

RESOLUTION NO. 7672

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTH PASADENA, CALIFORNIA, CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020, FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISION OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES AND FOR THE SUBMISSION TO THE VOTERS AN ORDINANCE EXTENDING THE CITY'S UTILITY USERS' TAX

WHEREAS, on July 1, 2020, pursuant to Resolution No. 7663, and under the provisions of the laws relating to general law cities in the State of California, the City Council called a General Municipal Election to be held on November 3, 2020, for the election of three City Council seats:

Councilmember, 1st District, Full Term (Four (4) Years)
Councilmember, 2nd District, Full Term (Four (4) Years)
Councilmember, 3rd District, Full Term (Four (4) Years)

WHEREAS, the City Council now desires to submit to the voters at the General Municipal Election, a question relating to the extension and modification of the Utility User's Tax.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH PASADENA, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of South Pasadena, California, on Tuesday, November 3, 2020, a General Municipal Election (consolidated with the Statewide General Election) for the purpose of electing three Members of the City Council for the full term of four years; and

SECTION 2. That the City Council, pursuant to its right and authority, does order submitted to the voters at the General Municipal Election the following question:

UTILITY USER'S TAX MEASURE	
To maintain City services, such as Public Safety, Paramedic and Library services, shall an Ordinance be adopted to:	YES
Extend the City's Utility User Tax at its current rate of 7.5% for all utilities, to be effective on January 1, 2021 and remain in effect until otherwise terminated by majority vote of the electorate in South Pasadena?	NO

SECTION 3. That the proposed complete text of the Ordinance submitted to the voters is attached as Exhibit A.

SECTION 4. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 5. That the Board of Supervisors of the County of Los Angeles is hereby authorized and respectfully requested to authorize and permit the Registrar-Recorder/County Clerk of the County of Los Angeles to:

- a) Print and supply ballots for said City of South Pasadena General Municipal Election;
- b) Mail the City's sample ballots and candidate statements of qualifications to the electors of the City of South Pasadena as part of the same material that will be mailed to the voters of the Statewide General Election to be held in the County of Los Angeles;
- c) Perform such other services as may be required for the consolidation and conduct of said City of South Pasadena General Municipal Election with said Statewide General Election to be held in the County of Los Angeles.

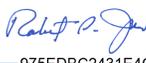
SECTION 6. The vote centers for the election shall be open as required during the identified voting period pursuant to California Elections Code sections 4007 and 14401.

SECTION 7. The City shall reimburse the County of Los Angeles in full for the services performed on behalf of the City upon the presentation of a bill by the County.

SECTION 8. The City Clerk is hereby directed to deliver a certified copy of this resolution to the Board of Supervisors of the County of Los Angeles and to transmit an electronic copy to the Board of Supervisors and the Registrar-Recorder/County Clerk of the County of Los Angeles.

SECTION 9. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED AND ADOPTED on this 5th day of August, 2020.

DocuSigned by:

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Robert S. Joe, Mayor

ATTEST: DocuSigned by:

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*Maria E. Ayala,
Chief City Clerk*

for: Evelyn G. Zneimer, City Clerk

APPROVED AS TO FORM:
DocuSigned by:


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Teresa L. Highsmith, City Attorney

I HEREBY CERTIFY the foregoing resolution was duly adopted by the City Council of the City of South Pasadena, California, at a regular meeting held on the 5th day of August, 2020, by the following vote:

AYES: Cacciotti, Khubesrian, Schneider, Mahmud, and Mayor Joe

NOES: None

ABSENT: None

ABSTAINED: None

DocuSigned by:

F69D694F8A024D0...

*Maria E. Ayala,
Chief City Clerk*

for: Evelyn G. Zneimer, City Clerk
(seal)

EXHIBIT A
ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SOUTH PASADENA,
CALIFORNIA, AMENDING CHAPTER 34B ("UTILITY
TAX") OF THE SOUTH PASADENA MUNICIPAL CODE
REGARDING THE UTILITY USERS' TAX AND EXTEND
THE RATE STRUCTURE TO PRESERVE AND FUND
IMPORTANT CITY SERVICES**

WHEREAS, the City of South Pasadena has collected a Utility Users Tax (UUT) since 1983; and

WHEREAS, in November 2011, the voters approved reducing the rate from 8% to 7.5% beginning on July 1, 2012, and extending the tax until June 30, 2022;

WHEREAS, the only major sources of general fund revenues, which pay for police, fire and paramedics, library, and community services are property taxes, sales tax, the recently approved 0.75% transaction and use tax, and the UUT; and

WHEREAS, the current 7.5% UUT revenues collected equals approximately \$3.4 million and represents approximately 12% of the City's general fund revenues; and

WHEREAS, the UUT contributed as much as 16% to the City's general fund and has seen a steady decrease due to conservation efforts and change in the demand for utilities.

WHEREAS, each .5% of UUT revenues collected equals approximately \$225,000 of the City's general fund budget; and

WHEREAS, the renewal of the UUT is essential to the City's financial sustainability and to preserve critical core services, including public safety, fire and paramedic services, youth and senior services, library and maintenance of streets and

parks. and

WHEREAS, after much consideration, the City Council reached consensus to support a 7.5% UUT to remain in place until revised or repealed by majority vote of the electorate; and

WHEREAS, the City Council continues to work on ways to increase the financial stability of the general fund; although some amount of the revenue generated by even a 7.5% UUT is likely to be lost over time due to market erosion, changing technology and other factors, setting the UUT at 7.5% will substantially help stabilize the current budget and current level of essential services.

NOW, THEREFORE, the People of the City of South Pasadena do ordain, as follows:

SECTION 1. Chapter 34B (Utility Tax) is amended to read as follows:

34B.1 Purpose.

In order to meet the financial concerns of the city and to pay for its usual and current expenses in each fiscal year hereafter, a utility users tax is imposed.

34B.2 Definitions.

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

- (a) "Ancillary Telecommunications Services" shall mean services that are associated with or incidental to the provision, use or enjoyment of Communications Services.
- (b) "City" means the city of South Pasadena.
- (c) "**Communications Services**" shall mean the transmission, conveyance, or routing of voice, audio, video communications, data or any other communications

information or signals to a point, or between or among points, whatever the technology used, and whether or not that information is transmitted through interconnected service with the public switched network, or through fiber optic, coaxial cable, power line transmission, broadband, digital subscriber line or other wireless transmission. The term "Communications Services" includes 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 those services are referred to 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 "Communications Services". "Communications Services" include, but are not limited to the following services, regardless of the manner or basis on which those services are calculated or billed: central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); local number portability; text messaging; instant messaging; Ancillary Telecommunications Services; prepaid and post-paid telecommunications services (including but not limited to prepaid calling cards); mobile telecommunications services; Private Communications Services; paging services; and 800 services (or any other toll-free numbers designated by the Federal Communications Commission). "Communications Services" does not include either digital downloads, such as downloads of books, music, ringtones, games and similar digital products, or that portion of cable or video television services subject to a cable or video television franchise fee.

- (d) "Month" means a calendar month.
- (e) "Person" means any domestic or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, Massachusetts business or common law trust, society, individual, or municipal corporation.
- (f) "Service supplier" means a utility provider that collects taxes paid and remits same to the city as required by this chapter.

- (g) "Service user" means a person required to pay a tax imposed by this chapter.
- (h) "State" means the state of California.
- (i)) "Tax administrator" means the finance director of the city.

34B.3 Exemptions and procedures for exemptions.

(a) Nothing in this chapter shall be construed as imposing a tax upon any person when imposition of such tax upon that person would be in violation of the Constitution of the United States or that of the state, such as public schools and exempted churches and religious organizations.

(b) There is exempted from the tax imposed by this chapter, all service users who have an income, adjusted for family size, at or below eighty percent of the area median income as determined under the Section 8, Income Limits for Los Angeles County, as published by the U.S. Department of Housing and Urban Development and applicable to the Community Development Block Grant Programs.

(c) There is exempted from the tax imposed by this chapter, all service users who are veterans who have a one hundred percent disability as verified by the Veterans Administration.

(d) The city council reserves the power to, by order or resolution, establish other classes of persons or classes of utility service otherwise subject to payment of a tax imposed by this chapter and provide that such classes or persons or service shall be exempt, in whole or in part, from such tax.

(e) The tax administrator shall prepare a list of the persons exempt from the provisions of this chapter by virtue of this section and furnish a copy thereof to each service supplier.

(f) The tax administrator shall adopt rules and regulations not inconsistent with the provisions of this chapter to carry out any grant of exemption authorized by the city council pursuant to this section. The tax administrator shall require such information as necessary, including, but not limited to, personal identification and verified federal and state income tax returns, to qualify a service user for such exemption.

(g) This exemption shall not apply retroactively. Service users shall only be entitled to an exemption after filing the required information and the receipt of notification of exemption from the tax administrator.

34B.4 Communications users tax.

(a) There is imposed a tax on the amounts paid for any intrastate, interstate, or international communications services by every person with a billing or service address in the city using such services. The tax imposed by this section shall be at the rate of 7.5 percent of the charges made for such services and shall be paid by the person paying for such services.

(b) As used in this section, the term "charges" does not include charges for services paid for by inserting coins in coin-operated telephones, except that where such coin-operated service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due. The communications users tax is intended to, and does, apply to the charges billed to a telephone account having situs in the city, irrespective of whether a particular communication service originates and/or terminates within the city.

(c) The tax imposed by this section shall be collected from the service user by the person providing the communications services, or the person receiving payment for such services. The amount of the tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month.

34B.5 Electricity users tax.

(a) There is imposed a tax upon every person in the city using electrical energy in the city. The tax imposed by this section shall be at the rate of 7.5 percent of charges made for such energy and shall be paid by the person paying for such energy. "Charges," as used in this section, include charges made for:

- (1) Metered energy; and

(2) Minimum charges for service, including but not limited to customer charges, service charges, demand charges, standby charges and annual and monthly charges, and fuel costs adjustments.

(b) As used in this section, the term “using electrical energy” shall not be construed to mean the storage of such energy by a person in a battery owned or possessed by him or her for use in an automobile or other machinery or device apart from the premises upon which the energy was received; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; nor shall the term include electricity used and consumed by an electric public utility; nor shall the term include the mere receiving of such energy by an electric public utility or governmental agency at a point within the city for resale; or the use of such energy in the production or distribution of water by a public utility or a governmental agency.

(c) The tax imposed in this section shall be collected from the service user by the person supplying such energy. The amount of tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month.

34B.6 Gas users tax.

(a) There is imposed a tax upon every person using gas in the city, that is delivered through mains and pipes. The tax imposed by this section shall be at the rate of 7.5 percent of the charges made for such gas and shall be paid by the person paying for such gas. “Charges” as used in this section shall include minimum charges for such services, including but not limited to customer charges, service charges, demand charges, standby charges, and annual and monthly charges.

(b) There shall be excluded from the base on which the tax imposed in this section is computed the following:

(1) Charges made for gas which is to be resold and delivered through mains and pipes;

(2) Charges made for and sold for use in the generation of electrical energy or for the production or distribution of water by a public utility or governmental agency;

(3) Charges made by a gas utility for gas used and consumed in the conduct of the business of gas public utilities;

(c) The tax imposed by this section shall be collected from the service user by the person selling the gas. The person selling the gas shall, on or before the twentieth day of each calendar month, commencing on the twentieth day of the calendar month after the effective date of this part, make a return to the tax administrator stating the amount of taxes billed during the preceding calendar month. At the time such returns are filed, the person selling the gas shall remit tax payments to the tax administrator in accordance with the schedules established or approved by the tax administrator.

34B.7 Water users tax.

(a) There is imposed a tax upon every person in the city using water which is delivered through mains or pipes. The tax imposed by this section shall be at the rate of 7.5 percent of charges made for such water and shall be paid by the person paying for such water. "Charges" as used in this section shall include

minimum charges for service, including customer charges, service charges, demand charges, standby charges and all other annual and monthly charges.

(b) There shall be excluded from the base on which the tax imposed in this section is computed charges made for water which is to be resold and delivered through mains or pipes; and charges made by a municipal water department, public utility or a county or municipal water district for water used and consumed by such department, utility or district.

(c) The tax imposed in this section shall be collected from the service user by the person supplying the water. The amount collected in one month shall be remitted to the tax administrator on or before the last day of following month.

34B.8 Cable television users tax.

(a) There is imposed a tax upon every person in the city using cable television service in the city. The tax imposed by this section shall be at the rate of 7.5 percent of the total charges made for such service, and shall be paid by the person paying for such service.

(b) As used in this section, the term “charges” includes, but is not limited to, charges for installation and programming, whether the programming is a cable transmission of broadcast channels, transmission of cable-only programming, or “pay-per-view” programming.

(c) The tax imposed by this section shall be collected from the service user by the person providing the cable television service, or the person receiving payment for such services. The amount of the tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month.

34B.9 Interest and penalty.

(a) Taxes collected from the service user which are not remitted to the tax administrator on or before the dates provided in this chapter are delinquent.

(b) Interest and penalty shall accrue on delinquent accounts at the then maximum legal rate; nonpayment when due shall constitute a misdemeanor enforceable under the provisions of the city municipal code.

(c) Interest and penalties for delinquency in remittance of any tax collected, or any deficiency determination regarding uncollected tax, shall attach and be paid by the person required to collect and remit the tax.

(d) All penalties and interest imposed under this chapter shall become a part of the tax required to be paid, collected, and remitted to the city.

34B.10 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 that 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. 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, but not limited to, the award by a competent court of attorneys' fees and court costs.

34B.11 Duty to collect—Procedures.

The duty to collect and remit the taxes imposed by this chapter shall be performed as follows: Notwithstanding the provisions of section 34B.6(c) of this chapter, the tax shall be collected insofar as practicable at the time and along with the charges made in accordance with the regular billing practices of the service supplier. Where 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 the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid.

34B.12 Additional powers and duties of tax administrator.

- (a) The tax administrator shall have the power and duty, and is directed to enforce each and all of the provisions of this chapter.
- (b) The tax administrator shall have the 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 taxes imposed by this chapter. A copy of such rules and regulations shall be on file in the office of the tax administrator and available to the public during regular business hours.
- (c) The tax administrator may, from time to time, issue administrative agreements or rulings identifying those services or persons that are subject the requirements imposed under this chapter, deferring implementation or enforcement of requirements imposed under this chapter, or interpreting the provisions of this chapter. To the extent that the tax administrator or City Attorney 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 city's discretion to settle disputes and shall not constitute a change in methodology for purposes of Government Code section 53750 or otherwise. Neither the tax administrator nor the City

Attorney is authorized to amend the city's methodology for purposes of Government Code section 53750 or otherwise, and the city does not abrogate or waive its ability to impose the taxes set forth under this chapter in full as a result of promulgating administrative rulings or entering into settlement agreements.

(d) The tax administrator shall determine the eligibility of any person who asserts a right to exemption from the tax imposed by this chapter. The tax administrator shall provide the service supplier with the name of any person who the tax administrator determines is exempt from the tax imposed by this chapter, together with the address and account number in which service is supplied to any such exempt person. The tax administrator shall notify the service supplier of the termination of any person's right to exemption under this chapter, or the change of any address to which service is supplied to any exempt person.

34B.13 Assessment—Administrative remedy.

(a) The tax administrator may make any assessment for taxes not remitted by a person required to remit.

(b) Whenever the tax administrator determines that a service user has deliberately withheld the amount of the tax owed by him or her from the amounts remitted to a person required to collect the tax, or that a service user has refused to pay the amount of tax to such person, or whenever the tax administrator deems it in the best interest of the city, the tax administrator may relieve such person of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods.

(c) If the tax administrator relieves a person required to collect the tax of this obligation under subdivision (b), the tax administrator shall notify the service user that he or she has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the service user by handing it to him or her personally or by deposit of the notice in the United States mail, postage prepaid thereon, 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 changed address, to the last known address. If a service user fails to remit the tax to the

tax administrator within fifteen days from the date of service of the notice, which shall be the date of the mailing if service is not accomplished in person, a penalty of twenty-five percent of the amount of the tax set forth in the notice shall be imposed, but not less than five dollars. The penalty shall become part of the tax required to be paid.

34B.14 Records.

It shall be the duty of every person required to collect and remit to the city any tax imposed under this chapter to keep and preserve, for a period of three years, all records necessary to determine the amount of such tax. The city shall have the right to inspect such records at all reasonable times.

34B.15 Segregation of Taxable and Non-taxable Charges.

If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier or taxpayer reasonably identifies actual charges for services not subject to tax. The service supplier or taxpayer seeking a reduction has the burden of proving the proper valuation and apportionment of taxable and non-taxable charges based upon books and records that are kept in the regular course of business and in a manner consistent with generally accepted accounting principles.

34B.16 Refunds

(a) 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, it may be refunded as provided in this section.

(b) Notwithstanding the provisions of subsection (a) of this section, a service supplier may claim a refund or take as credit against taxes collected and remitted, the amount overpaid, paid more than once, or erroneously or illegally collected or received, when it is established that the service user from whom the tax has been collected did not owe the tax; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the person required to collect

and remit. A service supplier that has collected any amount of tax in excess of the amount of tax imposed by this chapter and actually due from a service user, may refund such amount to the service user and claim a credit for such overpayment against the amount of tax which is due upon any other monthly returns; provided, such credit is claimed in a return dated no later than three years from the date of overpayment.

(c) No refund shall be paid under the provisions of this section unless the claimant establishes his or her right thereto by written records showing entitlement thereto; provided, however, that neither a refund nor a credit shall be issued to a service supplier unless the amount refunded or credited has either been refunded to the service user or credited to charges subsequently payable by the service user to the service supplier.

(d) Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this chapter on the amount of such refund charges shall also be refunded to the service users, and the service supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly returns.

34B.17 Change in State or Federal Law

To the extent that the city's authorization to impose or collect the taxes 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 such taxes to those changes, and taxes shall be imposed and collected to the full extent of the City's authorization.

34B.15 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or part thereof. The city council declares that it would have passed each section, subsection, subdivision,

paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one of more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

34B.16 Effective date.

The 7.5 percent utility user's taxes levied by this chapter shall apply on January 1, 2021 and remain in effect until modified or terminated by action of a majority of qualified electors voting at any regular or special municipal election for the city..

34B.17 Report and review.

After the effective date of this chapter and prior to the adoption by the city council of the budget of the city for each next succeeding fiscal year, the tax administrator shall annually provide a report to the city council of the revenues generated by the taxes imposed under this chapter. The city council shall review such annual report in light of the proposed budget and the limitation on the city's revenues as provided under Article XIII B of the California Constitution and Government Code Section 7910 (the Gann limits) to determine the necessity for continuance of such taxes to meet the usual and current expenses of the city.

Section 2. Majority Approval. This Ordinance shall be effective only if approved by a majority of the voters voting thereon (50% + 1) and shall go into effect ten (10) days after the vote is declared by the City Council.

Section 3. Severability. If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this Ordinance shall nonetheless remain in full force and effect. The people of the City of South Pasadena hereby declare that they would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Chapter be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.

Section 4. **Execution.** The Mayor is hereby authorized to attest to the adoption of this Ordinance by signing where indicated below.