

**ORDINANCE NO. 3558 C.S.**

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF MONTEREY**

**AMENDING SECTIONS 35-42 AND 35-56 OF ARTICLE 5 OF CHAPTER 35 OF THE  
MONTEREY MUNICIPAL CODE TO MODERNIZE THE TELEPHONE USERS TAX**

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

**SECTION 1.** Section 35-42 of Article 5 of Chapter 35 of the Monterey Municipal Code is hereby repealed in its entirety and replaced with the following:

**Sec. 35-42. Telephone users tax.**

(a) There is hereby imposed a tax upon every person using telecommunication services in the City. The tax imposed by this Section shall be at the rate of five percent (5%) of the charges made for such services for industrial, commercial, or any use other than service to a person's principal place of residence. The tax imposed by this Section shall be at the rate of two percent (2%) of the charges made for such services to a person's principal place of residence. There is a rebuttable presumption that telecommunication services billed to an address in the City, are used, in whole or in part, within the City, and such services are subject to tax under this Section. There is also a rebuttable presumption that prepaid telecommunication services sold within the City are used, in whole or in part, within the City and are therefore subject to taxation under this Section. If the billing address of the service user is different from his or her service address, the service address 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 telecommunication services.

(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). The tax administrator may issue and disseminate to telecommunication service suppliers subject to the tax collection requirements of this Article sourcing rules for the taxation of other telecommunication services, including but not limited to post-paid telecommunication services, prepaid telecommunication services, VoIP, and private telecommunication services, provided that such rules are based upon custom and common practice and further administrative efficiency and avoid multi-jurisdictional taxation (e.g., streamlined sales and use tax agreement).

(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 tax in another state or city on such telecommunication services, shall be allowed a credit against the tax imposed in 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.

(d) If any nontaxable charges are combined with and not separately stated from taxable service charges on a bill, the combined charge is subject to tax unless the service supplier apportions, by reasonable and verifiable standards, the combined charge between nontaxable and taxable services using books and records kept in the regular course of the service supplier's business, and in accordance with generally accepted accounting principles, and not created and maintained only for tax purposes. If the service supplier offers a combination of

taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the apportionment shall use books and records kept in the regular course of the service supplier's business and in accordance with generally accepted accounting principles, and not created and maintained only for tax purposes. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges.

(e) 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 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 or constitutional enactment. Any telecommunication 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, is rebuttable presumed to have "substantial nexus/minimum contacts" with the City for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this Section. A service supplier shall be deemed to have sufficient activity in the City to be obliged to collect and remit tax if its activities include, but are not limited to, any of the following: maintains or has within the City, directly or through an agent, affiliate, 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 in 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; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of utility services that are subject to a tax under this Article (e.g., electronic advertising received within the City or activities in the City by an affiliated person that inure to the benefit of the service supplier in its developing or maintaining a market in the City).

(f) The tax imposed by this Section shall be collected from the service user by the telecommunications service provider. The tax collected in one month shall be remitted to the Finance Department on or before the last day of the following month.

(g) Notwithstanding the provisions of subsection (a) above, the tax imposed by this Section shall not be imposed upon any person using telecommunication services in the City under the following circumstances:

1. Except with respect to local telephone service, on any charges for services used in the collection of news for the public press; a news ticker service furnishing a general news service similar to that of the public press; radio broadcasting; 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.
2. On any charges for services used by a public international organization in which the United States Government participates pursuant to a treaty or a federal statute; or the American National Red Cross.
3. On any charges for toll telephone services used, which originate within a combat zone from a member of the Armed Forces of the United States performing service in the combat zone, as defined under Section 112 of Title 26 of the United States Code.

4. On any charges for services used by a common carrier, telephone or telegraph company, or radio broadcasting station or network, in the conduct of its business.

5. On any charges for the installation of any instrument, wire, pole, switchboard, apparatus, or equipment, to the extent properly attributable to such installation.

6. On any charges for services used by a "nonprofit hospital" as defined in Section 170(b)(1)(A)(iii) of Title 26 of the United States Code, which is exempt from federal income taxation under Section 501(a) of Title 26 of the United States Code.

7. On any charges for services used by any federal or state government, or any of their political subdivisions, or the District of Columbia.

8. On any charges for services used by a "nonprofit educational organization" as defined in Section 170(b)(1)(A)(ii) of Title 26 of the United States Code, which is exempt from federal income taxation under Section 501(a) of Title 26 of the United States Code. "Nonprofit educational organization" also includes a school operated as an activity of an organization described in Section 501(c)(3) of Title 26 of the United States Code, which is exempt from federal income taxation under Section 501(a) of Title 26 of the United States Code, if the school normally maintains a regular facility 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. On any charges for services paid for by inserting coins in coin-operated machines.

(h) As used in this Section, the following words and phrases shall have the meanings respectively ascribed to them by this subsection:

1. "Ancillary telecommunication services" means services that are associated with or incidental to the provision, use, or enjoyment of telecommunications services including, but not limited to:

i. "Conference bridging service" means an ancillary service that links two or more participants in 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.

ii. "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a billing statement.

iii. "Directory assistance" means an ancillary service of providing telephone number information, and/or address information.

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

- v. "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 may be required to use voice mail service.
2. "Mobile telecommunications service" means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations and as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations thereunder.
3. "Prepaid telecommunication service" (including prepaid mobile telecommunication service) shall mean 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.
4. "Private telecommunication service" means a telecommunication service that entitles the service user 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 over which signals are transmitted between or among customer channel termination points (i.e., the place at which the service user inputs or receives the communications).
5. "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.
6. "Telecommunications service" means 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. The term "telecommunications services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of 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." "Telecommunications services" include, but are not limited to the following services, regardless of the manner or basis on which the charges for such services are calculated or billed: ancillary telecommunication services; intrastate, interstate, and international telecommunication services; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service; and 900 service. The term "telecommunication services" shall include, but is not limited to, charges for: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voicemail and other messaging services; directory assistance; access and line charges;

universal service charges; regulatory or administrative fees, charges or surcharges, including charges or surcharges for programs imposed by state or federal law (whether such charges or surcharges are imposed on the service supplier or the service user); local number portability charges; and text and instant messaging. "Telecommunication services" shall not include digital downloads that are not "ancillary telecommunication services," such as music, ringtones, games, and similar digital products.

7. "VoIP (Voice over Internet Protocol)" means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

8. "800 Service" means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

9. "900 Service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.

**SECTION 2.** Subsection (a) of Section 35-56 of Article 5 of Chapter 35 of the Monterey Municipal Code is hereby repealed in its entirety and subsection (b) thereof shall be redesignated as subsection (a).

**SECTION 3.** Effect of Ordinance.

It is the intent of the People that Monterey Municipal Code Section 35-48 of this Ordinance shall not be considered repealed and reenacted in its amended form; that the portions which are not altered are to be considered as having been the law from the time when they were enacted; that the new provisions are to be considered as having been enacted at the time of the amendment; and that the omitted portions are to be considered as having been repealed at the time of the amendment.

**SECTION 4.** Amendment of Ordinance.

Monterey Municipal Code Section 35-42 as amended by this Ordinance may be repealed or amended by the City Council without a vote of the People except as required by law.

**SECTION 5.** Severability.

If any section, sentence, clause, phrase, or portion of this Ordinance is held to be invalid or unenforceable by a court of competent jurisdiction for any reason, 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 Monterey 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 6. General Tax; Majority Approval; Effective Date**

The tax imposed by this Ordinance is a general tax for general governmental purposes. If a majority of voters casting votes on the question are in favor of the ballot measure regarding this Ordinance, this Ordinance shall be adopted upon the date the vote therefor is declared by the City Council and shall go into effect ten (10) days thereafter in accordance with California Elections Code Section 9217 and Section 2.6 of Article 2 of the Monterey City Charter. Implementation by communications service providers shall be governed by section 799 of the Public Utilities Code.

**SECTION 7. Execution of Ordinance.**

The People of the City of Monterey hereby authorize the Mayor and City Clerk of the City to execute this Ordinance to reflect its adoption at the November 8, 2016 election. I hereby certify that the foregoing ordinance was duly adopted by a majority of the voters of the City casting votes on the question on November 8, 2016.

  
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Clyde Roberson  
Mayor

Jan-6, '17  
(date)

ATTEST:

  
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Bonnie Gawf  
City Clerk

Jan 6, 2017  
(date)