

FILE NO. 080792

LEGISLATIVE DIGEST

[Replacing the Emergency Response Fee with a general tax at the same rates and with the same exemptions and modernizing the Telephone Users Tax without changing the rate or exemptions.]

Ordinance submitting to the voters an ordinance amending the Business and Tax Regulations Code by: (1) adding Article 10B, Sections 780-786, to replace the current Emergency Response Fee with a general tax at the same rates and with the same exemptions; (2) repealing Article 10A, Sections 750-770, to eliminate the existing Emergency Response Fee; and (3) amending Article 10 by adding Sections 721, 722, and 723, amending Sections 701, 703, 707.1, and 708, and repealing Sections 702 and 707.3, all to modernize and update the Telephone Users Tax without changing the tax rate or exemptions; and (4) amending Article 6, Section 6.1-1, to make conforming changes; and ratifying past collection of the Telephone Users Tax and the Emergency Response Fee.

Existing Law

Article 10A of the Business and Tax Regulations Code imposes an Emergency Response Fee (“ERF”) on telephone access lines to fund improvements to and operation of the City and County’s (“City”) 911 communications system. Under Section 753, the fee is imposed on every person who maintains access to the 911 communications system by subscribing to local telephone service within the City. The ERF applies to both wireline and wireless telephone service. Section 753 further requires fee revenues to be used exclusively to pay for eligible costs of the City’s 911 system. Section 754 lists six exemptions from the fee, including low-income customers subscribing to Lifeline telephone service. Section 755 sets the monthly fee at \$2.75 per access line, \$20.62 per trunk line and \$371.15 per high capacity trunk line.

Article 10, Section 703, of the Business and Tax Regulations Code imposes a Utility Users Tax on charges for “telephone communication services” (the “Telephone Users Tax” or “TUT”). Section 701(c) defines telephone communication services to “mean access to a telephone system and the privilege of telephonic-quality communications” and includes cellular telephone service. Under Section 703(d), the Telephone Users Tax does not apply to services that are exempt from the Federal Excise Tax imposed under 26 U.S.C. 4251 as such section existed on August 28, 1970 and as interpreted by the Internal Revenue Service prior to Revenue Notice 2006-50. Under Section 707.1, added by Proposition R in 1987, residential customers are exempt from the Telephone Users Tax for wireline, but not wireless, service.

Mayor, Supervisors Peskin, Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Sandoval

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Amendments to Current Law

This ordinance will make the following changes to current law:

1. The ordinance replaces the current ERF with a general tax at the same rates and with the same exemptions by doing the following:

(a) Repealing Article 10A of the Business and Tax Regulations Code to eliminate the existing ERF.

(b) Replacing the ERF with an Access Line Tax ("ALT") by adding a new Article 10B to the Business and Tax Regulations Code, which includes the following provisions:

(i) Section 780 states that the ALT will provide revenue for general fund services such as police, fire and emergency services.

(ii) Section 782 states that, like the ERF, the ALT will apply to each "access line" in the City. Section 781 defines access lines as any connection, whether by wire or wireless technology, from a customer location to a provider of "telephone communications service," including voice over Internet protocol ("VOIP") communications services. Section 781 defines "telephone communications service" by reference to the updated definition of that term set forth in the amended Article 10 (Telephone Users Tax).

(iii) Under Section 783, the same exemptions that apply to the ERF will apply to the ALT, including the exemption for low-income Lifeline service customers.

(iv) Section 784 states that the ALT monthly rates will be \$2.75 per access line, \$20.62 per trunk line and \$371.15 per high capacity trunk line. Beginning December 31, 2009, these rates will be increased annually by the increase in the consumer price index for the San Francisco area, if the Mayor and the Board of Supervisors approve the rate increase by Resolution.

(v) Section 785 states that, like the ERF, the ALT will be collected from telephone communications service subscribers by the telephone service supplier.

3. The ordinance changes the Telephone Users Tax in Article 10 of the Business and Tax Regulations Code, as follows:

(a) Section 701 modernizes and updates the definition of "telephone communications services" to apply to all current and future technologies used for telephone communications services, including VOIP service. This definition includes "ancillary telephone communications services" such as voicemail, call waiting, Caller ID, and conference calling

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services. Taxable telephone communications services exclude Internet access services that are exempt from taxation under federal law, video programming services and digital downloads such as books, music, video, ringtones and games.

(b) Section 703(a) clarifies that the tax applies to all charges for telephone communications services in the City, including service that is billed to a billing address in the City or provided to a service address in the City, to the extent permitted by federal and state law. The tax does not apply to suppliers of telephone communications services.

(c) Section 703(b) clarifies that the tax applies to all telephone communications service charges, including activation charges, universal service charges, and cost-recovery charges.

(d) Section 703(d) removes the current reference to the Federal Excise Tax, but recites and continues exemptions from the Telephone Users Tax provided by the Federal Excise Tax. In addition, Section 703(d) maintains the exemption for residential telephone communications service. Section 701 clarifies the definition of residential telephone communications service (the current definition is outdated), but it continues to mean wireline service to a residential address and not mobile service.

(e) Section 703(f) states that, if the price of a telephone communications service includes charges for taxable and non-taxable services, then the tax applies to the full price unless the service provider or customer identifies actual charges for the non-taxable service. This is known as a "bundling rule" and is a common practice for administering taxes.

(f) Section 708(d) authorizes the Tax Collector to issue administrative rules and regulations instructing telephone communications service suppliers how to apply the TUT and ALT. Section 708(d) also authorizes the Tax Collector to refrain from fully imposing the TUT and ALT and later reinstate these taxes without voter approval. Section 721 states that, if changes in federal or state law increase or decrease the City's authority to collect the TUT or the ALT, the City may collect the taxes accordingly. These provisions are designed to give the City flexibility to lower taxes and grant tax relief in appropriate cases without requiring those concessions to be permanent and are intended to allow the City to administer the tax consistently with changing federal law.

(g) Section 708(e) obliges service providers to collect and remit the TUT and the ALT if they "engage in business" in the City as that term is defined in Article 6, Section 6.2-12.

(h) Section 722 states that the Board of Supervisors may amend the TUT and the ALT without a vote of the electorate, as long as the changes do not increase the taxes approved by the voters in this ordinance. This will allow the Board to update the ordinance and alter its administration as circumstances warrant, but will require voter approval for a tax increase.

4. Section 7 of the ordinance ratifies and approves the City's collection of the TUT and the ERF to date.

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5. Section 8 of the ordinance states that the Treasurer and Tax Collector may, in his or her discretion, reimburse the telephone service providers who collect the ALT and TUT for any one-time costs they incur as a result of this Ordinance. Section 8 also states that the repeal of the ERF will take place 120 days after the official vote count is declared, in order to allow time for service providers to implement the ALT before the ERF is repealed

Background Information

Article XIII C of the California Constitution ("Proposition 218"), requires voter approval of any amendment that increases the amount or rate of tax or changes the methodology for imposing a tax. Under Proposition 218, the Board of Supervisors may impose taxes in any amount or at any rate which does not exceed the amount or rate approved by the voters.

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