

**RESOLUTION NO. 115-07**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND,  
CALIFORNIA, DECLARING THE EXISTENCE OF AN EMERGENCY  
NECESSITATING THE SUBMISSION OF A TELECOMMUNICATIONS AND  
VIDEO USERS' TAX ORDINANCE PURSUANT TO ARTICLE XIII D, SECTION  
2(B) OF THE CALIFORNIA CONSTITUTION

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WHEREAS, pursuant to Chapter 13.52 of the Richmond Municipal Code, the City currently levies a Utility Users' Tax; and

WHEREAS, two components of the Utilities Users' Tax are the Telecommunication User Tax and the Video Users Tax, which are levied, respectively, pursuant to Sections 13.52.030 and 13.52.080 of the Richmond Municipal Code and which are collectively referred to as the City's Telecommunications and Video Users' Tax (the "Tax"); and

WHEREAS, the City Council has determined that there is an urgent, unforeseen need to submit proposed revisions to the Tax to the electorate; and

WHEREAS, the City Council has determined that it would not be prudent or fiscally sound to delay the consideration of these tax revisions beyond the February 5, 2008 Statewide Presidential Primary Election; and

WHEREAS, pursuant to Article XIII C, Section 2(b) of the California Constitution, the City Council may submit the tax revisions to the electorate only if the City Council declares by unanimous vote that there is an emergency.

BE IT RESOLVED by the City Council of the City of Richmond, California, as follows:

1. For the purposes of Section 2(b) of Article XIII C of the California Constitution, the City Council declares, by a unanimous vote, that an emergency exists necessitating that revisions to the Tax be submitted to the electorate at the February 5, 2008 Statewide Presidential Primary Election.

2. The facts justifying this declaration are as follows:

a. The City currently receives approximately \$6 million a year in revenues from the Tax, and such revenues are critical to the public welfare and the City's financial ability to provide essential municipal services such as police, fire, street repair, and parks and libraries.

b. Lawsuits have been filed against other jurisdictions challenging the application of utility users' taxes to certain telecommunication services based upon allegedly deficient definitions contained in the ordinances governing such taxes and/or references to federal laws. Since the last election at which City Council seats were on the ballot, the number and scope of these lawsuits has increased, and at least one appellate court has reached a ruling adverse to the taxing entity involved in the action.

c. Legislation has been introduced in the United States Congress which may repeal certain federal laws referenced in the Tax ordinance.

d. Certain major telecommunication providers have notified the City in writing that they are collecting the Tax under protest.

e. Unless the City takes action to amend its Tax Ordinance, the effect of legislative or judicial action may be to dramatically reduce the revenues that have consistently been generated by the tax.

f. It is urgently important that the City ensure certainty in its ability to impose the Tax by reducing the legal and legislative risks that currently endanger this critical funding stream, which currently generate sufficient general funds each year to pay for approximately 30 full time police officers or for the operation of 2

fire trucks (including personnel costs). By way of comparison, the \$6 million annual revenue is roughly equal to the library services budget, roughly two-thirds the size of the recreations services budget, roughly three times the size of the budget for the street abatement division, and more than four times the amount the City contributes to the employment and training division (including summer youth programs).

g. The City must prepare a budget for Fiscal Year 2008-2009 by June, 2008. If the City has not ensured the uncertainty with respect to Tax revenues, by the time the City Council adopts its budget, then the City Council believes that it may have to cut essential services and/or reduce the City's reserve funds to unacceptably low levels in order to avoid a revenue risk that could endanger the ability of the City to respond to unforeseen emergent situations.

h. Any delay in modernizing the Tax will increase the period during which revenues are received under the existing tax ordinance, therefore increasing the amount of funds that could potentially be demanded from the City as part of an action or claim.

i. These circumstances constitute a fiscal emergency.

3. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the original Resolutions.

BY ORDER OF THE CITY COUNCIL OF THE CITY OF RICHMOND

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I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held on November 6, 2007, by the following vote:

AYES:	Councilmembers Bates, Butt, Lopez, Marquez, Rogers, Sandhu, Thurmond, Viramontes, and Mayor McLaughlin
NOES:	None
ABSTENTIONS:	None
ABSENT:	None

DIANE HOLMES  
Clerk of the City of Richmond  
(SEAL)

Approved:

GAYLE McLAUGHLIN  
Mayor

Approved as to form:

LOUISE RENNE, Interim  
City Attorney

State of California            }  
County of Contra Costa       : ss.  
City of Richmond             }

I certify that the foregoing is a true copy of Resolution No. 115-07, finally passed and adopted by the Council of the City of Richmond at the meeting held on November 6, 2007.

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Clerk of the City of Richmond