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CITY OF OAKLAND

Agenda Report

To: Office of the City Manager
Attn: Deborah A. Edgerly
From: Finance and Management Agency
Date: October 28, 2003

Re: Report and Resolution Submitting, on the Council's Own Motion, to Electors at the March 2, 2004 Election, a Proposed Ordinance Amending Section 4.28.030 of the Oakland Municipal Code so that Wireless Telephonic Service Providers will be Required to Apply the City of Oakland's Utility User's Tax ("UUT") in Accordance with the Sourcing Rules of Section 117 of the Federal Mobile Telecommunications Sourcing Act of 2000, and Directing the City Clerk to Fix the Date for Submission of Arguments and to Provide for Notice and Publication in Accordance with the March 2, 2004 Election

SUMMARY

The Finance and Management Agency, Revenue Division, is proposing to amend Section 4.28.030 of the Oakland Municipal Code. This amendment will conform the City of Oakland's Utility User's Tax ("UUT") to the sourcing rules of Section 117 of the Federal Mobile Telecommunications Sourcing Act of 2000 ("MTSA"). The MTSA is a federal law applicable to wireless customer's bills issued after August 1, 2002.

The MTSA permits a local jurisdiction to tax wireless telephone services if the jurisdiction's territorial limits encompass a customer's place of primary use, regardless of where a wireless call originates or terminates.

This MTSA methodology for imposing the tax on the entire amount of the customer's bill represents a change in taxing methodology that must be approved by the voters pursuant to Proposition 218.

FISCAL IMPACT

Although the goal of the MTSA was to craft a solution that achieved the desired administrative simplification but was substantially revenue neutral, it is estimated that by imposing the tax on all wireless subscribers with a billing address in

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Oakland, regardless of origination or termination of the call, the City will benefit by \$1,350,000 million annually. This estimation is based on the difference of the application of the UUT on the gross receipts reported on the various wireless providers' Business Tax accounts to their current remittances.

BACKGROUND

Section 4.28.030 of the Oakland Municipal Code was originally written to conform to the Supreme Court's decision in *Goldberg vs. Sweet*. In this ruling, the Court stated that for cities to have jurisdiction to impose taxes on interstate telecommunications, the call must either originate or terminate in a given city and the service address to which the call is charged must also be in the city.

The complexity of applying the Goldberg method to wireless telecommunications arises from the inherent difficulty in identifying the precise location from which a call is placed. Wireless carriers claim it is too burdensome to collect the tax based upon origination and termination of calls. In fact, prior to 1998, they claim the technology did not exist. To this day, according to an industry representative, the origination of land-to-mobile calls still cannot be identified.

The MTSA specifically changes this method of sourcing wireless services. By working together, state and local government associations and the wireless industry developed a uniform method for sourcing wireless telecommunications services to the appropriate taxing jurisdictions. The new method, which assumes that all wireless calls are sourced to the subscribers' residential or business address, whichever is the place of primary use, resolves many of the administrative complexities of the current system. However, the MTSA does not itself impose any tax. Nor does it authorize collection of any tax that local law has not validly imposed. A city must still follow procedural requirements imposed by state law to enact or amend a local taxing ordinance before it may validly tax those services.

KEY ISSUES AND IMPACTS

Staff has been in contact with the various cellular companies regarding their application of the UUT. Staff has learned that AT&T Wireless applies the tax on the first \$20 of the customer's bill; Verizon and Metro PCS will not divulge the methodology used, however, it is suspected to be less than what the current UUT ordinance allows; Nextel, Cingular Wireless and Sprint remit the UUT pursuant to the MTSA, voluntarily.

AT&T and Verizon have concurred that their remittances are not in compliance with the current UUT Ordinance because of the existence of technological obstacles (i.e. determining origination and termination of calls) and the burdensome nature of determining charges subject to the UUT. (It should be

noted that the City of Los Angeles has imposed the provisions of the MTSA without modifying their UUT Ordinance. This action has resulted in a lawsuit being filed in September 2003 by AT&T and Verizon against the City of Los Angeles claiming its action is a direct violation of Proposition 218.)

The proposed changes to Chapter 4, Article 28 of the Oakland Municipal Code would ease the difficulty in identifying taxable revenues for both reporting and auditing purposes, would apply the tax in compliance with the MTSA and would enable staff to guarantee compliance uniformly.

PROGRAM DESCRIPTION

The Utility User's Tax is imposed upon every person with a service address in Oakland, other than a telephone corporation, (as defined by and licensed by the California Public Utilities Commission), using intrastate, interstate, or international telephone communication services including, but not limited to, cellular telephones and facsimile transmissions for communications originating or terminating with Oakland's borders. The tax imposed is at the rate of seven and one-half (7.50) percent of all charges made for such services and is paid by the person receiving such services, and collected by the provider of such services.

SUSTAINABLE OPPORTUNITIES

Adopting the proposed amendment to Section 4.28.030 of the Oakland Municipal Code will allow staff to more easily audit remittances, while allowing the wireless companies to more easily determine taxable revenues.

DISABILITY AND SENIOR CITIZEN ACCESS

This section is not applicable.

RECOMMENDATION AND RATIONAL

Staff recommends approving the proposed amendment to Chapter 4, Article 28 of the Municipal Code and forwarding the proposed ordinance conforming Oakland's UUT to the MTSA to the voters at the March 2, 2004 election.

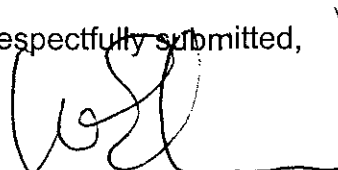
ALTERNATIVE RECOMMENDATION

There are no alternative recommendations.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the Council approve the amendments to Section 4.28.030 of the Municipal Code and forward to the March 2, 2004 election to seek voter approval.

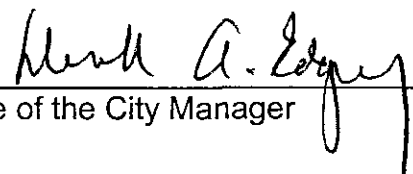
Respectfully submitted,



WILLIAM E. NOLAND
Interim Director, Finance and
Management Agency

Prepared by:
Debra Taylor Johnson
Revenue Manager

APPROVED FOR FORWARDING TO THE
FINANCE AND MANAGEMENT COMMITTEE:


Office of the City Manager

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**The Mobile
Telecommunications
Sourcing Act**

July 28, 2000

Pub.Law 106-252 (HR 4391)

4 U.S.C. §§ 116-26

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UNITED STATES CODE
TITLE 4. FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES
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4 U.S.C. § 117

§ 117. Sourcing rules

(a) Treatment of charges for mobile telecommunications services.-- Notwithstanding the law of any State or political subdivision of any State, mobile telecommunications services provided in a taxing jurisdiction to a customer, the charges for which are billed by or for the customer's home service provider, shall be deemed to be provided by the customer's home service provider.

(b) Jurisdiction.--All charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider under sections 116 through 126 of this title are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunication services originate, terminate, or pass through, and no other taxing jurisdiction may impose taxes, charges, or fees on charges for such mobile telecommunications services.

(Added Pub.L. 106-252, § 2(a), July 28, 2000, 114 Stat. 627.)

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INTRODUCED BY COUNCILMEMBER _____



CITY ATTORNEY

RESOLUTION NO. _____ C.M.S.

RESOLUTION SUBMITTING, ON THE COUNCIL'S OWN MOTION, TO ELECTORS AT THE MARCH 2, 2004 ELECTION, A PROPOSED ORDINANCE AMENDING SECTION 4.28.030 OF THE OAKLAND MUNICIPAL CODE SO THAT WIRELESS TELEPHONIC SERVICE PROVIDERS WILL BE REQUIRED TO APPLY THE CITY OF OAKLAND'S UTILITY USER'S TAX ("UUT") IN ACCORDANCE WITH THE SOURCING RULES OF SECTION 117 OF THE FEDERAL MOBILE TELECOMMUNICATIONS SOURCING ACT OF 2000, AND DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND TO PROVIDE FOR NOTICE AND PUBLICATION IN ACCORDANCE WITH THE MARCH 2, 2004 ELECTION

WHEREAS, the Federal Mobile Telecommunications Sourcing Act of 2000 ("MTSA") is a federal law that clarifies how a local Utility User's Tax ("UUT") can be applied to cellular telephone users and is applicable to wireless customer's bills issued after August 1, 2002; and

WHEREAS, the MTSA provides a simplified formula for imposing a user's tax on wireless telephone services, so that if the jurisdiction's territorial limits encompass a customer's place of primary use, all calls are subject to the tax regardless of where a wireless call originates or terminates; and

WHEREAS, the City of Oakland's current utility user's tax for cellular telephone use does not incorporate the new MTSA standard and requires that the tax be applied only to calls that "originate" or "terminate" in Oakland; and

WHEREAS, the City of Oakland's current UUT formula is cumbersome and complicated because it requires tracking cellular calls based on their point of origination and termination, making it difficult for the City to monitor compliance; and

WHEREAS, by applying the MTSA standard to the collection of UUT revenues in the City of Oakland, revenues would increase because the MTSA standard would apply to all calls when a customer's place of primary business is in Oakland, and not just calls originating or terminating in Oakland; and

WHEREAS, adoption of the MTSA standard imposing the tax on the entire amount of the customer's bill represents a change in taxing methodology that must be approved by the voters pursuant to Proposition 218; and

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WHEREAS, for the reasons stated hereinabove, the Finance and Management Agency, Revenue Division, is proposing to amend Section 4.28.030 of the Oakland Municipal Code to conform the City of Oakland's Utility User's Tax ("UUT") as applied to cellular telephones with the sourcing rules of Section 117 of the Federal Mobile Telecommunications Sourcing Act of 2000 ("MTSA").

NOW, THEREFORE, BE IT RESOLVED:

In order to achieve uniformity, minimize the loss of revenue to the City of Oakland and to provide a simplified and uniform methodology for collecting the UUT on cellular telephone calls, the City Council finds and determines that the City of Oakland's Utility User's Tax ("UUT") should be amended as it applies to wireless (cellular) telephone usage so that the tax conforms to the Sourcing Rules of Section 117 of the Federal Mobile Telecommunications Sourcing Act of 2000 ("MTSA").

FURTHER RESOLVED: This new methodology for imposing the tax on the entire amount of the customer's bill subject to the MTSA represents a change in taxing methodology that must be approved by the voters pursuant to Proposition 218.

FURTHER RESOLVED: That the City Council does hereby submit to the voters at the March 2, 2004 general election the text of the proposed ordinance, which shall be as follows:

"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. Section **4.28.030** of the Municipal Code is hereby amended to read as follows:

4.28.030400 Telephone Users Tax imposed.

A. There is imposed a tax upon every telecommunications service customer whose place of primary use is within the jurisdictional boundaries of the City of Oakland, ~~every person with a service address in the city,~~ other than a telephone corporation, (as defined by and licensed by the California Public Utilities Commission), using ~~intrastate, interstate, or international~~ telephone communication services including, but not limited to, cellular telephones and facsimile transmissions ~~for communications originating or terminating in the city.~~ 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 receiving such services, and collected by the provider of such services.

B. As used in this section, the term "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones 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 included in the base for computing the amount of tax due; nor shall the term "telephone communication services" include land mobile services or maritime mobile

services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations, as such section existed on July 1, 1968.

C. Notwithstanding the provisions of subsection A of this section, the tax imposed under this section shall not be imposed upon any person for using intrastate telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed by Section 4251 of Title 26 of the United States Code, as such section existed on July 1, 1968, without regard to subsection (b) thereof. (Prior code § 5-23.03)”

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 March 2, 2004, to file with the Alameda County Clerk certified copies of this resolution; and be it

FURTHER RESOLVED: That the City Council does hereby request that the Board of Supervisors of Alameda County include on the ballots and sample ballots the recitals and measure language contained in this resolution to be voted on by voters of the qualified electors of the City of Oakland; 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 each ballot used at said municipal election shall have printed therein, in addition to any other matter required by law the following:

PROPOSED ORDINANCE

A PROPOSED ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO REQUIRE WIRELESS TELEPHONIC SERVICE PROVIDERS TO APPLY THE CITY OF OAKLAND’S UTILITY USER’S TAX (“UUT”) IN ACCORDANCE WITH THE FEDERAL MOBILE TELECOMMUNICATIONS SOURCING ACT OF 2000.

MEASURE _____

Measure _____. Shall the Oakland Municipal Code be amended in order to require wireless telephonic service providers to apply the City of Oakland’s Utility User’s Tax (“UUT”) consistent with the Federal Mobile Telecommunications Sourcing Act of 2000 by imposing the tax on all calls regardless of the origination or termination of the call?	Yes	
	No	

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; and be it

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

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; 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 or against said proposed ordinance, and said date shall be posted in the Office of the City Clerk; and be it

FURTHER RESOLVED: That the City Clerk and City Manager are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the March 2, 2004 election and appropriate all monies necessary for the City Manager and City Clerk to prepare and conduct the March 2, 2004 election, consistent with law.

FURTHER RESOLVED: That if the electors approve the adoption of the herein proposed ordinance at the March 2, 2004 election, the ordinance shall become effective 30 days from the date the electoral results are certified by the City Clerk and adopted by the City Council.

IN COUNCIL, OAKLAND, CALIFORNIA, NOVEMBER __, 2003

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, BROOKS, NADEL, REID, QUAN, WAN AND PRESIDENT DE LA FUENTE
NOES-
ABSENT-
ABSTENTION

ATTEST: _____
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

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