



Ordinance Fact Sheet

TO: CITY COUNCIL

DATE: DECEMBER 3, 2007

FROM: CITY ATTORNEY

SUBJECT: AN ORDINANCE AMENDING CHAPTER 4.56 OF THE PASADENA MUNICIPAL CODE ("UTILITY USERS TAX") CONFIRMING THE LEGISLATIVE INTENT THAT THE TAX ON CHARGES FOR TELEPHONE COMMUNICATIONS NOT APPLY TO CHARGES FOR INTERNET ACCESS

TITLE OF PROPOSED ORDINANCE

AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTER 4.56 OF THE PASADENA MUNICIPAL CODE ("UTILITY USERS TAX") AND CONFIRMING THE LEGISLATIVE INTENT THAT THE TAX ON CHARGES FOR TELEPHONE COMMUNICATIONS NOT APPLY TO CHARGES FOR INTERNET ACCESS

PURPOSE OF ORDINANCE

This ordinance confirms the intent of the City Council that neither the tax on charges for telephone communications nor that tax as it may be amended by voter approval of Measure D in February, 2008 applies to charges for internet access. The ordinance defines "internet access" as the initial access to the internet and the data services it provides (i.e., using dial-up, broadband, cable modem, or other technology), and explicitly states that the Municipal Code section establishing the telephone tax is not intended to include charges for internet access as taxable under the utility users tax ("UUT"). The ordinance provides that the amendments to the Municipal Code excluding internet access from the telephone tax will remain in effect whether Measure D passes or

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not. Telephone communications services that use internet technology (such as voice over the internet protocol “VoIP” services), are not within the definition of “internet access” services, and the UUT applies to those telephone services both currently and if Measure D is approved. If the Council adopts this ordinance, it will establish the City’s “administrative methodology” for implementing the UUT and that methodology cannot be changed without voter approval under Government Code Section 53750(h), which implements, Proposition 218, the “Right to Vote on Taxes Act.” Accordingly, adoption of the ordinance will legally ensure that internet access will not be taxed by the City without voter approval.

REASON WHY LEGISLATION IS NEEDED

On November 5, 2007, the City Council adopted Resolutions placing Measure D on the ballot for a February 2008 election to adopt an ordinance clarifying definitions regarding the UUT. Currently, there is a federal moratorium in effect which prohibits state and local taxes on internet access. In view of the current federal moratorium, the ordinance that is on the ballot for consideration could not impose a utility user’s tax on internet access. However, to ensure that the UUT applies to telephone services in the future, notwithstanding unforeseeable technological changes which may move most telephone services onto the internet, Measure D defines telephone services broadly. Residents of the City have questioned whether Measure D would impose the City’s utility users tax on internet access. To answer those questions, and to ensure that only the City’s voters may extend the UUT to internet access, this ordinance is presented for Council approval. This ordinance is necessary to clarify the Council’s intent that the prohibition on taxing internet access will remain in place in Pasadena, even if the federal government allows such taxation, unless and until the City’s voters decide otherwise.

PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED

This ordinance will not directly affect city programs or departments. However, it will assure that those within the City of Pasadena who pay for internet access, as defined in the ordinance, will not be required to pay a telephone tax for such service.

FISCAL IMPACT

There is no fiscal impact as a result of this ordinance as it reflects the City’s existing practice and the intent of Measure D. The City currently does not collect a telephone tax on internet access and this ordinance confirms that fact.

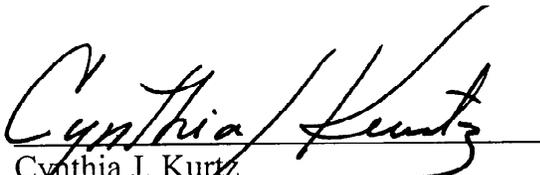
ENVIRONMENTAL DETERMINATION

This ordinance is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15060(c) because it does not have the potential to result in a direct, or reasonably foreseeable indirect, physical change in the environment.

Respectfully submitted,


Michele Beal Bagneris
City Attorney

Concurrence:


Cynthia J. Kurtz
City Manager

Introduced By _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTER 4.56 OF THE PASADENA MUNICIPAL CODE (“UTILITY USERS TAX”) AND CONFIRMING THE LEGISLATIVE INTENT THAT THE TAX ON CHARGES FOR TELEPHONE COMMUNICATIONS NOT APPLY TO CHARGES FOR INTERNET ACCESS

THE PEOPLE OF THE CITY OF PASADENA ORDAIN AS FOLLOWS:

SECTION 1. Title 4, Chapter 4.56, Section 4.56.020 of the Pasadena Municipal Code, Definitions, is hereby amended to add a new definition to be inserted in alphabetical order following existing subsection F, to read as follows, with the remaining subsections re-lettered accordingly:

“Internet Access’ means the service of providing initial access to the internet and the data services it provides, whether by dial-up, broadband, cable modem or other technology, but does not mean telephone communications services using internet technology (such as voice over the internet protocol services) provided to one who otherwise has internet access.”

SECTION 2. Title 4, Chapter 4.56, of the Pasadena Municipal Code is hereby amended by adding a new Section 4.56.035 to read as follows:

“4.56.035 Exclusion of Internet Access from Telephone Tax. Nothing in section 4.56.030 (Telephone tax) is intended to include charges for Internet Access within the Scope of taxable charges for telephone communications services.”

SECTION 3. Legislative Intent.

A. Section 4.56.020 of the Pasadena Municipal Code imposes a utility users tax on charges for telephone communications services ("UUT"), and it is the City's administrative methodology within the meaning of subdivision (h) of Government Code § 53750 that the existing UUT does not apply to charges for internet access, although it does apply to charges for telephone services provide via the internet, such as voice over the internet protocol (VoIP) services. Measure D, an ordinance amending Chapter 4.56 of the Pasadena Municipal Code proposed for voter approval in February, 2008, is not intended to extend the UUT to charges for internet access. It is the intent of this ordinance to declare and maintain the City's administrative methodology, not to apply the UUT to charges for internet access whether or not the voters of the City approve Measure D. Pursuant to Proposition 218, Article XIII C of the California Constitution, this administrative methodology cannot be changed without additional voter approval beyond the approval of Measure D.

B. This ordinance is intended to amend Chapter 4.56 of the Pasadena Municipal Code and is intended to remain in effect notwithstanding voter approval or disapproval of Measure D in February, 2008.

SECTION 4. Severability. Should any provision of this ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this ordinance or the application of this ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 5. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published in full text.

SECTION 6. This ordinance shall take effect upon publication.

Signed and approved this _____ day of _____, 2007.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held this _____ day of _____, 2007, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Date Published:

Jane L. Rodriguez, CMC
City Clerk

APPROVED AS TO FORM:


Michele Beal Bagneris
City Attorney