**ORDINANCE NO. 2006-**

AN URGENCY ORDINANCE OF THE CITY OF CULVER CITY, CALIFORNIA, AMENDING CHAPTER 3.08 OF THE CULVER CITY MUNICIPAL CODE “UTILITY USERS TAX” RELATING TO APPLICATION OF THE TELEPHONE USERS TAX.

WHEREAS, the City of Culver City has for many years imposed a tax on telephone communication services since 1969;

WHEREAS, for ease of administration by the telephone communication service providers, the Culver City Municipal Code defines “telephone communications services” by referring to federal excise tax law administered by the Internal Revenue Service and has for many years administered its tax on telephone communication services consistent with the application of the Federal Excise Tax;

WHEREAS, administration and application of the Federal Excise Tax has been and continues to be the purview of the Internal Revenue Service;

WHEREAS, until May 25, 2006, the Internal Revenue Service had administered and applied the Federal Excise Tax in a manner consistent with both Revenue Ruling 79-404 and the manner in which the City of Culver City intended to administer and apply its tax on telephone communication services, including applying the Federal Excise Tax to long-distance charges which varied in amount with either distance or elapsed transmission time of the involved communication;

WHEREAS, on May 25, 2006, the Internal Revenue Service issued Notice 2006-50 which announced that after July 31, 2006, the Internal Revenue Service would no longer apply the Federal Excise Tax to long-distance charges and bundled long-distance unless the charges vary in amount with both distance and elapsed transmission time;

WHEREAS, it has always been and continues to be the City of Culver City's intent that its tax on telephone communication services be applied to long-distance charges which vary in amount with either distance or elapsed transmission time and to bundled long-distance and local charges provided under a single plan that does not separately state the charges for local telephone service;

WHEREAS, the City Council does not wish to adopt the Internal Revenue Service's new interpretation of the definitions of the F.E.T., but rather wishes to continue to impose the UUT as it has been historically imposed;

WHEREAS, Culver City Municipal Code Section 3.08.210(C) expressly requires application of the utility users tax to bundled charges and that provision is not changed by this ordinance; and

WHEREAS, this ordinance is presented as an urgency ordinance because the above-referenced facts increase the possibility of a sudden and unplanned reduction of the tax on telephone communication services, and is therefore, necessary for preserving the public peace, health or safety.

**NOW, THEREFORE**, the City Council of the City of Culver City **DOES ORDAIN** as follows:

SECTION 1. Section 3.08.210(B) of Chapter 3.08 of the Culver City Municipal Code is hereby amended to read as follows:

B. Except as otherwise provided herein, TELEPHONE COMMUNICATION SERVICES shall include local and long-distance telephone service for which there is a charge, regardless of the means or technology used to provide such services. The tax imposed under subsection (a), above, shall not be imposed upon any person for using the following TELEPHONE COMMUNICATION SERVICES:

1. Service paid for by inserting coins in coin-operated telephones available with respect to local telephone service, or with respect to toll telephone service if the charge for such toll telephone service is less than 25 cents; except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.

2. Except with respect to local telephone service, services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to such person.

3. Services furnished to an international organization, or to the American National Red Cross.

4. Any toll telephone service which originates within a combat zone and is from a member of the Armed Forces of the United States performing service in such combat zone; provided a certificate, setting forth such facts as the Secretary may by regulations prescribe, is furnished to the person receiving such payment.

5. Any toll telephone service which entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located, that is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.

6. The installation of any instrument, wire, pole, switchboard, apparatus, or equipment as is properly attributable to such installation.

7. Amounts paid by a nonprofit hospital for services furnished to such organization.

8. Services or facilities furnished to the government of any State, or any political subdivision thereof, or the District of Columbia.

9. Services or facilities paid for by a nonprofit educational organization and furnished to such organization. For purposes of this subsection, the term **NONPROFIT EDUCATIONAL ORGANIZATION** means an educational organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is exempt from income tax under Section 501(a) of the same code. The term also includes a school operated as an activity of an organization described in Section 501(c)(3) of the Internal Revenue Code which is exempt from income tax under Section 501(a) of the same code, if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

SECTION 2. This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of public peace, health or safety. The facts constituting such urgency are as follows: The revenues from the telephone users tax are anticipated to be approximately $5.2 million dollars for Fiscal Year 2006-2007 if the telephone users tax continues to be applied in a manner consistent with the IRS' interpretation of the FET prior to the issuance of Notice 2006-50. In the event that the City's telephone users tax were to be applied consistent with Notice 2006-50, it is projected that the total telephone users tax revenues would decrease by millions of dollars for Fiscal Year 2006-07. The revenues from the telephone users tax are critical to the public peace, health and safety in that these revenues pay the costs associated with essential services, including public safety.

SECTION 3. Pursuant to Sections 614 and 619(d) of the City Charter, this ordinance shall take effect immediately upon its adoption and, as required by Section 616 of the City Charter, prior to the expiration of fifteen (15) days from the adoption hereof, the City Clerk shall cause this Ordinance or a summary to be published in a newspaper circulated in the City and designated by the City Council.

SECTION 4. To the extent the provisions of the Culver City Municipal Code as amended by this ordinance are substantially the same as the provisions of that Code as they read immediately prior to the adoption of this ordinance, then those provisions shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION 5. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 6. The amendments herein are not intended to make any change in the way in which the tax is calculated, imposed or administered. Therefore the changes made by this ordinance do not constitute an increase in the tax for purposes of Proposition 218. Further, if for any reason any section, subsection, sentence, clause, phrase or portion of this is held to constitute an increase for purposes of Proposition 218 or is otherwise held invalid or cannot be implemented according to its terms, the City Council intends that the ordinance provisions which would have been amended or affected by this ordinance shall remain in effect as if this ordinance had not been adopted.

SECTION 7. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

APPROVED and ADOPTED this ______ day of ___________, 2006.

______________________________
GARY SILBIGER, Mayor
City of Culver City, California

ATTEST:

______________________________
CHRISTOPHER ARMENTA,
City Clerk

APPROVED AS TO FORM:

______________________________
CAROL A. SCHWAB,
City Attorney