

RESOLUTION NO. NS-27,851

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SANTA CRUZ DECLARING A FISCAL EMERGENCY AND
PLACING A GENERAL PURPOSE TAX BALLOT MEASURE BEFORE CITY
VOTERS BY WAY OF A SPECIAL MAIL BALLOT ELECTION ON AUGUST
26, 2008, ORDERING A SPECIAL MAIL BALLOT ELECTION FOR
AUGUST 26, 2008
AND REQUESTING THAT THE COUNTY CLERK/ELECTIONS
DEPARTMENT CONSOLIDATE AND CONDUCT SUCH ELECTION**

WHEREAS, pursuant to Article XIIC of the California State Constitution, the election for a general tax increase is required to be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by unanimous vote of the governing body; and

WHEREAS, on April 29, 2008 the First District Court of Appeal for the State of California in a published decision issued its opinion in the case entitled *Bay Area Cellular Telephone Company. v. City of Union City* holding that 911 fees are actually taxes which must comply with Proposition 218 requirements and be enacted by a vote of the people; and

WHEREAS, as a result of this decision, the City of Santa Cruz will be required to cease collection of its Emergency Response Fee; and

WHEREAS, prior to the above-referenced appellate court decision, the City anticipated a significant 2008-2009 budget shortfall; and

WHEREAS, as a direct and immediate result of the above-referenced appellate court decision, it is now apparent that said anticipated budget shortfall has increased in magnitude to approximately \$5,000,000, which shortfall if not addressed immediately by fiscal measures intended to augment the City's General Fund and reduce or eliminate that shortfall, will require the layoff of a substantial percentage of the City's workforce with a commensurate reduction in City programs and City services to City residents, workers and visitors; and

WHEREAS, the residents of the City of Santa Cruz have expressed their desire to avoid further cuts in essential City services; and

WHEREAS, the City's fiscal crisis herein described is of sufficient gravity and severity that the City must at the earliest feasible juncture propose revenue enhancement measures to the electorate in order to maintain, to the extent possible, the minimal level of governmental services necessary to protect and preserve the health, safety and general welfare of the City's residents, workers and visitors; and

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WHEREAS, therefore the City Council of the City of Santa Cruz now hereby unanimously declares a fiscal emergency in the City of Santa Cruz justifying the call for a special mail ballot election for August 26, 2008 in order for the City to propose, and City voters to consider, the adoption of a general public safety communications tax intended to address the afore-referenced fiscal emergency and to maintain the level of City services that the City anticipated it would be able to provide prior to the rendition of the afore-referenced appellate court decision; and

WHEREAS, pursuant to Elections Code section 10002, the governing body of any city may by resolution request the Board of Supervisors of the County to permit the County Elections Official to render specified services to the City relating to the conduct of an election; and

WHEREAS, the resolution requesting the County Elections Official to render said specified services to the City relating to the conduct of the special City election shall be adopted and filed at the same time as the adoption of the ordinance, resolution or order calling the election; and

WHEREAS, pursuant to Elections Code Section 10400, whenever two or more elections, including bond elections, of any legislative or congressional district, public district, city, county, or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, they may be consolidated upon the order of the governing body or bodies or officer or officers calling the elections; and

WHEREAS, pursuant to Elections Code Section 10400, such election for cities and special districts may be either completely or partially consolidated; and

WHEREAS, various other district, county and other political subdivision mail ballot election may be or have been called to be held on August 26, 2008 as authorized by California Elections Code Section 1500.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the City Council of the City of Santa Cruz that it hereby directs a special mail ballot election to be called and conducted on August 26, 2008.

BE IT FURTHER RESOLVED AND ORDERED that the City Council of the City of Santa Cruz hereby requests the Board of Supervisors to permit the Santa Cruz County Clerk/Elections Department to provide any and all services necessary for conducting said special mail ballot, and to consolidate said special mail ballot election with any other August 26, 2008 mail ballot election called and conducted by the Santa Cruz County Clerk/Elections Department.

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BE IT FURTHER RESOLVED AND ORDERED that the City Clerk of the City of Santa Cruz is hereby ordered and directed to cause said proposed ordinance and notice of election to be published in accordance with applicable provisions of the California Elections Code. The Notice of Special Municipal Election provided for herein shall be published in a newspaper of general circulation, within the City of Santa Cruz, and in each edition thereof during the day of publication. Such publication shall be in substantially the following form:

The City Council of the City of Santa Cruz hereby submits to the registered electors of the City for their adoption or rejection in a special municipal election to be conducted by mail ballot and held in the City of Santa Cruz on Tuesday, August 26, 2008, the following proposal to amend the Santa Cruz Municipal Code: Measure to be voted on: City of Santa Cruz Public Safety Communications Tax, Ordinance No. 2008-__ , “An Ordinance Of the City Of Santa Cruz Adding Chapter 3.14 To The Santa Cruz Municipal Code Imposing A Public Safety Communications Tax”

Ballot Question:

In order to limit further reductions in the City’s General Fund and in order to recoup funds lost as a result of the repeal of the City’s emergency response (911) fee, shall the City impose a tax on City telephone service subscribers in the amount of \$3.49 per month?

The tax would reduce future budget cuts and enable the City Council to allocate additional funding to public safety including 911 Emergency Communications Center services.

Yes _____

No _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SANTA CRUZ ADDING
CHAPTER 3.14 TO THE SANTA CRUZ MUNICIPAL CODE
PERTAINING TO THE COMMUNICATIONS TAX

BE IT ORDAINED By The City Of Santa Cruz As Follows:

Chapter 3.14
PUBLIC SAFETY COMMUNICATIONS TAX

Sections:

- 3.14.010 Short Title.
- 3.14.020 Definitions.
- 3.14.030 Tax Imposition.
- 3.14.040 Tax Rate/Payments.
- 3.14.050 Tax Collection.
- 3.14.060 Rules And Regulations.
- 3.14.070 Penalties.
- 3.14.080 Actions To Collect.
- 3.14.090 Appeal.
- 3.14.100 Refunds.
- 3.14.110 Suspension Of Tax.
- 3.15.120 Exemptions.

3.14.010 SHORT TITLE.

This Chapter shall be known as the “Public Safety Communications Tax Ordinance of the City of Santa Cruz.”

3.14.020 DEFINITIONS.

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

- (1) “Person” shall mean any domestic or foreign corporation, firm, association, syndicate, joint-stock company, partnership of any kind, joint venture, club, common-law trust, society, other entity or individual.
- (2) “City” shall mean the City of Santa Cruz.
- (3) “Taxpayer” shall mean a person required to pay the tax imposed by this Chapter.
- (4) “Month” shall mean a calendar month.
- (5) “Place of Primary Use” shall mean the street address where a mobile telecommunications service customer’s mobile telecommunications service primarily occurs. For purposes of this Chapter said address shall be conclusively presumed to be the residential street address or the primary business street address of the customer.

(6) "Telephone Service Provider" shall mean any person supplying local telephone service, mobile telecommunications service or voice over internet protocol (VoIP) service to any person at any location in the City, including, but not limited to, places of primary use within the City, and may include, without limitation, local exchange carriers, interexchange carriers, competitive access providers, cable television providers offering telecommunication services, mobile telecommunication service providers and any other persons offering direct telecommunication connections between their premises and the premises of a telephone or telecommunications subscriber.

(7) "Telephone Service" shall refer to any of the telephone or telecommunications services referenced in subparagraph (6) above.

(8) "Tax" shall refer to the Public Safety Communications Tax imposed by this Chapter.

3.14.030 TAX IMPOSITION.

There is hereby imposed a tax on every person who subscribes to telephone service within the City. For purposes of this Chapter, a person who has a City billing address for telephone service shall be deemed to subscribe to telephone service within the City. For purposes of this Chapter, with respect to mobile telecommunications services, a person shall be deemed to subscribe to telephone service within the City if his or her place of primary use of mobile telecommunications service is within the City. The tax imposed by this Chapter is a general tax intended by the City Council to generate revenue for general City governmental purposes including, but not limited to, public safety communication services. This tax is in addition to, and not in lieu of, the Utility Users Tax imposed pursuant to Chapter 3.29 of this Code.

3.14.040 TAX RATE/PAYMENTS.

The tax rate shall be \$3.49 per month. Unless otherwise specified in the rules and regulations promulgated by the City Finance Director pursuant to Section 3.14.060, the tax shall be paid by taxpayers on a monthly basis.

3.14.050 TAX COLLECTION.

A. Taxpayers shall remit the tax to their telephone service provider. Telephone service providers shall hold tax revenues in trust for the City and shall remit the tax revenues to the City's Finance Department on a monthly basis on or before the last day of the month following the month during which the tax is collected.

B. The tax required to be collected by telephone service providers under this Chapter shall be added and stated separately as the City of Santa Cruz Public Safety Communications Tax in the telephone service provider's billing invoices to the taxpayer.

C. If the amount paid by a taxpayer to a telephone service provider in response to a customer billing invoice is less than the full amount of the charges for telecommunication services made by the telephone service provider and the tax to be collected by the telephone service provider pursuant to the invoice, a proportionate share of both the charges for service and the tax shall be deemed to have been paid.

D. The telephone service provider, at its option, may assess the City a service charge of up to one-eighth of one percent (0.125%) of the tax revenues actually collected by the telephone service provider. The service charge may be deducted from the tax revenues remitted to the City at the time of disbursement by the telephone service provider to the City.

E. The duty to collect the tax from a taxpayer shall commence with bills issued by the telephone service provider on or after the effective date of this Chapter.

3.14.060 RULES AND REGULATIONS.

The City Finance Director shall have power to adopt rules and regulations not inconsistent with the provisions of this Chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the tax. A copy of such rules and regulations shall be on file and available for public examination in the Finance Director's office. Failure or refusal to comply with any rules and regulations promulgated pursuant to this Section shall be deemed a violation of this Chapter.

3.14.070 PENALTIES.

A. Taxes which are not remitted by the taxpayer to the City on or before the due date of the telephone service provider's billing invoice to the taxpayer are delinquent.

B. A taxpayer who fails to remit any tax imposed by this Chapter within the time required shall pay a penalty of ten percent of the amount of the tax, per month or fraction thereof, from the first day of delinquency until the date of payment. The total amount of the penalties provided for in this subsection shall not exceed fifty percent of the total amount of the tax due.

C. If the Finance Director determines that a taxpayer's nonpayment of any tax remittance due under this Chapter is attributable to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated above.

D. Every penalty imposed under the provisions of this Section shall become a part of the tax required to be remitted.

E. In addition to the penalties imposed, a taxpayer who fails to remit any tax imposed by this Chapter shall pay interest at the rate of one and one-half percent per month or fraction thereof on the amount of tax due, exclusive of penalties, from the first day of the month following the month for which the amount or any portion thereof should have been remitted until the date of payment.

3.14.080 ACTIONS TO COLLECT.

Any tax required to be paid by a taxpayer under the provisions of this Chapter shall be deemed a debt owed by the taxpayer to the City. Any person owing or holding taxes due to the City under the provisions of this Chapter shall be liable in an action brought in the name of the City for the recovery of such amount and shall also be subject to any applicable judicial, administrative or criminal enforcement action authorized by Title 4 of this Code.

3.14.090 APPEAL.

A taxpayer aggrieved by any decision of the City Finance Director with respect to the payment or nonpayment of the tax imposed by this Chapter or with respect to the Finance Director's computation of due and payable tax, interest and/or penalties, if any, may appeal to the City Council by filing a notice of appeal with the City Clerk pursuant to Section 1.16.030 within fifteen days of the serving or mailing of the determination of the tax, interest and/or penalties due. The City Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to the taxpayer's last known place of address. The findings of the City Council shall be final and conclusive and shall be served upon the taxpayer either personally or by mail. Any amount found to be due shall be immediately payable to the City upon the service of the notice.

3.14.100 REFUNDS.

Whenever the amount of any tax, interest or penalty has been overpaid by a taxpayer or paid more than once by a taxpayer, or has been erroneously or illegally collected or received by the City, it may be refunded to the taxpayer by the City provided a claim in writing therefor, stating under penalty of perjury the specified grounds upon which the claim is founded, is filed with the City Finance Director within three years of the date of payment.

3.14.110 SUSPENSION OF TAX.

The tax imposed by this Chapter shall be suspended, and therefore neither remitted nor collected, during any time period in which a tax imposed by the Sana Cruz County Emergency Communications Center Joint Powers Authority for the operation and/or capital improvement of the Santa Cruz County Emergency Communications Center is in effect.

3.15.120 EXEMPTIONS.

Nothing in this Chapter shall be construed as imposing a tax upon:

- A. A lifeline customer of a telephone service provider;
- B. A telephone corporation;
- C. A person using a coin-operated telephone;
- D. A non-profit hospital which is exempt from federal income tax under Section 501(a) of the United States Code;
- E. A non-profit educational organization which is exempt from income tax under Section 501(a) of the United States Code;
- F. Any person when imposition of such fee upon that person would violate the Constitution of the United States, the Constitution of the State of California, or preemptive federal or state law;
- G. City or any other governmental agency.

PASSED AND ADOPTED this 27th day of May, 2008, by the following vote:

AYES: Councilmembers Robinson, Porter, Reilly, Rotkin, Madrigal,
Vice Mayor Mathews; Mayor Coonerty.

NOES: None.

ABSENT: None.

DISQUALIFIED: None.

APPROVED _____
Mayor

Attest _____
City Clerk