

**MEASURE A**

**ORDINANCE NO. 3031-08**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF REDONDO BEACH, CALIFORNIA AMENDING CHAPTER 9 OF TITLE 8 OF THE REDONDO BEACH MUNICIPAL CODE TO MODERNIZE THE UTILITY USERS TAX AND TO MAINTAIN THE CURRENT TAX RATE**

THE PEOPLE OF THE CITY OF REDONDO BEACH, CALIFORNIA, DO ORDAIN AS FOLLOWS:

SECTION 1. Code Amendment. Section 8-9.02 of the Redondo Beach Municipal Code is hereby amended to read as follows:

“8-9.02 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

‘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.

‘Billing address’ means the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

‘City’ means the City of Redondo Beach.

'City Manager' means the City Manager of the City, or his or her authorized representative.

'Cogenerator' means any corporation or person employing cogeneration (as defined in Section 218.5 of the California Public Utilities Code) for producing power for the generation of electricity for self use or sale to others from a qualified cogeneration facility (as defined in the Federal Public Utility Regulatory Policies Act of 1978 and regulations thereunder).

'Exempt wholesale generator' shall have the same meaning as set forth in the Federal Power Act (15 U.S.C. 79z-5a) and regulations thereunder.

'Gas' means natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.

'Month' means a calendar month.

'Non-utility 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-owner utility, cogenerator, municipal utility district, federal power marketing authority, 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;

(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 to users within the City; and,

(4) A water service supplier, distributor, wholesaler, marketer, or broker, which sells or supplies water to users within the City (other than a supplier of water distribution services to all or a significant portion of the City).

'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, or the manager, lessee, agent, servant, officer or employee of any of them..

'Place of primary use' means the street address where the customer's use of the telecommunications service primarily occurs, which must be (1) the residential street address or the primary business street address of the customer; and, (2) in the case of a

mobile telecommunications service user, within the licensed service area of the home service provider. (See Mobile Telecommunications Sourcing Act (4 U.S.C. Section 116 et seq.).)

'Service address' means the residential street address or the business street address of the service user. For a telephone communication service user, "service address" means either:

(1) The location of the telecommunications equipment to which a service user's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid; or,

(2) If the location in subsection (1) of this definition is unknown (e.g., mobile telecommunications or VoIP service), the service address means the location of the service user's place of primary use.

'Service supplier' means any entity or person, including the City, that provides telephone communication, electric, water, video or gas service to a user of such services within the City, and includes any entity or person required to collect, or self-collect under Section 8-9.07 of this chapter, and remit a tax as imposed by this chapter, including its billing agent.

'Service user' means a person required to pay a tax imposed under the provisions of this chapter.

'State' means the State of California.

'Tax Administrator' means the City Treasurer of the City of Redondo Beach or any person designated by the City Manager or the City Treasurer to perform the functions of the Tax Administrator specified in this chapter.

'Telephone communication services' includes the transmission, conveyance, or routing of voice, data, audio, video, or 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, 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 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 entitles a user to exclusive or priority use of communications channels. 'Telephone communication service' does not include: internet access services to the extent they are exempt from taxation under the Internet Tax Freedom Act, 47 U.S.C. 151 note; internet streamlining of broadcast audio and video programming services; and digital downloads, such as downloads of books, music, ringtones, games and similar digital products.

'Utility' means any telephone corporation, electrical corporation, gas corporation, water corporation, or cable television corporation, as defined in Sections 234, 218, 222, 241, and 215.5, respectively, of the Public Utilities Code of the State of California as said sections existed on January 1, 1969.

'Utilities' means any product or service provided by a utility.

'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 U.S.C.A. 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 federal law permits taxation of its video services, now or in the future; and other suppliers of video programming or communications (including two-way communications), whatever their technology.

'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 shall not include services for which a tax is paid under Section 8-9.04 of this chapter."

SECTION 2. Code Amendment. Section 8-9.04 of the Redondo Beach Municipal Code is hereby amended to read as follows:

"8-9.04 Telephone users' tax

(a) There is hereby imposed a tax upon every person 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. Interstate calls shall be deemed to include calls to the District of Columbia. 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 of four and 75/100ths (4.75%) percent of all charges made for such telephone communication services. There is a rebuttable presumption that telephone communication services billed to a billing or service address in the City are used, in whole or in part, within the City's boundaries, and 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 (such as calling card and other pre-paid services) are used, in whole or in part, within the city's boundaries and that such services are subject to taxation under this chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax, regardless of where the telephone communication service may originate, terminate, or pass through.

(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, from time to time, may issue and disseminate to telecommunication service suppliers subject to the tax collection requirements of this chapter administrative rulings, pursuant to Section 8-9.18(b) of this chapter, identifying those telecommunication services that are subject to the tax of subsection (a) above and/or the sourcing of such services for tax purposes. Such administrative rulings shall not impose a new tax, revise an existing tax methodology as stated in this section, or increase an existing tax, except as allowed by California Government Code Section 53750(h)(2) and (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 administrative discretion to enforce this ordinance. 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. An administrative ruling shall not constitute a new tax or an increase in an existing tax if such administrative ruling is:

- (1) Consistent with the existing ordinance language; and,
- (2) Merely reflects a change in, clarification to, or new rendition of:

(A) The definition, interpretation, or application of substantial nexus by a court of competent jurisdiction or by preemptive state or federal law, for purposes of taxation;

(B) The sourcing of taxable transactions based upon industry custom and practice, which furthers administrative efficiency and minimizes multi-jurisdictional taxation.

(d) The following shall be exempt from the tax imposed under 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, 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) Internet access charges and content. Nothing in this chapter is intended to tax internet access charges or internet content such as, but not limited to, DSL internet connection fees, internet streamlining of broadcast audio and video programming services and digital downloads such as downloads of books, music, ringtones, games and similar digital products. This exemption does not apply to methods of delivering telephone communication services over the internet, such as but not limited to, Voice over the Internet Protocol (VoIP) telephone services.”

(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 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; provided, however, the amount of credit shall not exceed the tax owed to the City under this section.

(f) The tax imposed by this section shall be collected from the service user by service supplier. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth day of the following month.

(g) 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. 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. Ratification. Ordinance 2952-04 is hereby ratified.

SECTION 4. Code Addition. A new Section 8-9.27 of the Redondo Beach Municipal Code is hereby adopted to read as follows:

“8-9.27 Effect of state and federal authorization

To the extent that the City’s authority 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 authority up to the full amount of the tax imposed under this Chapter.”

SECTION 5. Code Addition. A new Section 8-9.28 of the Redondo Beach Municipal Code is hereby adopted to read as follows:

“ 8-9.28 Independent Audit

The City shall annually verify that the taxes owed under this Chapter have been 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 6. Utility Rates. This Ordinance does not change the existing rate of any tax imposed under Chapter 9 of Title 8 of the Redondo Beach Municipal Code.

SECTION 7. 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 9 of Title 8 of the Redondo Beach Municipal Code as specified in Section 8-9.12 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 Redondo Beach.

SECTION 8. Amendment of Ordinance. Chapter 9 of Title 8 of the Redondo Beach 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 Proposition 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 9. 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 Redondo Beach 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 10. 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.

ADOPTED by the People of the City of Redondo Beach this 3<sup>rd</sup> day of March, 2009.

\_\_\_\_\_  
Mike Gin, Mayor

ATTEST:

\_\_\_\_\_  
Eleanor Manzano, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael W. Webb, City Attorney