

REPORT

To the Honorable Mayor and City Council
From the City Manager

December 15, 2008

SUBJECT

Introduction of Ordinance amending the Redwood City Municipal Code to conform to the 2007 voter-approved Communication Users Tax

RECOMMENDATION

Introduce an ordinance repealing and adding a new section 32.501; amending section 32.508; and repealing sections 32.502 and 32.506 of Article VII of Chapter 32 of the Redwood City Municipal Code with respect to the Utility Users Tax of the City of Redwood City.

BACKGROUND

On or about July 9, 2007, Ordinance No. 2316 was introduced adding sections 32.601 – 32.623 of Article VIII to Chapter 32 of the Redwood City Municipal Code with respect to enactment of the Communication Users Tax. The intent of this ordinance was to supplant the existing telephone and video service portions of the Utility Users Tax (Article VII of Chapter 32) with a communications users' tax that would among other measures, reduce the rate of that tax from 5% to 4%, modernize the language of the telephone and video services utility users tax so as to be applied equitably to all persons regardless of the type of equipment or technologies used to receive such services, and provide for an annual audit of exemptions, revenues and expenditures.

The City Council then adopted Resolution No. 14796 which authorized submission of Ordinance No. 2316 to the voters of Redwood City at the consolidated General Municipal Election of November 6, 2007. On November 26, 2007, Resolution No. 14823 was adopted which determined that Ordinance No. 2316 had been approved by a majority of the voters of Redwood City.

As the Communication Users' Tax is now in full force and effect with respect to telephone and video services the City Code should be updated accordingly. This ordinance will repeal and add a new section 32.501; amend section 32.508; and repeal sections 32.502, and 32.506 of Article VII of Chapter 32 of the Redwood City Municipal Code with respect to the Utility Users Tax. Attached hereto as Exhibit "A", is the new section 32.501 and amended section 32.508.

FISCAL IMPACT


None. Introduction of the Ordinance would simply bring the Redwood City Municipal Code into conformance with the action of the voters of Redwood City in November 2007.



Brian Ponty
Finance Director



Stan T. Yamamoto
City Attorney



Peter Ingram
City Manager

ATTACHMENT

1. The restated sections 32.501 and 32.508

ORDINANCE NO. 08-

**AN ORDINANCE OF THE CITY OF REDWOOD CITY REPEALING AND
ADDING A NEW SECTION 32.501 AND AMENDING SECTION 32.508
REPEALING SECTIONS 32.502 AND 32.506 OF ARTICLE VII TO
CHAPTER 32 OF THE REDWOOD CITY MUNICIPAL CODE WITH
RESPECT TO THE UTILITY USERS TAX**

THE PEOPLE OF THE CITY OF REDWOOD CITY DO ORDAIN AS FOLLOWS:

SECTION 1. That Article VII of Chapter 32 of the Redwood City Municipal Code is hereby added to read as follows:

Article VII.

UTILITY USERS TAX

Sec. 32.501 DEFINITIONS

Except where the context otherwise requires, the definitions given in this Section govern the construction of this Article:

BILLING ADDRESS: Means the mailing address of the service user where the service supplier submits or bills for payments by the customer.

CITY: Means the City of Redwood City.

CITY MANAGER: Means the City Manager of the City of Redwood City.

EXEMPT WHOLESALE GENERATOR: The term "exempt wholesale generator" shall have the same meaning as set forth in the Federal Power Act (15 U.S.C. Section 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 SERVICE SUPPLIER: Means

1. A service supplier, other than a supplier of electronic 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, cogenerator, distributed generation provider, exempt wholesale generator, municipal utility district, federal

power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

2. An electric service supplier (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; and
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.

PERSON: Means, without limitation, any domestic, non-profit or foreign corporation; firm; association; syndicate; joint stock company; partnership of any kind; limited liability company; joint venture; club; trust; Massachusetts business or common law trust; estate; society; cooperative; receiver, trustee, or guardian or other representative appointed by order of any court; any natural individual; municipal district or municipal corporation (other than the City).

SERVICE ADDRESS: Means the residential street address or the business street address of the service user.

SERVICE SUPPLIER: Means any person, including the City, that provides electric, gas, or water to a user of such services within the City. The term shall include any person required to collect, or self-collect under Section 32.505 of this Article, and remit a tax as imposed by this Article, including its billing agent in the case of electric, gas or water service suppliers.

SERVICE USER: Means a person required to pay a tax imposed by this Article.

STATE: Means the State of California.

TAX ADMINISTRATOR: Means the Director of Finance of the City of Redwood City, or his or her designee.

GAS CORPORATION AND ELECTRICAL CORPORATION: The terms “gas corporation” and “electrical corporation” shall have the same meanings as defined in Section 222 and 218, respectively, of the Public Utilities Code of the State of California, as said Sections existed on January 1, 1970. “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.

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Sec. 32.508 **CONSTITUTIONAL AND STATUTORY EXEMPTIONS:**

- A. Nothing in this Article shall be construed as imposing a tax upon:
 - 1. Any person or service when imposition of such tax upon that 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; and
 - 2. The City.

- B. Any service user that is exempt from the tax imposed by this Article pursuant to subsection A shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a State or Federal agency or subdivision with a commonly recognized name. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all utility service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in utility service suppliers so that the Tax Administrator can properly notify the new utility service supplier of the service users' tax exempt status. A service user that fails to comply with this Section shall not be entitled to a refund of utility users' taxes collected and remitted to the Tax Administrator from such service user as a result of such non-compliance. Upon request of the Tax Administrator, a service supplier or non-utility service supplier, or its billing agent shall provide a list of the names and addresses of those customers which, according to its billing records, are deemed exempt from the utility users' tax.

- C. The decision of the Tax Administrator may be appealed pursuant to Section 32.520 of this Article. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 32.520 of this Article is a prerequisite to a suit thereon.

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I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the people of the City of Redwood City voting on the ___ day of December, 2008.

Rosanne Foust, Mayor

ATTEST:

Silvia Vonderlinden, City Clerk