

ORDINANCE NO. 27814

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 4.68.080 OF CHAPTER 4.68 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO CLARIFY THAT THE CITY'S APPLICATION OF THE TELEPHONE USERS TAX TO INTRASTATE TELEPHONE COMMUNICATIONS SERVICES HAS BEEN AND WILL CONTINUE TO BE CONSISTENT WITH THE INTERNAL REVENUE SERVICE'S INTERPRETATION OF THE FEDERAL EXCISE TAX PRIOR TO MAY 25, 2006

WHEREAS, since 1970, the City of San José ("City") has imposed a telephone users tax on every person in the City using intrastate telephone communication services; and

WHEREAS, the City's telephone users tax has been applied consistent with the application of the Federal Excise Tax (FET) upon local and long distance telecommunication services as the FET is interpreted by the Internal Revenue Service (IRS); and

WHEREAS, on May 25, 2006, the Treasury Department announced in Notice 2006-50 that effective August 1, 2006, it will no longer apply the FET to long distance and bundled long distance and local service provided under a single plan that does not separately state the charges for local telephone service; and

WHEREAS, the Treasury Department's Notice 2006-50 reverses its prior Revenue Rulings and interpretation of the FET, which the City has relied upon in applying its telephone users tax; and

WHEREAS, by the adoption of this Ordinance amending the telephone users tax, the City reaffirms that it will continue its long-standing practice of applying its telephone users tax in a manner consistent with the IRS' interpretation of the FET which was in effect prior to the issuance of Notice 2006-50 on May 25, 2006;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 4.68.080 of Chapter 4.68 of Title 4 of the San José Municipal Code is amended to read as follows:

4.68.080 Telephone Users Tax

- A. Imposition of Tax. Every person in the city using intrastate telephone communication services, other than a telephone corporation shall pay a tax at the rate of five percent (5%) of the charges billed for such services, including charges for service. The service user shall pay the tax to the service supplier at the same time as and along with payment of the charges billed for the services.
- B. Coin-operated Telephones and Mobile Services. As used in this Section, the term “charges” shall not include charges for services paid for by inserting coins in coin-operated telephones, except that where 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 included in the base for computing the amount of tax due. The words “telephone communication services” shall not include land mobile services or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations as that Section existed on May 24, 2006.
- C. Exemptions. Notwithstanding the provisions of subsection A of this Section, a tax shall not be imposed upon any person for using intrastate telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to, the tax imposed under Section 4251 of Title 26 of the United States Code, as that Section was interpreted by the Internal Revenue Service before May 25, 2006.

- D. Duty of Seller. The person selling the intrastate telephone communication services shall collect the tax from the service user and shall remit the tax to the Director.
- E. Procedure. The procedure for collection and remittance of the tax is set forth in Sections 4.68.110 et seq.

SECTION 2. If this Ordinance is declared to be invalid, then the provisions of Section 4.68.080 as that Section read on June 26, 2006 will become effective.

SECTION 3. This Ordinance shall not be construed as imposing a new tax, or extending or increasing an existing tax.

PASSED FOR PUBLICATION of title this 27th day of June, 2006, by the following vote:

AYES:	CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE, NGUYEN, PYLE, REED, WILLIAMS, YEAGER; GONZALES
NOES:	NONE
ABSENT:	NONE
DISQUALIFIED:	NONE

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk