

1 [Adding Section 702 to the Business and Tax Regulations Code and amending Sections 703  
2 and 714 of the San Francisco Business and Tax Regulations Code.]

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4 **Ordinance amending Article 10, Utility Users Tax, by adding Section 702 to the**  
5 **Business and Tax Regulations Code; amending Section 703 of the San Francisco**  
6 **Business and Tax Regulations Code making technical clarifications to the Utility Users**  
7 **Tax on telephone services to address change in interpretation of referenced federal**  
8 **law; and amending Section 714 of the San Francisco Business and Tax Regulations**  
9 **Code to conform with Article 6, Common Administrative Provisions.**

10 Note: Additions are single-underline italics Times New Roman;  
11 deletions are ~~strikethrough italics Times New Roman~~.  
12 Board amendment additions are double underlined.  
13 Board amendment deletions are ~~strikethrough normal~~.

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

15 Section 1. The San Francisco Business and Tax Regulations Code is hereby amended  
16 by adding Section 702 to read as follows:

17 SEC. 702. INTERPRETATION OF TELEPHONE USERS TAX.

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

21 (b) When first adopted, the UUT referenced the Federal Excise Tax, 26 United States Code  
22 § 4251 ("FET") as such Section existed on the effective date of the City's Ordinance. The FET applies,  
23 by its terms, to "local" and "toll" telephone services.

24 (c) The UUT referred to the FET for the purpose of identifying the types of telephone  
25 communication services that were subject to the UUT and the types of services that were exempt from  
the UUT. The reference to the FET also provided a convenience to telephone service providers, who

1 were able to bill end use customers based on an existing tax base. The FET was not a basis or  
2 authority for the City's imposition of the UUT.

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

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

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

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

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

21 (i) These amendments do not increase the tax or create a new tax on telephone  
22 communication services.

23 (j) The procedure to refund any tax, interest or penalty that has been overpaid or paid more  
24 than once, or has been erroneously or illegally collected or received by the City is set out in Business  
25 and Tax Regulations Code, Article 6, Common Administrative Provisions, Section 6.15-1, Refunds. The

1 amendment to Section 714 clarifies that the reference to "this Code" in Section 714(a) refers to this  
2 process. It insures that the process of presenting a UUT claim is consistent with the required claims  
3 process for tax refunds in Section 6.15-1.

4 Section 2. The San Francisco Business and Tax Regulations Code is hereby amended  
5 by amending Sections 703 and 714, to read as follows:

6 SEC. 703. TELEPHONE USERS TAX.

7 (a) There is hereby imposed a tax upon every person, other than a telephone  
8 corporation, using intrastate telephone communication services in the City and County. The  
9 tax imposed by this Section shall be on the charges made for such services, including  
10 minimum charges for services. The tax imposed by this Section shall be paid by the person  
11 paying for such services.

12 (b) As used in this Section, the term "charges" shall not include charges for services  
13 paid for by inserting coins in coin-operated telephones, except that where such coin-operated  
14 telephone service is furnished for a guaranteed amount, the amounts paid under such  
15 guarantee plus any fixed monthly or other periodic charge shall be included in the base for  
16 computing the amount of tax due; nor shall the term "charges" include charges for any type of  
17 service or equipment furnished by a service supplier subject to Public Utility regulation during  
18 any period in which the same or similar services or equipment are also available for sale or  
19 lease from persons other than a service supplier subject to Public Utility regulation. The  
20 Telephone User Tax is intended to, and does, apply to all charges billed to a telephone having  
21 a situs in the City and County, irrespective of whether a particular telephone call originates  
22 and/or terminates within the City and County. In addition, effective September 1, 1993, the  
23 Telephone Users Tax is intended to, and does, apply to charges for cellular telephone service  
24 or enhanced specialized mobile radio communication service, when the service user has a  
25 billing address in the City and County.

1 (c) The tax imposed by this Section shall be collected from the service user by the  
2 person providing the intrastate telephone communication services. The amount of the tax  
3 collection in one month shall be remitted to the Tax Collector on or before the last day of the  
4 following month.

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

11 SEC. 714. REFUNDS.

12 (a) Any tax, interest or penalty overpaid or paid more than once may be refunded  
13 pursuant to Section 6.15-1, Refunds, of this the San Francisco Business and Tax Regulations Code.

14 ~~(b) — A service supplier may claim a refund or claim a credit against taxes to be collected and~~  
15 ~~remitted of the amount overpaid or paid more than once, or erroneously or illegally collected or~~  
16 ~~received; provided, however, that neither a refund or a credit shall be allowed unless the amount of the~~  
17 ~~tax so collected has either been refunded to the person entitled thereto or credited to the charges~~  
18 ~~subsequently payable by such person to the service supplier.~~

19 ~~(c) — A service user may obtain a refund of taxes overpaid or paid more than once or~~  
20 ~~erroneously or illegally collected or received by the City and County by filing a claim in the manner~~  
21 ~~provided in Subparagraph (a) of this Section, but only when the tax was paid by the service user~~  
22 ~~directly to the Tax Collector, or when the service user, having paid the tax to the service supplier,~~

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1 *establishes to the satisfaction of the Tax Collector that the service user has been unable to obtain a*  
2 *refund from the service supplier who collected the tax.*

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4 APPROVED AS TO FORM:  
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6 By: \_\_\_\_\_  
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