

**OAKLAND CITY COUNCIL**

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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A RESOLUTION SUBMITTING, ON THE COUNCIL'S OWN MOTION, TO THE VOTERS AT THE NOVEMBER 2, 2010 STATEWIDE GENERAL ELECTION, A PROPOSED ORDINANCE AMENDING CHAPTER 4.28 OF THE OAKLAND MUNICIPAL CODE, TELEPHONE UTILITY USERS TAX TO EXPAND THE DEFINITION OF "TELEPHONE COMMUNICATION SERVICES" TO INCLUDE MORE FORMS OF MODERN COMMUNICATIONS TECHNOLOGY NOT CURRENTLY TAXED WITHOUT INCREASING THE TAX RATE; AND DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION IN ACCORDANCE WITH THE NOVEMBER 2, 2010 STATEWIDE GENERAL ELECTION.

**WHEREAS**, the City of Oakland has imposed a telephone utility users tax on all persons in the City using telephone communications services since 1968; and

**WHEREAS**, in June 2008 the voters approved amendments modernizing the definition of telecommunications services in Oakland's telephone utility users tax to uniformly address evolving forms of transmissions communications, remove outdated definitions and references to outdated federal laws; and

**WHEREAS**, the Council determines that it is in the best interest of the City of Oakland to submit a telephone utility users tax to the voters that will expand the tax base to include more forms of modern communications technology; and

**WHEREAS**, accordingly, the City Council of the City of Oakland desires to amend Section 4.28.020 the Oakland Municipal Code in order to expand the definition of "telephone communication services" to include more forms of modern communications technology that currently is not taxed without increasing in the current tax rate; and

**WHEREAS**, the City will deposit all revenues it receives from the tax in the general fund of the City to be expended for any lawful public purpose; now, therefore, be it

**RESOLVED:** that the City Council does hereby submit to the voters at the statewide general election, not more than 88 days and not more than 150 days from the date of passage of this resolution, the text of the proposed ordinance, which shall read as follows:

Be it ordained by the People of the City of Oakland:

**Section 1.** The Municipal Code is hereby amended to add, delete, or modify sections as set forth below: section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by strike-through type; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed.

**Section 2. Code Amendment.** Section 4.28.020 of the Oakland Municipal Code is hereby amended to read as follows:

**4.28.020 Definitions.**

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

“City” means the City of Oakland.

“Commercial or industrial plant location” means one or more contiguous sites for which the service user receives one or more utility billings.

“Month” means a calendar month.

“Person” means any domestic or foreign corporation, firm, association, syndicate, joint-stock company, partnership of any kind, joint venture, club, Massachusetts business or common-law trust, society, or individual, whether engaged in First Amendment or non-First Amendment enterprises.

“Primary place of use” of a telephone communications service shall be the address to which the service supplier sends invoices for that service unless the service user provides evidence to the reasonable satisfaction of the Tax Administrator that the billing address is not the primary place of use.

“Service address” means the address or location where the user has its equipment (e.g., cellular phone, telephone, pager, facsimile machine) receiving utility services.

“Service supplier” means a person required to collect and remit a tax imposed by this chapter.

“Service user” means a person required to pay a tax imposed by this chapter.

“Tax administrator” means the Director of Finance and Management Agency of the City of Oakland or his or her designee.

“Telephone corporation”, “electrical corporation”, “gas corporation” and “cable corporation” shall have the same meanings as defined in Section 234, 218 and 222, 215.5, respectively, of the Public Utilities Code of the state of California, as said sections existed on January 1, 1975. “Electrical corporation” shall also be construed to include any municipality, district or franchised agency engaged in selling or supplying electrical power.

“Telephone communication services” shall have the following meaning:

1. “Telecommunication services” includes the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whether or not such information is transmitted through interconnected service with the public switched network, whatever the technology used, whether such transmission, conveyance or routing occurs by wire, cable, fiber-optic, light wave, laser, microwave, radio wave (including, but not limited to, cellular service, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service – see 47 USCA Section 332(c) (7) (C) (i) – regardless of radio spectrum used), switching facilities, satellite or any other technology now existing or developed after the adoption of this section, and includes, without limitation, fiber optic, coaxial cable, and wireless.
2. The term “telephone communication services” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that are functionally integrated with telecommunications services.
3. “Telephone communication services” includes, but is not limited to, the following services, regardless of the manner or basis on which such services are calculated or billed: central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling), local number portability, text messaging, ancillary telecommunication services, prepaid and post-paid telecommunications services (including but not limited to prepaid calling cards); mobile telecommunications service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); and value-added non-voice data service.

4. For purposes of this section, "private telecommunication service" means any dedicated telephone communications service that entitle a user to exclusive or priority use of communications channels.
5. "Telephone communication services" does not include: internet access services; video programming services; and digital downloads, such as downloads of books, music, ringtones, games and similar digital products

'Telephone communication services' includes any telephonic quality communication for the purpose of transmitting messages or information (including but not limited to voice, telegraph, teletypewriter, data, facsimile, video, or text) by electronic, radio or similar means through 'interconnected service' with the 'public switched network' (as these terms are commonly used in the Federal Communications Act and the regulations of the Federal Communications Commission — see 47 USCA Section 332(d)), whether such transmission occurs by wire, cable, fiber optic, light wave, laser, microwave, broadband, computer processing applications such as voice over internet protocol service and services classified by the Federal Communications Commission as "enhanced" or "value added," radio wave (including, but not limited to, cellular service, wireless broadband, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service — see 47 USCA Section 332(c) (7) (C) (i) — regardless of radio spectrum used), switching facilities, satellite, any other similar facilities, or any other technology now existing or developed after the adoption of this ordinance. Telephone communication services does not include charges for internet access or digital downloads, such as downloads of books, music, ringtones, games and similar digital products.'

"Utility" means any person, whether or not regulated by the Public Utilities Commission, that distributes or provides services regarding tangibles or intangibles via the public rights-of-way including but not limited to furnishing services such as telephone, gas, alternate fuels, electrical, cable television, pay television, satellite dish reception, teletype writer, facsimile exchange and other electronic and telecommunication transmissions.

**Section 4. Severability.** If a court of competent jurisdiction determines that any provision of this Ordinance, or its application to any person or circumstance is unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

**Section 5. California Environmental Quality Act Requirements.** This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., including without limitation Public Resources Code section 21065, CEQA Guidelines 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment.

**Section 6. Majority Approval; Effective Date.** This Ordinance shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council.

**Section 7. Council Amendments.** The City Council of the City of Oakland is hereby authorized to amend Section 4.28.020 of the Oakland Municipal Code as adopted by this Ordinance in any manner that does not increase the rate of the telephone users tax, otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution or entirely dispense with the requirement for independent audits stated in Section 4.28.190; and be it

**FURTHER RESOLVED:** That each ballot used at said election shall have printed therein, in addition to any other matter required by law, the following:

**AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE, TELEPHONE UTILITY TAX, TO EXPAND THE DEFINITION OF "TELEPHONE COMMUNICATION SERVICES" TO INCLUDE FORMS OF MODERN COMMUNICATIONS TECHNOLOGY NOT CURRENTLY TAXED, WITHOUT INCREASING THE TAX RATE**

Measure __. Shall the Oakland Municipal Code's Telephone Utility Users Tax be amended to expand the definition of "telephone communication services" to include more forms of modern communications technology that currently are not taxed, without increasing the current tax rate?	Yes	
	No	

and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes and directs the City Clerk of the City of Oakland (the "City Clerk") at least 88 days prior to November 2, 2010, to file with the Alameda County Clerk certified copies of this resolution; and be it

**FURTHER RESOLVED:** That the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Oakland, the Government Code and the Elections Code of the State of California; and be it

**FURTHER RESOLVED:** That in accordance with the Elections Code and Chapter 11 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for and against said proposed Ordinance and rebuttals, and said date shall be posted in the Office of the City Clerk; and be it

**FURTHER RESOLVED:** That, if the voters approve this Ordinance, the City Administrator is hereby directed to give written notification to service suppliers, on or after the effective date of the Telephone Access Tax, requesting that the service suppliers collect the tax pursuant to Section 799(a)(6) of the California Public Utilities Code.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT DE LA FUENTE

AYES-

NOES-

ABSENT-

ABSTENTION

Attest: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the  
Council of the City of Oakland, California