

City of Pacifica

Compiled by the Pacifica City Clerk Ms. Kathy O'Connell

Measure V

“Without raising the current 6.5% rate, and to fund fire protection; emergency services; police protection; Meals on Wheels and other senior citizen services; street, sidewalk and pothole repair; and other essential services, shall an ordinance be adopted to amend the City of Pacifica’s Utility Users Tax adding telecommunications services, requiring equal treatment regardless of technology used, maintaining senior exemptions and adding independent citizens oversight, with all funds staying in Pacifica and no funds for Sacramento?”

Full Text

AN ORDINANCE OF THE CITY OF PACIFICA, CALIFORNIA, AMENDING THE PACIFICA MUNICIPAL CODE TO ADD CHAPTER 3-11A IMPOSING A UTILITY USERS’ TAX ON TELECOMMUNICATIONS SERVICES

WHEREAS, the City is experiencing an existing and immediate funding crisis, which is the result of factors largely outside of its control, including national economic trends, decreases in revenue from existing taxes and fees, increases in charges by the County of San Mateo, and unpredictable State takeaways of local revenue; and

WHEREAS, the City has taken significant steps to reduce its operational costs including: cutting service positions, negotiating salary reductions with all staff members, reducing pensions and benefits, and implementing cost saving and efficiencies by consolidating services and eliminating unnecessary overhead; and

WHEREAS, because of changes in State law, particularly the approval of Propositions 62 and 218, the City has very few means available for increasing General Fund revenue; and

WHEREAS, if staff and service levels are further reduced, the health, safety, and welfare of the residents of Pacifica will be endangered, public safety standards will degrade, crime and violence will increase, public facilities and property will not be properly maintained, the community will not have adequate and safe recreational opportunities, and businesses and families will be discouraged from moving to, or remaining in, Pacifica; and

WHEREAS, because of that threat to the public health, safety, and welfare, an emergency exists in the City, as the term “emergency” is used in Article XIIC, section 2(b) of the California Constitution; and

WHEREAS, the City must immediately address that emergency by ensuring that the City has the resources necessary to preserve the public health, safety, and welfare; and

WHEREAS, the identified emergency necessitates that the City Council submit an essential City services temporary funding measure in the form of a eight (8) year, six and one-half percent (6.5%) utility users’ tax on telecommunications services, to the voters of Pacifica at the November 5, 2013 election, even though such an election would not be consolidated with a general election for a member of the City Council; and

WHEREAS, Article XIIC, section 2(b) of the California Constitution permits the City, in an emergency situation declared by a unanimous vote of the City Council to seek voter approval for a general tax at an election that is not consolidated with an election for a member of the City Council.

NOW, THEREFORE, the People of the City of Pacifica do hereby ordain as follows:

Section 1: Amendment of Municipal Code. Chapter 11A is hereby added to Title 3 of the Pacifica Municipal Code to read in its entirety as follows:

“Chapter 11A TELECOMMUNICATIONS USERS’ TAX

Sec. 3-11A.01	Short Title.
Sec. 3-11A.02	Authority and Purpose.
Sec. 3-11A.03	Definitions.
Sec. 3-11A.04	Telecommunications Users’ Tax.
Sec. 3-11A.05	Exemptions.
Sec. 3-11A.06	Bundling Taxable Items with Non-taxable Items.
Sec. 3-11A.07	Substantial Nexus/Minimum Contacts.
Sec. 3-11A.08	Maximum Tax Liability for Telecommunications Usage.
Sec. 3-11A.09	Duty to Collect—Procedures.
Sec. 3-11A.10	Collection Penalties—Service Suppliers.
Sec. 3-11A.11	Actions to Collect.
Sec. 3-11A.12	Deficiency Determination and Assessment—Tax Application Errors.
Sec. 3-11A.13	Administrative Remedy—Non-Paying Service Users.
Sec. 3-11A.14	Additional Powers and Duties of Tax Administrator.
Sec. 3-11A.15	Records.
Sec. 3-11A.16	Refunds.
Sec. 3-11A.17	Appeals.
Sec. 3-11A.18	No Injunction/Writ of Mandate.
Sec. 3-11A.19	Remedies Cumulative.
Sec. 3-11A.20	Notice of Changes to this Chapter.
Sec. 3-11A.21	Effect of State and Federal Reference/Authorization.
Sec. 3-11A.22	Annual Audit and Public Report.
Sec. 3-11A.23	Citizens Oversight Committee.
Sec. 3-11A.24	Violations; Penalties.
Sec. 3-11A.25	Jurisdiction of the State Public Utilities Commission.
Sec. 3-11A.26	Termination Date.

Sec. 3-11A.01 Short title.

This chapter shall be known as the “Telecommunication Users’ Tax Law” of the City of Pacifica.

Sec. 3-11.02 Authority and Purpose.

This chapter is adopted pursuant to the provisions of Section 37100.5 of the Government Code of the State for the purpose of providing general municipal revenues to be used for general municipal purposes.

Sec. 3-11A.03 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter shall have the meanings set forth in this Section.

(a) “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 the following services:

1. “Conference bridging service” means an ancillary service that links two (2) 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 telecommunications services used to reach the conference bridge.

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2. "Detailed telecommunications 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 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.
5. "Voicemail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voicemail service does not include any vertical services that the customer may be required to have in order to utilize the voicemail service.
- (b) "Billing address" means the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.
- (c) "Business service use" shall have the meaning ascribed thereto by Section 3-11.04(j) in Chapter 11 of this title.
- (d) "City" means the City of Pacifica.
- (e) "Due date" means the date specified in Section 3-11A.04(F) of this chapter that the Tax Administrator must receive the tax collected on telecommunications imposed by this chapter.
- (f) "Mobile telecommunications service" has the meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C.A. Section 124) and the regulations thereunder.
- (g) "Month" means a calendar month.
- (h) "Paging service" means a "telecommunications service" that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.
- (i) "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.
- (j) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.
- (k) "Post-paid telecommunication service" means the 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.
- (l) "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.
- (m) "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).
- (n) "Service address" means either:
1. The location of the service user's telecommunication equipment from which the telecommunication originates or terminates, regardless of where the telecommunication 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 telecommunications service, "service address" means the location associated with the service number.
- (o) "Service supplier" means any entity or person, including the City, that provides telecommunication service to a user of such service within the City.
- (p) "Service user" means a person required to pay a tax imposed under the provisions of this chapter.
- (q) "State" means the State of California.
- (r) "Streamlined Sales and Use Tax Agreement" means the multi-state agreement commonly known and referred to as the Streamlined Sales and Use Tax Agreement, as it is amended from time to time.
- (s) "Tax Administrator" means an employee of the City of Pacifica designated by the City Manager.
- (t) "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 the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to

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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 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 (or any other toll-free numbers designated by the Federal Communications Commission); 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). For the purposes of applying this chapter, "telecommunications services" shall include both "telecommunications services" and "ancillary telecommunication services."

- (u) "Telecommunications users' tax" means the tax imposed by Section 3-11A.04 of this chapter.
- (v) "VOIP (Voice Over Internet Protocol)" means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.
- (w) "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.
- (x) "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.

Sec. 3-11A.04 Telecommunications users' tax.

A. There is hereby imposed a tax upon every person in the City using telecommunications. The tax imposed by this section shall be at the rate of six and one-half percent (6.5%) of the charges made for such services and shall be collected from the service user by the telecommunications services supplier or its billing agent. There is a rebuttable presumption that telecommunications 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 telecommunications 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.A. Section 124) or any successor statute. The Tax Administrator may issue and disseminate to telecommunications service suppliers, which are subject to the tax collection requirements of this chapter, sourcing rules for the taxation of other telecommunications services, including but not limited to post-paid telecommunications services, prepaid telecommunications services, and private telecommunications services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation (e.g., Streamlined Sales and Use Tax Agreement).

C. Upon request from a telecommunications service supplier, the Tax Administrator may issue and disseminate to telecommunications service suppliers which are subject to the tax collection requirements of this chapter an administrative ruling identifying those telecommunications services, or charges therefor, that are subject to or not subject to the tax of subsection A of this section.

D. As used in this section, the term "telecommunications 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, 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 music, ring tones, games, and similar digital products.

E. To prevent actual multi-jurisdictional taxation of telecommunications 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.

F. The tax on telecommunication services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the 20th day of the following month.

G. Proceeds of the tax imposed by this section shall be deposited in the general fund of the City and be available for any legal purpose.

H. Any unexpended proceeds raised by the City pursuant to this section may be left in the general fund and used in succeeding years for any legal purpose.

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Sec. 3-11A.05 Exemptions.

A. Nothing in this chapter shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such 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.

B. Any service user that is exempt from the tax imposed by this chapter pursuant to subsection A of this section 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 for such service. 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 telecommunications service suppliers serving that service user. If the Tax Administrator determines the service supplier is entitled to an exemption pursuant to subsection A, the Tax Administrator shall notify the telecommunications service suppliers to exempt the appropriate service user from the telecommunications users' tax. A service user that fails to comply with this section shall not be entitled to a refund of a telecommunications users' tax collected and remitted to the Tax Administrator from such service user as a result of such noncompliance.

C. Residential service users who have reached the age of sixty-two (62) may apply to the Tax Administrator for an exemption to the tax imposed by this chapter. An application for such exemption shall be filed upon an application form approved by the Tax Administrator for such purpose. The application shall be accompanied by adequate written documentation that the applicant is sixty-two (62) years of age or older, is the service user whose account is listed at the service address for which the exemption is sought, and is personally responsible for the payment of the telecommunications service at the service address, and shall further include the names of all telecommunications service suppliers serving that service user. The Tax Administrator shall determine whether the criteria of this subsection have been satisfied and whether the exemption shall be granted. Upon granting such an exemption, the Tax Administrator shall notify the telecommunications service suppliers to exempt the appropriate service user from the telecommunications users' tax. If granted an exemption by the Tax Administrator pursuant to this subsection, such service user shall give the Tax Administrator timely written notice of any change in telecommunications service suppliers so that the Tax Administrator can properly notify the new telecommunications service supplier of the service user's tax exempt status.

D. Any service user granted an exemption pursuant to this section shall notify the Tax Administrator within ten (10) days of:

- (i) any change in telecommunications service suppliers so that the Tax Administrator can properly notify the new telecommunications service supplier of the service user's tax exempt status; or

- (ii) any change of address or any change in fact or circumstance which might disqualify that service user from receiving an exemption from tax. If it is determined that the service user is no longer qualified, the Tax Administrator shall give notice to the service suppliers that they shall resume collection of the tax commencing with the next billing period. If the user is entitled to exemption at a new address, the Tax Administrator shall notify the service suppliers of that fact.

E. Any decision of the Tax Administrator pursuant to this section may be appealed pursuant to Section 3-11A.17 of this chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 3-11A.17 of this chapter is a prerequisite to a suit thereon.

F. It shall be a misdemeanor for any person to knowingly receive the benefits of any exemption provided for in this section when the basis for exemption does not exist or ceases to exist.

G. The Tax Administrator may at any time require evidence of eligibility or continued eligibility of a service user for any exemption. Such evidence may include, without limitation, copies of business records, pay stubs, letters or statements from the Social Security Administration, copies of income tax returns, and other evidence concerning the service user or members of his or her household which may tend to prove or disprove eligibility. Failure to provide sufficient evidence to establish eligibility when requested by the Tax Administrator shall be grounds for denial or discontinuance of the service user's exemption.

H. No person shall be exempt from the tax except as provided in this section. The provisions of this chapter shall not apply retroactively, and no refund shall be made for any taxes paid prior to the issuance and effective date of any exemption granted by the Tax Administrator, nor shall any refund be made for any taxes collected during any period in which an exemption from the Tax Administrator was not in effect or had lapsed by failure to apply for renewal.

Sec. 3-11A.06 Bundling taxable items with non-taxable items.

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. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its 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 valuation of the taxable and non-taxable services.

Sec. 3-11A.07 Substantial nexus/minimum contacts.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this chapter, "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 telecommunications 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, 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 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; 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 communication services that are subject to a tax under this chapter.

Sec. 3-11A.08 Maximum Tax Liability for Telecommunications Usage.

The maximum total of the taxes any business service user for any service address shall pay under Section 3-11A.04 of this chapter, when combined with the total of the taxes paid under Section 3-11.06 ad 3-11.07 of Chapter 11 of this title, shall not exceed the cap of five hundred dollars (\$500.00) established by Section 3-11.08 of Chapter 11 of this title. Said cap shall be administered in accordance with and shall be subject to the provisions set forth in said Section 3-11.08.

Sec. 3-11A.09 Duty to collect—Procedures.

A. Collection by Service Suppliers.
The duty of service suppliers to collect and remit the taxes imposed by the provisions of this chapter shall be performed as follows:

1. The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Except in those cases where a service user pays the full amount of such charges but does not pay any portion of the taxes imposed by this chapter, or where a service user has notified a service supplier that he is refusing to pay a

tax imposed by this chapter which such service supplier is required to collect, if the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which has accrued for that billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 3-11A.13 shall apply.

2. The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user on or after the operative date of this chapter. Where a service user receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

B. Filing Return and Payment. Each service supplier required by this chapter to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator, on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as deemed necessary to determine if the tax is being levied, collected, and remitted in accordance with this chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code Section 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information that is exempt from the disclosure provisions of the Public Records Act.

Sec. 3-11A.10 Collection penalties—Service suppliers.

A. Taxes collected from a service user are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on the following business day. Any tax billed to a service user but not paid to the service supplier shall not be deemed an obligation of the service supplier unless such tax is thereafter paid to the service supplier.

B. In addition to remitting the amount of the tax, any service supplier who fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, shall pay a penalty for such delinquencies or deficiencies at the rate of fifteen percent (15%) of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of one percent (1.0%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

C. If the Tax Administrator determines that the non-payment by any service supplier of any remittance due under this chapter is due to fraud or gross negligence in reporting or remitting, a penalty of twenty-five percent (25%) of the amount of the tax collected and/or required

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to be remitted shall be added thereto in addition to the penalties stated above.

D. For collection purposes only, every penalty imposed and all interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid.

E. Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this chapter to be consistent with any uniform standards or procedures that are mutually agreed upon by other public agencies imposing a utility users tax, or otherwise legally established, to create a central payment location or mechanism.

Sec. 3-11A.11 Actions to collect.

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit the tax and shall no longer be a debt of the service user. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this chapter, along with any collection costs incurred by the City as a result of the person's noncompliance with this chapter, including, but not limited to, reasonable attorneys fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under 11 U.S.C.A. Section 507(a)(8)(C). Service suppliers who seek to collect charges for service in bankruptcy proceedings shall also include in any such claim the amount of taxes due the City for those services, unless the Tax Administrator determines that such duty is in conflict with any federal or state law, rule, or regulations or that such action would be administratively impractical.

Sec. 3-11A.12 Deficiency determination and assessment—Tax application errors.

A. The Tax Administrator shall make a deficiency determination if he or she determines that any person required to pay or collect taxes pursuant to the provisions of this chapter has failed to pay, collect, and/or remit the proper amount of tax by improperly applying or by failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute proceedings under this section if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. The Tax Administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of one percent (1.0%) per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) calendar days after the date of service of such notice, the person may file a written request with the Tax Administrator for a hearing on the matter.

C. If the person fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment,

and shall immediately be due and owing to the City. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

D. At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3-11A.17 of this chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 3-11A.17 of this chapter is a prerequisite to a suit thereon.

E. Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the 30th day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of one percent (1.0%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this chapter shall commence from the date of delinquency as provided in this subsection E.

F. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

Sec. 3-11A.13 Administrative remedy—Non-paying service users.

A. The service supplier shall provide the City with the names and addresses of all service users and the amounts of taxes owed under the provisions of this chapter, and shall submit such list to the Tax Administrator with each monthly tax return. Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this chapter from certain named service users for specific billing periods. To the extent the service user has failed to pay the amount of tax owed for a period of three (3) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this chapter. Nothing herein shall require that the Tax Administrator institute proceedings under this

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section if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of fifteen percent (15%) of the total tax that is owed, and shall pay interest at the rate of one percent (1.0%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

C. The Tax Administrator shall notify the non-paying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.

D. If the service user fails to remit the tax to the Tax Administrator within fifteen (15) days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of twenty-five percent (25%) of the amount of the total tax owed and the penalty set forth in the notice, but not less than ten dollars (\$10.00).

E. Every penalty imposed upon a service user pursuant to this section, and such interest as accrues thereon, shall become a part of the tax required to be paid.

Sec. 3-11A.14 Additional powers and duties of the Tax Administrator.

A. The Tax Administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this chapter.

B. The Tax Administrator shall have the power to adopt administrative rules and regulations consistent with provisions of this chapter for the purpose of interpreting, clarifying, carrying out, and enforcing the payment, collection, and remittance of the taxes imposed by this chapter. The administrative rules and regulations shall not impose a new tax, revise an existing tax methodology as stated in this section, or increase an existing tax, except as allowed by California Government Code Section 53750(h)(2). A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office. To the extent that the Tax Administrator determines that the tax imposed under this chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of Government Code Section 53750 or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of Government Code Section 53750, and the City does not waive or abrogate its ability to impose the telecommunications users' tax in full as a result of promulgating administrative rules or entering into agreements.

C. Upon a proper showing of good cause, the Tax Administrator may make administrative

agreements, with appropriate conditions, to vary from the strict requirements of this chapter and thereby: (1) conform to the billing procedures of a particular service supplier so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter; or (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file and available for public examination in the office of the Tax Administrator, and are voidable by the Tax Administrator or the City at any time.

D. The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this chapter, of any person required to collect and/or remit a tax pursuant to this chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 3-11A.12 of this chapter for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

E. Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this chapter for a period of not to exceed 45 days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of one percent (1.0%) per month, prorated for any portion thereof.

F. The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this chapter.

G. Notwithstanding any provision in this chapter to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this chapter if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration industry practice or other precedents.

Sec. 3-11A.15 Records.

A. It shall be the duty of every service supplier required to collect and/or remit to the City any tax imposed by this chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at a reasonable time.

B. The City, acting through the City

City of Pacifica

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Council, may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the City on or before the due date, provided that such person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.

C. The Tax Administrator is authorized to execute a nondisclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code Sections 7284.6 and 7284.7.

D. If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: (1) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and (2) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

E. If any person subject to record-keeping under this section unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of five hundred dollars (\$500.00) on such person for each day following: (1) the initial date that the person refuses to provide such access; or (2) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this chapter.

Sec. 3-11A.16 Refunds.

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this chapter from a person or service supplier, it may be refunded as provided in this section as follows:

A. *Written Claim for Refund.* Any person seeking a refund of over-payment of taxes, interest or penalties imposed by this chapter and collected by the City must file a claim with the City Clerk pursuant to Chapter 3-16 of this Code.

B. *Refunds to Service Suppliers.* A service supplier may claim a refund or take as credit against taxes collected and remitted an amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established that the person from whom the tax has been collected was not a service user.

C. *Refunds to Service Users.* Any service user may obtain a refund of taxes overpaid, paid more than once, or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subsection A of this section, but only when the service user having paid the tax to the service supplier establishes to the satisfaction of the Tax Administrator that the service user has been unable to obtain a refund from the service supplier who collected the tax.

D. *Proof Required.* No person shall be entitled to a refund or a credit pursuant to this section unless it first clearly establishes, to the satisfaction of the Tax Administrator, the right to the credit by written records showing entitlement thereto. Under no circumstances shall an overpayment taken as a credit against an underpayment pursuant to this subsection qualify a service supplier for a refund to which it would not otherwise be entitled under the one (1) year written claim requirement of Chapter 3-16.

Sec. 3-11A.17 Appeals.

A. Any person directly aggrieved by a decision of the Tax Administrator may appeal that decision in accordance with the procedure set forth in this section. A "decision" of the Tax Administrator includes any decision, determination, assessment, or administrative ruling made pursuant to this chapter. This section does not apply to a decision relating to a refund pursuant to Section 3-11A.16. Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

B. The City Manager shall select a hearing officer to hear all appeals filed pursuant to this section. A written notice of appeal shall be filed with the City Clerk, or his or her designee, within fourteen (14) days of the decision being appealed.

C. Upon receipt of the notice of appeal, the City Clerk, or his or her designee, shall schedule a hearing before a hearing officer selected by the City Manager within thirty (30) days from the receipt of the appeal. The appealing party shall be served with written notice of the time and place of the hearing at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent of the parties and the hearing officer.

D. Upon the conclusion of the hearing, the hearing officer shall consider any relevant evidence presented at the hearing and shall issue a written determination upholding, modifying or reversing the decision from which the appeal is taken. The hearing officer's determination shall be given within thirty (30) days after the conclusion of the hearing and shall state the reasons therefor. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision.

E. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

Sec. 3-11A.18 No Injunction/Writ of Mandate.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any

City of Pacifica

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officer of the City to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected and/or remitted.

Sec. 3-11A.19 Remedies Cumulative.

All remedies and penalties prescribed by this chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 *et seq.*) and the California Unfair Practices Act (Business and Professions Code Section 17070 *et seq.*), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

Sec. 3-11A.20 Notice of Changes to this Chapter.

If a tax under this chapter is added repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of California Public Utilities Code Section 799.

Sec. 3-11A.21 Effect of State and Federal Reference/Authorization.

Unless specifically provided otherwise, any reference to a State or Federal statute in this chapter shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease (as a result of excluding all or a part of a communication service, or charge therefor, from taxation). Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the City's authorization to collect or impose any tax imposed under this chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter.

Sec. 3-11A.22 Annual Audit and Public Report.

Annually the City Council retains an independent auditor to conduct an audit of and provide audited financial statements for all of the City financial activities. The auditor shall include an accounting of the revenue received from the telecommunications users' tax and expenditures thereof in the audited financial statements. The auditor's report shall be presented to the Council and made available to the public. Additionally, the City Manager shall annually prepare and present to the City Council and the public a report in conjunction with the audit that reviews the status and performance of the programs and services funded wholly or partially with proceeds of the telecommunications users' tax.

Sec. 3-11A.23 Citizens Oversight Committee.

The City Council shall appoint a Citizens Oversight Committee to review the receipt of revenue and to ensure that the tax revenue authorized by this chapter is expended within the City. The City Council shall adopt a resolution establishing the terms, composition and duties of the committee.

Sec. 3-11A.24 Violations; Penalties.

Any person violating any provision of this chapter, or any person willfully refusing to pay any tax required by this chapter, shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than five hundred dollars (\$500.00), or by imprisonment in the County Jail for a period of not more than six (6) months, or by both such fine and imprisonment.

Sec. 3-11A.25 Jurisdiction of State Public Utilities Commission.

Nothing contained in this chapter is intended to conflict with the applicable rules, regulations, and tariffs of any service supplier subject to the jurisdiction of the Public Utilities Commission of the State. In the event of any conflict, the provisions of such rules, regulations, and tariffs shall control.

Sec. 3-11A.26 Termination Date.

The authority to levy the tax imposed by this ordinance shall expire on the eighth anniversary of the operative date, unless extended by a majority of the voters of the City."

Section 2: Severability. If any part of this Ordinance is held to be invalid for any reason, such decision will not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed the remainder of this Ordinance if such invalid portion thereof had been deleted.

Section 3: Effective Date. This ordinance relates to the levying and collection of the City telecommunications users' tax and, if approved by the electorate of the City of Pacifica at the Special Municipal Election of November 5, 2013, shall take effect immediately upon the declaration of the results of that election by the City Council.

Section 4: Amendment or Repeal. Chapter 3-11A of the Municipal 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 that would increase the rate of any tax levied pursuant to this Ordinance. The People of the City of Pacifica affirm that the following actions shall not constitute an increase of the rate of a tax:

- (1) The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of the tax;
- (2) An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance;
- (3) The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Ordinance); and

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- (4) The collection of the tax imposed by this Ordinance, even if the City had, for some period of time, failed to collect the tax.

Section 5: Publication. The City Clerk of the City of Pacifica is hereby directed to cause the following summary of the ordinance to be published in a newspaper of general circulation, published and circulated in the City of Pacifica:

Contingent upon majority voter approval, this ordinance adopts a six and one-half percent (6.5%) utility users' tax on telecommunications services within the City of Pacifica. The tax shall terminate automatically upon the eight anniversary of the City beginning to collect it, unless extended by the voters.

Section 6: Execution. The Mayor is hereby authorized to attest to the adoption of this Ordinance by the voters of the City by signing where indicated below.

PASSED AND ADOPTED this _____ day of November, 2013, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Len Stone, Mayor

ATTEST:

Kathy O'Connell, City Clerk

APPROVED AS TO FORM:

Michelle Marchetta Kenyon, City Attorney

Impartial Analysis of Measure V

State law authorizes the City Council of the City of Pacifica to levy a Utility Users' Tax ("UUT") on the users of utilities in the City if the ordinance proposing the tax is approved by a two-thirds vote of all members of the City Council and the tax is approved by a majority vote of the City's voters. On July 8, 2013, the City Council by unanimous vote approved an ordinance to amend the Pacifica Municipal Code to establish a UUT on telecommunications services in the City for a period of eight years to raise revenue for general City purposes. The City Council also directed that this Measure V be placed on the ballot for majority voter approval.

Pursuant to Chapter 3.11 of the Pacifica Municipal Code, City residents and businesses currently pay a utility users' tax on electricity and gas services (the "Existing UUT"). The tax rate for the Existing UUT is 6.5% of the amount charged for each of these services.

As proposed by Measure V, the UUT on telecommunications services will include the following tax rate, exemption and cap on certain users: 6.5% tax rate; an exemption for senior citizens (residential service users who have reached the age of 62); and a \$500 cap for business service users. These provisions are the same as are set forth currently in the Existing UUT. Measure V also includes an annual audit and public report requirement and provides for the appointment of a Citizen Oversight Committee to ensure that the tax is being collected and remitted properly and that the revenue raised is spent in accordance with law. Except where precluded by federal law, the proposed measure would apply to all types of telecommunication, video communication, text messaging, and paging services in addition to the telephone, cellular telephone and voice over internet protocol ("VOIP") services. Measure V would not apply to cable, internet access, internet content, or digital downloads of games, ringtones, music, and books.

If adopted, Measure V would automatically expire eight years after becoming operative. Measure V cannot be extended, nor can the tax rate be increased, without voter approval.

Measure V is considered a general tax under state law. The revenues received from the tax will be placed in the City's general fund and may be used in any manner authorized by law and as directed by the City Council. All monies collected could be used by the City to pay for general City operations and programs such as fire and police services, street and sidewalk maintenance, and support for senior citizen services (such as Meals on Wheels).

A yes vote on Measure V would impose a utility users' tax on telecommunications services in Pacifica at a rate of 6.5%. Collection of the new tax would commence approximately 30 days following certification of the election results. A no vote on Measure V would reject the proposed tax. This measure requires a simple majority vote (*i.e.* 50 percent plus one) to pass.

/s/ **Michelle Marchetta Kenyon**
City Attorney
City of Pacifica

City of Pacifica

Compiled by the Pacifica City Clerk Ms. Kathy O'Connell

Arguments in support of or in opposition to the proposed laws are the opinions of the authors.

Argument in Favor of Measure V

Vote Yes on Measure V to protect police and fire services, 911 emergency response, and keep our neighborhoods, schools, parks and beaches safe. These services are part of what makes Pacifica a safe and desirable place to live.

To ensure Measure V will benefit Pacifica, all funds will stay in our community—the state cannot take away a single penny. Citizen oversight and annual audits ensure all funds are used appropriately to protect important city services for local residents.

Sacramento has taken \$26 million away from Pacifica since 1997. These “takebacks” have harmed the city’s ability to maintain the public safety and health services that Pacificans depend on.

We can’t rely on the state to protect the services that make Pacifica one of the 100 safest cities in the United States—that is why Measure V is essential.

Measure V will update our city’s existing UUT to add telecommunications services—without increasing the current rate.

Measure V will provide locally-controlled funding for critical services, including:

- Fire protection and 911 emergency response
- Police protection
- Senior citizen support, including Meals on Wheels
- Street and sidewalk maintenance, including pothole repair
- Food and shelter assistance for struggling residents

Measure V continues the existing exemption for senior citizens.

Measure V includes strict fiscal accountability provisions.

- All funds will stay in Pacifica and cannot be taken away by the state
- Measure V expires in 8 years and cannot be extended, increased or changed without voter approval
- Independent citizens’ oversight, mandatory third-party audits and yearly reports to the community are required to ensure funds are spent on priority city services

Please join Pacifica community leaders, business owners and senior citizens to protect the vital services that keep our residents safe and healthy—vote Yes on V.

- | | |
|---|-----------------|
| /s/ Linda L. Jonas
38 year Resident of Pacifica | August 6, 2013 |
| /s/ Dave Bertini
Former Pacifica Police Captain | August 6, 2013 |
| /s/ Bruce M Banco
Chair - Pacifica Financing City Services Task Force | August 12, 2013 |
| /s/ Allan Hale
Retired 52 year Pacifica resident | August 14, 2013 |
| /s/ Suzan Getchell-Wallace
Business Owner | August 13, 2013 |

Rebuttal to Argument in Favor of Measure V

- Don’t be deceived - THIS IS A 60% TAX INCREASE
- Pacifica has a balanced budget, a \$1.4 million surplus, and enough money to pay for consultants, conduct voter surveys, send us campaign mailers and call a costly special election
- Growing our tax base, not new taxes, is a better way to meet revenue needs
- Don’t overlook all the tax overrides we already pay on our property tax bills
- This tax hits just residents and exempts visitors and is unfair
- \$500 yearly cap for businesses. No cap for residents.
- Exempting based solely on age while the truly needy are forced to pay is unjust
- Seniors - you are not automatically exempted - You have to submit paperwork to apply
- This is a new tax on an essential safety services - your phones
- **None of the proposed revenue is guaranteed to go for any of the lovely programs that Pacifica cites as it’s reason for raising our taxes**
- The supposed independent oversight committee’s only real job would be to watch tax monies disappear into the City’s General Fund. Council will spend the money as it chooses
- The eight year duration of this tax is too long. Then they’ll want it extended forever. **There’s no temporary tax**
- Pacifica will never make overdue economies as long as it thinks the voters can be fooled into taxing ourselves more

VOTE NO ON MEASURE V. THE FLAWED TAX AT THE WRONG TIME.

- | | |
|---|-----------------|
| /s/ Thomas Clifford
Co-Chair, Pacificans Against Higher Utility Taxes | August 24, 2013 |
| /s/ Karen Rosenstein
Business Owner | August 24, 2013 |
| /s/ William “Leo” Leon
Concerned Citizen | August 24, 2013 |
| /s/ Mary Catherine Neff
Retired teacher | August 24, 2013 |
| /s/ Barbara Ash
Bus. Owner | August 24, 2013 |

City of Pacifica

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Arguments in support of or in opposition to the proposed laws are the opinions of the authors.

Argument Against Measure V

Here we go again - another tax increase on the ballot, this one unnecessary and unfair.

We already pay extra taxes approved for the county, schools, city, community colleges and the state. Is this where and how *you'd choose* to raise your taxes? What about our schools?

Pacifica's Government always wants more money, threatening us unless we approve taxes. **Pacifica's budget surplus is \$1.4 million.** The state is no longer taking it's money. Rising property values means more local revenue.

The City Council spent almost \$60,000 on a costly special election, expensive campaign mailers promoting the new tax, and another outside consultant. That could have funded a needed economic development coordinator.

We still pay what Pacifica's web site describes as "excellent" and "generous" compensation. Eighty-six employees and some retirees get over \$100,000 a year. Instead of adjusting compensation to match our tax base, Pacifica borrowed to pay it's pension shortfall.

- Many Pacificans are at the poverty level but are not exempt under Measure V. Others **are** exempt based on age, not ability to pay. **This 60% tax increase hurts the single parents, unemployed, large families and disabled veterans among us.**
- Only residents, not visitors would pay this tax.
- Businesses are favored with a \$500 annual cap. There is no cap for residents.
- This tax revenue would go into the General Fund and be spent on salaries. No programs are protected. Pacifica has over-promised what this tax can deliver.
- **Do you really think this would be a "temporary tax"?**

Pacifica operates too much in secret, withholding information from the public. It hires too many outside consultants. City Council Subcommittees make the important decisions behind closed doors. Has it earned your trust in higher taxes?

Join us, your neighbors of all political stripes, in voting NO on unfair, unnecessary Measure V.

- /s/ **Thomas Clifford** August 13, 2013
Co-Chair P.A.H.U.T.
- /s/ **William "Leo" Leon** August 13, 2013
Concerned Citizen
- /s/ **Mary Catherine Neff** August 13, 2013
Retired Teacher
- /s/ **Barbara Ash** August 13, 2013
Bus. Owner
- /s/ **Karen Rosenstein** August 13, 2013
Business Owner

Rebuttal to Argument Against Measure V

The argument against Measure V is simply not true.

We are Pacifica residents who reviewed the city budget. We care about preserving fire and police protection, senior citizen services, street repair and the future of Pacifica. We know the facts and are voting Yes on V.

Pacifica needs Measure V.

There is no \$1.4 million budget surplus.

Pacifica has balanced its budget by freezing employee salaries, cutting pensions and benefits and laying off 33% of its staff. The independent Financing City Services Task Force, comprising a diverse group of Pacifica residents, carefully studied the city budget and found there was no "fat" to cut. The group recommended Measure V to protect community services.

Measure V is necessary now to avoid cuts to critical city services threatened by new, imminent state takebacks.

Get the facts at www.CityofPacifica.org.

Measure V is the result of a transparent, public process, including two city council meetings and a public hearing that opponents attended on July 8, 2013. At this meeting, one of the authors of the opposing argument made an official public comment that it was "clear the city needs the money."

Measure V is fiscally responsible and seniors are eligible for an exemption.

Measure V would add less than \$6 to an average phone bill, and requires independent citizens' oversight, mandatory audits and yearly reports. Measure V isn't permanent. It expires in 8 years and cannot be extended without voter approval.

Pacificans deserve a vibrant, safe and desirable community.

Vote Yes on V.

www.SupportPacifcasFuture.org

- /s/ **Eric Ruchames** August 25, 2013
Retired Police Sergeant
- /s/ **Kalimah Salahuddin** August 25, 2013
Former Pacifica Resource Ctr Client
- /s/ **Susan Vaterlaus** August 26, 2013
Planning Commissioner
- /s/ **Joseph Kell** August 26, 2013
Member, Financing City Services Task Force