

# 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.

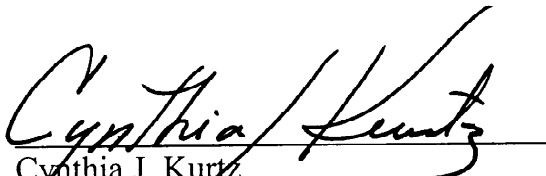
**ENVIRONMENTAL DETERMINATION**

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





