



Memorandum

To: Rules Committee

From: Councilmember Pete Constant

Subject: SEE BELOW

Date: May 1, 2008

Approved: 

SUBJECT: Legal Analysis of San José's 911 fee in light of the recently published Appeals Court decision in *Bay Area Cellular Telephone Co. v. City of Union City*

RECOMMENDATION

Direct the City Attorney to provide the City Council with a legal analysis of the City of San José's 911 fee in light of the recently published Appeals Court decision in *Bay Area Cellular Telephone Company v. City of Union City*.

This analysis should answer the following questions:

1. Are there any differences between the City of San José's and the City of Union City's use of the 911 fee? Does this published decision mean that San José's 911 fee is illegal?
2. What is the distinction between a published and unpublished decision?
3. What is the City of San José's liability at this point and moving forward?
4. How would a possible appeal of the Appeals Court decision affect the City of San José's continued use of the 911 fee?

BACKGROUND

Cities throughout the State have enacted fees to cover the cost of 911 dispatch and emergency services. These fees have been criticized as general taxes that require voter approval. The recent Appeals Court decision in *Bay Area Cellular Telephone Company v. City of Union City* may have legal ramifications for San José due to our use of a similar fee. It is prudent at this time for the City Attorney to provide the City Council with a legal analysis of this issue.

The City of San José's continued use of the NASCOP program after it was determined to be illegal became problematic and in the same way continued use of the 911 fee may result in a higher cost than benefit to the City. It is incumbent on us to ensure that all of our policies, fees and taxes are legal.