

RESOLUTION NO. RES-08-0076

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH CALLING AN ELECTION TO BE HELD NOVEMBER 4, 2008 FOR THE PURPOSE OF SUBMITTING TO THE VOTERS OF THE CITY OF LONG BEACH AN ORDINANCE AMENDING CHAPTER 3.68 OF THE LONG BEACH MUNICIPAL CODE, REGARDING THE UTILITY USERS TAX

WHEREAS, prior to a recent amendment, the City's utility users tax (UUT) on telecommunication services referenced the federal excise tax, and that tax may be repealed by Congress (S. 170 and S. 140), creating ambiguity and legal controversy regarding the continued implementation of the City's UUT on telecommunication services; and

WHEREAS, major telecommunication providers have taken the position that ordinances such as the City's UUT ordinance are affected by a May 2006 IRS Notice dramatically reducing the base of the federal excise tax; and

WHEREAS, lawsuits have been filed against the City and other California public agencies regarding the effect of the May 2006 IRS ruling on the defendants' UUT ordinances; and

WHEREAS, final judicial rulings in the above lawsuits, or future lawsuits, could cause the City to suffer a significant reduction of its UUT revenues; and

WHEREAS, there are bills before Congress (S. 166 and H.R. 436), proposing a three-year moratorium on new wireless taxes, which could prevent the City from adopting a modern UUT ordinance with voter approval to address the legal issues referenced above; and

WHEREAS, the residents of Long Beach have paid a UUT on telephone

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1 service for many years; and

2 WHEREAS, revenues from the UUT are presently used to fund 911
3 emergency response, police and fire services, maintain parks and youth recreation
4 programs, and to fund other important City services affecting quality of life in the
5 community; and

6 WHEREAS, eligible low-income seniors and disabled residents are exempt
7 from paying the UUT; and

8 WHEREAS, the City currently receives approximately \$15 million a year in
9 UUT on telecommunication services, and such tax revenues are critical to the public
10 welfare and the City's financial ability to provide essential municipal services such as, but
11 not limited to, police, fire, street repair, and parks and libraries; and

12 WHEREAS, the City desires reasonable certainty in the collection and
13 receipt of its utility users tax on telephony, and wishes to eliminate the current
14 uncertainties by obtaining voter approval of a modern ordinance pursuant to Proposition
15 218; and

16 WHEREAS, pursuant to Section 2(b) of California Constitution Article XIII C,
17 the City Council hereby unanimously declares the existence of an emergency in that
18 there are imminent financial risks and dangers, as described above, to the public welfare
19 and the City's financial ability to provide essential municipal services without disruption,
20 such that a special election is necessary to address such risks and dangers before the
21 next regularly scheduled municipal election for members of the City Council on April 13,
22 2010;

23 NOW, THEREFORE, the City Council of the City of Long Beach resolves as
24 follows:

25 Section 1. Under the provisions of the Constitution and laws of the State
26 of California and the Charter of the City of Long Beach, an election is ordered,
27 proclaimed and called to be held in the City of Long Beach, between the hours of 7:00
28 a.m., and 8:00 p.m., on Tuesday, the 4th day of November, 2008, for the purpose of

1 submitting to a vote of the qualified electors of the City of Long Beach the following
2 proposition which, for identification purposes, is marked as Proposition A.

3 Proposition A. Long Beach Utility Users Tax Modernization Measure.

4 Without raising current tax rates, shall an ordinance be adopted to
5 help preserve funding for critical City services, including police and fire
6 protection, paramedic and emergency response, street maintenance, parks,
7 youth services, and libraries, by updating the telephone users tax to include
8 new and evolving technologies so that all taxpayers are treated equally
9 regardless of technology used?

10 Section 2. Notice is hereby given of the time and place of the election.
11 The City Clerk is directed and authorized to print and publish the proposition as required
12 by law. All particulars not provided in this resolution shall be held under the provisions of
13 law governing the conduct of such elections in the City of Long Beach.

14 Section 3. The proposition shall be stated as provided in Section 13119
15 of the Elections Code of the State of California. The ballot used in voting upon the
16 propositions shall contain the words "yes" and "no". The text of Proposition A is set forth
17 in full in Exhibit "A".

18 Section 4. That only qualified voters of the City of Long Beach shall be
19 permitted to vote in the election called by this resolution.

20 Section 5. This resolution shall take effect immediately upon its adoption
21 by the City Council, and the City Clerk shall certify the vote adopting this resolution.

22 I hereby certify that the foregoing resolution was adopted by the City
23 Council of the City of Long Beach at its meeting of July 22, 2008, by the

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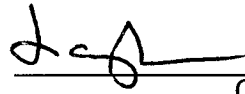
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following vote:

Ayes: Councilmembers: B. Lowenthal, S. Lowenthal,
DeLong, O'Donnell, Schipske,
Andrews, Reyes Uranga, Gabelich,
Lerch.

Noes: Councilmembers: None.

Absent: Councilmembers: None.


City Clerk

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EXHIBIT A

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LONG BEACH,
CALIFORNIA AMENDING CHAPTER 3.68 OF THE LONG
BEACH MUNICIPAL CODE TO MODERNIZE THE UTILITY
USERS TAX

THE PEOPLE OF THE CITY OF LONG BEACH DO ORDAIN AS
FOLLOWS:

Section 1. Section 3.68.020 of the Long Beach Municipal Code is hereby
amended to read as follows:

“3.68.020 Definitions.

Except where the context otherwise requires, the definitions given in
this section govern the construction of this chapter.

A. ‘Ancillary telecommunications services’ means services that
are associated with or incidental to the provision, use or enjoyment of
telecommunications services including, but not limited to, the following:

1. Services that link two or more participants of an audio
or video conference call, including the provision of a telephone number.

2. Services that separately state information pertaining to
individual calls on a customer’s billing statement.

3. Services that provide telephone number information,
and/or address information.

4. Services offered in connection with one or more
telecommunications services, which offer advanced calling features that
allow customers to identify callers or to manage multiple calls and call

1 connections.

2 5. Services that enable customers to store, send or
3 receive recorded messages.

4 B. 'Billing address' means the mailing address of a service user
5 where a service supplier submits invoices or bills for payment by the service
6 user.

7 C. 'City' means the City of Long Beach.

8 D. 'Electrical corporation' has the same meaning as defined in
9 Section 218 of the Public Utilities Code.

10 E. 'Month' means a calendar month.

11 F. 'Person' means, without limitation, any natural person;
12 domestic, nonprofit or foreign corporation; firm; trust; estate; association;
13 syndicate; joint stock company; limited liability company; partnership of any
14 kind; joint venture; club; business or common-law trust of any kind; society;
15 cooperative; receiver, trustee, guardian or other representative appointed
16 by order of any court; municipal district; or municipal corporation (other than
17 the city); or the manager, lessee, agent, servant, officer or employee of any
18 of them.

19 G. 'Service address' means the residential street address or the
20 business street address of the service user's primary place of use.

21 H. 'Service supplier' means any entity or person that provides
22 telephone communication, electric, gas, or water service to a user of such
23 services within the city.

24 I. 'Service user' means a person required to pay a tax imposed
25 by this chapter.

26 J. 'Tax administrator' means the revenue administrator of the
27 City of Long Beach.

28 K. 'Telephone communication services' includes the

1 transmission, conveyance, or routing of voice, data, audio, video, or any
2 other information or signals to a point, or between or among points, whether
3 or not such information is transmitted through interconnected service with
4 the public switched network, whatever the technology used, whether such
5 transmission, conveyance or routing occurs by wire, cable, fiber-optic, light
6 wave, laser, microwave, radio wave (including, but not limited to, cellular
7 service, commercial mobile service, personal communications service
8 (PCS), specialized mobile radio (SMR), and other types of personal
9 wireless service – see 47 USCA Section 332(c) (7) (C) (i) – regardless of
10 radio spectrum used), switching facilities, satellite or any other technology
11 now existing or developed after the adoption of this section, and includes,
12 without limitation, fiber optic, coaxial cable, and wireless. The term
13 ‘telephone communication services’ includes such transmission,
14 conveyance, or routing in which computer processing applications are used
15 to act on the form, code or protocol of the content for purposes of
16 transmission, conveyance or routing without regard to whether such
17 services are referred to as voice over internet protocol (VoIP) services or
18 are classified by the Federal Communications Commission as enhanced or
19 value added, and includes video and/or data services that are functionally
20 integrated with telecommunications services. ‘Telephone communication
21 services’ include, but are not limited to, the following services, regardless of
22 the manner or basis on which such services are calculated or billed: central
23 office and custom calling features (including but not limited to call waiting,
24 call forwarding, caller identification and three-way calling), local number
25 portability, text messaging, ancillary telecommunication services, prepaid
26 and post-paid telecommunications services (including but not limited to
27 prepaid calling cards); mobile telecommunications service; private
28 telecommunication service; paging service; 800 service (or any other toll-

1 free numbers designated by the Federal Communications Commission);
2 and value-added non-voice data service. For purposes of this section,
3 'private telecommunication service' means any dedicated telephone
4 communications service that entitle a user to exclusive or priority use of
5 communications channels. 'Telephone communication service' does not
6 include: internet access services; video programming services; and digital
7 downloads, such as downloads of books, music, ringtones, games and
8 similar digital products.

9 L. 'Telephone corporation' has the same meaning as defined in
10 section 234 of the Public Utilities Code."

11
12 Section 2. Section 3.68.050 of the Long Beach Municipal Code is hereby
13 amended to read as follows:

14 "3.68.050 Telephone tax.

15 A. There is imposed a tax upon every person, other than a
16 telephone corporation, who uses telephone communication services in the
17 city, including intrastate, interstate, and international telephone
18 communication services, to the extent permitted by federal and state law.
19 Interstate calls shall be deemed to include calls to the District of Columbia.
20 The telephone users tax is intended to, and does, apply to all charges
21 within the city's tax jurisdiction, such as charges billed to a telephone
22 account having a situs in the city as permitted by the Mobile
23 Telecommunications Sourcing Act of 2000, 4 U.S.C. § 116 et seq. The tax
24 imposed by this section shall be at the rate of five percent (5%). The tax
25 shall apply to all charges made for such telephone communication services
26 and shall be collected from the service user by the services supplier or its
27 billing agent. There is a rebuttable presumption that telephone
28 communication services billed to a billing or service address in the city are

1 used, in whole or in part, within the city, and that such services are subject
2 to taxation under this chapter. There is also a rebuttable presumption that
3 telephone communication services sold within the city that are not billed to
4 a billing address or provided to a primary physical location (such as prepaid
5 calling card services) are used, in whole or in part, within the city and are
6 therefore subject to taxation under this chapter.

7 B. As used in this section, the term 'charges' shall include the
8 value of any other services, credits, property of every kind or nature, or
9 other consideration provided by the service user in exchange for the
10 telephone communication services.

11 C. The tax administrator may, from time to time, issue and
12 disseminate to telecommunication service suppliers administrative rulings
13 identifying those telecommunication services that are subject to the tax of
14 subsection A of this section. Such administrative rulings shall be consistent
15 with legal nexus and laws pertaining to telephone communications services
16 and shall not impose a new tax, revise an existing tax methodology, or
17 increase an existing tax, except as allowed by California Government Code
18 Section 53750(h) (2) and (3) or other law. The tax administrator may
19 consider state-wide interpretive rules and guidelines promulgated by any
20 government agency or association of government agencies as a factor in
21 determining the intent of voters adopting this section. To the extent that the
22 tax administrator determines that the tax imposed under this section shall
23 not be collected in full for any period of time, such an administrative ruling
24 falls within the tax administrator's discretion to settle disputes. The tax
25 administrator's exercise of prosecutorial forbearance under this chapter
26 does not constitute a change in taxing methodology for purposes of
27 Government Code section 53750(h), and the city does not waive or
28 abrogate its ability to impose the telephone users' tax in full as a result of

1 issuing such administrative rulings and may suspend such rulings and
2 recommence collection of the tax without additional voter approval.

3 D. The following shall be exempt from the tax imposed by this
4 section:

5 1. Charges paid for by inserting coins in coin-operated
6 telephones available to the public with respect to local telephone service, or
7 with respect to long distance telephone service if the charge for such long
8 distance telephone service is less than 25 cents; except that where such
9 coin-operated telephone service is furnished for a guaranteed amount, the
10 amounts paid under such guarantee plus any fixed monthly or other
11 periodic charge shall be subject to the tax.

12 2. Except with respect to local telephone service, on any
13 charges for services used in the collection of news for the public press, or a
14 news ticker service furnishing a general news service similar to that of the
15 public press, or radio broadcasting, or in the dissemination of news through
16 the public press, or a news ticker service furnishing a general news service
17 similar to that of the public press, or by means of radio broadcasting, if the
18 charge for such service is billed in writing to such person.

19 3. Charges for services furnished to an international
20 organization designated under the International Organizations Immunities
21 Act and defined in 22 USCA 288 or to the American National Red Cross.

22 4. Charges for any long distance telephone service which
23 originates within a combat zone, as defined in section 112 of the Internal
24 Revenue Code, from a member of the Armed Forces of the United States
25 performing service in such combat zone, as determined under such section,
26 provided a certificate, setting forth such facts as the Secretary of the U.S.
27 Treasury may by regulations prescribe, is furnished to the person receiving
28 such payment.

1 5. Charges for any long distance telephone service to the
2 extent that the amount so paid is for use by a common carrier, telephone or
3 telegraph company, or radio broadcasting station or network in the conduct
4 of its business as such.

5 6. Amounts paid by a nonprofit hospital for services
6 furnished to such organization. For purposes of this subsection, the term
7 "nonprofit hospital" means a hospital referred to in Internal Revenue Code
8 section 170(b)(1)(A)(iii) which is exempt from income tax under Internal
9 Revenue Code section 501(a).

10 7. Charges for services or facilities furnished to the
11 government of any State, or any political subdivision thereof, or the District
12 of Columbia.

13 8. Charges paid by a nonprofit educational organization
14 for services or facilities furnished to such organization. For purposes of this
15 subsection, the term "nonprofit educational organization" means an
16 educational organization described in Internal Revenue Code section
17 170(b)(1)(A)(ii) which is exempt from income tax under Internal Revenue
18 Code section 501(a). The term also includes a school operated as an
19 activity of an organization described in Internal Revenue Code section
20 501(c)(3) which is exempt from income tax under Internal Revenue Code
21 section 501(a), if such school normally maintains a regular faculty and
22 curriculum and normally has a regularly enrolled body of pupils or students
23 in attendance at the place where its educational activities are regularly
24 carried on.

25 9. Charges for maritime mobile services as defined in
26 Section 2.1 of Title 47 of the Code of Federal Regulations as such section
27 existed on January 1, 1970.

28 E. To prevent actual multi-jurisdictional taxation of telephone

1 communication services subject to tax under this section, any service user,
2 upon proof to the tax administrator that the service user has previously paid
3 the same tax in another American jurisdiction on such telephone
4 communication services, shall be allowed a credit against the tax imposed
5 to the extent of the amount of such tax legally imposed in such other
6 jurisdiction; provided, however, the amount of credit shall not exceed the
7 tax owed to the city under this section. This ordinance shall be construed
8 broadly in favor of the imposition and collection of the utility users tax to the
9 fullest extent permitted by California and federal law, and as it may change
10 from time to time.

11 F. The tax on telephone communication services imposed by this
12 section shall be collected from the service user by the service supplier. The
13 amount of tax collected from the twenty-sixth day of each month through
14 the twenty-fifth day of the following month shall be remitted to the city clerk
15 on or before the twenty-sixth day of such following month, or at the option of
16 the person required to collect and remit the tax, an estimated amount of tax
17 collected, measured by billings of the previous month, shall be remitted to
18 the clerk on or before the twenty-sixth day of each month.

19 G. For purposes of imposing a tax or establishing a duty to
20 collect and remit a tax under this subchapter, "substantial nexus" and
21 "minimum contacts" shall be construed broadly in favor of the imposition,
22 collection and/or remittance of the utility users tax to the fullest extent
23 permitted by state and federal law, and as that law may change from time to
24 time. Any telephone communication service (including VoIP) used by a
25 person with a service address in the city, which service is capable of
26 making a call to another person on the general telephone network, shall be
27 subject to a rebuttable presumption that "substantial nexus/minimum
28 contacts" exists for purposes of imposing a tax, or establishing a duty to

1 collect and remit a tax, under this chapter. A service supplier shall be
2 deemed to have sufficient activity in the city to be obligated to collect and
3 remit the tax imposed by this chapter if it does any of the following:
4 maintains or has within the city, directly or through an agent or subsidiary, a
5 place of business of any nature; solicits business in the city by employees,
6 independent contractors, resellers, agents or other representatives; solicits
7 business in the city by means of advertising that is broadcast or relayed
8 from a transmitter within the city or distributed from a location within the city;
9 or advertises in newspapers or other periodicals printed and published
10 within the city or through materials distributed in the city by means other
11 than the United States mail.”

12 Section 3. Section 3.68.065 of the Long Beach Municipal Code, added in
13 2006 by ORD-06-0035, is hereby ratified and readopted.

14 Section 4. Section 3.68.075 of the Long Beach Municipal Code is hereby
15 added to read as follows:

16 “3.68.075 Effect of state and federal authorization

17 To the extent that the city’s authorization to impose or collect any tax
18 imposed under this chapter is expanded or limited as a result of changes in
19 state or federal law, no amendment or modification of this chapter shall be
20 required to conform the tax to those changes, and the tax shall be imposed
21 and collected to the full extent of the city’s authorization up to the full
22 amount of the tax imposed under this chapter.”

23 Section 5. Section 3.68.170 of the Long Beach Municipal Code is hereby
24 added to read as follows:

25 “3.68.170 Independent Audit

26 The city shall annually verify that the taxes owed under this chapter
27 have been properly applied, exempted, collected, and remitted in
28 accordance with this chapter, and properly expended according to

1 applicable law. The annual verification shall be performed by a qualified
2 independent third party and the review shall employ reasonable, cost-
3 effective steps to assure compliance, including the use of sampling audits.
4 The verification shall not be required of as to a service supplier where the
5 cost of the verification is expected to exceed the tax revenues to be
6 reviewed.”

7 Section 6. This Ordinance does not change the existing rate of any tax
8 imposed under Chapter 3.68 of the Long Beach Municipal Code.

9 Section 7. This Ordinance does not change the existing exemptions for
10 low-income seniors and disabled persons from the any tax imposed under Chapter 3.68
11 of the Long Beach Municipal Code as specified in Section 3.68.080 of that Chapter. Any
12 change to those exemptions which constitutes a tax increase within the meaning of
13 Government Code Section 53750(h) shall require a vote of the people of the City of Long
14 Beach.

15 Section 8. Chapter 3.68 of the Long Beach Municipal Code as amended
16 by this Ordinance may be repealed or amended by the City Council without a vote of the
17 people except as follows: as required by Proposition 218, any amendment to that
18 chapter that increases the amount or rate of tax beyond the levels authorized by this
19 Ordinance may not take effect unless approved by a vote of the people. The City Council
20 may impose the taxes authorized by that chapter in any amount or rate which does not
21 exceed the rate approved by the voters of the City.

22 Section 9. If any section, sentence, clause, phrase, or portion of this
23 Ordinance is for any reason held to be invalid or unenforceable by a court of competent
24 jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this
25 ordinance shall nonetheless remain in full force and effect. The people of the City of
26 Long Beach hereby declare that they would have adopted each section, sentence,
27 clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more
28 sections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid

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1 or unenforceable and, to that end, the provisions of this Ordinance are severable.

2 Section 10. As provided in Section 2001 of the Long Beach City Charter, if
3 a majority of those electors voting on this ordinance vote in favor of same, it shall be
4 adopted upon a declaration of the result of such ballot by the City Council, and it shall
5 take effect ten (10) days after that date.

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