

FILE NO. 080792

ORDINANCE NO. 145-08

1 ~~[Repealing-Replacing the Emergency Response Fee, Enacting an Access Line Tax, and~~
2 ~~Updating with a general tax at the same rates and with the same exemptions and modernizing~~
3 ~~the Telephone Users Tax without changing the rate or exemption.]~~

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

15 Note: Additions are *single-underline italics Times New Roman*;
16 deletions are *strikethrough italics Times New Roman*.
17 Board amendment additions are double underlined.
18 Board amendment deletions are ~~strikethrough normal~~.

18 Be it ordained that pursuant to Article XIIC of the Constitution of the State of California,
19 the Board of Supervisors hereby submits this ordinance to the qualified electors of the City
20 and County of San Francisco, at the November 4, 2008 general municipal election.

22 Be it ordained by the People of the City and County of San Francisco:

23 Section 1. Findings.

24 (a) ~~Repeal of Replacing the Existing Emergency Response Fee and Enactment~~
25 ~~of an Access Line with a General Tax.~~

1 (1) Since 1993, the City and County of San Francisco has imposed on telephone
2 access lines an Emergency Response Fee ("ERF") to fund improvements to and operation of
3 the City and County's 911 communication system.

4 (2) The ERF ordinance includes complex provisions to ensure that ERF revenues fund
5 only "eligible project costs."

6 (3) To ease administration and provide budgetary flexibility, the City and County
7 desires to replace the ERF with a general tax, the access line tax ("ALT") that would supply
8 general fund revenues that could support emergency services, as well as other essential City
9 services.

10 (4) To minimize disruption and confusion, the City and County desires to apply the
11 ALT in the same manner as the ERF was applied.

12 (5) The ALT will be imposed at the current ERF monthly rates: \$2.75 per access line,
13 \$20.62 per trunk line, and \$371.15 per high capacity trunk line. Future increases should be
14 limited to the inflation rate.

15 (6) As under the ERF, low-income telecommunications customers who receive
16 discounted "Lifeline" telecommunications service are exempt from the ALT.

17 (b) ~~Update of~~ Modernizing the Telephone Users Tax.

18 (1) Since 1970, the City and County of San Francisco has collected a Utility Users Tax
19 on charges for telephone communications services (Telephone Users Tax or TUT).

20 (2) Telephone communications services have changed dramatically since 1970.
21 Technology, carrier marketing plans, and federal and state regulation have changed
22 significantly and continue to do so.

23 (3) The TUT should be modernized and clarified to include current technologies,
24 accommodate future technologies, and reflect current marketing and regulatory realities.
25

1 Updating the TUT will ensure that users of various telephone communications services are
2 treated equitably, regardless of the technology used.

3 (4) Updating the TUT in this way requires voter approval.

4 (5) The TUT rate will remain at 7.5%.

5 (6) Under an ordinance approved by voters in 1987, residential use of wireline (but not
6 cellular or other wireless) communications service is exempt from the TUT. The updated TUT
7 continues this exemption.

8 (7) The other existing exemptions from the TUT will also continue.

9 (8) The updated TUT will not apply to video programming services; digital downloads,
10 such as music, books, ringtones and games; and Internet access services that federal law
11 excludes from tax.

12
13 Section 2. Article 10A of the San Francisco Business and Tax Regulations Code,
14 Sections 750-770, imposing the Emergency Response Fee (ERF), is hereby repealed in its
15 entirety.

16
17 Section 3. The San Francisco Business and Tax Regulations Code is hereby amended
18 by adding Article 10B, Sections 780 through 786, to read as follows:

19
20 **ARTICLE 10B: ACCESS LINE TAX**

21 **SEC. 780. PURPOSE.**

22 The tax imposed and levied by this Article is intended to provide revenue for such general fund
23 services as may be determined by the Board of Supervisors including, without limitation, police, fire,
24 and emergency services.

1
2 **SEC. 781. DEFINITIONS.**

3 *When used in this Article, the following terms shall have the following meanings:*

4 (a) **Access Line.** "Access line" means any connection or channel, whether by wire or by
5 wireless technology, that provides access to a from a customer location to a provider of
6 telephone communications service network services offered to the public for compensation.

7 "Access line" includes the assignment of a 10-digit telephone number under the North
8 American Numbering Plan for the purpose of providing telephone communications services,
9 including without limitation voice over Internet protocol telephone communications services,
10 using such telephone number.

11 (b) **Billing Address.** "Billing address" has the meaning given in Article 10 of this Code.

12 (c) **High Capacity Trunk Line.** "High capacity trunk line" shall mean a trunk line with a
13 capacity of at least 24 channels over a high capacity service, such as a 1.544 Mb, T-1, or
14 Integrated Services Digital Network (ISDN) Primary Rate Interface (PRI) line.

15 (d) **Lifeline Service.** "Lifeline service" means discounted telephone communications service
16 available to eligible low income residential customers.

17 (e) **Prepaid Calling Service.** "Prepaid calling service" means the right to access
18 telephone communications service, which must be paid for in advance and which enables the
19 origination of calls using an access number or authorization code, whether manually or
20 electronically dialed, and that is sold in predetermined units or dollars of which the number
21 declines with use in a known amount, without the provisioning of an access line.

22 (f) **Post-paid Calling Service.** "Post-paid calling service" means the
23 telecommunications service obtained by making a payment on a call-by-call basis either
24 through the use of a credit card or payment mechanism such as a bank card, travel card,
25 credit card, or debit card, or by charge made to a telephone number which is not associated

1 with the origination or termination of the telecommunications service without the provisioning
2 of an access line.

3 (g) **Service Address.** "Service address" has the meaning given in Article 10 of this Code.

4 (f)(h) **Telephone Communications Service.** "Telephone communications service" has the
5 meaning given in Article 10 of this Code.

6 (g)(i) **Service Supplier.** "Service supplier" means any person supplying an access line to any
7 telephone communications service subscriber within the City and County of San Francisco or the
8 billing agent of any such person.

9 (h)(j) **Telephone Communications Service Subscriber.** "Telephone communications service
10 subscriber" means any person required to pay a tax under this Article.

11 (i)(k) **Trunk Line.** "Trunk line" means a line between a service supplier's switching device
12 and a private branch exchange or automatic call distributing system, or other similar device, at a
13 telephone communications service subscriber location, provided however that "trunk line" shall not
14 include any such line which is marketed to customers and configured by the service supplier to deliver
15 only calls to the subscriber location and cannot be used by the subscriber to originate outgoing calls
16 from the subscriber location (e.g., direct inward dial lines).

17
18 **SEC. 782. IMPOSITION OF ACCESS LINE TAX.**

19 (a) There is hereby imposed a tax as provided in this article on every person who subscribes to
20 telephone communications services within the City and County of San Francisco, to the extent
21 permitted by federal and state law. The tax shall apply to each access line within the city's tax
22 jurisdiction, including, without limitation, access lines billed to a telephone account having a situs in
23 the city, as permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. § 116 et seq. There is
24 a rebuttable presumption that service billed to a billing address or provided to a service address in the
25 city is used, in whole or in part, within the city's boundaries and that such service is subject to taxation

1 under this article. The tax shall not apply to a prepaid calling service or a post-paid calling
2 service.

3 (b) The amount of the tax imposed by this section shall be paid, on a per-access-line basis, by
4 the person paying for telephone communications service; however, no telephone communications
5 service subscriber shall be required to pay more than \$55,000 in tax per account per service location
6 in any calendar year. The cost of wireless telephone communications services shall not be considered
7 for purposes of this subsection (b). The cap established by this subsection shall be adjusted annually in
8 accordance with the increase in the Consumer Price Index: All Urban Consumers for the
9 San Francisco / Oakland / San Jose Area for All Items as reported by the United States Bureau of
10 Labor Statistics, or any successor to that index, as of December 31st of each year, beginning with
11 December 31, 2009, and such increase shall take effect when 1) notice of the increase is given by the
12 Controller in the manner generally used by the Controller for notification of fee or tax changes and
13 2) such increase is approved by the Mayor and Board of Supervisors by resolution.

14 (c) Only one payment of the tax shall be required for any access line, trunk line or high
15 capacity trunk line, notwithstanding that access lines of more than one person are used in furnishing
16 telephone communications service to a telephone communications service subscriber.

17
18 **SEC. 783. EXEMPTIONS.**

19 Nothing in this Article shall be construed as imposing a tax upon the access lines of:

20 (a) A customer receiving Lifeline service; or

21 (b) A service supplier; or

22 (c) Coin-operated telephones; or

23 (d) A nonprofit hospital which is exempt from federal income tax under Section 501(a) of the
24 United States Code; or

1 (e) A nonprofit educational organization which is exempt from income tax under Section
2 501(a) of the United States Code; or

3 (f) Any person when imposition of such tax upon that person would violate the Constitution of
4 the United States or that of the State of California or preemptive federal or State law.

5
6 **SEC. 784. TAX SCHEDULE.**

7 The amount of the tax shall be \$2.75 per month per access line, \$20.62 per month per trunk line
8 and \$371.15 per month per high capacity line. These amounts shall be adjusted annually in
9 accordance with the increase in the Consumer Price Index: All Urban Consumers for the
10 San Francisco / Oakland / San Jose Area for All Items as reported by the United States Bureau of
11 Labor Statistics, or any successor to that index, as of December 31st of each year, beginning with
12 December 31, 2009, and such increase shall take effect 1) when notice of the increase is given by the
13 Controller in the manner generally used by the Controller for notification of fee or tax changes and
14 2) such increase is approved by the Mayor and Board of Supervisors by resolution.

15
16 **SEC. 785. COLLECTION OF TAX.**

17 (a) The tax imposed by this Article shall be collected from the telephone communications
18 service subscriber by the service supplier.

19 (b) The tax required to be collected by service suppliers under this ordinance shall be added to
20 and stated separately as the "San Francisco Access Line Tax" in the service supplier's billings to
21 telephone communications service subscribers. The charge identified as the San Francisco Access
22 Line Tax in such billings shall include only the amount authorized by this Article, and shall not
23 include any additional charges or fees which may be imposed by the service supplier to recover the cost
24 of collecting the tax.

1 (c) Nothing in this Article is intended to regulate the ability of a service supplier to recover
2 any costs of collecting the tax imposed under this Article, to the extent such that recovery may be
3 authorized by state or federal law.

4 (d) Except as otherwise stated in this Article, the tax imposed by this Article shall be collected
5 and remitted at the same time as and in the same manner as the tax imposed by Section 703 of
6 Article 10.

7 **SEC. 786. ADMINISTRATION OF TAX..**

8 Except as otherwise stated in this Article, the tax imposed by this Article shall be administered
9 in the same manner as the tax imposed by Section 703 of Article 10.

10
11 Section 4. The San Francisco Business and Tax Regulations Code is hereby amended
12 by adding Sections 721, 722, and 723, amending Sections 701, 703, 707.1, and 708, and
13 repealing Sections 702 and 707.3, to read as follows:

14 **SEC. 701. ADDITIONAL DEFINITIONS.**

15 When used in this Article, the following terms shall mean or include:

16 (a) "Ancillary Telephone Communications Services" shall mean services associated with or
17 incidental to the provision, use or enjoyment of telephone communications services, including but not
18 limited to:

19 (1) Services that link two or more participants in an audio or video conference call and that
20 may include the provision of a telephone number.

21 (2) Services that provide telephone number information, and/or address information, or any
22 other information that may assist in contacting another party via a telephone communications
23 service.

1 (3) Services offered in connection with one or more telephone communications services which
2 offer advanced calling features that allow customers to identify callers and to manage multiple
3 calls and call connections.

4 (4) Services that enable customers to store, send or receive recorded messages including, without
5 limitation, voice mail services.

6 (5) Services related to listing telephone communications service customer information in, or
7 excluding such information from, a directory or database.

8 (6) Services that provide customer billing information in a detailed or alternative format.

9 (b) "Billing Address" shall mean the mailing address to which a telephone communications
10 service supplier submits invoices or bills for payment by a service user.

11 (c)(d) "Electrical corporation," "gas corporation," and "telephone corporation" shall
12 have the same meanings as defined in Sections 218, 222 and 234, respectively, of the Public
13 Utilities Code of the State of California.

14 (d) "Residential Telephone Communications Service" shall mean telephone communications
15 service by a fixed line, wire or cable to a residential service address and includes voice over Internet
16 Protocol (VoIP) service that cannot be used at locations other than the service user's residential
17 service address. Residential telephone communications service excludes mobile telephone
18 communications services including mobile VoIP service.

19 (e) "Paging Service" shall mean a telephone communications service that provides
20 transmission of coded radio signals for the purpose of activating specific pagers; such
21 transmissions may include messages and/or sounds.

22 (f) "Service Address" shall mean the street address of a service user's primary place of usage.

23 (f)(g)(a) "Service User" shall mean a person required to pay a tax imposed under the
24 provisions of this Article.

1 (g)(h)(b) "Service Supplier" shall mean any person required to collect a tax imposed
2 under the provisions of this Article.

3 (h)(i)(e) "Steam Corporation" shall mean and include every "heat corporation," as
4 defined in Section 224 of the Public Utilities Code of the State of California, using steam to
5 deliver heat.

6 (i)(j)(e) "Telephone Communications Services" shall mean ~~access to a telephone system~~
7 ~~and the privilege of telephonic quality communications with substantially all persons having telephone~~
8 ~~or radio telephone stations which are part of such telephone system. "Telephone communication~~
9 ~~services" shall not include land mobile services or maritime mobile services as defined in Section 2.1 of~~
10 ~~Title 47 of the Code of Federal Regulations, as said Section existed on January 1, 1970.~~

11 ~~Notwithstanding this exclusion, "telephone communication services" shall include cellular telephone~~
12 ~~and enhanced specialized mobile radio communication services. the transmission, conveyance, or~~
13 ~~routing of voice, data, audio, video, or any other information or signals to a point, or between or~~
14 ~~among points, whatever the technology used, including without limitation wire, fiber optic, coaxial~~
15 ~~cable, power line transmission, light wave, laser, microwave, radio wave, satellite or any other form of~~
16 ~~wireless transmission, or any other technology now existing or developed after the adoption of this~~
17 ~~section, and whether or not such information is transmitted through interconnected service with the~~
18 ~~public switched network. Telephone communications service includes such transmission, conveyance,~~
19 ~~or routing in which computer processing applications are used to act on the form, code or protocol of~~
20 ~~the content for purposes of transmission, conveyance or routing without regard to whether such service~~
21 ~~is referred to as voice over internet protocol (VoIP) service or is classified by the Federal~~
22 ~~Communications Commission as enhanced or value added, and includes video and/or data services~~
23 ~~that are functionally integrated with telephone communications service. Telephone communications~~
24 ~~service includes without limitation the following services, regardless of the manner or basis on which~~
25 ~~such services are calculated or billed: ancillary telephone communications services; mobile telephone~~

1 communications service; paging service; and toll-free service800 service. Telephone
2 communications service does not include: internet access services to the extent they are exempt from
3 taxation under the Internet Tax Freedom Act, 47 U.S.C. 151 note; video programming services; and
4 digital downloads, such as downloads of books, music, video, ringtones, games and similar digital
5 products.

6 (j)(k) "Telephone communications service supplier" shall mean any person who provides
7 telephone communications service to a user of such service within the City, including, without limitation,
8 use outside the City which is within the City's tax jurisdiction under the Mobile Telecommunications
9 Sourcing Act, 4 U.S.C. § 116 et seq. The term includes any person required to collect or remit the tax
10 imposed by Section 703, including the billing agent of such person.

11 (k)(l)(f) "Water Corporation" shall mean and include every corporation or person
12 including the City and County owning, controlling, operating or managing any water system for
13 compensation within the State of California.

14 (m) "800 Service" shall mean a telephone communications service that allows a caller
15 to dial a toll-free number without incurring a charge for the call. "800 service" includes without
16 limitation services marketed as "800," "855," "866," "877," and "888" toll-free calling, and any
17 subsequent numbers designated by the Federal Communications Commission.

18
19 **~~SEC. 702. INTERPRETATION OF TELEPHONE USERS TAX.~~**

20 (a) ~~Since 1970, the City and County of San Francisco has collected a Utility Users Tax~~
21 ~~("UUT") on telephone communication services. The City levies the UUT under the City's inherent~~
22 ~~powers as a charter city. Since 1992, the tax rate has been 7.50 percent (7 1/2%).~~

1 ~~(b) When first adopted, the UUT referenced the Federal Excise Tax, 26 United States Code~~
2 ~~§ 4251 ("FET") as such Section existed on the effective date of the City's Ordinance. The FET applies,~~
3 ~~by its terms, to "local" and "toll" telephone services.~~

4 ~~(c) The UUT referred to the FET for the purpose of identifying the types of telephone~~
5 ~~communication services that were subject to the UUT and the types of services that were exempt from~~
6 ~~the UUT. The reference to the FET also provided a convenience to telephone service providers, who~~
7 ~~were able to bill end use customers based on an existing tax base. The FET was not a basis or authority~~
8 ~~for the City's imposition of the UUT.~~

9 ~~(d) In 1979, the IRS issued Revenue Ruling 79-404, which provided that toll telephone service~~
10 ~~that was billed based only on time was subject to the FET. Revenue Ruling 79-404 was consistent with~~
11 ~~the City's intent to apply the UUT to toll telephone service, regardless of how carriers elected to bill for~~
12 ~~such service. The IRS reaffirmed Revenue Ruling 79-404 in Notices issued in 2004 and 2005.~~

13 ~~(e) On May 25, 2006, the United States Treasury Secretary issued Revenue Notice 2006-50,~~
14 ~~announcing that the Internal Revenue Service ("IRS") would no longer interpret the FET to apply to~~
15 ~~toll telephone service that was billed on the basis on time only, and not on the basis of both time and~~
16 ~~distance. Revenue Notice 2006-50 reversed 27 years of administrative interpretation and practice of~~
17 ~~the IRS as it related to toll telephone service. As a result of Revenue Notice 2006-50, the IRS no longer~~
18 ~~interprets the FET to apply to toll calls billed on the basis of time only, and to certain other "bundled"~~
19 ~~services.~~

20 ~~(f) The City will continue to apply its UUT to all types of telephone communication services,~~
21 ~~including toll service, as it has historically and consistently done.~~

22 ~~(g) The City will continue to recognize and retain the exemptions that existed in the FET prior~~
23 ~~to Revenue Notice 2006-50.~~

24 ~~(h) The City will not apply the UUT to any telephone communication services that were not~~
25 ~~subject to the UUT prior to the issuance of Revenue Notice 2006-50.~~

1 (i) ~~These amendments do not increase the tax or create a new tax on telephone communication~~
2 ~~services.~~

3 (j) ~~The procedure to refund any tax, interest or penalty that has been overpaid or paid more~~
4 ~~than once, or has been erroneously or illegally collected or received by the City is set out in Business~~
5 ~~and Tax Regulations Code, Article 6, Common Administrative Provisions, Section 6.15-1, Refunds. The~~
6 ~~amendment to Section 714 clarifies that the reference to "this Code" in Section 714(a) refers to this~~
7 ~~process. It insures that the process of presenting a UUT claim is consistent with the required claims~~
8 ~~process for tax refunds in Section 6.15-1.~~

9
10 **SEC. 703. TELEPHONE USERS TAX.**

11 (a) There is hereby imposed a tax upon every person, other than a telephone
12 ~~corporation~~communications service supplier, using intrastate telephone communication services in
13 ~~the City and County. The tax imposed by this Section shall be on the charges made for such services,~~
14 ~~including minimum charges for services. The tax imposed by this Section shall be paid by the person~~
15 ~~paying for such services. who uses telephone communications service in the city, including intrastate,~~
16 ~~interstate, and international telephone communications service, to the extent permitted by federal and~~
17 ~~state law. The telephone users tax shall apply to all charges for telephone communications service~~
18 ~~within the city's tax jurisdiction, such as charges billed to a telephone account having a situs in the city~~
19 ~~as permitted by the Mobile Telecommunications Sourcing Act of 2000, 4 U.S.C. § 116 et seq. There is~~
20 ~~a rebuttable presumption that telephone communications service billed to a billing address or provided~~
21 ~~to a service address in the city is used, in whole or in part, within the city's boundaries and that such~~
22 ~~service is subject to taxation under this article. There is also a rebuttable presumption that a telephone~~
23 ~~communications service sold within the city that is not billed to a billing address or provided to a~~
24 ~~primary physical location in the city is used, in whole or in part, within the city's boundaries and that~~
25 ~~such service is subject to taxation under this article.~~

1 (b) As used in this Section, the term "charges" shall ~~not include charges for services paid~~
2 ~~for by inserting coins in coin-operated telephones, except that where such coin-operated telephone~~
3 ~~service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed~~
4 ~~monthly or other periodic charge shall be included in the base for computing the amount of tax due;~~
5 ~~nor shall the term "charges" include charges for any type of service or equipment furnished by a~~
6 ~~service supplier subject to Public Utility regulation during any period in which the same or similar~~
7 ~~services or equipment are also available for sale or lease from persons other than a service supplier~~
8 ~~subject to Public Utility regulation. The Telephone User Tax is intended to, and does, apply to all~~
9 ~~charges billed to a telephone having a situs in the City and County, irrespective of whether a particular~~
10 ~~telephone call originates and/or terminates within the City and County. In addition, effective~~
11 ~~September 1, 1993, the Telephone Users Tax is intended to, and does, apply to charges for cellular~~
12 ~~telephone service or enhanced specialized mobile radio communication service, when the service user~~
13 ~~has a billing address in the City and County. include without limitation: charges for activation,~~
14 ~~connection, reconnection, termination, movement, or change of telephone communications service; late~~
15 ~~payment fees; access and line charges, whether or not imposition of such charges is mandated or~~
16 ~~authorized by a regulatory agency; universal service charges and any other charges designed to assist~~
17 ~~in expanding access to telephone communications service; and regulatory, administrative and other~~
18 ~~cost recovery charges. The term "charges" shall include the value of any other services, credits,~~
19 ~~property of every kind or nature, or other consideration provided by the service user in exchange for~~
20 ~~telephone communications service.~~

21 (c) The tax imposed by this Section shall be collected from the service user by the
22 ~~person providing the communications services telephone communications service supplier. The amount~~
23 ~~of the tax collection in one month shall be remitted to the Tax Collector on or before the last day of the~~
24 ~~following month.~~

25 (d) The following shall continue to be exempt from the tax imposed by this section:

- 1 (1) Residential telephone communications service;
- 2 (2) Any person or entity that is exempt from the tax imposed by this section under
- 3 Article 6 or its successor;
- 4 (3) Service paid for by inserting coins in coin-operated telephones available to the
- 5 public with respect to local telephone service, or with respect to long distance
- 6 telephone service if the charge for such long distance telephone service is less than
- 7 25 cents; except that where such coin-operated telephone service is furnished for a
- 8 guaranteed amount, the amounts paid under such guarantee plus any fixed monthly
- 9 or other periodic charge shall be subject to the tax.
- 10 (4) News services. No tax shall be imposed under this section, except with respect to
- 11 local telephone service, on any payment received from any person for services used
- 12 in the collection of news for the public press, or a news ticker service furnishing a
- 13 general news service similar to that of the public press, or radio broadcasting, or in
- 14 the dissemination of news through the public press, or a news ticker service
- 15 furnishing a general news service similar to that of the public press, or by means of
- 16 radio broadcasting, if the charge for that service is billed in writing to that person.
- 17 (5) International, etc., organizations. No tax shall be imposed under this section on
- 18 any payment received for services furnished to a public international organization
- 19 in which the United States participates pursuant to treaty or Act of Congress, or to
- 20 the American National Red Cross.
- 21 (6) Servicemen in combat zone. No tax shall be imposed under this section on any
- 22 payment received for any toll telephone service, which originates within a combat
- 23 zone, as defined in Section 112 of Title 26 of the United States Code, from a
- 24 member of the Armed Forces of the United States performing service in the combat
- 25 zone, as determined under Section 112 of Title 26 of the United States Code.

- 1 (7) Items otherwise taxed. Only one payment of tax under this section shall be required
2 with respect to the tax on any service, provided, however, that a person claiming
3 exemption under this section shall bear the burden to prove the city actually
4 received the earlier payment of tax on that service.
- 5 (8) Common carriers and telecommunications companies. No tax shall be imposed
6 under this section on the amount paid for any telephone communications service to
7 the extent that the amount so paid is for use by a common carrier, telephone or
8 telegraph company, or radio broadcasting station or network in the conduct of its
9 business.
- 10 (9) Installation charges. No tax shall be imposed under this section on any amount
11 paid for the installation of any instrument, wire, pole, switchboard, apparatus, or
12 equipment as is properly attributable to the installation.
- 13 (10) Nonprofit hospitals. No tax shall be imposed under this section on any amount paid
14 by a nonprofit hospital for services furnished to that organization. For purposes of
15 this exemption, the term "nonprofit hospital" means a hospital referred to in Section
16 170(b)(1)(A)(iii) of Title 26 of the United States Code, which is exempt from federal
17 income tax under Section 501(a) of Title 26 of the United States Code.
- 18 (11) State and local governments. No tax shall be imposed under this section upon any
19 payment received for services or facilities furnished to the government of any State,
20 or any of its political subdivisions, or the District of Columbia.
- 21 (12) Nonprofit educational organizations. No tax shall be imposed under this section on
22 any amount paid by a nonprofit educational organization for services or facilities
23 furnished to that organization. For purposes of this exemption, the term "nonprofit
24 educational organization" means an educational organization described in Section
25 170(b)(1)(A)(ii) of Title 26 of the United States Code, which is exempt from federal

1 income tax under Section 501(a) of Title 26 of the United States Code. The term
2 also includes a school operated as an activity of an organization described in
3 Section 501(c)(3) of Title 26 of the United States Code, which is exempt from
4 federal income tax under Section 501(a) of Title 26 of the United States Code, if
5 that school normally maintains a regular facility and curriculum and normally has
6 a regularly enrolled body of pupils or students in attendance at the place where its
7 educational activities are regularly carried on.

8 ~~Notwithstanding the provisions of Subsection (a), the tax imposed under this Section shall not~~
9 ~~be imposed upon any person for using intrastate telephone communication services to the~~
10 ~~extent that the amounts paid for such services are exempt from or not subject to the tax imposed~~
11 ~~under Section 4251 of Title 26 of the United States Code, the Federal Communications Excise~~
12 ~~Tax, as such section existed on August 28, 1970, and as such section was interpreted by the~~
13 ~~Internal Revenue Service prior to Revenue Notice 2006-50.~~

14 (e) To prevent actual, multiple taxation of any telephone communications service
15 subject to tax under this section, any service user, upon proof that the service user owed and
16 has paid a tax in another taxing jurisdiction on the telephone communications service, shall be
17 allowed a credit against the tax imposed by this section to the extent of the tax properly due and
18 paid in the other taxing jurisdiction. However, no credit may be allowed for any tax paid to
19 another taxing jurisdiction to the extent that the telephone communications service may not
20 legally be made the subject of taxation by the other taxing jurisdiction, nor shall the amount of
21 credit exceed the tax owed to the City under this section.

22 (f) If a non-taxable service and a taxable service are billed together under a single
23 charge, the entire charge shall be deemed taxable unless the telephone communications service
24 supplier or taxpayer reasonably identifies actual charges for services not subject to the tax.
25 The telephone communications service supplier or taxpayer seeking a reduction has the burden

1 of proving the proper valuation and apportionment of taxable and non-taxable charges based
2 upon books and records that are kept in the regular course of business and in a manner
3 consistent with generally accepted accounting principles.
4

5 **SEC. 707.1. UTILITY USERS TAX EXEMPTION.**

6 (a) No tax shall be levied upon residential telephone communications service or upon the
7 use in the City and County of San Francisco by residential customers of telephone
8 communication services, electrical energy or gas, water or steam which is delivered through
9 mains or pipes or of any other utility service after June 30, 1988.

10 (b) For the purposes of this Section, "residential customer" shall mean any customer
11 paying for the utility service at a residential or domestic rate consistent with the rate schedule
12 set by the California Public Utilities Commission or any other rate-making authority.

13 (c) This Section was adopted by the voters of San Francisco at the November 3, 1987
14 election and may be amended only by the vote of the electorate.

15
16 **~~SEC. 707.3. INTERSTATE TELEPHONE USERS TAX.~~**

17 ~~Commencing August 1, 1992, the tax set forth in Section 703 (telephone users) and Section~~
18 ~~707.2, in addition to being imposed upon persons using intrastate telephone communication services,~~
19 ~~shall also be imposed upon every person, other than a telephone corporation, using interstate or~~
20 ~~international telephone communication services in the City and County. The tax imposed on the~~
21 ~~interstate or international telephone communication services shall be collected from the service user by~~
22 ~~the person providing such services. The amount of the tax collection in one month shall be remitted to~~
23 ~~the Tax Collector on or before the last day of the following month.~~
24

25 **SEC. 708. COLLECTION OF TAX.**

1 (a) Unless prohibited by the laws of the United States or the State of California, or
2 exempted by the provisions of this Code, every person using telephone communications
3 services, electrical, water gas or steam services in this City and County shall be required to
4 pay the tax imposed in this Article and Article 10B herein to the service supplier along with the
5 charges made for such services. This obligation is not satisfied until the tax has been paid to
6 this City and County, except that a receipt indicating payment of the service charges from a
7 service supplier maintaining a place of business in this City and County or from a supplier who
8 is authorized by the Tax Collector to collect the tax shall be sufficient to relieve the service
9 user from further liability for the tax to which the receipt refers.

10 (b) Every service supplier maintaining a place of business in this City and County, and
11 providing telephone communications services, electrical, water gas or steam services to a
12 service user, not exempted under this Code shall, at the time of collecting the charges made
13 for such services from the service user, also collect the tax imposed by this Article and Article
14 10B from the service user and on demand shall give to the service user a receipt therefor. In
15 all cases in which the tax is not collected by the service supplier, as aforesaid, the service
16 supplier shall be liable to the Tax Collector of the City and County for the amount of the tax
17 due on the amount of taxable rent service charges collected from the occupant service user under
18 the provisions of this Article and Article 10 B, the same as though the tax were paid by the
19 service user. In all cases of transactions upon credit or deferred payment, the payment of tax
20 to the Tax Collector may be deferred in accordance therewith, and the service supplier shall
21 be liable therefor at the time and to the extent that such credits are paid or deferred payments
22 are made in accordance with the rate of tax owing on the amount thereof.

23 The Tax Collector shall have the power to adopt rules and regulations prescribing
24 methods and schedules for the collection and payment of the tax and such methods and
25 schedules shall eliminate fractions of one cent.

1 (c) The taxes imposed by this Article and Article 10B shall be collected, insofar as
2 practicable, at the same time as and along with the collection of charges made in accordance
3 with the regular billing practice of the service supplier. If the amount paid by a service user is
4 less than the full amount of the charges and tax which has accrued for the billing period, a
5 proportionate share of both the charges and the tax shall be deemed to have been paid.

6 ~~Where a person receives more than one billing, one or more being for different periods than~~
7 ~~another,~~ The duty to collect shall arise separately for each ~~billing~~ period for which a service
8 supplier bills a service user.

9 (d) The Tax Collector may issue administrative rulings identifying telephone communications
10 services that are subject to the taxes imposed by section 703 of this article and article 10B. Such
11 rulings shall be consistent with legal requirements and shall not impose a new tax, revise an existing
12 tax methodology, or increase an existing tax, except as allowed by California Government Code section
13 53750(h)(2) and (3) or other law. To the extent that the Tax Collector determines that the taxes
14 imposed under Section 703 or Article 10B shall not be collected in full for any period of time, such a
15 determination falls within the Tax Collector's prosecutorial discretion to settle disputes. The Tax
16 Collector's exercise of such forbearance under this section does not constitute a change in taxing
17 methodology for purposes of Government Code section 53750(h), and the city does not waive or
18 abrogate its ability to impose the taxes imposed by Section 703 or Article 10B in full as a result of such
19 determinations and may suspend such determinations and recommence enforcement of the taxes
20 without additional voter approval.

21 (e) A service supplier shall be obligated to collect and remit the tax imposed by Section 703 of
22 this Article and Article 10B if it is "engaging in business within the City" as described in Article 6,
23 Section 6.2-12.

1 **SEC. 721. EFFECT OF STATE AND FEDERAL AUTHORIZATION.**

2 To the extent that the city's authorization to impose or collect any tax imposed under Section
3 703 of this Article or Article 10B is expanded or limited as a result of changes in state or federal law,
4 no amendment or modification of Section 703 or Article 10B shall be required to conform the taxes to
5 those changes, and the taxes shall be imposed and collected to the full extent of the city's authorization
6 up to the full amount of the taxes imposed under Section 703 and Article 10B.

7
8 **SEC. 722. AMENDMENT OF ORDINANCE.**

9 Article 6, Article 10 and Article 10B of the Business and Tax Regulations Code may be repealed
10 or amended by the Board of Supervisors without a vote of the people except as follows: as required by
11 Article XIII C of the California Constitution ("Proposition 218"), any amendment that increases the
12 amount or rate of tax beyond the levels authorized by this Ordinance may not take effect unless
13 approved by a vote of the people. The Board of Supervisors may impose the taxes authorized by
14 Section 703 and Article 10B in any amount or rate which does not exceed the amount or rate approved
15 by the voters.

16
17 **SEC. 723. SEVERABILITY.**

18 If any section, sentence, clause, phrase, or portion of Article 6, Article 10 or Article 10B is for
19 any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining
20 sections, sentences, clauses, phrases, or portions of these Articles shall nonetheless remain in full force
21 and effect. The people of the City and County of San Francisco hereby declare that they would have
22 adopted each section, sentence, clause, phrase, or portion of these Articles, irrespective of the fact that
23 any one or more sections, sentences, clauses, phrases, or portions of these Articles be declared invalid
24 or unenforceable and, to that end, the provisions of these Articles are severable.

1 Section 5. Section 6.1-1 of the San Francisco Business and Tax Regulations Code is
2 hereby amended to read as follows:

3 **SEC. 6.1-1. COMMON ADMINISTRATIVE PROVISIONS.**

4 (a) Except where the specific language of the Business and Tax Regulations Code or
5 context otherwise requires, these common administrative provisions shall apply to Articles 6,
6 7, 9, 10, ~~10A~~, 10B, 11, 12, 12-A and 12-B of such Code. Any provision of this Article 6 that
7 references or applies to Article 10 shall be deemed to reference or apply to Article 10B.

8 (b) Unless expressly provided otherwise, all statutory references in this Article and the
9 Articles set forth in Subsection (a) shall refer to such statutes as amended from time to time
10 and shall include successor provisions. ~~For purposes of collecting the Emergency Response Fee~~
11 ~~under Article 10A, any reference to a "tax" in this Article shall include the Emergency Response Fee~~
12 ~~where appropriate; provided, however that nothing in the operation of this provision shall affect the~~
13 ~~underlying legal character of the Emergency Response Fee or suggest that the fee is a tax.~~

14 (c) For purposes of this Article, a domestic partnership established pursuant to
15 Chapter 62 of the San Francisco Administrative Code shall be treated the same as a married
16 couple.

17
18 Section 6. This Ordinance does not change the existing rate of any tax imposed under
19 the Business and Tax Regulations Code.

20
21 Section 7. The voters of the City and County of San Francisco hereby ratify and
22 approve the past collection of the Telephone Users Tax under Article 10 of the San Francisco
23 Business and Tax Regulations Code, as enacted by Ordinance 287-70 and as subsequently
24 amended, including without limitation, the amendments effected by Ordinance 224-06. The
25 voters of the City and County of San Francisco hereby ratify and approve the past collection

1 of the Emergency Response Fee under Article 10A of the San Francisco Business and Tax
2 Regulations Code, as enacted by Ordinance 419-93 and as subsequently amended.


3
4 Section 8.

5 (a) Service suppliers obligated to collect and remit the taxes imposed by Section 703
6 of Article 10 or Article 10B of the San Francisco Business and Tax Regulations Code shall
7 implement any changes required by this Ordinance in accordance with California Public
8 Utilities Code Section 799. The Treasurer and Tax Collector may, in his or her sole discretion,
9 reimburse service suppliers for any one-time costs they may incur to implement any changes
10 required by this Ordinance, subject to the fiscal provisions of the San Francisco Charter.

11 (b) This Ordinance shall be effective only if approved by a majority of the voters voting
12 thereon. This Ordinance, except Section 2, and shall go into effect ten (10) days after the
13 official vote count is declared by the Board of Supervisors. Section 2 of this Ordinance,
14 repealing Article 10A of the San Francisco Business and Tax Regulations Code, shall go into
15 effect on the date that is 120 days after the official vote count is declared. The Treasurer and
16 Tax Collector may, by administrative ruling, set an earlier date for Section 2 of this Ordinance
17 to go into effect.

18
19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21 By:


22 Julie Van Nostern
23 Deputy City Attorney
24
25



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails

Ordinance

File Number: 080792

Date Passed:

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; (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.

July 22, 2008 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

July 29, 2008 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

File No. 080792

I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on July 29, 2008 by
the Board of Supervisors of the City and
County of San Francisco.



Angela Calvillo
Clerk of the Board

8.1.08

Date Approved



Mayor Gavin Newsom