



REPORT TO COUNCIL

City of Sacramento

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Consent Calendar
June 10, 2008

Honorable Mayor and
Members of the City Council

Title: Pass for Publication: Ordinance: Utility User Tax Rate Reduction and Update for Communications Services

Location/Council District: Citywide

Recommendation: Pass for Publication an ordinance to reduce the Utility User Tax on users of communications services from 7.5% to 7%, and to update the definitions to include modern communications technologies within the tax base so all technologies and users are treated the same.

Contact: Marty Hanneman, Assistant City Manager, (916) 808-5704

Patti Bisharat, Director of Governmental Affairs, (916) 808-8197

Presenters: N/A

Department: City Manager's Office

Division: Governmental Affairs

Organization No: 0310

Description/Analysis

Issue: With emerging technologies now providing traditional telephone services, the City's Utility User Tax ordinance is not applied to all communications users equally. The proposed ordinance will ensure that all technologies (and customers) are treated the same. The proposed ordinance also addresses changes in federal law. The ordinance once adopted will become effective upon voter approval.

Policy Considerations: The City seeks to treat users of communications services equally, regardless of the means of transmission or technology used. The proposed ordinance is consistent with this interest and will continue the existing tax rebates for low-income residents and required annual financial audits.

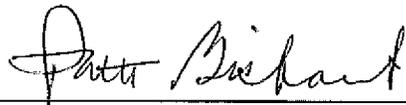
Environmental Considerations: None.

Rationale for Recommendation: The City's current ordinance contains old definitions and, as a result, the tax burden is not being shared equally. These old definitions also do not reflect recent changes in federal law. A number of California cities have adopted similar voter-approved ordinances in recent years.

Financial Considerations: As technologies for communication have evolved in recent years, the City has experienced a gradual erosion of revenue from the Utility User Tax for telecommunications-related services. As communication services continue to evolve from traditional landline telephones to newer technologies, the erosion of this important General Fund revenue source will begin to threaten the City's ability to maintain existing service levels for many of its most important services including Police, Fire Protection, and youth programs.

An updated ordinance will ensure all communications users are treated the same for tax purposes. Since minor increases of revenue are anticipated by updating the ordinance definitions to include modern communications technologies within the tax base, the proposed ordinance reduces the tax rate from 7.5% to 7% in an effort to make this update revenue-neutral at this time.

Emerging Small Business Development (ESBD): None.

Respectfully Submitted by: 

Recommendation Approved:

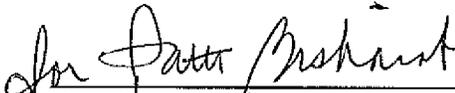

Ray Kerridge
City Manager

Table of Contents:

Report	pg. 1
Attachments	
1 Ordinance	pg. 3

ORDINANCE NO. _____

**ADOPTED BY THE SACRAMENTO CITY COUNCIL
ON _____**

AN ORDINANCE AMENDING SECTIONS 3.32.010 AND 3.32.030, AND REPEALING SECTION 3.32.040, OF CHAPTER 3.32, TITLE 3 OF THE SACRAMENTO CITY CODE TO UPDATE AND CLARIFY THE TELEPHONE USER TAX BY REPLACING IT WITH A COMMUNICATIONS USER TAX APPLICABLE TO CURRENT TECHNOLOGY TO ASSURE IT IS APPLIED FAIRLY, AND TO REDUCE THE TAX RATE.

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

BACKGROUND

- A. The City of Sacramento established a telephone user tax in 1969 for charges on telephone services, extended that tax in 1993 to include cellular and wireless telephone service, and has levied and collected a Utility User Tax on those services (Telephone User Tax or TUT) under the City's inherent powers as a charter city, and the current tax rate is 7.5%;
- B. The City desires to reduce the tax rate on communications services from 7.5% to 7% under the Communications User Tax (CUT);
- C. 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 (such as telephone land lines) do not bear a greater tax burden than users of communications services transmitted via newly developed technologies;
- D. The TUT contained rebates for low income persons and the City desires to continue those rebates in the CUT;
- E. The CUT will require annual financial audits of tax expenditures and will require voter approval of increases to the CUT.
- F. This Communications User Tax shall not apply to charges for the portion of cable or video television services that are subject to a cable or video television franchise fee;
- G. Telephony and related communications services have changed dramatically in recent decades; communications technology, telephone calling and marketing plans and state and federal legislation continue to evolve at a rapid pace;

- H. In particular, communications are no longer accomplished entirely through the switched network, wireless service has become prevalent, communications through other means are increasing in popularity, the overall cost of communications is declining, common charges are no longer based upon distance, and the federal government has been extremely active in adopting laws affecting the telecommunications industry;
- I. Updating and clarifying the TUT to include current technologies and reflect the realities of the current communications industry require voter approval under the California Constitution;
- J. The City depends upon the revenue generated by the TUT to continue providing essential City services such as police, fire protection and youth programs.

SECTION 2

Section 3.32.010 of the Sacramento City Code is amended to read as follows:

3.32.010 Definitions.

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

A. **“Cable Television Corporation”** has the same meaning as defined in Section 215.5 of the Public Utilities Code of the state of California, as said section existed on January 1, 1969.

B. **“City”** means the city of Sacramento.

C. **“Month”** means a calendar month.

D. **“Person”** means all domestic and foreign corporations, associations, syndicates, joint stock companies, partnerships of every kind, joint ventures, clubs, Massachusetts business or common law trusts, and societies.

E. **“Public Agency”** means a federal, state or local governmental agency or municipal corporation.

F. **“Service Supplier”** means a person required to collect and remit a tax imposed under the provisions of this chapter.

G. **“Service User”** means a person required to pay a tax imposed under the provisions of this chapter.

H. **“Tax Administrator”** means the Director of Finance of the City of Sacramento or his or her designee.

I. **“Telephone Corporation,” “Electrical Corporation” and “Gas Corporation”** shall have the same meanings as defined in Sections 234, 218 and 222, respectively, of the Public Utilities Code of the state of California, as such sections existed on January 1, 1969.

SECTION 3

Section 3.32.030 of the Sacramento City Code is amended to read as follows:

Section 3.32.030 Communications User Tax.

A. There is imposed a tax upon every Person with a billing or service address in the City, other than a Public Agency, who uses intrastate, interstate or international Communications Services, to the extent permitted by state and federal law. The tax imposed by this section shall be at the rate of seven percent of the charges made for such services and shall be paid by the person paying for such services.

B. The following words and phrases whenever used in this section shall be construed as defined herein:

1. **“Ancillary Telecommunications Services”** means services that are associated with or incidental to the provision, use or enjoyment of Communications Services, including but not limited to the following services: Conference Bridging Service, Detailed Telecommunications Billing Service, Directory Assistance Service, Vertical Service, and Voice Mail Service.

2. **“Communications Services”** means the transmission, conveyance, or routing of voice, audio, video, data or any other communications information or signals to a point, or between or among points, whatever the technology used, and whether or not that information is transmitted through interconnected service with the public switched network, or through fiber optic, coaxial cable, power line transmission, broadband, digital subscriber line or other wireless transmission. The term "Communications Services" includes 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 those 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 or data services that are functionally integrated with Communications Services. Communications Services include but are not limited to the following services, regardless of the manner or basis on which those 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; instant messaging; Ancillary Telecommunications Services; prepaid and post-paid telecommunications services (including but not limited to prepaid

calling cards); Mobile Telecommunications Services; Private Communications Services; paging services; Video Services; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); and 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers call in to pre-recorded or live service). Communications Services does not include either digital downloads such as e-mail or digital products such as books, music, ringtones, games and similar digital products, or that portion of cable or video television services subject to a cable or video television franchise fee.

3. **“Conference Bridging Service”** means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

4. **“Detailed Telecommunications Billing Service”** means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

5. **“Directory Assistance Service”** means an ancillary service of providing telephone number information or address information.

6. **“Mobile Telecommunications Services”** shall have the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations thereunder.

7. **“Private Communications Services”** means any dedicated Communications Services that entitle the user to the exclusive or priority use of communications channels.

8. **“Vertical Service”** means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

9. **“Video Programming”** means those programming services commonly provided to subscribers by a Video Service Supplier including but not limited to basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such Video Programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.

10. **“Video Services”** means Video Programming and any and all services related to the providing, recording, delivering, use or enjoyment of Video Programming (including origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video) using one or more channels by a Video Service

Supplier, regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes ancillary video services, data services, telecommunication services, or interactive communications services that are functionally integrated with Video Services.

11. **“Video Service Supplier”** means any person, company, or service which provides or sells one or more channels of Video Programming, or provides or sells the capability to receive one or more channels of Video Programming, including any telecommunications that are ancillary, necessary or common to the provision, use or enjoyment of the Video Programming, to or from a business or residential address in the City, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the Video Programming or telecommunications. A Video Service Supplier includes, but is not limited to, multi-channel Video Programming distributors (as defined in 47 U.S.C.A. Section 522(13)); open video systems (OVS) suppliers; and suppliers of cable television; master antenna television; satellite master antenna television; multi-channel multipoint distribution services (MMDS); Video Services using internet protocol (e.g., IP-TV and IP-Video), which provide, among other things, broadcasting and video on demand), direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of Video Services (including two-way communications), whatever their technology.

12. **“Voice Mail Service”** means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have to utilize the voice mail service.

C. The tax imposed in this section shall be collected from the Service User by the Person providing the intrastate, interstate or international Communication Services. The amount of tax collected in one month shall be remitted to the City collector on or before the last day of the following month. The amount on which the tax is based shall be the sum of all charges for such services included in the bill; except that if a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the Service Supplier or Service User reasonably identifies actual charges for services not subject to tax. The Service Supplier or Service User seeking a reduction has the burden of proving the proper valuation and apportionment of taxable and non-taxable charges based upon books and records that are kept in the regular course of business and in a manner consistent with generally accepted accounting principles.

D. Charges subject to the Communications User Tax include all amounts billed to the Service User for Communications Services, unless such charge is otherwise exempt from the tax as provided in this section or under state or federal law. Such charges include but are not limited to the following: connection, reconnection, termination, movement, or change of Communications Services; late payment fees;

detailed billing; Voice Mail Service and other messaging services; Directory Assistance Service; access and line charges; universal service charges; and regulatory, administrative and other cost recovery charges.

E. Mobile Telecommunications Services shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124). The Tax Administrator may issue and disseminate to Communications Services Suppliers who are subject to the tax collection requirements of this section, sourcing rules for the taxation of other Communications Services, including but not limited to prepaid Communications Services, post-paid Communications Services, and Private Communications Services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation. The Tax Administrator may also issue and disseminate to Communications Services suppliers who are subject to the tax collection requirements of this section, an administrative ruling identifying those Communications Services, or charges therefor, that are subject to the tax of subsection A. This administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this section, or increase an existing tax, except as allowed by California Government Code Section 53750(h)(2)(A).

F. The following shall be exempt from any tax imposed by this section:

1. News services. No tax shall be imposed under this section, except with respect to local telephone service, on any payment received from any Person 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 such person.

2. International organizations. No tax shall be imposed under this section on any payment received for services furnished to a public international organization in which the United States participates pursuant to treaty or Act of Congress, or to the American National Red Cross.

3. Servicemen in combat zone. No tax shall be imposed under this section on any payment received for any Communications Services which originates within a combat zone from a member of the Armed Forces of the United States performing service in such combat zone, as defined in and determined under Section 112 of Title 26 of the United States Code.

4. Items otherwise taxed. Only one payment of tax under this section shall be required with respect to the tax on any Communications Services.

5. Common carriers and communications companies. No tax shall be imposed

under this section on the amount paid for any Communications Services described in this section, 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. Nonprofit hospitals. No tax shall be imposed under this section on any amount paid by a nonprofit hospital for Communications Services furnished to such organization. For purposes of this subsection, the term "nonprofit hospital" means a hospital referred to in Section 170(b)(1)(A)(iii) of Title 26 of the United States Code, which is exempt from federal income tax under section 501(a) of Title 26 of the United States Code.

7. Exemption for nonprofit educational organizations. No tax shall be imposed under this section on any amount 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 Section 170(b)(1)(A)(ii) of Title 26 of the United States Code, which is exempt from federal income tax under section 501(a) of Title 26 of the United States Code, including a school operated as an activity of an organization described in section 501(c)(3) of Title 26 of the United States Code which is exempt from federal income tax under 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.

G. To prevent actual multiple taxation of any Communications Services that are subject to tax under this section, any Service User, upon proof that the Service User owed and has paid a tax in another taxing jurisdiction on the Communications Services, shall be allowed a credit against the tax imposed in Subsection A to the extent of the amount of the tax properly due and paid in the other taxing jurisdiction. However, no credit may be allowed for any tax paid to another taxing jurisdiction on any call to the extent that the call may not, under the Constitution and statutes of the United States, be made the subject of taxation by the other taxing jurisdiction. Nor shall the amount of credit exceed the tax owed to the City under this section.

H. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this section, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the Communications User Tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any Communications Services used by a Person with a service or billing address in the City shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this section. For Communications Services for which there is no billing address or primary physical location for the provision of services, the service address shall mean the point of sale of the services.

I. Amendment or Repeal. The Communications User Tax imposed by this Section may be decreased, repealed or amended by the City Council, but may not be increased without a vote of the people as required in California Constitution Article XIII C and California Government Code Section 53750(h).

J. Audit of Communications User Tax. The City shall annually audit the Communications User Taxes imposed by this Section to verify that tax revenues have been properly expended in accordance with the law. The annual audit shall be performed under the direction of the Director of Finance by a qualified independent third party employing reasonable, cost-effective procedures.

SECTION 4

Section 3.32.040 of the Sacramento City Code is repealed.

SECTION 5

Low-Income Refund. This ordinance does not change the existing low-income citizen tax refund program as provided for under Section 3.32.170 of the Sacramento City Code.

SECTION 6

Severability. If any portion of this ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this ordinance shall remain in effect. The people of the City of Sacramento hereby declare that they would have adopted each portion of this ordinance, notwithstanding the fact that any one or more portions of this ordinance is declared invalid or unenforceable and, to that end, the provisions of this ordinance are severable. If this ordinance is declared to be invalid, then the provisions of Sections 3.32.010, 3.32.030 and 3.32.040 as those Sections read on October 3, 2006, will become effective.

SECTION 7

Majority Approval; Effective Date. This ordinance shall be effective only if approved by a majority of the voters voting on this ordinance proposition and shall go into effect ten days after the vote is declared by City Council.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

Ayes:

Noes:

Abstain:

Absent:

Mayor Heather Fargo

ATTEST:

Shirley Concolino, City Clerk