



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** Claims Presentation and  
Processing for Emergency  
Communication System Support  
Fee Refunds

**DATE:** June 15, 2006

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## **RECOMMENDATION**

Approval of an ordinance amending Section 8.20.370 of the San José Municipal Code to clarify the requirements and procedures applicable to claims for refund of the Emergency Communication System Support Fee. This recommendation supplements the Administration's recommendation to amend Section 8.20.200 of the Code to extend the sunset date for collection for the fee. A draft ordinance incorporating both the recommendations of the Administration and the City Attorney is attached to this memorandum.

## **OUTCOME**

The adoption of the proposed ordinance provisions will:

1. confirm that claimants seeking fee refunds must file their claims within one year of the date of payment as a prerequisite for filing a lawsuit against the City;
2. in the case of a rejected claim, limit the time period for the claimant to file a lawsuit against the City to six months from the date of the City's written rejection notice; and
3. impose certain claim processing requirements upon the City in order to expedite the claim review process.

## **BACKGROUND**

Under the Government Torts Claim Act (the "Act"), the general rule is that any party with a claim for money or damages against a public entity must file a claim directly with the public entity in order to file a lawsuit. The Act also provides time limits for the claimant to file his or her claim and for the public entity to reject or deny the claim. Further, once a public entity rejects a claim in accordance with the Act's procedures, the claimant

must bring his or her lawsuit against the public entity within six months of the written rejection notice.

The purpose of these procedures is to give a public entity the opportunity to investigate the facts while evidence is fresh and to settle meritorious claims without the need for costly litigation. Additionally, the prompt presentation of claims seeking money and the shortened time frame for the claimant to sue, enables the public entity to engage in appropriate fiscal planning.

The Act permits a public entity, such as the City, to adopt its own claims filing requirements so long as they are consistent with certain minimum standards. The proposed ordinance would confirm that Emergency Communication System Support Fee refunds claims are subject to the same claims presentation and filing requirements as other claims made against the City pursuant to the Act.

### **ANALYSIS**

The Code currently requires claimants to file a claim for refund of this fee with the Director of Finance within one year of date of payment. The proposed ordinance will not alter this requirement; however, the ordinance will clarify the format in which the claim must be filed and the information that must be supplied by the claimant. In addition, the ordinance will confirm that the City must process these fee refund claims in the same manner and time in which it processes other claims filed under the Act.

The ordinance will further clarify the settlement and refund authority of the Director with respect to these claims. Consistent with the provisions of the Act, the Director will be authorized to pay claims up to \$25,000 and, with the City Attorney's written approval, for amounts in excess of \$25,000 but no more than \$50,000. Payments in excess of \$50,000 require City Council approval.

Finally, the ordinance will clarify that a claimant must follow the claim presentation requirements in order to be able to file a lawsuit against the City. The claimant must bring its lawsuit against the City within six months of the City's written notice of rejection. If the City fails to provide the written rejection notice to the claimant, then the claimant may bring the lawsuit within two years of the date on which the claim arose.

### **IMPLEMENTATION**

The proposed ordinance will require staff in the Finance Department to process fee refund claims in accordance with the proposed ordinance's requirements. During July, this Office will conduct training in order that staff will be able to process the refund claims in accordance with the new procedures.

**ALTERNATIVES**

The City Council could choose to not adopt the proposed ordinance and keep the current refund provisions in place.

**PUBLIC OUTREACH**

Notice of the adoption of the proposed ordinance will be published in the newspaper as required by law.

**COORDINATION**

This Office has coordinated with the Finance Department and the Budget Office. However, as described above, training will occur in July in order to ensure that appropriate staff are familiar with the requirements of the proposed ordinance.

**CEQA**

Not a Project.

RICHARD DOYLE  
City Attorney

By Mollie J. Dent  
MOLLIE J. DENT  
Sr. Deputy City Attorney

cc: Les White

For questions please contact:  
Mollie J. Dent, Senior Deputy City Attorney, at (408)535-1905

**DRAFT**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 8.20.200 AND 8.20.370 OF CHAPTER 8.20 OF TITLE 8 OF THE SAN JOSE MUNICIPAL CODE TO EXTEND THE DATE FOR IMPOSITION OF THE EMERGENCY COMMUNICATIONS SYSTEM SUPPORT FEE THROUGH JUNE 30, 2012 AND TO CLARIFY THE REQUIREMENTS AND PROCEDURES APPLICABLE TO CLAIMS FOR REFUND OF THE FEE**

**WHEREAS**, the City of San José is committed to maintaining and improving the performance of the City's 911 emergency communication system; and

**WHEREAS**, the City's 911 emergency communication system provides immediate access to emergency services for telephone subscribers, who derive significant benefit from ongoing operation of the modernized integrated system installed at the San José Emergency Communications Center, which has enhanced call delivery, call processing and call dispatch thus providing speedy and reliable emergency communications; and

**WHEREAS**, telephone subscribers derive significant benefit from maintenance and upgrading of the system by the City so that it continues to operate at a state of the art level; and

**WHEREAS**, the Council has determined that a portion of the costs associated with operating, maintaining and upgrading the 911 emergency communication system and facility should be allocated among telephone subscribers within the City of San José because these telephone subscribers reap this significant benefit; and

**WHEREAS**, on August 31, 2004 the Council adopted Ordinance No. 27229 establishing the City of San Jose Emergency Communication System Support Fee, to be charged to subscribers to telephone service in the City as the most practical and equitable mechanism to provide revenue for the resources which are needed to maintain an

adequate and reliable 911 emergency communication system for the benefit of telephone subscribers; and

**WHEREAS**, the portion of operating costs and project costs that reflect the cost to provide the benefits estimated to be provided by operation of the 911 emergency communication system to telephone subscribers who are subject to the fee (“Eligible Operating Costs” and “Eligible Project Costs”) is financed from emergency communication system support system fee revenues; and the portion of operating costs and project costs reflecting the cost to provide the benefits estimated to be provided by operation of the 911 emergency communication system to telephone subscribers who are exempted from the fee (“Ineligible Operating Costs” and “Ineligible Project Costs”) is not financed from emergency communication system support fee revenues; and

**WHEREAS**, the Emergency Communication System Support Fee is necessary to recover the cost of providing an adequate and reliable 911 emergency communication system for the benefit of nonexempt telephone subscribers; and

**WHEREAS**, the benefits of the 911 emergency communication system that are provided to telephone subscribers that are exempt from the fee is financed through other revenue mechanisms; and

**WHEREAS**, the Emergency Communication System Support Fee provides revenue for Eligible Project Costs and Eligible Operating Costs, as defined in San José Municipal Code Sections 8.20.0404 and 8.20.050, and all Fee revenues are deposited by the Director of Finance in the Emergency Communication System Support Fund established under the San José Municipal Code; and

**WHEREAS**, under San José Municipal Code Section 8.20.200, the Emergency Communication System Support Fee is set to expire on December 31, 2006; and

**WHEREAS**, extension of the Emergency Communication system Support Fee is necessary in order to provide a secure source of revenue for operation and maintenance of the City's 911 emergency communication system; and

**WHEREAS**, pursuant to Section 935 of the California Government Code, this Council wishes to clarify the procedures and requirements applicable to the presentation and processing of Emergency Communication System Support Fee refund claims in order to ensure that the City the opportunity to investigate the facts of such claims while the evidence is fresh, to settle meritorious claims without the need of costly litigation, and to make appropriate fiscal planning decisions, including decisions regarding the expenditure of the City's fee revenue; and

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

SECTION 1. Section 8.20.200 of Chapter 8.20 of Title 8 of the San José Municipal Code is hereby amended to read as follows:

**8.20.200      Persons Subject to Fee**

- A.     There is hereby imposed an Emergency Communications System Support Fee on every person who maintains access to the 911 Emergency Communication System by subscribing to local telephone service within the City of San José.
  
- B.     For purposes of this Chapter, with respect to wireless telephone services, a person shall be construed to subscribe to local telephone service within the City of San José if he or she has a "place of primary use," as such term is defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124(8), within the geographic boundaries of the City.

- C. Only one payment of the fee herein imposed shall be required for any single access line, trunk line or high capacity trunk line, notwithstanding that access lines of more than one telephone corporation are used in furnishing local telephone service to a telephone subscriber.
  
- D. The fee imposed under subsection A, above, shall be in effect for every person who subscribes to local telephone service within the City of San José through June 30, 2012.

SECTION 2. Section 8.20.370 of Chapter 8.20 of Title 8 of the San José Municipal Code is hereby amended to read as follows:

**8.20.370     Refunds**

- A. The Director of Finance shall refund to the telephone subscriber any fees collected by the service supplier in excess of the annual limit described in Section 8.20.210B. The annual limit will be calculated using the payments made during the months of July through June. For the first year of operation of this Chapter, payments made through June 2005 will use a prorated annual limit based on the number of months that payments were billed by the service suppliers. In order to be eligible for the refund, the telephone subscriber must provide a written request for the refund along with proof of payment by the subscriber. Such claims and proof of payment must be submitted to the Director of Finance within ninety (90) days of the end of the one (1) year period as described above.
  
- B. Whenever the amount of any fee payment not provided for under this Chapter has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this Chapter, a refund may be provided to the fee payer, but only if a claim, in writing, stating under penalty of perjury, the specific grounds upon which the claim is founded, has been presented by the fee

payer to the Director of Finance within one (1) year of the date of payment, and except as modified by this Chapter, in the manner prescribed by Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with Section 900 thereof) for the claims to which that Part applies by its own terms, as those provisions now exist or shall hereafter be amended, and as further provided by this Chapter.

- C. All Emergency Communications System Support Fee refund claims shall be made in writing and verified by the claimant or by his or her guardian, conservator, executor or administrator. Any claim filed on behalf of more than one person shall be verified by each person on behalf of whom the claim is filed or by his or her guardian, conservator, executor or administrator.
  
- D. All Emergency Communications System Support Fee refund claims shall be filed on the refund claim form prescribed by the Director. In the event that the Director has not prescribed a form of claim, the Emergency Communications System Support Fee refund claim shall contain:
  - 1. the information required by California Government Code Section 910; and
  - 2. the specific amount claimed to have been overpaid, paid more than once, or erroneously or illegally collected or received by the City; and
  - 3. the grounds upon which the claim is founded, with specificity sufficient to enable the Director and other responsible City officials to understand and evaluate the claim; and
  - 4. documentation supporting the amount of the refund sought, including but not limited to proof of payment.
  
- E. Emergency Communications System Support refund claims shall be acted upon by the Director within the time and, except as modified by Chapter, in the manner

prescribed by Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with Section 900 thereof) for the claims to which that Part applies by its own terms, as those provisions now exist or shall hereafter be amended, and as further provided by this Chapter.

- F. The Director is authorized to allow, compromise or settle an Emergency Communications System refund claim if the claimant has demonstrated that all or a portion of the amount claimed has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City and the amount to be paid pursuant to the allowance, compromise or settlement is in an amount not to exceed Twenty Five Thousand Dollars (\$25, 000) and with the approval of the City Attorney, if the amount to be paid does not exceed Fifty Thousand dollars (\$50,000). In the event that the amount to be paid pursuant to an allowance, compromise or settlement of an Emergency Communications System Support Fee refund claim exceeds Fifty Thousand Dollars (\$50,000), the approval of the City Council is required.
- G. In accordance with California Government Code Sections 935(b) and 945.6, no action against the City may be maintained by a person who has not complied with applicable claims presentation requirements.
- H. Any action brought against the City upon any claim or demand shall conform to the requirements of Section 940 through and including Section 949 of the California Government Code. Any action brought against any employee of the City shall conform to the requirements of Section 950 through and including Section 951 of the California Government Code.
- I. No refund shall be paid under the provisions of this Section unless the claimant has established his/her right thereto by written records showing entitlement thereto.

J. Service suppliers are not authorized to provide refunds of any fees established by this Chapter.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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RON GONZALES  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk