

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING VARIOUS SECTIONS OF CHAPTER 4.70 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO EXTEND THE CAP PROGRAM FOR THE TELECOMMUNICATIONS USERS TAX THROUGH **DECEMBER 31, 2022** AND CHANGE THE 2% ANNUAL INCREASE INCREMENT TO AN ANNUAL INCREASE OF 3%, TO TAKE EFFECT RETROACTIVELY ON JANUARY 1, 2018**

**WHEREAS**, since 1970, the City of San José (“City”) has imposed a telephone utility users tax on every person in the City using intrastate telephone services at the rate of 5%; and

**WHEREAS**, on November 4, 2008, San José voters approved a ballot measure, designated as Measure K, to replace the existing tax with an updated telecommunications users tax (“TUT”), which reduced the 5% tax rate to 4.5% and applied the tax to all intrastate, interstate, and international communications services, regardless of the technology used to provide such services; and

**WHEREAS**, on February 24, 2009, in order to mitigate the financial impact the new TUT would have on the City’s large businesses, which are also the largest users of communications services, the City Council approved Ordinance No. 28498, which established a program (“Cap Program”) to cap the maximum amount of TUT payable by service users that meet certain threshold requirements related to payment of the TUT or the predecessor tax, provided certain conditions are satisfied; and

**WHEREAS**, the cap is available to all service users that voluntarily apply to pay the tax cap and that meet the eligibility requirements set forth in Chapter 4.70 of Title 4 of the San José Municipal Code; and

**WHEREAS**, on September 25, 2012, the City Council adopted Ordinance No. 29151, extending the expiration date of the Cap Program through December 31, 2017 and updating the threshold requirements so as to continue to stimulate economic activity in the City; and

**WHEREAS**, the implementation of the Cap Program in 2009 has mitigated the impact of Measure K on the City's business partners and has achieved its core purpose of maintaining a cooperative relationship with Cap Program participants; and

**WHEREAS**, the City desires to amend Chapter 4.70 of Title 4 of the San José Municipal Code to extend the expiration date of the Cap Program through **December 31, 2022**, revise the tax cap annual increase from 2% to 3%, and update the threshold requirements in order to allow Cap Program participants to adjust their business practices to prepare for full payment of the TUT upon expiration of the Cap Program; and

**WHEREAS**, the cap on the TUT does not increase the rate of the tax levied pursuant to Chapter 4.70 of the San José Municipal Code and, therefore, does not require voter approval under Chapter XIII C of the California Constitution;

**NOW THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

**SECTION 1.** Section 4.70.930 of Chapter 4.70 of Title 4 of the San José Municipal Code is amended to read as follows:

#### **4.70.930 Tax Cap**

"Tax Cap" means, for each Service User, the Base Year Tax as determined by the Director, increased by two percent (2%) annually through Tax Cap Year 2017, and increased by three percent (3%) annually beginning with Tax Cap Year 2018, as shown in Section 4.70.940 below.

SECTION 2. Section 4.70.940 of Chapter 4.70 of Title 4 of the San José Municipal Code is amended to read as follows:

#### **4.70.940 Threshold Requirement**

In order to be eligible for the Tax Cap described in this Part, the Service User must demonstrate to the reasonable satisfaction of the Director that the Service User paid the Base Year Tax in an amount that meets the applicable threshold amount specified in the table below.

Tax Cap Year	Base Year	Base Year Tax
2009	2008	\$50,000
2010	2009	\$51,000
2011	2010	\$52,020
2012	2011	\$53,060
2013	2012	\$54,122
2014	2013	\$55,204
2015	2014	\$56,308
2016	2015	\$57,434
2017	2016	\$58,583
<u>2018</u>	<u>2017</u>	<u>\$60,340</u>

<u>2019</u>	<u>2018</u>	<u>\$62,151</u>
<u>2020</u>	<u>2019</u>	<u>\$64,015</u>
<u>2021</u>	<u>2020</u>	<u>\$65,936</u>
<u>2022</u>	<u>2021</u>	<u>\$67,914</u>

SECTION 3. Section 4.70.950 of Chapter 4.70 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.70.950 Calculation of Tax Cap After Threshold Requirement Has Been Satisfied**

- A. Once the Service User has demonstrated to the reasonable satisfaction of the Director that its Base Year Tax met the applicable threshold requirement specified in Section 4.70.940, the Service User shall pay to the City the amount of its Base Year Tax as determined by the Director, increased by two percent (2%) annually through Tax Cap Year 2017, and increased by three percent (3%) annually beginning with Tax Cap Year 2018, as its Tax Cap.
- B. No Service User that complies with the provisions of this Part shall be required to pay Telecommunications Users Taxes in excess of the Tax Cap set forth herein.

SECTION 4. Section 4.70.1050 of Chapter 4.70 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.70.1050 Expiration**

This Part shall expire on December 31, 20~~20~~21 unless otherwise extended, shortened, or revised by the City Council.

SECTION 5. The provisions of this Ordinance shall go into effect retroactively on January 1, 2018.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk