

**SAN LEANDRO UTILITY USER TAX
REDUCTION AND FAIRNESS MEASURE RR**

RR

MEASURE RR: Shall an ordinance be adopted to reduce the City of San Leandro's existing utility users' tax from 6% to 5.7% on telecommunications and video (cable-like) services; ensure that users of current and future technologies be treated fairly; and preserve funding for general municipal services such as police, maintenance of and improvements to city streets and sidewalks and graffiti removal?

YES

NO

**CITY ATTORNEY IMPARTIAL ANALYSIS OF
MEASURE RR**

**City of San Leandro Utility User Tax Reduction
and Fairness**

The San Leandro City Council has placed a measure on the November 4, 2008 ballot asking voters to adopt an ordinance adding Chapter 2-17 of Title 2 of the San Leandro Municipal Code to update the City's utility users tax (UUT). San Leandro Municipal Code Chapter 2-4 currently imposes a UUT charged to persons utilizing electrical energy; gas delivered through mains or pipes; using intrastate, interstate and international telephone service and using cable television service furnished by a cable television corporation within the City. The tax is collected by service providers from customers. All UUT revenue is deposited in the City's general fund and used for general governmental purposes including police, maintenance and improvements to city streets and sidewalks and parks and recreation programs. The proposed measure enacts a tax that reflects changes in modern technology, meets current legal standards and lowers the tax rate from 6% to 5.7% on telecommunication and video services.

When San Leandro's UUT ordinance was initially adopted, the ordinance followed the pattern of nearly all other UUT ordinances. In particular, in defining the circumstances where the UUT could be collected on telecommunication services, the ordinance makes specific reference to the Federal Excise Tax (FET) with respect to its application. The definitions and terminology contained in the ordinance have not been changed since the UUT was adopted. Consistent with an IRS ruling in 1979, San Leandro's UUT and FET have been assessed for telephone charges that are based on time and distance, as well as cellular phones and rate plans that are based only on time or bundled plans, which combine billing for various types of services.

After revolutionary changes in telephone communication technology and customer billing methods, the IRS has faced legal challenges to its collection of the FET for wireless communications services that are billed based on time only or "bundled" billing plans. On May 25, 2006, the IRS reversed its long standing interpretation and ruled that the FET would no longer apply to wireless communications that are billed in such a manner. The key legal issue is

whether the reference to the FET in San Leandro's ordinance could jeopardize the continued collection of the City's UUT.

The proposed measure amends the ordinance to address the FET legal issue and also incorporates modern terminology to remain current with evolving communications technology. The proposed amendment treats users communications services in a uniform and equitable manner, regardless of the means of transmission or technology used.

If this measure is adopted, most technology users will not see much change in their monthly bills, and those using traditional local and long distance telephone services will see a tax rate drop. For wireless customers, there may be a nominal increase for services such as text messaging, and those using private communication services will see a nominal tax increase. Internet services such as email, browsers and digital download will not be taxed.

A majority vote of the electorate is required for adoption.

s/JAYNE W. WILLIAMS

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