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7/9/2008

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CALLING AND GIVING NOTICE OF, ON ITS OWN MOTION, THE SUBMISSION TO THE ELECTORS OF THE CITY OF SAN JOSE, AT THE SPECIAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2008, A BALLOT MEASURE PROPOSAL TO ELIMINATE THE CITY'S EMERGENCY COMMUNICATIONS SYSTEM SUPPORT FEE AND REPLACE IT WITH A REDUCED TELEPHONE LINE TAX

WHEREAS, Charter Section 1600 authorizes the City Council to set the date for a Special Municipal Election; and

WHEREAS, the City Council desires to submit to the electors of the City of San José at a Special Municipal Election a ballot measure proposal to amend Section 8.20.200 of Chapter 8.20 of Title 8 and Title 4 of the San José Municipal Code to eliminate the emergency communication system support fee tax and replace it with a reduced telephone line tax.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. A Special Municipal Election is hereby called and ordered to be held in the City of San José on November 4, 2008, for the purpose of voting on a ballot measure proposal to amend Section 8.20.200 of Chapter 8.20 of Title 8 and Title 4 of the San José Municipal Code to eliminate the emergency communication system support fee tax and replace it with a reduced telephone line tax. The actual language of the proposed Ordinance amending the Code is attached to this Resolution as Exhibit A.

SECTION 2. The proposed ballot measure will be placed on the ballot for the November 4, 2008 election in the following form:

REDUCTION AND REPLACEMENT OF 9-1-1 FEE

Shall an ordinance be adopted to:

- eliminate the \$1.75 fee per telephone line and replace it with a reduced tax of \$1.65, with a corresponding reduction for commercial-type trunk lines, to support essential City services such as police, fire, street maintenance, and libraries; and
- continue lifeline exemptions for low-income senior citizen or low-income disabled households, subject to existing annual audits?

YES	
NO	

SECTION 3. The City Council hereby requests the Board of Supervisors of the County of Santa Clara, California to permit the Registrar of Voters in Santa Clara County to render to the City of San José such services as the City Clerk of the City of San José may request relating to the conduct of the above-described Special Municipal Election with respect to the following matters:

Coordination of election precincts, polling places, voting booths, voting systems and election officers; Printing and mailing of voter pamphlets; Preparation of tabulation of result of votes cast.

SECTION 4. The City Council hereby requests that the Registrar of Voters of the County of Santa Clara consolidate the Special Municipal Election called and ordered to be held on November 4, 2008 with any other election that may be held on that date.

SECTION 5. The City Council hereby authorizes the Board of Supervisors of Santa Clara County, California to canvass the returns of the Special Municipal Election.

SECTION 6. The City Council hereby directs the City Clerk to reimburse the County of Santa Clara in full for any of the above-mentioned services which may be performed by the Registrar of Voters, upon presentation of a bill to the City, with funds already appropriated to the City Clerk for election purposes.

SECTION 7. The City Council hereby directs the City Clerk to take all actions necessary in order to facilitate the Special Municipal Election in the time frame specified herein and comply with provisions of the Elections Code of the State of California, City Charter, Ordinances, Resolutions and Policies with regard to the conduct of the Special Municipal Election.

SECTION 8. Pursuant to Section 12111 of the California Elections Code and Section 6061 of the California Government Code, the City Council hereby directs the City Clerk to (a) cause a synopsis of the proposed measure including the actual text of the proposed amended Municipal Code Section 8.20.200 and the proposed new Municipal Code Chapter 4.52 to be published in the San José Mercury News, a newspaper of regular circulation within the City of San José; (b) consolidate the Notice of Measure to be Voted with the Notice of Election into a single notice; (c) cause copies of the proposed measure, [along with the actual text of proposed amended Municipal Code Section 8.20.200 and the proposed new Municipal Code Chapter 4.52,] to be printed in convenient pamphlet form and in type of not less than 10-point; (d) cause copies of that pamphlet to be mailed to each of the qualified electors of the City of San José; and (e) do all other things required by law to submit the specified measure [and the actual text of proposed amended Municipal Code Section 8.20.200 and the proposed new Municipal Code Chapter 4.52] to the electors of the City of San José at the Special Municipal Election [including causing the actual text of the proposed amended Municipal Code Section 8.20.200 and the proposed new Municipal Code Chapter 4.52 to be made available in the Office of the City Clerk at no cost and posted on the City Clerk's website.]

SECTION 9. Pursuant to Section 9282 and 9285 of the California Elections Code, the City Council hereby approves the submittal of direct arguments for and against the ballot measure, if any, but determines that rebuttal arguments will not be allowed.

SECTION 10. The City Council hereby directs the City Clerk to transmit a copy of any measure qualifying for placement on the ballot to the City Attorney for preparation of an impartial analysis.

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ADOPTED this ____ day of _____, 2008, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

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EXHIBIT A

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TELEPHONE LINE TAX

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF SAN JOSE:

SECTION 1. Title 4 of the San José Municipal Code is hereby amended to add a new Chapter 4.52, entitled "Telephone Line Tax," to read as follows:

CHAPTER 4.52 TELEPHONE LINE TAX

Part 1 Title and Definitions

4.52.010 **Ordinance Title**

This Chapter may be cited as the "Telephone Line Tax Ordinance" of the City of San José.

4.52.020 **Definitions**

The definitions contained in this Part shall govern the application and interpretation of this Chapter.

4.52.030 **Access line**

"Access line" means any connection from a customer within the geographic boundaries of the City of San José to a supplier of telephone service offered to the public for compensation. Within the meaning of this Part, and without limitation, "Access line" includes connections providing residential basic exchange service, business basic exchange service, PBX service (private branch

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exchange), foreign exchange service, and Centrex service. "Access line" also includes a connection from a single mobile telephone to a commercial mobile radio service, as defined in section 20.3 of Title 47 of the Code of Federal Regulations as this section existed on October 1, 2002, which has as its place of primary use, as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Section 124(8), a location within the City of San José.

4.52.040 Director

"Director" means the Director of the Finance Department of the City of San José or such other Director designated by the City Manager to administer this Chapter.

4.52.050 Lifeline Service

"Lifeline service" means discounted telephone service available to eligible low-income residential customers.

4.52.060 Telephone Service

"Telephone service" means access to a telephone system, providing two-way telephonic quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such telephone system, whether or not such service uses transmission wires. For the purposes of the tax imposed by this Chapter 4.52, a person shall be construed to subscribe to "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. Section 124(8), within the geographic boundaries of the City of San José. "Telephone service" does not include any system that is expressly excluded from the definition of "Access line" or "Trunk line".

4.52.070 Service location

“Service location-” means the premises of a Telephone subscriber at which a working service point or primary station set provides the subscriber with basic exchange service and to which extension services are charged. One or more parcels of real property, which are contiguous or separated only by public streets or rights of way, and are under the common control of a single Telephone subscriber shall be considered a single Service location -for the purpose of implementing the annual tax cap established in Section 4.52.210 of this Chapter.

4.52.080 Service supplier

“Service supplier” means any person supplying telephone service to any Telephone subscriber, pursuant to authority granted by the California Public Utilities Commission or the Federal Communications Commission, at a location within the City of San José. Service suppliers may include, without limitation, local exchange carriers, inter-exchange carriers, competitive access providers, cable television providers offering telecommunications services, suppliers of Wireless telephone service, and any other entity offering direct connections between their premises and the premises of Telephone subscribers.

4.52.090 Telephone corporation

“Telephone corporation” shall have the same meaning as defined in Section 234 of the Public Utilities Code of the State of California, or the most comparable successor definition. It also includes any person providing Wireless telephone service to any Telephone subscriber.

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4.52.100 Telephone subscriber

“Telephone subscriber” means any person who receives telephone service or its function.

4.52.110 Trunk line

“Trunk line” means a line between a Service supplier's switching device and a private branch exchange or automatic call distributing system, or other similar device, at a Telephone subscriber location.

4.52.120 Wireless telephone service

“Wireless telephone service” means commercial mobile radio service as defined in Section 20.3 of Title 47 of the Code of Federal Regulations as this section existed on October 1, 2002.

**Part 2
Imposition of Tax**

4.52.200 Persons Subject to Tax

- A. There is hereby imposed a tax on every person who subscribes to 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 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.

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- C. Only one payment of the tax herein imposed shall be required for any single Access line or Trunk line, notwithstanding that Access lines of more than one Telephone corporation are used in furnishing telephone service to a Telephone subscriber.

4.52.210 Amount of Tax

- A. The amount of the tax imposed by this Chapter shall be \$1.65 per month per Access line and \$12.38 per month per Trunk line. ~~The amount of the tax established by this Subsection shall be adjusted annually, commencing January 1, 2010, if the cost of living in the City of San José has increased over the preceding Base Period as shown by the Consumer Price Index—All Urban Consumers for All Items (with a base period of 1982-1984=100) for the San Francisco-Oakland-San José Area published by the United States Department of Labor Bureau of Labor Statistics (CPI Index), but in no event shall the adjustment exceed three percent (3%) per annum. The Base Period for the first adjustment period (January 1, 2010), shall be the CPI Index reported for the months of April 2009 and October 2009. For the second adjustment period (January 1, 2011), the Base Period shall be the CPI Index reported for the months of October 2009 and October 2010. The Base Period for subsequent adjustment periods shall be October to October. In the event the CPI Index is no longer published, the City Council shall use as a reference, another index published by either the State of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City of San José.~~
- B. The tax imposed by this Chapter shall be paid, on a per line basis, by the person paying for such telephone service.

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- C. No Telephone subscriber shall be required to pay a tax in excess of \$22,132 per account per Service location in any calendar year. For the first year of operation of this Chapter, payments made through December 2009 will use a prorated annual limit based on the number of months that payments were billed by the Service suppliers. The cost of Wireless telephone services shall not be considered for purposes of the tax cap established by this subsection, regardless of whether the Service location is also a primary place of use for a wireless line. The amount of the tax cap established by this subsection shall be adjusted annually, commencing January 1, 2010, if the cost of living in the City of San José has increased over the preceding Base Period as shown by the Consumer Price Index - All Urban Consumers for All Items (with a base period of 1982-1984=100) for the San Francisco-Oakland-San José Area published by the United States Department of Labor Bureau of Labor Statistics (CPI Index), but in no event shall the adjustment exceed three percent (3%) per annum. The Base Period for the first adjustment period (January 1, 2010), shall be the CPI Index reported for the months of April 2009 and October 2009. For the second adjustment period (January 1, 2011), the Base Period shall be the CPI Index reported for the months of October 2009 and October 2010. The Base Period for subsequent adjustment periods shall be October to October. In the event the CPI Index is no longer published, the City Council shall use as a reference, another index published by either the State of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City of San José.

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4.52.220 Exemptions

Nothing in this Chapter shall be construed as imposing a tax upon the Access lines of:

- A. A Lifeline service customer of a Service supplier; or
- B. A Telephone corporation; or
- C. Coin-operated telephones; or
- D. A nonprofit hospital which is exempt from federal income tax under Section 501(a) of the United States Code; or
- E. A nonprofit educational organization which is exempt from income tax under Section 501(a) of the United States Code; or
- F. Any person when imposition of such tax upon that person would violate the Constitution of the United States or that of the State of California or preemptive federal or State law; or
- G. City of San José, County of Santa Clara, State of California and United States Government offices.

Part 3

Collection of Tax

4.52.300 Tax Billing

- A. The tax imposed by this Chapter shall be billed to the Telephone subscriber by the Service supplier with its regular bill or as otherwise in

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accordance with the Service supplier's normal billing procedures, and Service suppliers shall collect such taxes as are remitted from Telephone subscribers so billed on behalf of the City of San José.

- B. The tax required to be collected by Service suppliers under this Chapter shall be added to the Service supplier's billings to subscribers. The tax shall be stated separately as the City of San José "Telephone Line Tax" on billings by Service suppliers whose billing systems, as presently configured, are capable of such programming, and the Director may enter into such Administrative Agreements as may be required to accommodate appropriate billing of the tax as provided in Section 4.52.390. Where authorized by federal or state law, the Director may require reasonable modifications to a Service supplier's billing system platform to accommodate requirements of this subsection provided an Administrative Agreement for recovery of all one-time costs incurred by the Service supplier to comply is executed as allowed by Section 4.52.390 of this Chapter.

- C. The duty to collect the tax from a Telephone subscriber shall commence on April 1, 2009; provided that, however, within ten (10) business days of the effective date of the Ordinance enacting this Chapter, the Director shall provide Service suppliers with written notice of their responsibility to bill and remit taxes collected. In the event that notice is not sent within ten (10) business days of the effective date of this Chapter, Service suppliers' duty to bill and remit taxes collected shall commence no later than ninety (90) days after receipt of notice from the City.

- D. Service suppliers shall not be liable to any Telephone subscriber for billing, collecting or remitting the tax on behalf of the City and Service suppliers shall not be responsible for investigating the validity of the tax or assisting in the refunding of any tax determined to be invalid or improperly

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imposed, pursuant to an administrative or judicial ruling, order or determination.

4.52.310 Tax Payment

- A. Tax revenues remitted to Service suppliers by Telephone subscribers shall be held for the City, and Service suppliers shall remit the tax revenues collected to the Director on a monthly basis on or before the 25th day of the month following the month in which they were collected.

- B. In the event a Telephone subscriber makes partial payment of the tax imposed by this Chapter 4.52, which has accrued for the billing period, absent express written direction by the Telephone subscriber identifying those charges in dispute, such partial payment shall be applied to satisfy, in order: (1) charges due and owing to the Service supplier for services and products; (2) applicable federal, state, and local sales and use taxes; (3) authorized pass through expenses, costs and other charges for which the Service supplier may be directly liable for payment to federal and state governments including, but not limited to, Universal Service Tax (USF) charges; and (4) charges for which Service suppliers are acting as mere conduits for collection and remittance including the City of San José tax imposed by this Chapter 4.52.

4.52.320 Liability for Tax

- A. Any tax imposed on a Telephone subscriber under the provisions of this Chapter shall be deemed a debt owed by the Telephone subscriber to the City until it has been paid to the City, except that payment to a Service supplier is sufficient to relieve the subscriber from further liability for the tax.

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- B. Any tax collected under the provisions of this Chapter shall be deemed a debt owed to the City of San José by the person required to bill and remit such tax.

- C. With the exception of the requirement to bill Telephone subscribers for the tax and to pursue the normal course of collection efforts for deficiencies in payment by Telephone subscribers, nothing in this Chapter shall impose any duty on a Service supplier to enforce the collection of the tax hereinabove imposed. However, whenever a Service supplier remits to the City funds collected as a tax imposed pursuant to this Chapter 4.52, the Service supplier shall also provide the City with the name and address of any Telephone subscriber who has not paid the tax for two (2) or more billing periods and shall state the amount of such tax remaining unpaid. A Service supplier in compliance with this subsection shall, following the provision of its report, be relieved of any further duty under this Chapter for billing and attempts to collect uncollected taxes from the Telephone subscribers identified in the report identified in this subsection for the stated periods. The Director may, at his or her discretion, then assume the responsibility to collect the taxes due for the stated periods, in which case, the Director shall notify the Telephone subscriber that the Director has assumed the responsibility to collect the taxes due for the stated periods and may demand payment from the Telephone subscriber of such taxes.

- D. A Service supplier shall be obligated to bill and remit taxes collected consistent with the provisions of Sections 4.52.300 and 4.52.310. In the event a Service supplier willfully refuses to bill or to remit those taxes collected in due course, the Service supplier shall be liable to the City in the amount of taxes that were to be collected, as determined by the Director pursuant to Section 4.52.370.

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- E. Any person owing money to the City, under the provisions of this Chapter, shall be liable in any action brought in the name of the City for the recovery of such amount.

4.52.330 Registration, Reporting and Remitting

- A. Each Service supplier providing telephone services to subscribers within the City shall register with the Director, upon a form prescribed by the Director, and shall set forth the name under which the Service supplier transacts or intends to transact business, together with identification of the Service supplier's registered agent for process, or such other agent the Service supplier designates, to whom notices pursuant to this Chapter shall be directed. All notices and communications required by this Chapter must be directed to the agent designated in the Service supplier's registration in order to be effective notice.
- B. Each Service supplier shall, on or before the last day of each month, file a return with the Director, on forms provided by the Director, stating the amount of taxes collected by the Service supplier during the preceding month. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director. The Director may require additional readily attainable information in the return. Returns and remittances are due immediately upon cessation of business for any reason.
- C. Service suppliers must maintain records of taxes collected and remitted to the City for a period of at least three (3) years after the date the tax is remitted.

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4.52.340 Interest and Penalties

A. Service suppliers.

1. Taxes collected from a Telephone subscriber which are not remitted to the Director by the Service supplier by the due dates provided in this Chapter, or taxes that a Service supplier willfully refuses to bill or remit pursuant to Section 4.52.370, are delinquent.

2. Penalties for delinquency in remittance of any taxes collected pursuant to this Chapter 4.52 shall attach, and be paid by the Service supplier required to remit, in accordance with the provisions of Section 1.17.130 of Chapter 1.17 of Title 1 of this Code.

3. The Director shall have power to impose additional penalties upon Service suppliers required to collect and remit tax amounts under the provisions of Section 1.17.140 for fraud or intentional material misrepresentation or omission in reporting or remitting up to one hundred percent (100%) of the amount of the taxes collected or as recomputed by the Director.

4. Every penalty imposed under the provisions of this subsection shall become a part of the taxes required to be remitted to the City.

5. In addition to the penalties imposed in this subsection, interest shall be payable on any delinquency tax payment, in accordance with Section 1.17.150 of Chapter 1.17 of Title 1 of this Code.

B. Extension of Time. Upon receipt of a written request of a Service supplier or Service subscriber, and for good cause, the Director may extend the time for filing any statement required pursuant to this Chapter for a period of not

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to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate set forth in Chapter 1.17 of Title 1, until paid.

C. Waiver of Penalties and Interest. The Director shall waive the first penalty of ten percent (10%) imposed upon a Service supplier if:

1. The Service supplier applies to the Director for such a waiver no later than thirty (30) days from the date the remittance was due to the City; and
2. The Service supplier has made timely payments for (a) the five (5) years immediately prior to the date the remittance was due to the City; or (b) the two (2) years immediately prior to the date the remittance was due to the City if it has supplied, transported, or delivered the service fewer than five (5) years; and
3. The Service supplier provides evidence satisfactory to the Director that:
 - a. Payment of the delinquent remittance was postmarked or received by the City no more than three (3) days after its due date; or
 - b. The Service supplier mistakenly made payment to a party other than the City on or prior to the date that payment was due to the City, and paid the delinquent remittance and accrued interest owed the City prior to applying to the Director for a waiver; or

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c. Failure to pay timely was due to circumstances beyond the control of the Service supplier and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the Service supplier paid the delinquent remittance and accrued interest owed the City prior to applying to the Director for a waiver.

4. The waiver provisions specified in this subsection C shall not apply to interest accrued on the delinquent payments.

B. Telephone subscribers.

1. Whenever the Director determines that a Telephone subscriber has willfully withheld the amount of the tax owed by the subscriber from the amounts remitted to a Service supplier or that a Telephone subscriber has failed to pay the amount of the tax for a period of two (2) or more billing periods, or whenever the Director deems it is in the best interest of the City, the Director shall relieve the Service supplier of the obligation to collect taxes due under this Part from certain named Service subscribers for specified billing periods and collect the taxes directly from the Telephone subscriber.

2. Penalties shall attach for willful withholding of the amount of the tax owed from the amounts remitted to a Service supplier, or failure to pay any taxes imposed by this Chapter to the Service supplier in accordance with the provisions of Section 1.17.130 of Chapter 1.17 of Title 1 of this Code.

3. In addition to the penalties imposed in this subsection, any Telephone subscriber who fails to remit taxes and penalties within

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thirty (30) days of the date the City of San José mails notification that the City has assumed responsibility for the collection of taxes due for specified billing periods, shall pay interest on the amount of the tax, in accordance with Section 1.17.150 of Chapter 1.17 of Title 1 of this Code, from the date on which the tax first became delinquent to the Service supplier until payment in full is received by the Director, plus such additional collection charge for each delinquent account as may be set by resolution of the City Council.

4. The penalties, interest and collection charges imposed in this subsection shall not be collected by the Service supplier, but shall be determined and collected by the City.
5. Every penalty imposed and such interest as accrues under the provisions of this subsection shall become a part of the tax herein required to be paid.

4.52.350 Records

- A. Every Service supplier required to collect and remit to the Director any tax imposed by this Chapter, shall keep and preserve for a period of three (3) years from the due date of remittance, all records as may be necessary to determine the amount of any tax such Service supplier may have collected or been required to remit.
- B. All such records shall be made available for inspection, audit or copying by the City's authorized representatives at any time during regular business hours upon written request by such representatives.

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4.52.360 Authority to Perform Compliance Audits

The Director shall have the authority to conduct audits of Service suppliers including inspection, auditing, and copying relevant records and material, including but not limited to, electronic records, during the Service supplier's regular business hours, upon written request and not less than five (5) business days notice in order to review compliance with this Chapter. The Director shall notify said Person of the initiation of an audit in writing. Upon completion of the audit, the Director may make a deficiency determination pursuant to Section 4.52.370 of this Chapter for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such Person to the Director. If said Person is unable or unwilling to provide sufficient records to enable the Director to verify compliance with this Chapter, the Director is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

4.52.370 Failure to Collect and Report Tax; Determination of Tax by Director

- A. If any Service supplier willfully refuses to make, within the time provided in this Chapter, any report and remittance of taxes collected from Telephone subscribers or any portion thereof required by this Chapter, the Director may inspect, audit, and copy records relevant and material to the Service supplier's willful failure during the Service supplier's regular business hours, upon written request and not less than five (5) business days notice.
- B. As soon as the Director is able to procure facts and information upon which to base the assessment of any tax imposed by this Chapter, collected by any Service supplier who has willfully refused to make such report and remittance, the Director shall proceed to determine and assess

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against such Service supplier the tax, interest and penalties provided by this Chapter. In cases where such determination is made, the Director shall give a notice of the amount so assessed by personally serving the notice, or by depositing it in the United States mail, postage prepaid, addressed to the Service supplier to its registered agent for service of process in the State of California.

- C. The Service supplier may, within ten (10) days after the serving or mailing of such notice, make application in writing to the Director for a hearing on the amount assessed. If application by the Service supplier for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Director, shall become final and conclusive and immediately be due and payable. If such application is made, the Director shall give not less than five (5) days written notice in the manner prescribed herein to the Service supplier to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such tax, interest and penalties. At the hearing, the Service supplier may appear and offer evidence and/or legal authority as to why the specified tax, interest, and penalties should not be so fixed.
- D. After such hearing, the Director shall determine the proper tax to be remitted and shall thereafter give written notice to the Service supplier in the manner prescribed herein of the determination and the amount of the tax, interest and penalties. The amount determined to be due shall be payable within fifteen (15) days.

4.52.380 Refunds

- A. The Director shall refund to the Telephone subscriber any taxes collected by the Service supplier in excess of the annual limit described in Section 4.52.210 C. In order to be eligible for the refund, the Telephone

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subscriber must provide a written request for the refund along with proof of payment by the subscriber. Service suppliers are not authorized to provide refunds of any tax imposed by this Chapter.

- B. Any refund of taxes imposed by or collected pursuant to this Chapter 4.52 shall be subject to provisions of Chapter 4.82 of Title 4 of this Code.

4.52.390 Administrative Agreements

- A. Upon a proper showing of good cause, the Director may enter into administrative agreements, with appropriate conditions, to vary from the strict requirements of this Chapter and thereby: (1) conform to the billing procedures of a particular Service supplier so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this Chapter; or (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit to the City.
- B. Upon a proper showing of good cause, the Director is authorized to execute a non-disclosure agreement approved as to form by the City Attorney to protect the confidentiality of Service subscriber information pursuant to *California Revenue and Tax Code Sections 7284.6 and 7284.7*.
- C. Upon a proper showing of good cause, the Director is authorized to execute a non-disclosure agreement approved as to form by the City Attorney to protect the confidentiality of proprietary Service supplier information.
- D. A copy of each agreement authorized by this Section 4.52.390 shall be on file in the Director's office, except that if the agreement provides for

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confidentiality and nondisclosure of portions of such agreement, those portions of the agreement shall be excluded from the public records maintained by the Director of Finance's office.

4.52.400 Appeals of Decision of the Director

- A. Any person aggrieved by any decision of the Director regarding the amount of tax or penalty owed or the duty or obligation to collect, report or pay a tax pursuant to this Chapter, may appeal the decision of the Director by filing a written notice of appeal with the City Manager of the City of San José within fifteen (15) days of the serving or mailing of such decision. The notice of appeal shall state the grounds for the appeal. Once a notice of appeal is received, the City Manager shall schedule a day, time and place for the hearing and shall provide written notice of the time and place of the hearing and shall mail such notice to the appellant at least ten (10) calendar days prior to the date of the hearing.
- B. At the hearing, the appellant bears the burden of production and persuasion to establish the factual and legal issues upon which the appeal is based. At the conclusion of the hearing, the City Manager shall make findings of fact based upon the evidence submitted and determine whether grounds exist for denial of the appeal or for adjustment of amounts owed. The person appealing shall be notified of the City Manager's decision in writing. The City Manager's decision shall be final. Any appellant who requests a hearing and who fails to appear at the hearing is deemed to waive the right to a hearing and the adjudication of the issues related to the hearing, provided that the hearing was properly noticed.
- C. The amount of any tax finally determined as provided in this Section shall be due and payable as of the date of the original tax, together with any

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penalties that may be due thereon; provided, however, that if the amount of such tax is fixed in accordance with the original statement of the appellant, no penalty shall attach by reason of any delinquency.

Part 4
Miscellaneous

4.52.410 **Purpose of Tax and Deposit of Revenues in the General Fund**

- A. The purpose of the tax imposed under this Chapter 4.52 is solely for the purpose of raising revenue for general municipal purposes and is not intended for regulation.
- B. All taxes, penalties, and interest collected under this Chapter 4.52 shall be deposited in the general fund of the City.

4.53.420 **Administrative Rules and Regulations**

The Director may adopt administrative rules and regulations consistent with provisions of this Chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. The administrative rules and regulations shall not impose a new tax; revise an existing tax methodology as stated in this Section, or increase an existing tax, except as allowed by *California Government Code Section 53750(h)(2)*. The Director shall hold a public hearing and allow public comment on any proposed rule or regulation prior to adoption thereof. The Director shall provide not less than ten (10) days notice of such public hearing. A copy of such administrative rules and regulations shall be on file in the Director's office. To the extent that the Director 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 subscriber, that determination shall be considered an exercise of the Director's discretion to settle disputes and shall not constitute a change in taxing

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methodology for purposes of *Government Code Section 53750* or otherwise. The Director is not authorized to amend the City's methodology for purposes of *Government Code Section 53750* and the City does not waive or abrogate its ability to impose the Telecommunications Users Tax in full as a result of promulgating administrative rulings or entering into agreements with Service suppliers or Service subscribers. Failure or refusal to comply with any rules and regulations promulgated by the Director shall be deemed a violation of this Chapter.

4.52.430 Subject to Existing Annual Audits

Pursuant to Section 1215 of the City's Charter, as may be amended, the revenues from the tax imposed by this Chapter shall be subject to the annual audit performed by the City's independent auditor of the City's municipal books, records, accounts and fiscal procedures and which is reported in the City's Comprehensive Annual Financial Report.

4.52.440 Effective Date

This Chapter 4.52 shall become effective immediately upon the date that this Ordinance is confirmed and approved by the voters of San José at the statewide general election on November 4, 2008.

4.52.450 Amendment or Repeal

Chapter 4.52 of Title 4 of the San José Municipal Code may be repealed or amended by the City Council without a vote of the people. However, as required by Chapter XIIC of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance. The people of the City of San José affirm that any of the following actions shall not constitute an increase of the rate of a tax:

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- A. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of the tax; or
- B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance; or
- C. The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Ordinance); or
- D. The collection of the tax imposed by this Ordinance, even if the City had, for some period of time, failed to collect the tax.

SECTION 2. 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 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 telephone service within the City of San José if he or she has a “place of primary use,” as such term is

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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 telephone service to a telephone subscriber.

The fee imposed under subsection A, above, shall be in effect for every person who subscribes to telephone service within the City of San José, but shall be suspended through June 30, 2009 for any period of time during which the tax imposed by Chapter 4.52 of this Code is in effect and being collected. Should the tax imposed by Chapter 4.52 be rendered inoperative or for any reason be deemed or declared invalid, the fee suspension shall also be deemed inoperative and the fees imposed under this sSection 8.20.200 shall immediately become effective, at the rates established in the most recent City Council resolution adopted pursuant to Section of this Chapter 8.20.