

PROPOSED ORDINANCE OF MEASURE H

The People of the City of Hermosa Beach hereby ordain as follows:

Section 1. Section 3.36.020 of the Hermosa Beach Municipal Code is hereby amended to read as follows:

Except where context otherwise requires, the definitions hereafter shall govern the construction of this chapter:

“Ancillary telecommunication services” means services that are associated with or incidental to the provision, use or enjoyment of telecommunication services, including but not limited to the following services:

(1) “Conference bridging service” means an ancillary 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 telecommunication services used to reach the conference bridge.

(2) “Detailed telecommunication billing service” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

(3) “Directory assistance” means an ancillary service of providing telephone number information, and/or address information.

(4) “Vertical service” means an ancillary service that is offered in connection with one or more telecommunication services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(5) “Voice mail service” means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

“Ancillary video services” means services that are associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, search functions, or other interactive services or communications that are associated with or incidental to the provision, use or enjoyment of video programming.

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

“City” shall mean the City of Hermosa Beach.

“City Manager” shall mean the City Manager or his or her designee.

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“Communication Services” means: “telecommunication services,” “ancillary telecommunication services,” “video services” and “ancillary video services.”

“Mobile Telecommunications Service” has the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations thereunder or any successor statutes or regulations.

“Month” means a calendar month.

“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.

“Place of Primary Use” means the street address representative of where the service user’s use of a communication service primarily occurs, which must be the residential street address or the primary business street address of the customer.

“Post-paid telecommunication service” means a telecommunication service obtained by making a payment on a communication-by-communication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.

“Prepaid telecommunication service” means the right to access telecommunication services, which must be paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

“Private telecommunication service” means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points (i.e., the location where the customer either inputs or receives the communications).

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“Service Address” means either:

- (1) 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; or,
- (2) If the location in Subsection (1) of this definition is unknown (e.g., mobile telecommunications service or VoIP service), the service address means the location of the service user’s place of primary use.
- (3) For prepaid telecommunication service, “service address” means the location associated with the service number.

“Service Supplier” means any entity or person, including the City, providing communication, electric, gas or water service to a user of such services within the City.

“Service User” (as a beneficiary of service) means a person required to pay a tax imposed under the provisions of this Chapter.

“Tax Administrator” means the Finance Director of the City or his or her designee.

“Telecommunication services” means:

- a. The transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used, and includes broadband services [e.g., T-1, digital subscriber line (eDSL), fiber optic, coaxial cable, and wireless broadband, including Wi-Fi, WiMAX, and Wireless MESH] to the extent federal and/or state law permits taxation of such broadband services, now or in the future. The term telecommunication 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 telecommunication services.

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- b. Telecommunication services include, without limitation the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; broadband service (to the extent federal and/or state law permits taxation of such service); mobile telecommunication service; prepaid telecommunication service (to the extent that it is practicable for the service supplier to collect the correct tax imposed under this Article from the service supplier); post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); and 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to pre-recorded or live service).
- c. Telecommunication services shall also include without limitation, charges for: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including without limitation call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory, administrative and other cost recovery charges; local number portability charges; and text and instant messaging. Telecommunication services shall not include digital downloads that are not ancillary telecommunication services, such as video programming, music, ringtones, games, and similar digital products.

“Video Programming” means those programming services commonly provided to subscribers 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.

“Video Services” means any and all services related to the providing or delivering of “video programming” (including 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 or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes data services, “telecommunication services,” or interactive communication services that are functionally integrated with “video services.”

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“Video Service Supplier” means any person, company, or service which provides or sells one or more channels of video programming, or provides or sells the capability to receive one or more channels of video programming, including any communications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the City, 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) or any successor statute or regulation]; open video systems (OVS) suppliers; and suppliers of cable television; master antenna television; satellite master antenna television; multichannel multipoint distribution services (MMDS); video services using internet protocol (e.g., IP-TV and IP-Video, which provide, among other things, broadcasting and video on-demand), 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.

“Electrical corporation, gas corporation and water corporation” have the same meaning, except as hereinafter provided, as defined in Sections 218, 222, 241, respectively, of the Public Utilities Code of the State of California, or any successor statute. “Water Corporation” shall be construed to include any organization or municipality, including but not limited to, a mutual water company, engaged in the selling or supplying of water to a service user.

Section 2. Section 3.36.040 of the Hermosa Beach Municipal Code is hereby amended to read as follows:

Section 3.36.040 Communication Services Tax

A. There is hereby imposed a tax upon every person in the City using communication services. The maximum tax imposed by this Section shall be at the rate of five and one-half percent (5.5%) of the charges made for such services and shall be collected from the service user by the communication services supplier or its billing agent. There is a rebuttable presumption that communication services, which are 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. 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. 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 communication services.

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B. Mobile Telecommunications Service shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) or any successor statute or regulation. The Tax Administrator may issue and disseminate to communication service suppliers, which are subject to the tax collection requirements of this Chapter, sourcing rules for the taxation of other communication services, including but not limited to post-paid communication services, prepaid communication services, and private communication services, provided that such rules are based upon industry custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation.

C. The Tax Administrator may issue and disseminate to communication service suppliers, which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those communication services, or charges therefore, that are subject to or not subject to the tax of Subsection A. above.

D. Charges for video services and ancillary video services shall include, but are not limited to, charges for the following:

- (1) franchise fees and access fees (PEG);
- (2) initial installation of equipment necessary for provision and receipt of communication services;
- (3) late fees, collection fees, bad debt recoveries, and return check fees;
- (4) activation fees, reactivation fees, and reconnection fees;
- (5) all video programming services (e.g., basic services, premium services, audio services, video games, pay-per-view services, or on-demand programming);
- (6) ancillary programming services (e.g., electronic program guide services, search functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of the video programming);
- (7) equipment leases (e.g., converters, remote devices); and,
- (8) service calls, service protection plans, name changes, changes of services, and special services.

E. To prevent actual multi-jurisdictional taxation of 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 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.

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F. The tax on communication services imposed by this Section shall be collected from the service user by the service supplier or person receiving payment for the services. The amount of the tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator, on or before the last day of the following month.

G. Except as otherwise provided by applicable federal or state law, if any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's 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 apportionment of taxable and non-taxable charges.

H. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Section, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the communication users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any 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 for tax collection and remittance purposes if its activities include, but are not limited to, 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 on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter with the City or distributed from a location with 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. The City shall make available, upon request, an accurate description of its jurisdictional boundaries based on street addresses and/or ZIP Plus Four, in an electronic format. If a service supplier relies upon such information provided by City, it shall not be responsible for any errors in taxation that may result.

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I. Satisfaction of Tax Obligation by Service Users. Any person who pays the tax levied pursuant to this Section with respect to any charge for a communication service shall be deemed to have satisfied his or her obligation to pay the tax levied pursuant to former Section 3.36.040 and Section 3.36.080 as codified immediately prior to adoption of this ordinance with respect to that charge. Likewise, prior to April 1, 2008, any person who pays the tax levied pursuant to former Section 3.36.040 and Section 3.36.080 as codified immediately prior to adoption of this ordinance shall be deemed to have satisfied his or her obligation to pay the tax levied pursuant to this Section with respect to that charge. The intent of this paragraph is to prevent the imposition of multiple taxes upon a single utility charge during the transition period from the prior telephone and cable telephone tax to the new communication services tax (which transition period ends April 1, 2008) and to permit communication service providers, during that transition period to satisfy their collection obligations by collecting either tax.

J. Collection of Tax by Service Supplier. Service Suppliers shall begin to collect the tax imposed by this Section as soon as feasible after the effective date of the Section, but in no event later than permitted by Section 799 of the California Public Utilities Code.

Section 3. Section 3.36.080 is hereby repealed.

Section 4. Effective Date. This Chapter shall become effective immediately upon the date that this Ordinance is confirmed and approved by the voters of Hermosa Beach at the Municipal General Election of November 6, 2007.

Section 5. Amendment or Repeal. Section 3.36.040 of the Hermosa Beach City Code may be repealed or amended by the City Council without a vote of the people. However, as required by Article XIIC of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance.

Section 6. 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 declares 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 7. Ratification of Prior Tax. The voters of the City of Hermosa Beach hereby ratify and approve the past collection of the Telephone and Cable Television Users Tax under Chapter 3.36 of the Hermosa Beach Municipal Code as it existed prior to the effective date of this Ordinance.

Section 8. Execution. The Mayor is hereby authorized to attest to the adoption of this Ordinance by the voters of the City by signing where indicated.