

ORDINANCE NO. 2000 – 7

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF ELK GROVE REGARDING UTILITY USER TAX

The City Council of the City of Elk Grove does ordain as follows:

Section 1. The Council of the City of Elk Grove finds that the ballot measure regarding incorporation of the City of Elk Grove specifically included authorization by the voters for the City to continue to levy and collect within the City the same general taxes, fees, charges, and assessments and rates as are presently levied and collected by the County of Sacramento, and that in adopting this ordinance it is the intent of the Council to exercise such authorization. In light of said approval by the voters, no further approval is required pursuant to Government Code section 57135, Proposition 62, or Proposition 218 prior to the adoption of the general taxes levied by this ordinance.

Section 2.

1. **SHORT TITLE.** This ordinance shall be known as the “Elk Grove Utility User Tax Ordinance.”

2. **TAX IMPOSED.** There is established and levied, on the effective date of this ordinance, a utility user tax in the manner and at the rates set forth in this ordinance.

3. **DISPOSITION OF TAX REVENUE.** The utility use tax imposed by this ordinance is levied to raise revenue for the general governmental purposes of the City. All of the proceeds from the tax imposed by this ordinance shall be placed in the City’s general fund and used for the usual current expenses of the City.

4. **DEFINITIONS.** For purposes of this ordinance, the following words and phrases shall be construed and defined as set forth in this section.

a. “Cable television corporation” shall have the same meaning as defined in Section 215.5 of the Public Utilities Code.

b. “City” means the City of Elk Grove.

c. “County” means the County of Sacramento.

d. “Electrical corporation” shall have the same meaning as defined in Section 218 of the Public Utilities Code and shall include a municipal utility district.

e. “Gas” shall mean natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.

f. “Gas corporation” shall have the same meaning as defined in Section 222 of the Public Utilities Code.

g. “Month” shall mean a calendar month.

h. “Person” shall mean all domestic and foreign corporations, associations, syndicates, joint stock companies, partnerships of every kind, joint ventures, clubs, Massachusetts business or common law trusts, societies, governmental agencies and individuals.

i. “Residential service user” means any service user who is charged for electrical, gas or telephone service based on (1) a residential rate schedule filed with the California Public Utilities Commission by an electrical, gas or telephone corporation, or (2) a residential rate schedule approved by a municipal utility district.

j. “Service supplier” shall mean a person required to collect and remit a tax imposed under the provisions of this ordinance.

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

l. “Sewer service” shall mean the collection, transmission, treatment or disposal of sewage or industrial waste.

m. “Tax Administrator” means the City Treasurer.

n. “Telephone corporation” shall have the same meaning as defined in Section 234 of the Public Utilities Code.

5. **CONSTITUTIONAL EXEMPTION.** Nothing in this ordinance shall be construed as imposing a tax upon any person when the imposition of such tax upon that person would be in violation of the Constitution of the United States or that of the State of California.

6. **EXEMPTIONS.**

a. The taxes imposed by this ordinance shall not be levied on any governmental agency.

b. Notwithstanding the provisions of Section 7 hereof, electrical energy which is separately billed and metered by the service supplier as agricultural service use shall be exempt from the tax levied by that section.

c. Notwithstanding the provisions of Section 7 hereof, the first \$45.00 in total monthly charges made for electrical energy to a residential service user shall be exempt from the tax levied by Section 7.

d. Notwithstanding the provisions of Section 8 hereof, the charges made for the baseline rate usage approved by the California Public Utilities Commission for gas furnished to a residential service user shall be exempt from the tax levied by Section 3.40.090.

e. Notwithstanding the provisions of Section 9 hereof, the tax imposed by that section shall not be imposed upon any person for using intrastate, interstate or international telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under Division 2, Part 20 of the California Revenue and Taxation Code, or the tax imposed under Section 4251 of the Internal Revenue Code.

**7. ELECTRICITY USER TAX.**

a. There is hereby levied a tax on every person using electrical energy in the City. The tax imposed by this section shall be at the rate of two and fifty one hundredths percent (2.50%) of the charges made for such energy and shall be paid by the person paying for such energy. The tax applicable to electrical energy provided by a non-utility supplier shall be determined by applying the tax rate to the equivalent charge the service user would have incurred if the energy used had been provided by the electrical corporation furnishing service in the City. Rate schedules for this purpose shall be available from the City. Non-utility suppliers shall install, maintain and use an appropriate utility type metering system which will enable compliance with this section. "Charges", as used in this section, shall include charges made for metered energy and charges for service, including, but not limited to, customer charges, service charges, standby charges, charges for temporary services, demand charges, annual and monthly charges, and any other charge authorized by the California Public Utilities Commission, the Sacramento Municipal Utility District or the Federal Energy Regulatory Commission.

b. As used in this section, the term "using electrical energy" shall not be construed to include the following: (1) the storage of such energy by a person in a battery owned or possessed by him for use in an automobile or other machinery or device apart from the premises upon which the energy was received, provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; (2) the receiving of such energy by an electrical corporation at a point within the City for resale; (3) the use of such energy in the production or distribution of water by a public utility; or (4) the use of electrical energy used in the conduct of business by an electrical corporation, gas corporation or telephone corporation furnishing service in the City.

c. The tax imposed in this section shall be collected from the service user by the person supplying such energy. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month, unless the due date occurs on a weekend or a holiday in which case the due date is the first business day following. Taxes shall be deemed remitted on the date received by the Tax Administrator, or on the date postmarked if remitted by first class United States mail with postage fully prepaid. With prior written approval of the Tax Administrator, remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers.

**8. GAS USER TAX.**

a. There is hereby levied a tax on every person using gas in the City which is delivered through mains or pipes. The tax imposed by this section shall be at the rate of two and fifty one hundredths percent (2.50%) of the charges made for such gas and shall be paid by the person paying for such gas. "Charges," as used in this section, shall include charges made for metered gas and charges for service, including, but not limited to, customer charges, service charges, and annual and monthly charges and any other charge authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission.

b. As used in this section, the term "charges" shall not include the following: (1) charges made for gas which is to be resold and delivered through mains or pipes; (2) charges made for gas sold for use in the generation of electrical energy or for the production or distribution of water by a public utility; (3) charges made for gas used in the propulsion of a motor vehicle, as that phrase is defined in the Vehicle Code of the State of California, utilizing natural gas;

(4) gas used in the conduct of business by an electrical corporation, a gas corporation or a telephone corporation furnishing service in the unincorporated area of the County; and (5) charges made for as used by a non-utility supplier to generate electrical energy for its own use, or for sale to others, provided the electricity so generated is subject to the tax in accordance with Section 7.

c. The tax imposed in this section shall be collected from the service user by the person selling the gas. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month, unless the due date occurs on a weekend or a holiday in which case the due date is the first business day following. Taxes shall be deemed remitted on the date received by the Tax Administrator, or on the date postmarked if remitted by first class United States mail with postage fully prepaid. With prior written approval of the Tax administrator, remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers.

**9. TELEPHONE USER TAX.**

a. There is hereby levied a tax on every person using intrastate, interstate and international telephone services in the City. The tax imposed by this section shall be at the rate of two and fifty one hundredths percent (2.50%) of the charges made for such services and shall be paid by the person paying for such services.

b. As used in this section, the term "charges" shall not include the following: (1) charges for services paid for by inserting coins in coin-operated telephones except that, where such coin-operated service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due; (2) land mobile services or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations as said section existed on January 1, 1970; (3) telephone service used in the conduct of business by an electrical corporation, a gas corporation or a telephone corporation furnishing service in the City; and (4) 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 form persons other than a service supplier subject to Public Utility Regulation.

c. The tax imposed by this section shall be collected from the service user by the person providing the telephone services, or the person receiving payment for such services. The amount of the tax collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month, unless the due date occurs on a weekend or a holiday in which case the due date is the first business day following. Taxes shall be deemed remitted on the date received by the Tax Administrator, or on the date postmarked if remitted by first class United States mail with postage fully prepaid. With prior written approval of the Tax Administrator, remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers.

**10. CABLE TELEVISION USER TAX.**

a. There is hereby levied a tax on every person using cable television service furnished by a cable television corporation in the City. The tax levied by this section shall be at the rate of two and fifty one hundredths percent (2.50%) of the charges made for such services and shall be paid by the person paying for such service. "Charges" used in this section shall include

charges for all cable television services, including, but not limited to, basic and premium cable services, customer charges, service charges, per program charges, and annual and monthly charges.

b. The tax imposed by this section shall be collected from the service user by the person providing the cable television services. The amount of the tax collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month, unless the due date occurs on a weekend or a holiday in which case the due date is the first business day following. Taxes shall be deemed remitted on the date received by the Tax Administrator, or on the date postmarked if remitted by first class United States mail with postage fully prepaid. With prior written approval of the Tax Administrator, remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers.

**11. SEWER SERVICE USER TAX.**

a. There is hereby levied a tax on every person using sewer service in the City. The tax levied by this section shall be at the rate of two and fifty one hundredths percent (2.50%) of the charges made for such service and shall be paid by the person paying for such service. "Charges" used in this section shall include all charges for sewer service, including, but not limited to, customer charges, service charges, standby charges, charges for temporary devices, demand charges, and annual and monthly charges.

b. The tax imposed by this section shall be collected from the service user by the person providing the sewer service. The amount of the tax collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month, unless the due date occurs on a weekend or a holiday in which case the due date is the first business day following. Taxes shall be deemed remitted on the date received by the Tax Administrator, or on the date postmarked if remitted by first class United States mail with postage fully prepaid. With prior written approval of the Tax Administrator, remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers.

**12. INTEREST AND PENALTY.**

a. Taxes collected from a service user which are not remitted to the Tax Administrator on or before the due dates provided in this ordinance are delinquent and are subject to penalties and interest.

b. Any person who fails to remit taxes collected in the time required by this ordinance shall pay a penalty of five percent (5%) of the amount of the tax, and if not remitted within two (2) working days after the date of delinquency, shall pay a total penalty of twenty percent (20%) of the amount of tax owed. Such penalty shall attach to the amount of tax due and shall be paid by the person required to collect and remit the tax.

c. If the failure to collect or remit a tax levied by this ordinance is the result of fraud or gross negligence, the Tax Administrator shall impose an additional penalty of twenty percent (20%) of taxes owed upon persons required to collect and remit taxes under the provisions of this ordinance.

d. Any person required to remit to the Tax Administrator delinquent taxes as required in this section shall pay interest at the rate of one and one half percent (1.5%) per

month, or portion thereof, on the amount of tax owed exclusive of penalties, from the date on which the tax first became delinquent until paid.

e. Notwithstanding the provisions of subsections b and d, no penalty or interest shall be applied if the person charged with collecting and remitting the tax establishes to the satisfaction of the Tax Administrator that the delinquency is the result of natural disasters or other phenomena beyond the control of the person charged with collecting and remitting the tax and so notifies the Tax Administrator as soon as normal communications permit.

13. **ACTIONS TO COLLECT.** Any tax required to be paid by a service user under the provisions of this ordinance 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 the tax. Any person owing money to the City under the provisions of this ordinance shall be liable in an action brought in the name of the City for the recovery of such amount.

14. **DUTY TO COLLECT - PROCEDURES.** The duty to collect and remit the taxes imposed by this ordinance 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 practices of the service supplier. Except in those cases where a service user pays the full amount of said charges but does not pay any portion of a tax imposed by this ordinance, or where a service user has notified a service supplier that he is refusing to pay a tax imposed by this ordinance which said service supplier is required to collect, if the amount paid by a service user is less than the full amount of the charge and tax which has accrued for the billing period, such amount and any subsequent payments by a service user shall be applied to the utility charge first. Any remaining balance shall be applied to taxes due.

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

15. **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 ordinance.

b. The Tax Administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this ordinance for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such rules and regulations shall be on file in the Tax Administrator's office.

c. The Tax Administrator may make administrative agreements, subject to approval as to form by the City Attorney, to vary the strict requirements of this ordinance so that collection of any tax imposed here may be made in conformance with the billing procedures of a particular service supplier so long as said agreements result in collection of the tax in conformance

with the general purpose and scope of this ordinance. A copy of each such agreement shall be on file in the Tax Administrator's office.

d. The tax Administrator shall determine the eligibility of any person who asserts a right to exemption from the tax imposed by this ordinance. 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 services 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.

e. The Tax Administrator may file suit in the name of the City to collect delinquent taxes, together with penalties and interest.

16. **ASSESSMENT - ADMINISTRATIVE REMEDY.**

a. The Tax Administrator may assess the service user for taxes not paid to the service supplier.

b. Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by such users 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, or whenever the Tax Administrator deems it in the best interest of the City, he may relieve such person of the obligation to collect taxes due under this ordinance from certain named service users for specified billing periods.

c. The service supplier shall provide the Tax Administrator with amounts refused, along with the names, addresses and reasons of the service users refusing to pay the tax imposed under provisions of this ordinance. Whenever the service user has failed to pay the amount of tax for a period of two or more billing periods, the Tax Administrator may relieve the service supplier of the obligation to collect taxes due.

d. The Tax Administrator shall notify the service user that he 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 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 address, to his last known address. If a service user fails to remit the tax to the Tax Administrator within fifteen (15) days from the date of the service of the notice upon him, which shall be the date of mailing if service is not accomplished in person, a penalty of twenty-five percent (25%) of the amount of the tax set forth in the notice, but not less than \$5.00, shall be imposed.

17. **RECORDS.** It shall be the duty of every person required to collect and remit to the City any tax imposed by this ordinance to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and remittance to the Tax Administrator. The Tax Administrator shall have the right to inspect such records at all reasonable times.

18. **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 ordinance, it may be refunded as provided in this section.

b. Notwithstanding the provisions of subsection a of this section, a service supplier may, with prior written approval from the Tax Administrator, claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established that the service user from whom the tax has been collected did not owe the tax; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the person required to collect and remit. A service supplier that has collected any amount of tax in excess of the amount of tax imposed by this ordinance, and actually due from a service user, may refund such amount to the service user and may, with prior written approval of the Tax Administrator, claim credit for such overpayment against the amount of tax which is due upon any other monthly returns, provided such credit is claimed in a return dated no later than three (3) years from the date of overpayment.

c. No refund shall be paid under the provisions of this section unless the claimant (1) files a written claim for refund with the Tax Administrator within thirty (30) days of the date on which the tax for which a refund is claimed was due, and (2) establishes his right to a refund by written records showing entitlement thereto.

d. Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this ordinance on the amount of such refunded charges shall also be refunded to service users, and the service supplier may, with prior written approval of the Tax Administrator, take a credit for such refunded taxes against the amount of tax which is due upon the next monthly returns. In the event this ordinance is repealed, the amounts of any refundable taxes will be borne by the City.

**19. DELAYS IN IMPLEMENTATION.**

Each service supplier shall immediately implement collection procedures in accordance with the effective dates contained in this ordinance.

**20. ANNUAL REVIEW.** The City Council shall annually conduct a public hearing prior to the adoption of the final City budget to determine whether the rate of the utility user taxes levied by this ordinance should be reduced. After the close of such public hearing, the City Council may, by ordinance approved by majority of all members of the City Council, reduce the rate of any of the utility user taxes levied by this ordinance.

**21. SEVERABILITY.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance or any part thereof is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining portion of this ordinance or any part thereof. The City Council of the City of Elk Grove hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared invalid.

Section 3. This ordinance is intended to, and hereby does, supersede Chapter 3.40 of the Sacramento County Code as adopted by the City of Elk Grove, unless this Ordinance is found to be invalid. This ordinance is merely a transfer of utility user tax from Sacramento County to the City and will effect no increased tax burden.

Section 4. This ordinance shall take effect immediately as an urgency ordinance. Commencing July 1, 2000, the City of Elk Grove will be required to provide services to its citizens. The City is also required to make "revenue-neutrality" payments to Sacramento County. In order to meet these obligations, the City must ensure that it begin receiving revenue from all sources to which it is entitled. For these reasons, the City Council finds that the immediate passage of this ordinance is necessary for the immediate preservation of the public peace, health and safety, and the fiscal integrity of the City.

Section 5. The City Clerk may post this ordinance in at least three public places in the City of Elk Grove within fifteen days after its passage, in lieu of publication.

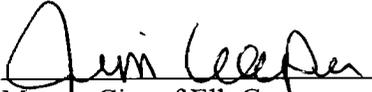
PASSED AND ADOPTED by the City Council of the City of Elk Grove this 1st day of July, 2000, by the following roll call vote:

AYES: Cooper, Soares, Leary, Scherman, Briggs

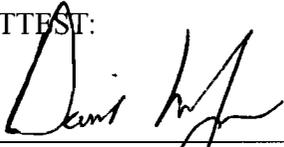
NOES: 0

ABSENT: 0

ABSTAIN: 0

  
Mayor, City of Elk Grove

ATTEST:

  
City Clerk, City of Elk Grove

APPROVED AS TO FORM:

  
City Attorney, City of Elk Grove