



PUBLIC NOTICE PROPOSED ORDINANCE NO. 20-994

Pursuant to GC § 36933(c)(1), the City must publish a summary of a proposed ordinance or a proposed amendment to an ordinance provided that the summary is posted in the manner specified in GC § 36933(a) at least five (5) days prior to adoption of the proposal and within fifteen (15) days after the adoption with the names of the Council Members voting for and against the proposal.

TITLE/SUMMARY

ORDINANCE NO. 20-994

AN ORDINANCE OF THE CITY OF MONTCLAIR AMENDING MONTCLAIR MUNICIPAL CODE SECTION 3.36.050 (TELEPHONE USERS TAX) TO PROVIDE TECHNICAL CLARIFICATION IN CONFORMITY WITH EXISTING LAW

ORDINANCE HISTORY

The proposed Ordinance was introduced at a regular City Council meeting held on Monday, November 16, 2020, and first reading was approved by the following vote:

AYES: Martinez, Johnson, Ruh, Raft, Dutrey
NOES: None
ABSTAIN: None
ABSENT: None

A Public Hearing is scheduled to take place before the City Council at a regular meeting on Monday, December 7, 2020, at 7:00 p.m. to hear comments from the public prior to consideration of the Ordinance's adoption.

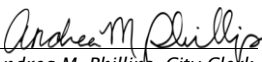
EFFECTIVE DATE

30 days after adoption.

A certified copy of the full text of the Ordinance referenced in this notice is available for inspection in the Office of the City Clerk located at City Hall, 5111 Benito Street, Montclair, California, upon request in-person, via telephone, or via email.

I, Andrea M. Phillips, City Clerk of the City of Montclair, hereby certify that this notice has been posted on the City's website at <https://www.cityofmontclair.org/public-notices>, and at the following three locations within the City's boundaries that are accessible to the public:

- City Hall — North Bulletin Board (5111 Benito Street, Montclair)
- Montclair Branch Library — Entrance Bulletin Board (9955 Fremont Avenue, Montclair)
- Montclair Chamber of Commerce — Entrance Door (8800 Benson Avenue, Montclair)

By: 
Andrea M. Phillips, City Clerk

CITY HALL HOURS
Monday – Thursday
7:00 a.m. to 6:00 p.m.

Dated: November 17, 2020

Questions? Call (909) 625-9416 or email CITYCLERK@CITYOFMONTCLAIR.ORG

ORDINANCE NO. 20-994

AN ORDINANCE OF THE CITY OF MONTCLAIR
AMENDING MONTCLAIR MUNICIPAL CODE SECTION
3.36.050 (TELEPHONE USERS TAX) TO PROVIDE
TECHNICAL CLARIFICATION IN CONFORMITY WITH
EXISTING LAW

WHEREAS, the City of Montclair has levied a utility users tax on charges for telecommunications service (Telephone Users Tax or TUT) since 1991; and

WHEREAS, since the time of its adoption in 1991, the TUT has referred to section 4251 of the Internal Revenue Code (Federal Excise Tax, hereafter the "FET") for the administrative convenience of telephone service providers who billed customers on the basis of the FET tax base; and

WHEREAS, the FET was not a source of authority for imposition of the City's TUT; and

WHEREAS, on May 25, 2006, the United States Treasury Secretary issued Notice No. 2006-50 (hereafter, the "Rule"), announcing that the Internal Revenue Service (IRS) would no longer interpret the FET to apply to charges based on time only (as opposed to time and distance), or to charges for certain other bundled services; and

WHEREAS, the City will continue to carry out its original intent and long-standing practice of applying the TUT in a manner that is consistent with the federal interpretation of the FET that was in effect before the Rule was issued; and

WHEREAS, the City therefore desires to remove the reference to the FET in Subsection D of Section 3.36.050 of Chapter 3.36 to provide technical clarification that is declarative of existing law; and

WHEREAS, in *Gonzalez v. City of Norwalk* (2017) 17 Cal.App.5th 1295, the court held that a change in the federal interpretation of the FET did not retroactively change the meaning of a municipal code incorporation of that statute; therefore, a subsequent amendment of the ordinance to eliminate reference to the FET was declaratory of existing law and was not a tax "increase" requiring voter approval under Proposition 218.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES ORDAIN AS FOLLOWS:

SECTION I. Paragraph D of Section 3.36.050 of Chapter 3.36 of Title 3 of the Montclair Municipal Code is amended to read:

Notwithstanding the provisions of subsection A of this section, the tax imposed under this section shall not be imposed on any person for using intrastate, interstate and international telephone communication services to the extent that the amounts paid for such services are not subject to the tax imposed under Division 2, Part 20 of the California Revenue and Taxation Code.

SECTION II. Declaration. Because the provisions of the Montclair Municipal Code, as amended by this ordinance, do not alter the amount of the City's telephone user tax, do not expand the application of the tax, and are substantially the same as the previous provisions of the Code as they read immediately prior to the adoption of this ordinance, the amendments made by this ordinance shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION III. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION IV. Effective Date. This ordinance shall take effect 30 days after second reading as provided in Government Code section 36937. However, it is declaratory of existing law and makes no substantive change in the tax ordinance for the reasons stated in the recitals to this ordinance.

SECTION V. Publication. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this XX day of XX, 2020.

Mayor

ATTEST:

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 20-994 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2020, and finally passed not less than five (5) days thereafter on the XX day of XX, 2020, by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Andrea M. Phillips
City Clerk