

(City Council Series)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
SANTA MONICA AMENDING PROVISIONS OF CHAPTER 6.72 OF THE SANTA  
MONICA MUNICIPAL CODE RELATING TO THE UTILITIES TAX

SECTION 1. Santa Monica Municipal Code Section 6.72 is hereby amended to read as follows:

Utilities Tax

6.72.010 Definitions.

The following words and phrases whenever used in this Chapter shall be given the meaning stated below unless otherwise provided.

(a) "Ancillary telecommunication services" mean services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to the following services:

(1) "Conference bridging service" that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

(2) Any service which separately states information pertaining to individual calls on a customer's billing statement.

(3) Any service which provides telephone number information, or address information.

(4) Any service offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers or to manage multiple calls or to call connections, including conference bridging services.

(5) Any service that enables a service user to store, send or receive recorded messages.

(b) "Ancillary video services" mean services that are associated with or incidental to the provision or delivery of video services, including but not limited to the provision of converters and similar equipment, electronic program guide services, recording services, search functions, or other interactive services or communications that are associated with or incidental to the provision, use or enjoyment of video services.

(c) "Billing address" means the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

(d) "Cable television service" means any and all services related to the providing of television, video or origination programming or services, including any communications that are ancillary, necessary or common to the use or enjoyment of the programming or service, provided to premises located in the City through any cable, or any other similar medium, in part or exclusively, that is used to transmit television or video signals, regardless of the content of the video programming or communications. However, cable television service shall not include services for which a tax is paid under Section 6.72.020 of this Chapter.

(e) "Cable television supplier" means any person, company or service which provides one or more channels or signals of television, video or television programming or services, including any communications that are ancillary, necessary or common to the use or enjoyment of the programming or services, to or from a business, home, condominium or apartment, where some fee is paid, whether directly or indirectly, whether or not the public rights-of-way are utilized in the delivery of the video or television programming or communications and regardless of the content of such video or television programming or communication. Cable television supplier includes, but is not limited to, multichannel video programming distributors, as defined in 47 U.S.C. Section 522(13), open video systems (OVS) suppliers, suppliers of cable television, master antenna television, satellite master antenna television, multichannel multipoint distribution services, direct broadcast satellite, and other suppliers of video programming or communications including two way communications, whatever their technology, to the extent allowed by law.

(f) "City" means the City of Santa Monica.

(g) "Electrical corporation" has the same meaning as it is defined in Section 218 of the California Public Utilities Code. "Electrical corporation" shall be construed to include any municipality or franchised agency engaged in the selling or supplying of electrical power to a service user.

(h) "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.

(i) "Gas" means natural or manufactured gas or any alternate hydrocarbon fuel, which may be substituted therefor.

(j) "Gas corporation" has the same meaning as it is defined in Section 222 of the California Public Utilities Code.

(k) "Month" means a calendar month.

(l) "Non-utility 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, co-generator, 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 operators, 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; or

(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.

(m) "Person" means, without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint

stock company, joint venture, limited liability company, corporation (including foreign, domestic, and non-profit), municipal district or municipal corporation, other than the City, cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

(n) "Service address" means the residential street address or the business street address of the service user's primary place of usage. As determined by the Tax Administrator "service address" may include the location of the service user's communication equipment from which the communication originates or terminates, regardless of where the communication is billed or paid. For prepaid telecommunication service, "service address" means the location associated with the service number.

(o) "Service supplier" means any entity or person, including the City, that is required to collect, self-collect or self-impose and remit a tax subject to this Chapter including any billing agent. Service supplier includes any person that provides telecommunication, electric, gas, cable, water or wastewater service to a user of such services within the City.

(p) "Service user" means a person required to pay a tax imposed under the provisions of this Chapter.

(q) "Tax Administrator" means the City's Director of Finance or his or her designee.

(r) "Telecommunication service" means the transmission, conveyance, or routing by any method or mean of any voice, data, audio, video, or any other information

or signals to a point, or between or among points, regardless of the technology or method or mean of transmission, conveyance or routing that may be used. Telecommunication service includes, without any limitation whatsoever, any transmission, conveyance, or routing in which computer processing, or any other technology or application of any kind, may be used to act on any form, code or protocol of content for purposes of transmission, conveyance or routing, without regard to whether such service is described or otherwise referred to as voice over internet protocol (VoIP) service or is classified by the Federal Communications Commission, or any other successor entity, as enhanced or value added. Telecommunication service includes video or data or any other service that is functionally integrated, in whole or in part, with any telecommunication service. Telecommunication service further includes, but is not limited to, the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; intrastate, interstate and international telecommunication service; mobile telecommunications service; prepaid or post-paid telecommunication service; private telecommunication service; paging service; "800" or "900" numbers or any other similar numbers designated by the Federal Communications Commission or any other successor entity; ancillary video services and video services. Telecommunication service also includes, but is not limited to, any charge however calculated or billed for: connection, reconnection, termination, movement, or change of service; late payment fees; detailed billing; central office; custom features; directory assistance; access, line or universal service; regulatory, administrative or other cost recovery fees; local number portability; text and instant messaging; video programming; equipment leases; service calls;

service protection plans; and special or other services of any kind. Telecommunication service does not include digital downloads that are not "ancillary telecommunication services", such as music, ringtones, games, and similar digital products.

(s) "Telephone corporation" has the same meaning as defined in Section 234 of the California Public Utilities Code.

(t) "Video programming" means programming services provided to service users by a "video service supplier" including but not limited to basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.

(u) "Video services" means any and all services and equipment related to the providing, recording, delivering, use or enjoyment of video programming, including but not limited to, origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video, using one or more channels by a video service supplier, regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes ancillary video services, data services, telecommunication services, or interactive communication services that are functionally integrated, in whole or in part, with video services.

#### 6.72.020 Telecommunication Services Tax

(a) There is hereby imposed a tax upon every person using telecommunication services in the City, other than a telephone corporation, including intrastate, interstate, and international telephone communication services. The tax imposed by this Section shall be at the rate of ten percent of all charges made for such telecommunication services and shall be collected from the service user by the telecommunication services supplier or its billing agent. To the extent allowed by law, the tax on telecommunication services shall apply to a service user if the billing or service address of the service user is 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.

(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 telecommunication services. If any nontaxable service or charge is combined with and not separately stated from taxable service charges on the bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier can reasonably identify the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records that are kept in the regular course of business, and in accordance with generally accepted accounting principles. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its books and records kept in the regular course of business



and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation of the taxable and non-taxable services. As used in this Section, the term "charges" shall not include charges for services paid for by inserting coins or other forms of payment in coin or payment operated telephones, except that where such coin or payment 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 included in the base for computing the amount of tax due.

(c) To prevent actual multi-jurisdictional taxation of telecommunication 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 on such telecommunication 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; provided, however, the amount of credit shall not exceed the tax owed to the City under this section. For purposes of establishing a sufficient legal basis for the imposition and collection of utility users tax for telecommunication services pursuant to this Chapter, "minimum contacts" 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.

(d) The tax on telecommunication service imposed by this Section shall be collected from the service user by the service supplier or its billing agent. The amount of

tax collected in one month shall be remitted to the Tax Administrator, and is due to the Tax Administrator on or before the 20<sup>th</sup> day of the following month.

(e) Any natural person, who satisfies the special exemption requirements established by Section 6.72.150, shall be exempt from the tax imposed by this Section. Nothing in this Chapter shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such person or service would be in violation of a federal or state statute, the Constitution of the United States or the Constitution of the State of California. The City Council may, in its discretion and in accordance with applicable law, create by ordinance exemptions from the telecommunication services tax.

(f) The Tax Administrator is authorized to enforce the provisions of this Chapter and may adopt administrative rules and regulations and may issue determinations as appropriate for the proper administration and interpretation of this Chapter and that are consistent with provisions and intent of this Chapter. The Tax Administrator may also issue and disseminate to service suppliers sourcing and other administrative rules or determinations for the taxation of telecommunication services, including but not limited to post-paid communication services, prepaid communication services, and private communication services.

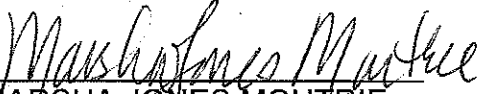
SECTION 2. The terms of this ordinance measure may be repealed or amended by the City Council of the City of Santa Monica through duly enacted ordinance unless Chapter XIIC of the Constitution of the State of California provides otherwise.

SECTION 3. Severability. If any section, subsection, 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 portions of this Ordinance shall nonetheless remain in full force and effect. The people hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

SECTION 4. Ratification of Prior Tax. The People of the City of Santa Monica ratify and approve the tax practices and collection activities under Chapter 6.72 of the Santa Monica Municipal Code as occurred prior to the adoption of this Ordinance.

SECTION 5. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

APPROVED AS TO FORM:

  
MARSHA JONES MOUTRIE  
City Attorney