

Ordinance Fact Sheet

TO: CITY COUNCIL

DATE: April 23, 2001

FROM: CITY MANAGER

SUBJECT: AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTER 4.56 OF THE PASADENA MUNICIPAL CODE RELATING TO THE UTILITY USERS TAX ORDINANCE.

TITLE OF PROPOSED ORDINANCE:

An Ordinance of the City of Pasadena Amending Chapter 4.56 of the Pasadena Municipal Code Relating to the Utility Users Tax Ordinance.

BACKGROUND:

On January 8, 2001, the City Council directed the City Attorney to update the City's Utility User Tax Ordinance to reflect current technological advances.

The City's current utility users tax (UUT) ordinance was enacted in 1969. At the time of its enactment, there were only a handful of monopoly utility providers. Today, due to deregulation and technological changes, there are many providers of utility services in the City. For example, there are over six hundred telecommunication providers licensed by the California Public Utilities Commission. Many are doing business in the City, employing different technologies to provide various telecommunication services. There are numerous licensed electric service providers (ESPs) in California, many of which are now offering "direct access" to California customers. There are also a number of different gas marketers doing business in the City, again due to deregulation of the gas industry.

In order to give guidance to the many new utility service providers regarding their UUT collection responsibilities, it is appropriate to update the City's UUT ordinance with needed clarifications regarding the scope of the City's existing taxes and the collection responsibilities of all providers. The City staff has, therefore, researched other updated UUT ordinances, and consulted with experts in this area to recommend appropriate amendments.

MEETING OF 4/23/2001

AGENDA ITEM NO. 9.A.2

SUMMARY OF THE REVISIONS:

First, none of these clarifying amendments increase the UUT or expand the existing tax base so as to require the approval of the electorate under Proposition 218. They ensure that utility services that currently are subject to the UUT will continue to be covered into the future. The attached opinion letter from special counsel who is recommending the form of updates to the City's UUT verifies that no part of the update creates a new tax, increases an existing tax or expands the tax base of services that are currently subject to the City's UUT. Based upon this opinion, the City Attorney's Office concurs that the update would not require a vote of the people.

Second, the clarifications make it clear that the application of the UUT to telecommunications services follows the Federal Excise Tax (FET) rules and regulations on the subject, as promulgated by the Internal Revenue Service. That has always been the intent of the ordinance, which dates back several decades to when the regulated telecommunications providers agreed to impose and collect a UUT on behalf of California municipalities, providing they did not have to administer a complicated system with a myriad of differences and irreconcilable conflicts between the federal FET requirements and numerous local tax ordinances. To the extent that the FET may be repealed in the near future, the ordinance establishes that the city's tax on telecommunications shall persevere, and will be based upon that body of FET law that existed immediately prior to the date of its repeal.

Third, the amendments specifically identify as many components of traditional utility service subject to the UUT as possible. Traditionally, these components were included on a customer's bill as one line item, lumped together for the sake of clarity and simplicity. Primarily in response to deregulation efforts, many of these charges may be separated out on a customer's bill in the future. Listing these component charges in the ordinance is necessary to ensure that they are taxed in the future in the same manner as they have been taxed in the past.

Fourth, the updates include an important filing requirement in order to be eligible for an exemption from the UUT in cases where the exemption stems from preemption of the ordinance by state or federal statutes or constitutions. Any entity or person, unless it is a state or federal agency (or one of its subdivisions) with a commonly recognized name, must file an application for an exemption before it can be eligible for the exemption. This removes the burden from the city of having to determine the exemption status of a wide variety of organizations, such as federal credit unions and insurance companies where it may be very difficult to determine if an exemption is warranted, and places it on the exempt entity to affirmatively assert its exempt status. The requirement prevents these organizations from retrospectively filing claims for large refunds with the city for utilities tax payments covering the previous three year period.

Fifth, the proposal permits the Tax Administrator to periodically survey the utility industries and adopt administrative rulings that update the list of specifically identified components of traditional utility service subject to the UUT. As deregulation of the electric, gas and telecommunications industries continues, it is likely that gas and electric service providers will continue to break-out more and more of their charges into their individual components. On the other hand, some telecommunications providers may bundle some separate charges into new "components" for marketing purposes. Possessing the ability to identify all of these component charges as they evolve is necessary to ensure that they are taxed in the future in the same manner as they have been taxed in the past.

Finally, the revisions make it clear, as the short title of the ordinance implies, that the ultimate responsibility for the payment of the tax is on the utility user. In cases where the utility provider is immune from the application of the ordinance (e.g. the provider lacks sufficient contacts with the city for it to be subject to the city's jurisdiction) the utility user has the responsibility to self-assess and remit the appropriate tax.

REASON WHY LEGISLATION IS NEEDED:

The Pasadena Municipal Code may only be amended by ordinance of the City Council.

PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED:

The proposed ordinance amendment will provide better clarity on the rules and intent of the City's utility user tax ordinance to those who collect or are asked to apply the ordinance.

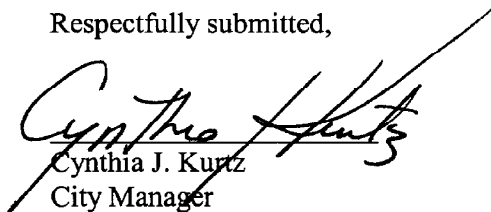
ENVIRONMENTAL IMPACT:

The proposed changes fall under the general rule 15061(b)(3) that CEQA applies only to projects that have the potential for causing a significant effect on the environment. There is no possibility that the changes in question may have an effect on the environment and thus are not subject to CEQA.

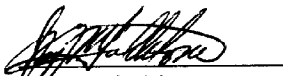
FISCAL IMPACT:

The proposed code changes are designed to clarify the existing utility users tax. None of the clarifications or revisions impose a new tax, revise an existing tax methodology, or increase an existing tax. However, a small increase in utility users tax revenues might be expected because of greater compliance with the existing ordinance and the elimination of ambiguities in its application.

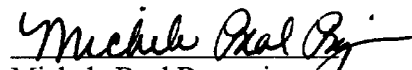
Respectfully submitted,


Cynthia J. Kurtz
City Manager

Approved by:


May M. Goldstone
Director of Finance

Concurrence:


Michele Beal Bagneris
City Attorney

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April 10, 2001

Ms. Michele Beal Bagneris, Esq.
City Attorney
CITY OF PASADENA
100 N. Garfield Ave., Rm. 228
Pasadena CA 91109-7215

Re: Update of the Utility Users Tax Ordinance

Dear Ms. Bagneris:

This will confirm that I am familiar with and have reviewed all of the recommended changes to your Utility Users Tax (UUT) ordinance. None of the recommended changes to the current City of Pasadena Utility Users Tax ordinance are intended to create a new tax, increase an existing tax, or expand the tax base of services that are currently subject to the City's utility users tax. Rather, our recommended changes are designed to give clearer directions to the tax collecting utilities, and to improve the procedures for collecting, remitting, and enforcing *existing utility users taxes*. Accordingly, in my opinion, none of our recommended changes to the current UUT ordinance, if applied as intended, would create a new tax, or a tax increase or expansion, so as to require a vote of the people under California Constitution Article XIII(C), or would trigger any special notice or public meeting requirements under the applicable provisions of Government Code Section 54954.6.

For your information, a number of California cities have already adopted these recommended changes, and, to my knowledge, there has been no claim that any such changes create new taxes, or expand or increase existing taxes. Obviously, if a tax collector is currently improperly applying the UUT, and, as a result of these proposed clarifications, begins to properly apply and remit the UUT to the City, there may be a small increase or decrease in the City's UUT to reflect this correction. But this would be true whether or not your UUT ordinance were updated.

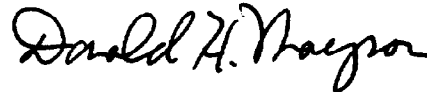
Ms. Michele Beal Bagneris, Esq..
April 10, 2001
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Importantly, the updated UUT ordinance also creates a process for rendering administrative rulings by the tax administrator to address *new tax application issues that may arise in the future* as traditional taxable utility services become "bundled" or "unbundled", new technologies are used to provide traditional taxable services, or new marketing methods are used. The UUT ordinance provides guidelines to the tax administrator to render decisions that will not result in new taxes or an expansion of existing taxes.

As you may know, a voluntary organization was formed at the League of California Cities Annual Convention last year, which is known as the Utility Users Tax Technical Task Force. This group is intended to assist UUT tax administrators in developing uniform tax application decisions *under existing tax laws*, as new issues arise. The updated UUT ordinance, therefore, will facilitate the implementation of such recommended uniform "best practices" through the adoption of administrative rulings by the City's Tax Administrator.

Taken together, the recommended changes to Pasadena's UUT ordinance will allow for more equitable and efficient implementation of your *existing* utility users taxes. Please let me know if you have any additional questions regarding our recommended changes to your UUT ordinance.

Sincerely,



DONALD H. MAYNOR

CC: Mr. Jay Goldstone, Finance Director
Mr. Nicholas Rodriguez, Esq.
Scott Rasmussen, Esq.
Mr. Douglas Wiese, Esq.

Introduced by

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTER 4.56 OF THE PASADENA MUNICIPAL CODE RELATING TO THE UTILITY USERS TAX ORDINANCE.

The People of the City of Pasadena ordain as follows:

SECTION 1. This ordinance, due to its length and the corresponding costs of publication, will be published by title and summary as permitted by Section 508 of the Charter. The approved summary of this ordinance reads as follows:

"SUMMARY

The purpose of this ordinance is to give guidance to the many new utility service providers regarding their utility users tax (UUT) collection responsibilities with needed clarifications regarding the scope of the City's existing taxes and the collection responsibilities of all providers; it is not intended to create a new tax, to increase an existing tax, or to expand the tax base of services currently subject to taxation. It adds the new terms or definitions 'billing address,' 'city administrator,' 'exempt wholesale generator,' 'gas,' 'non-utility service supplier,' 'service address,' 'telephone communications services,' 'video service supplier,' and 'video services.' It revises the terms 'person' and 'service supplier.' It deletes the term 'cable television corporation.'

The application of the UUT to telecommunications services follows the Federal Excise Tax (FET) rules and regulations on the subject. In the event that the FET is repealed in the future, the ordinance

establishes that the city's tax on telecommunications shall remain in effect, and will be based upon that body of FET law that existed immediately prior to the date of its repeal.

The ordinance establishes a rule by which to judge whether particular components of a gas, electric, water or video services bill are subject to the UUT, and specifies a number of those charges which are subject to it. The ordinance authorizes the tax administrator to conduct administrative surveys of each of the utility industries covered by the utility users tax, and authorizes the tax administrator to issue administrative rulings based on those surveys to clarify the scope of the utility users tax. If a non-taxable charge is lumped together with a taxable charge, the entire charge shall be taxed, unless the service user requests a break-out of those charges from the service supplier, and the service supplier is able to accommodate the request.

Any person required to collect and/or remit the utility users tax must file a tax return with the tax administrator at the same time the funds are remitted. Both must be received by the tax administrator on or before the twentieth day of the month following the collection of the utility users tax. In the event that a service user's service supplier does not collect the tax on behalf of the service user, the service user is obligated to pay the appropriate tax directly to the city, which must also be received by the tax administrator on or before the twentieth day of the month following the use of the utility service upon which the tax is based.

The ordinance includes an important filing requirement in order to be eligible for an exemption from the UUT in cases where the exemption stems from preemption of the ordinance by state or federal

statutes or constitutions. Any entity or person, unless it is a state or federal agency (or one of its subdivisions) with a commonly recognized name, must file an application for an exemption before it can be eligible for the exemption.

The ordinance revises the language related to the 15% penalty for late payment of the utility users tax, and now includes a 0.75% per month interest provision. If a service user refuses to pay the utility users tax to the service supplier that collects it on behalf of the service user, the tax administrator is obligated to assess the service user for the delinquent tax, and a 25% penalty and 0.75% per month interest applies in this case. The service user is entitled to a hearing on the matter, and the tax administrator shall confirm or modify his or her original assessment as the evidence and testimony warrants.

All persons who are required to remit a utility users tax must keep records to substantiate the amount of utility users tax remitted to the city, and must present those records to the tax administrator upon request. The revisions specify that the city may issue administrative subpoenas to compel their presentation if a service user or service supplier refuses the tax administrator's request to review the records. A penalty of \$500 per day applies to anyone who unreasonably denies the tax administrator access to these records.

This ordinance also grants other miscellaneous powers to the tax administrator, including the power to adopt administrative rules and regulations, the power to make administrative agreements with service suppliers, and the power to determine the exemption eligibility of any person.

The revisions limit the statute of limitations on refund claims

from three years to one year. For those claims that are older than one year but less than three years old on the effective date of this ordinance, the refund claim must be made within 90 days of this ordinance's effective date or it is permanently barred. The tax administrator, or the city council for large claims, is required to act upon the claim within 45 days.

The ordinance includes a new appeals section designed to comply with the State of California's Tort Claims Act. Anyone aggrieved by any assessment, decision or administrative ruling of the tax administrator, other than a decision related to a refund, or with the failure of the tax administrator to grant an exemption, must file an appeal within 14 days of the date of the assessment, decision, or administrative ruling which aggrieved the service user or service supplier. Failure to do so bars any judicial review of the assessment, decision, or administrative ruling. Once an appeal is made, the city is obligated to conduct a hearing within 30 days, and must confirm, modify, or reverse the initial assessment, decision, or administrative ruling.

Finally, the ordinance specifically authorizes the city council to enact temporary rebates to a class of service users for extraordinary utility costs. It requires that the city council consider a number of important factors before rendering its decision, including: (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, (8) any other factor that affects the fairness or equity of granting such a temporary rebate.

Ordinance No. _____ shall take effect upon its publication by title and summary."

SECTION 2. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

SECTION 3. This ordinance shall take effect upon its publication by title and summary.

Signed and approved this ____ day of _____, 2001.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the
City Council of the City of Pasadena at its meeting held
_____, 2001, by the following vote:

AYES:

NOES:


ABSENT:

ABSTAIN:

PUBLISHED:

Jane L. Rodriguez, CMC
CITY CLERK

APPROVED AS TO FORM:

 4/16/01

Nicholas George Rodriguez
Assistant City Attorney