

OFFICE OF THE CITY CLERK

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER _____

2008 JUN 01 PM 6:00

Katherine M. Boyd
CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. 81107 C.M.S.

A RESOLUTION SUBMITTING TO THE VOTERS AT THE JUNE 3, 2008 SPECIAL ELECTION A PROPOSED ORDINANCE AMENDING CHAPTER 4.28 OF THE OAKLAND MUNICIPAL CODE IN ORDER TO MODERNIZE THE PROVISIONS OF THE TELEPHONE UTILITY USERS TAX WITHOUT INCREASING THE TAX RATE; REQUESTING CONSOLIDATION OF THE ELECTION WITH THE GENERAL ELECTION TO BE HELD JUNE 3, 2008; REQUESTING THE SERVICES OF THE REGISTRAR OF VOTERS; AND DIRECTING THE CITY CLERK TO TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE SPECIAL 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, municipal ordinances similar to Oakland's telephone utility users tax have been the subject of court challenges due to outdated definitions or references to outdated federal laws; and

WHEREAS, the City requires reasonable certainty in the collection and receipt of General Fund taxes and the City Council has determined that the steps it takes now are necessary to eliminate potential legal issues and to ensure continued collection of tax revenue that is essential for the City to continue to provide vital public services; 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 use modern terminology that will remain current regardless of changes in technology; and

WHEREAS, accordingly, the City Council of the City of Oakland desires to amend Section 4.28.030 the Oakland Municipal Code in order to remove outdated language and to modernize the telephone utility users tax without increasing in the current tax rate; and

WHEREAS, the City desires to treat users of communications services in a uniform and equitable manner, regardless of the means of transmission or technology used, so that users of communications services transmitted by traditional technologies bear an equitable tax burden when compared with users of communications services transmitted via newly developed technologies; and

WHEREAS, the proposed definitions are technology-neutral and reflect the modern use of communications so that all telephone communications users will be treated equally; and

WHEREAS, all revenues received from the tax will be deposited in the general fund of the City to be expended for general fund purposes; now, therefore, be it

RESOLVED: That the City Council of the City of Oakland does hereby request that the Board of Supervisors of Alameda County order the consolidation of the Special Municipal election of June 3, 2008, with the statewide general election of June 3, 2008, consistent with the provisions of state law; and, be it

FURTHER RESOLVED: That the City Council of the City of Oakland does hereby submit to the voters at the June 3, 2008 special election the text of the proposed ordinance, which shall be as follows:

AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE IN ORDER TO MODERNIZE THE TELEPHONE UTILITY USERS TAX SO THAT ALL TELEPHONE COMMUNICATIONS SERVICE USERS ARE TREATED EQUALLY REGARDLESS OF THE TECHNOLOGY USED AND WITHOUT INCREASING THE TAX RATE.

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' 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.

~~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.~~

~~‘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 Treasurer of the City of Oakland.~~

~~‘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.~~

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~~'Utility' means any person, whether Public Utilities Commission ("P.U.C.") or non-P.U.C. regulated, 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 3. Code Amendment. Section 4.28.030 of the Oakland Municipal Code is hereby amended to read as follows:

4.28.030 Telephone users tax imposed.

A. There is imposed a tax upon every person, other than a telephone corporation, using telephone communication services including, but not limited to, cellular telephones and facsimile transmissions, whose place of primary use is within the city of Oakland. The tax imposed by this section shall be at the rate of seven and one-half (7.50) percent of all charges made for such services and shall be paid by the person using such services, and collected by the provider of such services.

B. The following shall be exempt from the tax imposed by this section:

(1) Charges paid for by inserting coins in coin-operated telephones available to the public with respect to local telephone service, or with respect to long distance telephone service if the charge for such long distance 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, any charges for 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 a person engaged in such activity.

(3) Charges for services furnished to an international organization or to the American National Red Cross.

(4) Charges for any long distance telephone service which originates within a combat zone, as defined in section 112 of the Internal Revenue Code, from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate setting forth such facts as the Secretary of the U.S. Treasury may by regulations prescribe is furnished to the person receiving such payment.

(5) Charges for any long distance telephone service to the extent that the amount so paid 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) Amounts paid by a nonprofit hospital for services furnished to such organization. For purposes of this subsection, the term 'nonprofit hospital' means a hospital referred to in Internal Revenue Code section 170(b)(1)(A)(iii) which is exempt from income tax under Internal Revenue Code section 501(a).

(7) Charges for services or facilities furnished to the government of any State, or any political subdivision thereof, or the District of Columbia.

(8) Charges paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term 'nonprofit educational organization' means an educational organization described in Internal Revenue Code section 170(b)(1)(A)(ii) which is exempt from income tax under Internal Revenue Code section 501(a). The term also includes a school operated as an activity of an organization described in Internal Revenue Code section 501(c)(3) which is exempt from income tax under Internal Revenue Code section 501(a), 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.

~~A. There is imposed a tax upon every person, other than a telephone corporation, using telephone communication services including, but not limited to, cellular telephones and facsimile transmissions, whose place of primary use is within the jurisdictional boundaries of the city of Oakland. The tax imposed by this section shall be at the rate of~~

~~seven and one half (7.50) percent of all charges made for such services and shall be paid by the person using such services, and collected by the provider of such services.~~

~~B. The following shall be exempt from the tax imposed by this section:~~

~~—— (1) Charges paid for by inserting coins in coin-operated telephones available to the public with respect to local telephone service, or with respect to long distance telephone service if the charge for such long distance 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, any charges for 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 a person engaged in such activity.~~

~~—— (3) Charges for services furnished to an international organization or to the American National Red Cross.~~

~~—— (4) Charges for any long distance telephone service which originates within a combat zone, as defined in section 112 of the Internal Revenue Code, from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate setting forth such facts as the Secretary of the U.S. Treasury may by regulations prescribe is furnished to the person receiving such payment.~~

~~—— (5) Charges for any long distance telephone service to the extent that the amount so paid 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) Amounts paid by a nonprofit hospital for services furnished to such organization. For purposes of this subsection, the term 'nonprofit hospital' means a hospital referred to in Internal Revenue Code section 170(b)(1)(A)(iii) which is exempt from income tax under Internal Revenue Code section 501(a).~~

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Section 4. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be 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. 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 6. Council Amendments. The City Council of the City of Oakland is hereby authorized to amend Sections 4.28.020, 4.28.030 and 4.28.190 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.

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed ordinance, and said date shall be posted in the Office of the City Clerk; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3 of the Oakland Municipal Code, the City Clerk shall provide for notice and publication as to said proposed ordinance in the manner provided for by law; and be it

FURTHER RESOLVED: That the City Council does hereby request that the Registrar of Voters of the County of Alameda perform necessary services in connection with said election.

FURTHER RESOLVED: That the City Clerk is hereby directed to obtain printing, supplies and services as required.

FURTHER RESOLVED: That the City Clerk is hereby authorized to provide such other services and supplies in connection with said election as may be required by the Statutes of the State of California and the Charter of the City of Oakland.

FURTHER RESOLVED: That the City Clerk and City Administrator are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the special election and appropriate all monies necessary for the City Administrator and City Clerk to prepare and conduct the June 3, 2008 special election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA, March 4, 2008

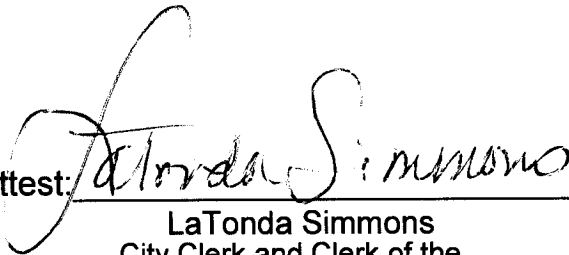
PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, ~~KERNIGHAN~~, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE - 7

NOES- 0

ABSENT- Kernighan - 1

ABSTENTION - 0

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