunications, gas and electric utility services under the 1991 City of El Monte Utility User Tax Ordinance.

THE CITY COUNCIL OF THE CITY OF EL MONTE, CALIFORNIA, AND THE PEOPLE OF THE CITY OF EL MONTE, DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Effective upon final approval by a majority vote of the voters voting in an election on the issue as provided in Section 2 of this Ordinance No. 2452, the City Council of the City of El Monte and the People of the City of El Monte hereby amend Chapter 2.1 of Article VI of the El Monte Municipal Code (the "1991 City of El Monte Utility User Tax Ordinance") as set forth herein to read as follows:

EL MONTE MUNICIPAL CODE ARTICLE VI
CHAPTER 2.1 -- 1991 CITY OF EL MONTE UTILITY USER TAX ORDINANCE
(INCLUDES ALL AMENDMENTS APPROVED BY THE VOTERS ON MARCH 4, 1997)

Sections:

- 6270.0 Title
- 6270.1 Authority and Purpose
- 6270.2 Tax Imposed
- 6270.3 Definitions
- 6270.4 Exemptions
- 6270.5 Jurisdiction of the California Public Utilities Commission [This limitation/exemption has been consolidated with other exemptions amended: See Now Section 6270.4. "Exemptions"]
- 6270.6 Exemption for Senior Citizens and Disabled Persons and Other Persons [this limitation/exemption has been consolidated with other exemptions amended: See Now Section 6270.5. "Exemptions"]
- 6270.7 Telecommunication Services User Tax
- 6270.8 Electricity Service User Tax
- 6270.9 Gas Service User Tax
- 6270.10 Duty of Service Supplier To Collect Tax Amounts Payable: Procedures
- 6270.11 Filing of Tax Return By Service Supplier and Payment of Taxes Collected
- 6270.12 Failure to Remit Tax Amount Collected
- 6270.13 Administration of Tax Collection -- Penalties and Assessments
- 6270.14 Records
- 6270.15 Refunds and Claims
- 6270.16 Additional Powers and Duties of Tax Collector
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6270.18 Termination or Suspension of Taxes By Resolution of the City Council

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6270.24 Severability

6270.0 TITLE. This Chapter 2.1 shall be known as the "1991 City of El Monte Utility User Tax Ordinance."

6270.1 AUTHORITY AND PURPOSE. This Chapter 2.1 was enacted in 1991 by the City Council of the City of El Monte and later amended by the City Council, and has been further amended by the City Council and the People of the City of El Monte upon the approval of the voters of City of El Monte Ordinance No. 2452, pursuant to the provisions of Government Code Section 37100.5, Government Code Sections 53723 and 53724 and other applicable law for the purpose of providing a source of general municipal tax revenues to be used for the current and usual general municipal governmental expenses of the City of El Monte.

6270.2 TAX IMPOSED. The general taxes imposed by this Chapter 2.1 have been approved by a majority vote of the voters of the City voting in an election on the issue conducted on March 4, 1997.

6270.3 DEFINITIONS. Except where the context otherwise requires, the definitions of the words and phrases set forth in this Section 6270.3 shall govern the application and administration of the provisions of this Chapter 2.1:

- a) The word "person" shall mean, without limitation, any natural individual, firm, trust, common law trust, estate, joint stock company, joint venture, limited liability company, corporation (foreign or domestic), cooperative, or receiver, trustee, guardian or other representative appointed by order of any court.
- b) The word "City" shall mean the City of El Monte.
- c) The word "cogenerator" shall mean any corporation or person employing cogeneration (as defined in Public Utilities Code Section 218.5) for producing power for the generation of electricity for self use or sale to others from a qualified cogeneration facility (as defined in the federal Public Utility Regulatory Policies Act of 1978 and federal regulations thereunder).
- d) The words "electrical corporation" shall mean a corporation or person as defined in Public Utilities Code Section 218.
- e) The words "exempt wholesale generator" shall have the same meaning as set forth in the Federal Power Act (15 United States Code Sections 79z-5a) and the federal regulations thereunder.
- f) The word "gas" shall mean natural or manufactured gas or any alternate hydrocarbon fuel, including propane, which may be substituted therefor.

- g) The words "gas corporation" shall mean a corporation or person as defined in Public Utilities Code Section 222.
- h) The words "intrastate telecommunication" shall mean all telecommunications regardless of routing that either (i) originate in the City and terminate in the State, or (ii) originate in the State and terminate in the City, where, in either instance, the service or billing address of the service user is in the City.
- i) The words "interstate telecommunication" shall mean all telecommunications that either (i) originate in the City and terminate in another state, or (ii) originate in another state and terminate in the City, where, in either instance, the service or billing of the service user is in the City.
- j) The words "international telecommunication" shall mean all telecommunications that either (i) originate in the City and terminate outside of the United States, or (ii) originate outside of the United States and terminate in the City, where, in either instance, the service or billing of the service user is in the City.
- k) The word "month" shall mean a calendar month.
- l) The words "non-utility supplier" shall mean: (1) a service supplier, other than an electrical corporation franchised to serve within the City, which generates electricity in capacities of 50 kilowatts, or more, for its own use or for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity; (2) an electricity broker, marketer, aggregator, pool operator, or other supplier of electricity which is not franchised by the City to use or occupy any public right-of-way, which sells or supplies electricity or supplemental services to electric service users within the City; and (3) a gas supplier, aggregator, marketer or broker, other than a gas corporation franchised to serve within the City, which sells or supplies gas to users within the City.
- m) The word "service(s)" refers to the utility and other compensated activities provided by a service supplier to a service user. The use of the word "service" as used in a particular section of this Chapter 2.1, refers to the particular utility and other compensated activities which are paid for by the service user to the service.
- n) The words "service supplier" shall mean any entity or person required to collect (or self-collect) and remit any tax imposed under this Chapter 2.1.
- o) The words "service user" shall mean a person required to pay a tax imposed under the provisions of this Chapter 2.1. In general, a service user is the person in whose name a service supplier delivers the services and other compensated activities provided by a service supplier and who is responsible for paying for the cost of such services.
- p) The word "state" shall mean the State of California.
- q) The words "Tax Collector" shall mean the Director of Finance of the City.

- r) The words "telecommunication services" include, in addition to the meaning ordinarily and popularly ascribed to it, without limitation, the transmission of messages or information (including but not limited to voice, data, facsimile, video, text) through the use of the local, toll, and wide area telephone service; telegraph, teletypewriter, and computer services; cellular telephone services; or any other transmission of messages or information by electronic or similar means through "interconnected service" with the "public switched network" (as those terms are commonly used in the Federal Communications Act and the regulations of the Federal Communications Commission) by wire, cable, fiber-optics, light waves, laser, microwaves, radio waves, switching facilities, satellite or similar facilities, whether such service is provided by a telephone corporation, competitive access provider, private communication service provider, or any other person. "Telecommunication services" shall include access services, and any other services that are an adjunct to the transmission of messages or information describe above. "Telecommunication services" shall not include land mobile services or maritime mobile services, which are not interconnected with the public switched network.
- s) The words "telephone corporation" shall mean a corporation or person as defined in Public Utilities Code Section 234(t).

6270.4. EXEMPTIONS.

No tax (or any portion of such a tax as specified in this Section 6270.4) which is approved, imposed and levied by the City pursuant to this Chapter 2.1 shall apply to:

- i. charges imposed by the service supplier relating to late payments by the service user, returned check fees and other late collection penalties, interest charges and the like of the service supplier;
- ii. the City and other public agencies;
- iii. any person or service user in the event that the imposition of such tax upon that person or service user would be in violation of the Constitution of the United States or the Constitution of the State of California;
- iv. any individual residential service user who resides in the City who is at least sixty-two of age or older, provided the combined adjusted gross income as used for federal income tax reporting purposes of all members of the household does not exceed the limits for "very low family income" set by the United States Department of Housing and Urban Development (HUD) in its document entitled "Revised Income Limits for Public Housing and Section 8 programs and Medium Family Incomes" for Los Angeles County;
- v. an individual residential service user who is also a "disabled person" for the purpose of satisfying the eligibility criteria of the United States Social Security Administration as a person who is eligible to receive "Supplemental Income" as a blind or disabled person; and
- vi. the amount of the taxes imposed by this Chapter 2.1 on any person or service user, during the twelve (12) month preceding the date of submission of an application to the Tax Collector for approval of an exemption, which is equal to the difference between the sum of Forty Thousand Dollars (\$40,000.00) and the aggregate amount of all taxes imposed by this Chapter 2.1 which have been paid by the service user to the City

during the twelve (12) months preceding the date of submission of an application for such an exemption;

- vii. notwithstanding any provision of Section 6270.7 to the contrary, no service user shall pay the tax imposed by Section 6270.7 on "multichannel video programming distributor services", as this term is defined in 47 United States Code Section 522(12), which are provided to the service user by a multichannel video programming distributor which holds a "franchise", as this term is defined in 47 United States Code Section 522(9), which has been initially authorized by the City pursuant to Section 7630, et seq., of this Code; and
- viii. The City may hereafter establish other classifications of persons or services which may be declared to be exempt, in whole or in part, from the levy, payment and collection of any tax which is otherwise imposed by this Chapter 2.1. Such other classifications shall be described by resolution of the City Council and the resolution shall also contain a description of the duration of the exemption and any special tax administering eligibility verifications and other procedures applicable to the granting of the exemption authorized by resolution of the City Council pursuant to this subparagraph (viii).

The exemptions authorized by subparagraphs (iii) - (viii), above, shall not relieve the service supplier from the duty to collect the applicable tax amount from any service user who may be eligible to claim such an exemption or relieve any service user from the duty and liability to pay the applicable tax amount to the service supplier, unless an exemption has been applied for by the service user and granted by the Tax Collector in accordance with the provisions of this Section. Any service user exempt from the payment of any of the taxes imposed by this Chapter 2.1 because of the provisions of subparagraphs (ii) - (viii) of this Section may file an application with the Tax Collector for approval of an exemption. Such an application shall be submitted by the service user/applicant upon a form supplied by the Tax Collector and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption.

The Tax Collector shall review all such applications and shall certify as exempt those applicants determined to be qualified hereunder. The Tax Collector shall notify all service suppliers affected that such exemptions have been approved. Upon the receipt of such notice, the service supplier shall not be required to continue to bill any further tax imposed by this Chapter 2.1 on such exempt service user until further notice by the Tax Collector is given. The service supplier shall eliminate such exempt service user from its tax billing procedure no later than sixty (60) days after the receipt of such notice from the Tax Collector.

All exemptions authorized under this Section shall continue for so long as the prerequisite facts supporting the initial eligibility for exemption shall continue; provided, however, the exemption shall automatically terminate upon the earlier date of any change in the service address (or residence in the case of an individual), assignment of a different customer account number by the service supplier or by virtue of a discontinuance, suspension, or termination of service to the person who has otherwise been found to be eligible for such an exemption; provided however, that such individual may nevertheless apply for a new exemption with each change of address or residence in the City.

The Tax Collector shall have the power and right to demand evidence of the continued eligibility of a service user for an exemption under the provisions of subparagraph (iii) - (viii), inclusive of this Section. Such evidence may include, but need not be limited to, copies of business records, letters, statements from public agencies such as the Social Security Administration, copies of income tax returns, and such other evidence concerning the service user or other members of this household which may tend to prove or disapprove such eligibility. The failure of a service user to provide such evidence within thirty (30) days following a written by the Tax Collector, shall be

grounds for the cancellation of the service user's eligibility for exemption under the provisions of this Section, effective ten (10) days following the date of mailing of a notice of cancellation by the Tax Collector. Any person or service user who has been confirmed to be exempt from payment of any amount of tax(es) approved in this Chapter 2.1, pursuant to this Section, shall notify the Tax Collector within ten (10) days of any change in the facts or circumstances which might disqualify such person or service user from further eligibility to either claim or maintain such an exemption. It shall be a misdemeanor for any person to knowingly receive the benefits of an exemption authorized by this Section when the basis for such exemption either does not exist or ceases to exist.

If the Tax Collector determines that an application for exemption is incomplete, or that the applicant has failed to truthfully set forth facts in support of the claim for exemption or if the applicant is not eligible for an exemption, then in such event, the application for the exemption shall be denied in a written notice mailed to the applicant. The applicant shall thereafter have a right to file an amended application for an exemption or to appeal the Tax Collector's decision to the City Administrator within ten (10) days after the date of mailing of the Tax Collector's notice of denial. In the case of an appeal, the City Administrator shall review the facts in consultation with the City Attorney and the City Administrator shall render a final written determination on such appeal.

The Tax Collector shall annually prepare a list of the service users who have submitted applications and been found to be exempt by the Tax Collector under the provisions of subparagraphs (iii) - (viii), inclusive, and furnish a copy thereof to each service supplier. The list shall contain the name of the service user, together with the current address to which service is supplied.

The Tax Collector shall adopt and thereafter may modify from time to time as appropriate, additional written procedure for the administration of this Section 6270.4, as provided in Section 6270.16.

6270.5. JURISDICTION OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION. [This limitation/exemption has been consolidated with other exemptions: See now Section 6270.4. EXEMPTIONS].

6270.6. EXEMPTION FOR SENIOR AND DISABLED PERSONS AND OTHER PERSONS. [This limitation/exemption has been consolidated with other exemptions: See now Section 6270.4. EXEMPTIONS].

6270.7. TELECOMMUNICATION SERVICES USER TAX.

- a) There is hereby approved, imposed and levied by the City a tax upon every person, other than a telephone corporation, using interstate, international, and/or intrastate telecommunication services in the City. The tax approved and levied by this Section shall be at the rate of seven percent (7%) of the charges billed for such services by the telecommunications service supplier, and shall be paid by the service user/person. The tax shall not be based on network usage-related charges for cellular telephone services and other similar mobile services, for which the service provider cannot, as a practical matter, determine the origination or termination of the telecommunication. The Tax Collector may adopt administrative rules for assuring a reasonable and consistent allocation of the monthly cellular billing between network usage-related charges and non-usage-related charges. The word "charges" as used in this Section shall also include the value of any other services, credits, property of every kind or nature, or other consideration payable by the service user to the service supplier.
- b) Notwithstanding the provisions of subsection (a) of this Section, the tax approved under this Section shall not be imposed upon any person for using telecommunication services to the extent that the amounts paid for such services are exempt from or not subject to the

tax imposed under Internal Revenue Code Section 4251 and the regulations thereunder. Notwithstanding the tax exception described in the preceding sentence, the following charges (whether or not they are determined to be exempt from or not subject to a federal excise tax), shall be included in the calculation of the tax amount payable under this Section:

- i. Charges to a service user by a hotel or motel for telecommunication services used in the City when such charges are incidental to the right of occupancy in such hotel or motel. Collection of the tax shall be the responsibility of the hotel or motel;
 - ii. Charges to a service user in the City by a telecommunication service supplier for providing access to a public long distance network, by any means, including but not limited to a virtual private network, private channel or private line, or radio wave or microwave, whether such access charges are determined as a flat periodic amount, on the basis of distance and/or elapsed transmission time, or in any other manner; and,
 - iii. Charges to a service user in the City by a telecommunication service provider for providing access to an interactive subscriber network, which is available to the general public through the public switched network, among other means.
- c) The tax approved by this Section shall be collected from the service user by the service supplier providing the telecommunication services (or by the motel or hotel owner in cases covered by subsection (b)(i) above). The amount of the tax collected in one month shall be remitted by U.S. Mail to the Tax Collector, and must be received by the Tax Collector on or before the last day of the following month.
- d) To prevent actual multi-jurisdictional taxation of the telecommunication services subject to the tax approved by this Section, any service user, upon proof to the Tax Collector that the service user has previously paid the same tax in another state or city on such telecommunication service, shall be allowed a credit against the tax approved by this Section to the extent of the amount of such tax legally imposed in such other state or local agency, provided, however, the amount of credit shall not exceed the amount of the tax owed to the City under this Section.

6270.8. ELECTRICITY SERVICE USER TAX.

- (a) There is hereby approved, imposed and levied by the City a tax upon every person using electricity, including cogenerated electricity, in the City. The tax approved and levied by this Section shall be at the rate of seven percent (7%) of the charges made for such electricity (or cogenerated electricity, as applicable) and for any supplemental services provided by a service supplier or non-utility supplier to a service user related to the provision of electricity. The tax shall be paid by the service user/person paying for such electricity or supplemental services.
- (b) The word "charges", as used in this Section, shall include charges payable by the service user for: (1) metered energy; (2) minimum charges for services, customer charges, services charges, demand charges, standby charges, fuel or other cost adjustments, stranded investment or competitive transition charges, and all other annual and monthly charges or surcharges for electricity services or programs, which are authorized by the California Public Utilities Commission, whether or not such charges appear on a bundled or line item basis on the customer billing. The words "charges for supplemental services related to the provision of electricity" as used in this Section shall include charges payable by the service user for wheeling, transmission (including congestion charges), distribution, and stand-by, reserves, firming, ramping, voltage, support, regulation, emergency, or other similar services. The word "charges" as used in this Section shall also include the value of any other services, credits,

property of every kind or nature, or other consideration payable by the service user to the service supplier in exchange for the electricity or services related to the provision of such electricity.

- (c) As used in this Section, the words or term "using electricity" shall not be construed to mean the storage of electrical energy by a person in a battery that he owns or possesses for use in an automobile or other machinery or device apart from the premises upon which the electricity was received; provided, however, the term shall include the receiving of such electricity for the purpose of using it in the charging of batteries; nor shall the term include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the City for resale.
- (d) The tax approved in this Section shall be collected from the service user by the electricity service supplier or non-utility supplier who provides such service. The amount of tax collected in one month shall be remitted by U.S. Mail, to the Tax Collector, and must be received by the Tax Collector on or before the last day of the following month.
- (f) The tax approved by this Section on electricity provided to the service user by a self-production or by a non-utility supplier or an electric utility not otherwise collecting and remitting the tax to the Tax Collector under this Section 6270.8 in the case of one or more of its customers shall be collected and remitted in the manner set forth in Section 6270.10(c).
- (g) The tax approved, imposed and levied by this Section on cogenerated electricity shall be calculated at the rate specified in Section 6270.8(a) on the value of the cogenerated electricity consumed by the service user in the City. For the purpose of this Section 6270.8(g), the value of cogenerated electricity consumed by the service user in the City shall be determined by reference to the electric utility supplier's combined "Avoided Cost Energy Pricing and Avoided Cost Capacity Pricing" reporting procedure which is filed with the California Public Utilities Commission or by such successor formula authorized by the California Public Utilities Commission. The cogenerated electricity service user shall pay the tax approved by this Section to the Tax Collector in the manner provided in Section 6270.10(c).

If the cogenerator sells the energy for consumption by other service users in the City, the value of the cogenerated electricity sold to each such service user in the City shall be based upon the actual charges made for such service, and the amount of the tax approved by this Section shall be collected from the service user by the cogenerator/non-utility supplier. The cogenerator shall install and maintain an appropriate metering system for measuring the number of kilovolts of cogenerated electricity provided to the service user such that the cogenerator and the Tax Collector may verify compliance with the obligation of the service user to pay the tax amount approved by this Section 6270.S(g). The amount of tax collected in one month shall be remitted by U. S. Mail, to the Tax Collector, and must be received by the Tax Collector on or before the last day of the following month. The tax on cogenerated electricity provided by a non-utility supplier shall be collected and remitted in the manner set forth in Section 6270.10(c).

Whether the cogenerator consumes or sells the cogenerated electricity, the service user of the cogenerator shall also pay the tax on all "charges for supplemental services" related to the provision of cogenerated electricity which includes the analogous matters covered in the definition of this term as found in Section 6270.S(b)(2), above.

6270.9. GAS SERVICE USER TAX.

- (a) There is hereby approved, imposed and levied by the City a tax upon every person using gas in the City, which is delivered to a service user through a pipeline distribution system or by mobile transport. The tax approved, imposed and levied by this Section shall be at the rate of seven percent (7%) of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas, and shall be paid by the person using such gas; provided, however, that the tax shall not apply to any charge for gas storage services when the service supplier cannot, as a practical matter, determine the location where such stored gas is ultimately used. The word "charges" as used in this Section shall include: (1) the commodity charges payable by a service user for purchased gas, or the cost of gas owned by the service user, which is delivered through a gas pipeline distribution system or by mobile vehicle transport; (2) gas transportation charges (including interstate charges), customer charges, minimum charges, annual and monthly charges, and any other charges for gas services or programs, which are authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission. The words "cost of gas owned by the service user" as used in this Section shall include 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. The word "charges" as used in this Section shall also include the value of any other services, credits, property of every kind or nature, or other consideration payable by the service user in exchange for the gas or services related to the delivery of such gas.
- (b) There shall be excluded from the calculation of the tax approved in this Section: (1) charges payable by a service user for gas which is to be resold and delivered through a pipeline distribution system or by mobile vehicle transport; (2) the cost of gas used in the City by: (i) a cogenerator in the production of cogenerated electricity; (ii) an electric corporation; (iii) a public agency that supplies or sells electricity; or (iv) an exempt wholesale generator; and (3) charges payable by a service user at the time of sale of propane or other alternate hydrocarbon fuel which is to be used by the service user in motor vehicles or charges for propane or other alternate hydrocarbon fuels payable by the service user where the quantity of the propane or alternate hydrocarbon fuel at each time of delivery is twenty five (25) gallons or less.
- (c) The tax that is calculated on charges for gas provided by self-production or by a non-utility supplier not otherwise remitting the tax to the Tax Collector under this Section 6270.9 shall be collected and remitted in the manner set forth in Section 6270.10(c). All other taxes on charges for gas approved by this Section shall be collected from the service user by the gas service supplier. The amount of the tax collected in one month shall be remitted by U.S. Mail, to the Tax Collector, and must be received by the Tax Collector on or before the last day of the following month.
- (d) Where a gas service supplier is providing commodity transportation service to a service user but the service user has purchased the commodity from a third party, then the commodity transporting service supplier shall collect the tax imposed by this Section from the service user, which shall be calculated as follows:
- i) Seven percent (7%) of the commodity transportation charges, including interstate transportation charges to the extent not included in the commodity charge, transition charges, or any other charges for gas services or programs, which are authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission; plus, ii) Seven percent (7%) of the imputed value of the transported commodity (net of the amount described in subparagraph (i), above) as calculated in accordance with Public Utilities Code Section 6353(a)
- (b) and (c), or at the election of the service user, seven percent (7%) of the actual charges for the

transported commodity (net of the amount described in subparagraph (i), above).

- (e) If the service user elects to pay the tax approved by this Section based upon the actual charges for the transported commodity as provided in subsection (d) (ii) above, the service user must:
 - i) give thirty (30) days prior written notice to the Tax Collector of the exercise of such an election; and,
 - ii) submit to the Tax Collector an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter to reflect the difference between the tax based upon the imputed value in accordance with the Public Utilities Code Section 6353 (a) (b) and (c) and the actual charges of the transported commodity. A credit, if approved by the Tax Collector, may be applied against any subsequent tax bill relating to the tax imposed by this Section that becomes due.

6270.10. DUTY OF EACH SERVICE SUPPLIER TO COLLECT TAX AMOUNTS PAYABLE: PROCEDURES.

The duty of each service supplier (including certain direct purchasers of electricity or gas services) to collect and remit to the City the tax amounts approved and levied by any provision of this Chapter 2.1 from each service user who is a customer of the service supplier shall be performed as follows:

- (a) The tax shall be collected by the service supplier insofar as practicable at the same time as, and along with, the charges made in accordance with the regular service billing practice of the service supplier. In the event that an amount paid by a service user to a service supplier includes less than the full amount of the charge and tax imposed by this Chapter 2.1 which accrued during the billing period, such an amount and any subsequent payments by a service user shall be applied to the utility service charges: first (or net of the amount of the tax imposed under this Chapter 2.1) until such other charges of the service supplier have been fully satisfied; and second, any remaining balance shall be applied to the tax amount due from the service user under this Chapter 2.1. In those cases where a service user has notified the service supplier of a refusal to pay a tax amount approved by this Chapter 2.1, Section 6270.13(e) shall apply.
- (b) The duty of the service supplier to collect the tax approved by this Chapter 2.1 from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this Chapter 2.1. Where a service user receives more than one billing from the service supplier relating to one or more billing periods or relating to one or more separate service accounts, the duty of the service supplier to collect the amount of the tax approved by this Chapter 2.1 from the service user shall arise separately for each billing period and/or for each separate account payable by that service user.
- (c) Any service user subject to the tax imposed by Section 6270.8 or Section 6270.9 hereof, which produces electricity or gas for self-use, as applicable, or any service user who purchases gas or electricity directly from a non-utility supplier which does not collect the applicable tax amount approved and levied by this Chapter 2.1 from the service user, or any such service user who does not otherwise pay the full tax due for the use of such gas or electricity (as applicable), shall report said fact to the Tax Collector and shall remit the tax due directly to the Tax Collector within thirty (30) days of use of such gas or electricity. In lieu of paying the actual amount of any of the taxes referenced in the first sentence of this Section, the service user may, at its option, remit to the Tax Collector within thirty (30) days of such use an estimated amount of the tax payable based upon an average monthly estimated payment pattern for use of comparable amounts of gas or electricity (as applicable), provided that the service user shall submit an adjusted payment or request for credit, as appropriate, to the Tax Collector within sixty (60) days following the end of each calendar

quarter. A credit, if approved by the Tax Collector, may be applied against any subsequent tax bill that becomes due. The Tax Collector may require the 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 of price thereof. If the service user is unable to provide satisfactory evidence relating to the calculation of the tax, or, if the administrative costs of calculating the tax, in the opinion of the Tax Collector, is excessive, the Tax Collector may determine the amount of the tax payable by applying the tax rate to the equivalent service charges which the service user would have incurred if the gas or electricity used had been provided by a gas corporation or electrical corporation, as applicable, which is a primary provider of gas or electricity within the City. Rate schedules for this purpose shall be prepared by the Tax Collector.

(d) Nothing contained in this Chapter 2.1 shall prohibit the City from directly billing any service user or directly collecting from any service user the amount of any tax approved by this Chapter 2.1 in accordance with such direct tax billing and/or direct tax collection procedure as may be provided by rule or regulation of the Tax Collector approved by resolution of the City Council.

6270.11. FILING OF TAX RETURN BY SERVICE SUPPLIERS AND PAYMENT OF TAXES COLLECTED.

Each service supplier (and each service user subject to Section 6270.10(c)) shall prepare and file a written tax return to the Tax Collector on forms provided by the Tax Collector. The full amount of the tax collected shall be included with the return and filed with the Tax Collector once per month or on such other schedule of reporting and payment as may be authorized by the Tax Collector. The Tax Collector is authorized to specify such additional information as deemed necessary to determine if the tax is being calculated and collected by the service supplier in accordance with this Chapter 2.1. Returns are due immediately upon cessation of business for any reason.

6270.12 FAILURE TO REMIT TAX AMOUNT COLLECTED.

Taxes collected by a service supplier from a service user which are not remitted to the Tax Collector on or before the due date provided in this Chapter 2.1 are delinquent. Taxes owed by a service user subject to Section 6270.10(c) are delinquent if not received by the Tax Collector on or before the due date. Should the due date for the remittance of any tax/return and/or tax amount payable to the Tax Collector occur on a weekend or legal holiday, the tax return and the corresponding tax amount must be received by the Tax Collector on the first regular business day of the City following a Saturday/Sunday, or legal holiday.

6270.13 ADMINISTRATION OF TAX COLLECTION - PENALTIES AND ASSESSMENTS.

(a) Civil penalties for delinquency in either the filing of a tax return and/or the remittance to the City of any tax amounts collected by a service supplier, or any deficiency determination thereof, shall attach and be paid by the service supplier at the rate of fifteen (15%) percent of the total tax amount imposed by the provisions of this Chapter 2.1 during the period of such delinquency.

(b) The Tax Collector shall have the power to impose additional civil penalties upon any service supplier or other person required to collect and remit tax amounts pursuant to the provisions of this Chapter 2.1 (in addition to the amount assessable under Section 6270.13(a)) for fraud and negligence in reporting or remitting to the City of any tax amounts at the rate of fifteen (15%) percent of the tax amount imposed by the City, or as recomputed by the Tax Collector during the period of time that such fraud or negligence is alleged to have occurred.

(c) Each penalty amount imposed pursuant to the provisions of this Section shall become a

part of the tax amount required to be remitted to the Tax Collector.

(d) Whenever the Tax Collector determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a service supplier or other person required to collect the tax, or whenever the Tax Collector deems it in the best interest of the City, the Tax Collector may relieve such service supplier or other person of any further obligation to collect the tax amounts due under this Chapter 2.1 from certain named service users for specific billing periods. Whenever the service user has failed to pay the amount of the tax owed for a period of two (2) or more consecutive billing periods, the service supplier shall be relieved from the further obligation to collect the tax amounts owed by such user which correspond to the period of such delinquency; provided however, that the service supplier has first provided the City with the name and address of such a service user and the amount of the tax owed under the provisions of this Chapter 2.1.

(e) The Tax Collector shall notify each non-paying service user as identified in subsection (d) of this Section that the Tax Collector has assumed the responsibility to collect the tax amounts due for the stated periods and demand payment of such taxes. The notice shall be served on the service user 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 service supplier or other person required to collect the tax; or, should the service user have changed its address to the last known address. If the service user fails to remit the tax to the Tax Collector within fifteen (15) days from the date of the mailing of the notice, a penalty of twenty-five (25%) percent of the amount of the tax set forth in the notice shall be imposed, but not less than Five Dollars (\$5.00). The penalty shall become a part of the tax required to be paid. (f) The Tax Collector may make an assessment for any tax amount not paid or remitted by a service user or other person required to pay or remit such tax amount to the City. A notice of the assessment shall refer briefly to the amount of the taxes and penalties imposed and the time and place when such assessment shall be submitted to the City Council for confirmation or modification. The City Clerk shall mail a copy of such notice to the service supplier and to 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. Any interested party having any objections may appear and be heard at the hearing provided his objection is filed in writing with the City Clerk prior to the time act for the hearing. At the time fixed for considering such assessment, the City Council shall hear the same, together with any objections filed as provide in this subsection, and thereupon may confirm or modify such assessment by motion.

6270.14. RECORDS.

(a) It shall be the duty of every person required to collect and remit to the City any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and remittance to the Tax Collector, which records the Tax Collector, or the Tax Collector's designated representative, shall have the right to inspect at all reasonable times. The Tax Collector, or the Tax Collector's designated representative, is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information.

(b) The Tax Collector, or the Tax Collector's designated representative, may request from a person providing transportation services of gas or electricity to service users within the City a list of the names and addresses of its transportation customers within the City pursuant to Section 6354(e) of Chapter 2.56 of Division 3 of the California Public Utilities Commission. (c) If any person subject to record-keeping under this section unreasonably denies the Tax Collector, or the Tax Collector's designated representative, access to such records, then the Tax Collector may impose a penalty of \$500 on such person for each day following the initial date that the person refuses to provide such access.

6270.15. REFUNDS AND CLAIMS.

Whenever the amount of any tax imposed under this Chapter 2.1 has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Collector, it may be refunded as provided in this Section:

(a) The Tax Collector may refund any tax amount that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Collector under this Chapter 2.1, provided that no refund shall be paid under the provisions of this Section unless the claimant has submitted a written claim for a refund of the tax amount paid to the Tax Collector within one year of the date of the overpayment or the date of erroneous or illegal collection of said tax. Such a tax refund claim must clearly establish claimant's right to the refund by written record showing entitlement thereto. The submission of a written tax refund claim, which complies with the claim filing procedures of Government Code Section 910, et seq., shall be a prerequisite to the initiation of any legal proceeding to recover a refund of any tax amount or assert any other challenge to the validity of any tax approved and levied by this Chapter 2.1. The City Council shall act upon each tax refund claim within the time period set forth in Government Code Section 910.4. If the City Council fails or refuses to act on a tax refund claim within the time prescribed by Government Section 910.4, 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 is required to act upon the claim as provided in Government Section 910.4. It is the intent of the City Council that any tax refund claim which may have arisen prior to the commencement of the one (1) year tax refund claim period of this Section and which is not otherwise barred by the applicable statute of limitation or claim procedure found elsewhere in this Article shall be filed with the Tax Collector in accordance with the tax refund claim procedure applicable to any such claim arising prior to the operative date of this Chapter 2.1.

(b) Notwithstanding other provision of this Section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, orders the service supplier to pay a refund to one or more service users of charges for past services, the taxes paid by each such affected service user pursuant to this Chapter 2.1 on the amount of such refunded charges shall also be refunded to each such affected service user by the service supplier; provided however, the service supplier shall be entitled at its option to claim a credit for the amount of such refunded tax against the amount of the tax which is due and payable to the City with the next monthly return following the date of payment of such refunded charges for past services.

6270.16. ADDITIONAL POWERS AND DUTIES OF TAX COLLECTOR.

(a) The Tax Collector shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this Chapter 2.1.

(b) The City may adopt rules and regulations by resolution of the City Council which are not inconsistent with provisions of this Chapter 2.1 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 Collector's office.

(c) The Tax Collector may enter into administrative agreements to vary from the strict requirements of this Chapter 2.1, so that collection of any tax imposed herein may be made in conformance with the billing procedures of a particular service supplier (or service user subject to Section 6270.10(c) as long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this Chapter 2.1. A copy of each such agreement shall be on file in the Tax Collector's office.

(d) The Tax Collector, or designee, shall provide prompt written notice to all service suppliers of any change in the City's boundaries following any annexation or other change in the City's boundaries. Said notice shall set forth the revised boundaries by street and address along with a copy of the final annexation order from the Local Agency Formation Commission.

6270.17. ACTIONS TO COLLECT TAX AMOUNTS PAYABLE TO THE CITY.

The amount of 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 amount of a tax collected from a service user by a service supplier which has not been remitted to the Tax Collector shall be deemed a debt owed to the City by the service supplier. Any person owing money to the City under the provisions of this Chapter 2.1 shall be liable to pay such an amount upon entry of judgment in an action brought in the name of the City for the recovery of such sum, including reasonable attorneys fees, costs and interest.

6270.18. TERMINATION OR SUSPENSION OF TAXES BY RESOLUTION OF THE CITY COUNCIL.

Upon written notification from the Tax Collector that the City Council has authorized a termination or suspension of any tax approved under this Chapter 2.1, each service supplier shall implement the direction of the City Council terminating or suspending the tax for the period of time indicated in such a written notice, commencing with the first full billing period which occurs after the effective date of such an action authorized by resolution of the City Council. 6270.19.

OPERATIVE DATE

OF CHAPTER 2.1, INCLUDING AMENDMENTS TO CHAPTER 2.1 AFTER THE APPROVAL BY THE VOTERS OR ORDINANCE NO. 2452 ON MARCH 4, 1997.

(a) The taxes imposed under Ordinance No. 2324, dated August 27, 1991, and this Chapter 2.1, together with certain additional telephone service charges as described in Urgency Ordinance No. 2332, dated September 24, 1991, became applicable to utility bills transmitted to service users on or after sixty (60) days following the passage of Ordinance No. 2324, or as soon thereafter as was practicable. The additional amount of taxes imposed by Ordinance No. 2355, dated September 8, 1992, and this Chapter 2.1, became applicable upon passage of Ordinance No. 2355, and the additional amount of the taxes imposed under Ordinance No. 2355 on or after sixty (60) days from the date of final passage or as soon thereafter as was practicable for the imposition of the tax rates authorized by Ordinance No. 2355 and this Chapter 2.1.

(b) The amendment of Chapter 2.1 authorized by Ordinance No. 2452 was approved by the voters on March 4, 1997 and each of the amendments of Chapter 2.1 included in Ordinance No. ----- shall become operative immediately upon acceptance by the City Council of the certified results of the March 4, 1997 municipal election confirming that Ordinance No. 2452 amending this Chapter 2.1 has been approved by a majority vote of the electorate in accordance with Government Code Section 53723.

6270.20. MAXIMUM TAX RATE. No person shall pay a tax of more than seven percent (7%) to the City of any services, subject to a tax under this Chapter 2.1, nor shall any person pay in the aggregate more than seven percent (7%) in taxes to the City of all services subject to tax under this Chapter 2.1.

6270.21 TEMPORARY REDUCTION IN THE RATE OF ANY TAX APPROVED IN THIS CHAPTER

2.1. Each of the tax rates approved, imposed and levied by Section 6270.8, Section 6270.9, and Section 6270.10 on the operative date of Ordinance No. 2452 which adds this Section 6270.21 to Chapter 2.1, may be temporarily reduced and levied at a rate of less than seven percent (7%) by resolution of the City Council. Each such temporary reduction of the tax rate shall be in effect and may be levied at a reduced rate only for the period of time authorized in the City Council resolution and upon the end of the temporary period of the tax rate reduction authorized in the resolution, the tax shall be levied at the full amount of the rate in effect on the operative date of Ordinance No. 2452 which adds this Section 6270.21 to Chapter 2.1. No such temporary reduction in a tax rate approved by a resolution of the City Council shall require the approval of the voters of the before the temporary tax rate reduction may take effect for the term as specified in the resolution.

6270.22. ANNUAL REPORTS TO THE CITY COUNCIL REGARDING THE TAX REVENUES RECEIVED AND THE ADMINISTRATION OF CHAPTER 2.1.

Commencing on October 1, 1997 and thereafter on each October 1, until such time as the taxes approved and levied by this Chapter 2.1 may be terminated or suspended, the Director of Finance shall submit a written report to the City Council which includes the following information:

- (i) total tax revenue received by the City under Section 6270.8 as of June 30 of the fiscal year preceding the date of the report; total tax revenue received by the City under Section 6270.9 as of June 30 of the fiscal year preceding the date of the report; total tax revenue received by the City under Section 6270.10 as of June 30 of the fiscal year preceding the date of the report;
- (ii) an estimate of the total amount of tax revenues which have been declared to be exempt under Section 6270.4 as of June 30 of the fiscal year preceding the date of the report;
- (iii) an appropriately detailed summary of the amount of taxes which have been refunded, adjusted or modified as authorized under Chapter 2.1 as of June 30 of the fiscal year preceding the date of the report;
- (iv) an appropriately detailed summary of tax collection and administration costs and expenses incurred by the City, and penalty and interest amounts, if any, received by the City under Chapter 2.1 as of June 30 of the fiscal year preceding the date of the report; and

(v) a recommendation of the Finance Director as to whether an adjustment to the rate of any tax approved and levied under this Chapter 2.1 is indicated in light of the financial condition of the City as described in the report; provided however, that any recommendation to increase any one or more of the tax rates to a new rate (or rates) which is higher than the rate or rates approved and levied under this Chapter 2.1 shall not be deemed to empower the City Council to approve a higher tax rate than seven percent (7%) on any service without first obtaining voter approval of the operative date of such a tax rate increase in the manner required by law.

6270.23. ANY AMENDMENT TO INCREASE A TAX RATE OR ADD A SERVICE SUBJECT TO A TAX UNDER THIS CHAPTER 2.1 AFTER THE APPROVAL BY THE VOTERS OF ORDINANCE NO. 2452 ON MARCH 4, 1997, REQUIRES FURTHER VOTER APPROVAL.

Any amendment of one or more sections of this Chapter 2.1 to increase the rate of a tax above the rate of the tax as approved and levied after the operative date of Ordinance No. 2452, and any other amendment of this Chapter 2.1 after March 4, 1997, which adds a service subject to a tax to be collected and administered under the provisions of this Chapter 2.1, shall not take effect until after the ordinance of the City Council proposing such an increase in a tax rate and/or adding a service to be subject to a tax under this Chapter 2.1 (as applicable), has first been approved by a majority vote of the electors of the City at an election called for such a purpose in a manner authorized by law.

6270.24. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter 2.1 or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Chapter 2.1 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. The City Council hereby orders this Ordinance No. 2452 to be submitted to a vote of the electors of the City at the March 4, 1996, general municipal election. Provided the imposition, levy and procedures for the administration and collection of the general taxes as set forth in Section 1 of this Ordinance are approved by a majority vote of the electors casting ballots in favor of this Ordinance No. 2452 on March 4, 1997, the operative date of the approval, imposition, levy and procedures for the administration and collection of such taxes under Chapter 2.1 as amended by Ordinance No. 2452 shall be the date on which the City Council accepts the certified results of the March 4, 1997 general municipal election in the manner authorized by law.

SECTION 3. In the event that Ordinance No. 2452 may not be approved by a majority vote of the electors casting ballots in favor of Ordinance No. 2452 on March 4, 1997, then in such event, Section 1 of Ordinance No. 2452 shall have no further force or effect, and the provisions of the 1991 City of El Monte Utility User Tax shall remain in full force until the date specified in Section 6270.18 of the El Monte Municipal Code as amended by Ordinance No. 2355, dated September 8, 1992.

SECTION 4.If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance No. 2452 or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance No. 2452 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 or invalid.

SECTION 5. Upon the approval of this Ordinance No. 2452 by a majority vote of the electors voting on the issue and the certification of the results of the the March 4, 1997 election by the City Council in the manner authorized by law, the Mayor and City Clerk are hereby authorized and directed to attest to the approval of this Ordinance No. 2452 and the general taxes imposed herein by a majority vote of the electors.

SECTION 6.The City Clerk shall certify that this Ordinance No. 2452 has been adopted by the City Council and that this Ordinance No. 2452 shall be submitted to the electorate of the City for approval by a majority vote of the voters voting at the election on the issue on March 4, 1997, and the City Clerk shall cause a copy hereof to be published once in the official newspaper within fifteen (15) days of adoption hereof by the City Council.

Passed, approved and adopted by the City Council on this ----- day of , 1996.
Mayor of the City of El Monte

ATTEST:
City Clerk of the City of El Monte

Passed, approved and adopted by a majority vote of the voters voting at the election held on March 4, 1997.
Mayor of the City of El Monte

ATTEST:
City Clerk of the City of El Monte

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF EL MONTE)

I, ROSE M. GRIFFITH, City Clerk of the City of El Monte, hereby certify that the foregoing Ordinance No. 2452 was passed and adopted by the City Council, signed by the Mayor and attested to by the City Clerk at a regular meeting of said Council held on the day of , 1996, and that said Ordinance was adopted by the following vote, to-wit:

AYES:
NOES:
ABSENT:

City Clerk of the City of El Monte