

Michael G. Colantuono
MColantuono@CLLAW.US
(213) 533-4146

Colantuono & Levin, PC
555 West 5th Street, 31st Floor
Los Angeles, CA 90013
Main: (213) 533-4155
FAX: (213) 533-4191
WWW.CLLAW.US

MEMORANDUM

TO: Mayor Bogaard and Members of the City Council
City of Pasadena

FILE NO: 11131-0002

FROM: Michael G. Colantuono, Esq.
Sandra J. Levin, Esq.

DATE: October 31, 2007

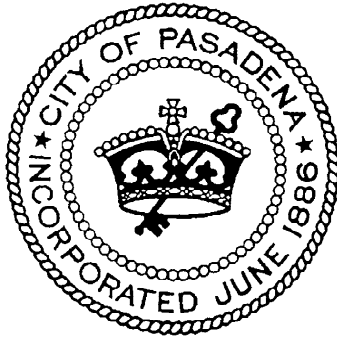
RE: Utility Users Tax Ballot Measure

At your October 22, 2007 meeting, you discussed a proposed ballot measure to maintain the City's existing utility users tax at the current rate, but to amend definitions in the ordinance to address changes in communications law and technology. The Council requested that City staff revisit the ballot label – the 75-words-or-less question actually printed on the ballot. The attached documents are identical to those presented at your October 22, 2007 meeting except as to the date of your action (revised from October to November) and the ballot label, which is now proposed to read as follows:

Pasadena Utility Users Tax Continuation Measure: Shall an ordinance be adopted to ratify and continue Pasadena's existing Utility Users Tax to fund general city services, including essential municipal services such as police, fire, street repair, parks and libraries, provided that low-income seniors and disabled residents remain exempt, the ordinance is updated to treat taxpayers equally regardless of technology used, and independent annual audits are required?

If you have further questions about these materials, Sandi Levin and your City Attorney and non-legal staff will be in attendance at your November 5th meeting to address them. Thank you for the opportunity to assist on this interesting project!

c: Cynthia Kurtz, City Manager
Michele Beal Bagneris, City Attorney
Jane L. Rodriguez, City Clerk
Nick Rodriguez, Assistant City Attorney
Julie Gutierrez, Assistant City Manager
Steve Stark, Finance Director
Steve Mermell, Assistant Finance Director



Agenda Report

TO: CITY COUNCIL

DATE: October 22, 2007

FROM: CITY MANAGER
CITY ATTORNEY

SUBJECT: RESOLUTIONS RELATED TO ORDERING THE SUBMISSION OF MEASURE D, PASADENA UTILITY USERS TAX CONTINUATION MEASURE, A PROPOSED ORDINANCE TO AMEND CHAPTER 4.56 OF THE CITY OF PASADENA MUNICIPAL CODE TO MODERNIZE THE APPLICATION OF THE UTILITY USERS TAX, AT THE SPECIAL MUNICIPAL ELECTION ON TUESDAY, FEBRUARY 5, 2008; AND APPROPRIATING FUNDS FOR ELECTION-RELATED COSTS

RECOMMENDATIONS:

It is recommended that the City Council:

- (1) Adopt the following resolutions related to ordering the submission of Measure D, Pasadena Utility Users Tax Continuation Measure, on the February 5, 2008 Special Municipal Election ballot:
 - (a) A resolution of the City Council of the City of Pasadena calling and giving notice of a Special Municipal Election to be held Tuesday, February 5, 2008, to submit to the voters of the City of Pasadena an ordinance amending Chapter 4.56 of Title 4 of the Pasadena Municipal Code, the Utility Users Tax.
 - (b) A resolution of the City Council of the City of Pasadena requesting the Board of Supervisors of the County of Los Angeles to authorize and order the consolidation of a Special Municipal Election of the City of Pasadena with the statewide Presidential Primary Election to be held on Tuesday, February 5, 2008, and requesting the County Clerk/Registrar of Voters to provide certain services.
 - (c) A resolution of the City Council of the City of Pasadena setting priorities for filing written arguments pertaining to a proposed ordinance amending Chapter 4.56 of Title 4 of the Pasadena Municipal Code, the Utility Users Tax, and directing the City Attorney to prepare an impartial analysis.
 - (d) A resolution of the City Council of the City of Pasadena providing for the filing of rebuttal arguments for said proposed measure.
- (2) Direct the City Clerk to print the full text of the proposed ordinance, including arguments and impartial analysis, in a bilingual (English/Spanish) supplemental voter information pamphlet to be mailed to each registered voter,

and to print and mail bilingual (English/Chinese) supplemental voter information pamphlets to voters requesting Chinese translations.

(3) Approve a journal voucher appropriating \$432,000 from the General Fund Utility Users Tax Reserve to the City Clerk's Election Account No. 8114-101-263000 for estimated election-related costs for the February 5, 2008 Special Municipal Election.

BACKGROUND:

On September 17, 2007 the City Council directed the City Attorney to prepare the necessary resolutions to submit to the qualified electors of the city at a February 5, 2008, Special Municipal Election, a Measure to modernize the application of the City's Utility Users Tax (UUT). This action was necessitated by recent changes in federal regulations, litigation and potential legislation, which threaten the City's ability to continue to receive UUT revenues related to telecommunications.

Historically, the City's UUT, as well as that of most cities with such taxes, has been applied to telecommunication services in a similar manner as the application of the Federal Excise Tax (FET). On May 25, 2006, the IRS issued a Notice that it intended to stop applying the Federal Excise Tax to nearly all telephone communication services, thus leading some phone carriers to argue that the IRS ruling, which dramatically reduces the scope of taxable services, also applies to UUT ordinances such as Pasadena's which reference the FET.

On April 2, 2007 the City Council clarified that this was not the case, and that the City's UUT is unaffected by the IRS Notice. Nevertheless, similar actions by other municipalities are now in litigation in three class action lawsuits in the Los Angeles area and a fourth suit by the Howard Jarvis Taxpayers Association against the City of Sacramento.

Updating the definitions of telecommunications in the City's UUT ordinance, though a special election, would eliminate the issues which have been raised in the wake of the FET repeal as well as the associated litigation. The proposed ordinance would update the telecommunications definitions and confirm the April 2nd elimination of references to the FET from the UUT ordinance. The new definitions will be technology-neutral and reflect the modern use of communications so that all taxpayers will be treated equitably. Importantly, these changes are expected to be cost-neutral to current users of telecommunications as the proposed ordinance does not change the tax rate of the existing UUT. Moreover, any future increase in tax rate would require voter approval in future elections.

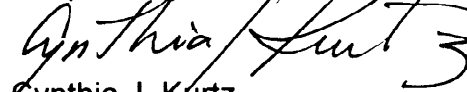
Attached to this staff report are:

1. A resolution calling and giving notice of a special election to place proposed Measure D on the ballot, to which is attached the proposed ordinance for voter approval. The resolution requires unanimous approval of the members of the Council present for the vote under Article XIII C, Section 2(b) of the California Constitution, a provision added by Proposition 218.
2. A resolution requesting the Board of Supervisors of the County of Los Angeles to authorize and order the consolidation of the special municipal election with the statewide presidential primary on February 5, 2008 and requesting the County Clerk/Registrar to provide certain services,
3. A resolution setting priorities for filing written arguments and directing the City Attorney to prepare an impartial analysis. While staff recommends that an impartial analysis be prepared, whether to authorize some or all of the members of the Council to sign the "yes" argument on Measure D is a policy question for the Council. If the Council does not do so, the City Clerk will select a "yes" argument for the ballot pamphlet in accordance with the priority order set forth in California Elections Code Section 9287.
4. A resolution to authorize rebuttal arguments for the February 5, 2008 Special Election on Measure D only. Staff has no recommendation on this resolution; whether to adopt it is a policy question for the City Council. Rebuttal arguments provide additional information to the voters, but add expense for additional printing.

FISCAL IMPACT:

The costs associated with consolidating a special municipal election with the state presidential primary election are estimated to be \$387,000 which includes funds for legal notices in English, Spanish and Chinese, translation of election materials into Spanish and Chinese and printing and mailing of a supplemental bilingual voter information pamphlet. Staff is requesting an additional appropriation of \$45,000, for a total appropriation of \$432,000 to cover the costs of providing additional information on the proposed measure. Sufficient funding is available in the General Fund UUT reserve, which has a current balance of \$6.99 million.

Respectfully submitted,

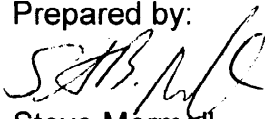


Cynthia J. Kurtz
City Manager



Michele B. Bagneris
City Attorney

Prepared by:



Steve Mermell
Deputy Finance Director

General Fund Expenses By Program

	Total FY 2008 Appropriations	212,338,420
	Less Programs Backed With Direct Revenue	(11,464,465)
	Subtotal	200,873,955
<hr/>		
Debt Service		27,754,178
Police		55,929,381
Sworn	41,947,036	
Non-sworn	13,982,345	
<hr/>		
Fire		34,054,637
Sworn	32,011,359	
Non-sworn	2,043,278	
<hr/>		
Public Works		17,416,239
Parks, Street Trees & Landscaping	10,898,968	
Street Cleaning & Maintenance	3,478,837	
Engineering/Management/Admin	3,038,434	
<hr/>		
Planning & Development		9,827,292
Economic Development, Technology, Real Estate & Admin.	2,412,103	
Code Compliance	1,853,170	
Zoning	1,767,268	
Community Planning	1,225,451	
Design & Historic Preservation	1,202,667	
Cultural Affairs	447,568	
Northwest Programs	338,259	
Graffiti Abatement	315,662	
Enterprise Zone	228,561	
M A S H - General Fund Portion	36,583	
<hr/>		
Human Services & Recreation		9,220,276
Community & Recreation Centers	3,393,297	
Recreation Programs and Services for Youth	2,862,501	
Human Services Programs	1,081,963	
Neighborhood Connections & Programs	942,339	
<hr/>		
Finance		9,850,182
<hr/>		
Library		9,172,812
<hr/>		
City Attorney/City Prosecutor		6,246,912
<hr/>		
Transfer of TOT revenues to Pasadena Center		5,570,305
<hr/>		
Other transfers and reserves		4,710,148
<hr/>		
Transportation		3,268,725
<hr/>		
Human Resources		2,911,392
<hr/>		
City Manager		2,654,795
Public Affairs	473,996	
Pasadena Community Access Corp	333,758	
Local Hire - First Source Program	190,041	
<hr/>		
City Council		1,886,422
<hr/>		
City Clerk		1,618,320
<hr/>		
Animal Control Contract - Pasadena Humane Society		1,005,985
<hr/>		
	Total Appropriations	203,098,001

10/22/2007
 Item 7.A.1.
 Handout by staff

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA CALLING AND GIVING NOTICE OF A SPECIAL MUNICIPAL ELECTION TO BE HELD TUESDAY, FEBRUARY 5, 2008, TO SUBMIT TO THE VOTERS OF THE CITY OF PASADENA AN ORDINANCE AMENDING CHAPTER 4.56 OF TITLE 4 OF THE PASADENA MUNICIPAL CODE, THE UTILITY USERS TAX

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

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;

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

WHEREAS, a lawsuit has been filed against the City of Los Angeles by certain wireless telecommunication providers challenging the application of the Los Angeles UUT on charges for certain wireless services, and the California Court of Appeal recently ruled against the City of Los Angeles, raising new questions regarding the scope of Pasadena's existing tax on wireless communications;

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

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;

WHEREAS, the residents of Pasadena have paid a UUT on electricity, gas, water, cable television, and telephone since 1969;

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

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

WHEREAS, all revenues from the UUT are subject to annual independent audits; and this measure gives Pasadena residents local control -- with 100% of revenues staying in Pasadena to be used for services for our local residents;

WHEREAS, the City currently receives \$ 10.4 million a year in UUT on telecommunication services, and such tax revenues are critical to the public welfare and the City's financial ability to provide essential municipal services such as, but not limited to, police, fire, street repair, and parks and libraries;

WHEREAS, the City desires reasonable certainty in the collection and receipt of its utility users taxes, and wishes to eliminate the current legal and legislation risks

associated with its existing UUT on telecommunications services by obtaining voter approval of a modern ordinance pursuant to Proposition 218;

WHEREAS, pursuant to Section 2(b) of California Constitution Article XIII C, the City Council hereby unanimously declares the existence of an emergency in that there are imminent financial risks and dangers, as described above, to the public welfare and the City's financial ability to provide essential municipal services without disruption, such that a special election is necessary to address such risks and dangers before the next regularly scheduled municipal election for members of the City Council on March 10, 2009;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Pasadena as follows:

1. Pursuant to the requirements of the Pasadena City Charter and the laws of the State of California, a special municipal election is hereby called and ordered to be held in the City of Pasadena, California, on Tuesday, February 5, 2008.
2. At said election there shall be submitted to the qualified voters of the City of Pasadena an ordinance amending Chapter 4.56 of Title 4 of the Pasadena Municipal Code, the Utility Users Tax.
3. The text of the measure, labeled as Measure D, which may be redesignated by the County Clerk, is attached hereto as Exhibit A, and incorporated herein by this reference.
4. The procedures for voting for and against said question shall be those established by Los Angeles County and the question shall be printed in substantially the following form:

MEASURE D. PASADENA UTILITY USERS TAX CONTINUATION MEASURE: Shall an ordinance be adopted to ratify and continue Pasadena’s existing Utility Users Tax to fund general city services, including essential municipal services such as police, fire, street repair, parks and libraries, provided that low-income seniors and disabled residents remain exempt, the ordinance is updated to treat taxpayers equally regardless of technology used, and independent annual audits are required?	YES	
	NO	

5. The ballots to be used at the election shall be in form and content as required by law.

6. The polls shall be open at 7:00 a.m. of the day of the election and shall remain open continuously from that time until 8:00 p.m. of the same day when the polls shall be closed, except as provided in Section 14401 of the California Elections Code.

7. Under separate resolution, the Board of Supervisors of Los Angeles County shall cause the precincts, polling places and election officers for said election to be established and cause the returns of said election to be canvassed and to certify the same to the City Council of the City of Pasadena. The vote requirement for passage of the measure is a majority of the votes cast (50% plus 1).

8. In all particulars not recited in this resolution, the election hereby called shall be as provided by law for holding municipal elections in the City.

9. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

Adopted at the regular meeting of the City Council on the ____ day of October
2007, by the following vote:

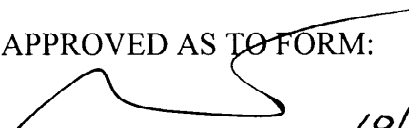
AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED AS TO FORM:



Michael G. Colantuono
Special Counsel

10/17/07

Jane L. Rodriguez, City Clerk

EXHIBIT A

MEASURE D – TEXT OF PROPOSED ORDINANCE

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF PASADENA,
CALIFORNIA AMENDING CHAPTER 4.56 OF THE
PASADENA MUNICIPAL CODE TO MODERNIZE THE
APPLICATION OF THE UTILITY USERS TAX

THE PEOPLE OF THE CITY OF PASADENA DO ORDAIN AS FOLLOWS:

Section 1. Code Amendment. Section 4.56.020 of the Pasadena Municipal Code is hereby amended to read as follows:

4.56.020 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 and to manage multiple calls and call connections.

(5) Services that enable customers to store, send or receive recorded messages.

B. “Billing address” means the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

B.C. "City" means the city of Pasadena.

C.D. "City administrator" means the city manager, or his or her authorized representative.

D.E. "Exempt wholesale generator" has the same meaning as set forth in the Federal Power Act (15 U.S.C. Section 79z-5a) and regulations thereunder.

E.F. "Gas" means natural or manufactured gas or any alternate hydrocarbon fuel, ~~which~~ that may be substituted therefor.

F.G. "Gross annual income" means all income regardless of source and includes, but is not limited to, income subject to federal and state income taxation, social security payments, pensions, welfare payments, interest on tax-exempt investments, gifts and inheritances.

G.H. "Month" means a calendar month.

H.I. "Nonutility service supplier" means:

1. A service supplier, other than a supplier of electric distribution services to all or a significant portion of the city, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

2. An electric service provider (ESP) , electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the city, which sells or supplies electricity or supplemental services to electricity users within the city; and

3. A gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the city, which sells or supplies gas or supplemental services to gas users

within the city.

I J. "Person" means, without limitation, any domestic, nonprofit or foreign corporation; firm; trust; estate; association; syndicate; joint stock company; limited liability company; partnership of any kind; joint venture; club; Massachusetts business or common-law trust; society; any natural individual; cooperative; receiver, trustee, guardian or other representative appointed by order of any court; municipal district; or municipal corporation (other than the city).

J K. "Service address" means the residential street address or the business street address of the service user's primary place of usage.

K L. "Service supplier" means any entity or person that provides telephone communication, electric, gas, water or video service to a user of such services within the city. The term includes any entity or person required to collect, or self-collect under Section 4.56.055, and to remit a tax imposed by this chapter, including its the billing agent of such an entity or person in the case of electric, gas, water or video service suppliers.

L M. "Service user" means a person required to pay a tax imposed by this chapter.

M N. "Tax administrator" means the revenue administrator of the city of Pasadena.

~~N. "Telephone communication services" includes any telephonic quality communication for the purpose of transmitting messages or information (including but not limited to voice, telegraph, teletypewriter.~~ O. "Telephone communication services" includes the transmission, conveyance, or routing of voice, data, facsimile audio, video, or text) by electronic, radio or similar means through "any other information or signals to a point, or between or among points, whether or not such information is transmitted through interconnected service" with the "public switched network" (as these terms are commonly used in the Federal Communications Act and the regulations of the Federal Communications Commission – see 47 USCA Section 332(d)), whatever the technology used, whether such transmission, conveyance or routing occurs by wire, cable, fiber-optic, light wave, laser, microwave, radio wave (including, but not limited to, cellular service, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service – see 47 USCA Section 332(c) (7) (C) (i) – regardless of radio spectrum used), switching facilities, satellite or any other similar facilities technology now existing or developed after the adoption of this ordinance., and includes, without

limitation, fiber optic, coaxial cable, and wireless. The term "telephone communication services" includes such 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 such 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 and/or data services that are functionally integrated with telecommunications services. "Telephone communication services" include, but are not limited to, the following services, regardless of the manner or basis on which such 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, ancillary telecommunication services, prepaid and post-paid telecommunications services (including but not limited to prepaid calling cards); mobile telecommunications service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); and value-added non-voice data service. For purposes of this section, "private telecommunication service" means any dedicated telephone communications service that entitle a user to exclusive or priority use of communications channels.

P. "Telephone corporation," "electrical corporation," "gas corporation," and "water corporation" have the same meanings as defined in Sections 234, 218, 222, and 241, respectively, of the Public Utilities Code of the state of California, as said sections existed on January 1, 1969. "Electrical corporation" and "water corporation" shall be construed to include any municipality or franchised agency engaged in the selling or supplying of electrical power or water to a service user.

P Q. "Video service supplier" means any person, company, or service which provides one or more channels of video programming, including any communications that are ancillary, necessary or common to the use and enjoyment of the video programming, to or from an address in the city, including to or from a business, home, condominium, or apartment, 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 communications. A "video service supplier" includes, but is not limited to, multichannel video programming distributors (as defined in 47 USCA Section 522(13)), open video systems (OVS) suppliers, suppliers of cable television, master antenna television, satellite master antenna television, multichannel multipoint distribution services (MMDS), direct broadcast satellite (to the extent allowed by federal law), and other suppliers of video programming or communications (including two-way communications), whatever their technology.

Q R. "Video services" means any and all services related to the providing of video programming (including origination programming), including any communications that are ancillary, necessary or common to the use or enjoyment of the video programming, regardless of the content of such video programming or communications. "Video services" does not include services for which a tax is paid under Section 4.56.030.

Section 2. Code Amendment. Section 4.56.030 of the Pasadena Municipal Code is hereby amended to read as follows:

4.56.030 Telephone tax.

A. There is imposed a tax upon every person, other than a telephone corporation, who uses telephone communication services in the city, including intrastate, interstate, and international telephone communication services, to the extent permitted by federal and state law. The telephone users tax is intended to, and does, apply to all charges within the city's tax jurisdiction, such as charges billed to a telephone account having a situs in the city as permitted by the Mobile Telecommunications Sourcing Act of 2000, 4 U.S.C. § 116 et seq. The tax imposed by this section shall be at the rate established under Section 4.56.180(A). The tax shall apply to all charges made for such telephone communication services and shall be collected from the service user by the telephone communication services supplier or its billing agent. ~~To the extent allowed by law, the tax on telephone communication services shall apply to a service user if the~~ There is a rebuttable presumption that telephone communication services billed to a billing or service address of the service user is in the city are used, in whole or in part, within the city's boundaries. If the billing address of the service user is different from the service address, the service address of the service user shall be used., and that such services are subject to taxation under this chapter. There is also a rebuttable presumption that telephone communication services sold within the city that are not billed to a billing address or provided to a primary physical location are used, in whole or in part, within the city's boundaries and that such services are subject to taxation under this chapter

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

C. The tax administrator may, from time to time, ~~may~~ issue and disseminate to telecommunication service suppliers which are subject to the tax collection requirements of this chapter, ~~an administrative ruling~~ rulings identifying those telecommunication services that are subject to the tax of subsection A of this section. ~~This~~ Such administrative ~~ruling~~ rulings shall be consistent with legal nexus and laws pertaining to telephone communications services and shall not impose a new tax, revise an existing tax methodology, or increase an existing tax, except as

allowed by California Government Code Section 53750(h) (2) and (A-3) or other law. The tax administrator may consider state-wide interpretive rules and guidelines promulgated by any government agency or association of government agencies as a factor in determining the intent of voters adopting this section. To the extent that the tax administrator determines that the tax imposed under this section shall not be collected in full for any period of time, such an administrative ruling falls within the tax administrator's discretion to settle disputes. The tax administrator's exercise of prosecutorial forbearance under this Chapter does not constitute a change in taxing methodology for purposes of Government Code section 53750(h), and the city does not waive or abrogate its ability to impose the telephone users' tax in full as a result of issuing such administrative rulings and may suspend such rulings and recommence collection of the tax without additional voter approval.

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

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

(2) Except with respect to local telephone service, on any charges 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.

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

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

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

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

(8) Charges 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 Internal Revenue Code section 170(b)(1)(A)(ii) which is exempt from income tax under Internal Revenue Code section 501(a). The term also includes a school operated as an activity of an organization described in Internal Revenue Code section 501(c)(3) which is exempt from income tax under Internal Revenue Code 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.

(9) Charges for telephone channel facilities used by a cable television corporation in supplying cable television service to its customers

(10) Charges for "private mobile radio service" (as defined in Part 20 of Title 47 of the Code of Federal Regulations) or "private mobile service" (as defined in 47 USCA Section 332(d)) which is not interconnected to the public switched network.

E. To prevent actual multi-jurisdictional taxation of telephone communication services subject to tax under this section, any service user, upon proof to the tax administrator that the service user has previously paid the same tax in another ~~state or city~~ American jurisdiction on such telephone communication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other ~~state or city~~ jurisdiction; provided, however, the amount of credit shall not exceed the tax owed to the city under this section. ~~For purposes of establishing sufficient legal nexus for the imposition and collection of utility users tax on charges for telephone communication services pursuant to this chapter, 'minimum contacts'~~ This ordinance shall be construed broadly in favor of the imposition and collection of the utility users tax to the fullest extent permitted by California and federal law, and as it may change from time to time.

F. The tax on telephone communication services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one (1) month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the twentieth (20th) day of the following month.

G. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this subchapter, “substantial nexus” and “minimum contacts” shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as that law may change from time to time by judicial interpretation or by statutory enactment. Any telephone communication service (including VoIP) used by a person with a service address in the city, which service is capable of terminating a call to another person on the general telephone network, 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 chapter. A service supplier shall be deemed to have sufficient activity in the city to be obligated to collect and remit the tax imposed by this chapter if it does any of the following: maintains or has within the city, directly or through an agent or subsidiary, a place of business of any nature; solicits business in the city by employees, independent contractors, resellers, agents or other representatives; solicits business in the city by means of advertising that is broadcast or relayed from a transmitter within the city or distributed from a location within the city; or advertises in newspapers or other periodicals printed and published within the city or through materials distributed in the city by means other than the United States mail.

Section 3. Code Addition. A new Section 4.56.230 of the Pasadena Municipal Code is hereby adopted to read as follows:

4.56.230 Effect of state and federal authorization

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

Section 4. Code Addition. A new Section 4.56.240 of the Pasadena Municipal Code is hereby adopted to read as follows:

4.56.240 Independent Audit

The city shall annually verify that the taxes owed under this chapter have been properly applied, exempted, collected, and remitted in accordance with this chapter, and properly expended according to applicable law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of as to

a service supplier where the cost of the verification is expected to exceed the tax revenues to be reviewed.

Section 5. Utility Rates. This Ordinance does not change the existing rate of any tax imposed under Chapter 4.56 of the Pasadena Municipal Code. A table of the existing rates of the taxes imposed under that Chapter 4.56 is attached hereto as Attachment 1.

Section 6. Low-Income Senior and Disabled Persons Exemptions. This Ordinance does not change the existing exemptions for low-income seniors and disabled persons from the any tax imposed under Chapter 4.56 of the Pasadena Municipal Code as specified in Section 4.56.210 of that Chapter. Any change to those exemptions which constitutes a tax increase within the meaning of Government Code Section 53750(h) shall require a vote of the People of the City of Pasadena.

Section 7. Amendment of Ordinance. Chapter 4.56 of the Pasadena Municipal Code as amended by this Ordinance may be repealed or amended by the City Council without a vote of the people except as follows: as required by Propositions 62 and 218, any amendment to that chapter that increases the amount or rate of tax beyond the levels authorized by this Ordinance may not take effect unless approved by a vote of the people. The City Council may impose the taxes authorized by that chapter in any amount or rate which does not exceed the rate approved by the voters of the City.

Section 8. Severability. If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this ordinance shall nonetheless remain in full force and effect. The people of the City of Pasadena hereby declare that they would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.

Section 9. Majority Approval; Effective Date. This Ordinance shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council.

PASSED, APPROVED and ADOPTED this ____ day of _____,
2008.

William Bogaard
MAYOR

ATTEST:

Jane Rodriguez
CITY CLERK

APPROVED AS TO FORM:



10/13/07
Michael G. Colantuono
SPECIAL COUNSEL

Attachment 1

Existing UUT Rates by Utility Service

Cable Television	9.4%
Telephone (Intrastate, Interstate, International and Wireless)	8.28%
Natural Gas	7.9%
Electricity	7.67%
Water	7.67%

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES TO AUTHORIZE AND ORDER THE CONSOLIDATION OF A SPECIAL MUNICIPAL ELECTION OF THE CITY OF PASADENA WITH THE STATEWIDE PRESIDENTIAL PRIMARY ELECTION TO BE HELD ON TUESDAY, FEBRUARY 5, 2008, AND REQUESTING THE COUNTY CLERK / REGISTRAR OF VOTERS TO PROVIDE CERTAIN SERVICES

WHEREAS, the City Council of the City of Pasadena has called a Special Municipal Election to be held on the day of the statewide Presidential Primary Election on Tuesday, February 5, 2008; and

WHEREAS, the City Council is submitting to the qualified voters of the City of Pasadena an ordinance to ratify and continue Pasadena's existing Utility Users Tax; and

WHEREAS, it is desirable that the Special Municipal Election be consolidated with the statewide Presidential Primary Election to be held on the same date and that within the city the precincts, polling places and election officers of the two elections be the same, and that the Los Angeles County Clerk / Registrar of Voters canvass the returns of the Special Municipal Election and that the election be held in all respects as if there were only one election; and

WHEREAS, it is necessary to secure the consent and order of the Board of Supervisors of the County of Los Angeles to effect such consolidation;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Pasadena as follows, that:

SECTION 1. Pursuant to the requirements of Section 10403 of the California Elections Code, the Board of Supervisors of the County of Los Angeles is hereby requested to consent and

agree to the consolidation of a Special Municipal Election with the statewide Presidential Primary Election on Tuesday, February 5, 2008, in order that a proposed ordinance may be submitted to the voters of the City of Pasadena.

SECTION 2. A measure is to appear on the ballot in substantially the following form:

MEASURE D. PASADENA UTILITY USERS TAX CONTINUATION MEASURE: Shall an ordinance be adopted to ratify and continue Pasadena's existing Utility Users Tax to fund general city services, including essential municipal services such as police, fire, street repair, parks and libraries, provided that low-income seniors and disabled residents remain exempt, the ordinance is updated to treat taxpayers equally regardless of technology used, and independent annual audits are required?	YES	
	NO	

SECTION 3. The County Clerk / Registrar of Voters is authorized to canvass the returns of the Special Municipal Election and to certify the same to the City Council of the City of Pasadena at the time and in the manner provided by law. The vote requirement for passage of the measure shall be a majority of votes cast (50% plus 1). The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

SECTION 4. The Board of Supervisors is requested to issue instructions to the County Clerk / Registrar of Voters to take any and all steps necessary for the holding of the consolidated election.

SECTION 5. The City of Pasadena recognizes that additional costs will be incurred by the County by reason of this consolidation, and the City agrees to reimburse the County for all expenses incurred for services requested by this resolution.

SECTION 6. The City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the County Clerk / Registrar of Voters of Los Angeles County.

Adopted at the regular meeting of the City Council on the _____ day October 2007, by the following vote:

AYES:

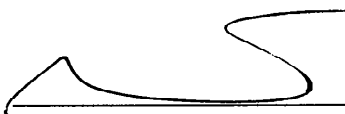
NOES:

ABSENT:

ABSTAIN:

Jane L. Rodriguez, City Clerk

APPROVED AS TO FORM:

 10/17/07
Michael G. Colantuono
Special Counsel

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA SETTING PRIORITIES FOR FILING WRITTEN ARGUMENTS PERTAINING TO A PROPOSED ORDINANCE AMENDING CHAPTER 4.56 OF TITLE 4 OF THE PASADENA MUNICIPAL CODE, THE UTILITY USERS TAX, AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS

WHEREAS, a Special Municipal Election, to be consolidated with the statewide Presidential Primary Election, is to be held in the City of Pasadena on Tuesday, February 5, 2008, at which there will be submitted to the voters of said City a measure in substantially the following form:

MEASURE D. PASADENA UTILITY USERS TAX CONTINUATION MEASURE: Shall an ordinance be adopted to ratify and continue Pasadena's existing Utility Users Tax to fund general city services, including essential municipal services such as police, fire, street repair, parks and libraries, provided that low-income seniors and disabled residents remain exempt, the ordinance is updated to treat taxpayers equally regardless of technology used, and independent annual audits are required?	YES	
	NO	

NOW, THEREFORE, the City Council of the City of Pasadena does resolve, declare, determine and order as follows, that:

SECTION 1. The City Council hereby authorizes the following member(s) of the City Council: _____

_____ to file a written argument in favor of the measure in accordance with the Elections Code of the

State of California, Section 9280, et seq., and may be changed until and including the date fixed by the City Clerk, November 19, 2007, after which no arguments for or against the measure may be submitted to the City Clerk.

SECTION 2. The City Council hereby directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall cause to be prepared an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure. The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments.

Adopted at the regular meeting of the City Council on the _____ day October 2007, by the following vote:

AYES:


NOES:

ABSENT:

ABSTAIN:

Jane L. Rodriguez, City Clerk

APPROVED AS TO FORM:



Michael G. Colantuono
Special Counsel

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA PROVIDING FOR THE FILING OF REBUTTAL ARGUMENTS WITH RESPECT TO A PROPOSED MEASURE AMENDING CHAPTER 4.56 OF TITLE 4 OF THE PASADENA MUNICIPAL CODE, THE UTILITY USERS TAX, SUBMITTED AT THE SPECIAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, FEBRUARY 5, 2008

WHEREAS, Section 9285 of the California Elections Code authorizes the City Council, by majority vote, to adopt provisions for the filing of rebuttal arguments for city measures submitted at municipal elections;

NOW, THEREFORE, the City Council of the City of Pasadena does resolve, declare, determine and order as follows, that:

SECTION 1. Pursuant to Section 9285 of the California Elections Code, when the elections official has selected the arguments for and against the measure which will be printed and distributed to the voters, the elections official shall send a copy of an argument in favor of the measure to the authors of any argument against the measure, and a copy of an argument against the measure to the authors of any argument in favor of the measure immediately upon receiving the arguments.

The author or a majority of the authors of an argument relating to a City measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument. A rebuttal argument may not be signed by more than five persons.

The rebuttal arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers, not more than 10 days after the final date for filing direct arguments. The rebuttal arguments shall be accompanied by the Declaration by Author(s) form to be supplied by the City Clerk.

Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

SECTION 2. The provisions of Section 1 shall apply only to the Special Municipal Election to be held on Tuesday, February 5, 2008, and shall then be of no further force and effect.

Adopted at the regular meeting of the City Council on the _____ day October 2007, by the following vote:

AYES:


NOES:

ABSENT:

ABSTAIN:

Jane L. Rodriguez, City Clerk

APPROVED AS TO FORM:


Michael G. Colantuono
Special Counsel