

1 [Emergency Response Fee Amendments.]

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3 **Ordinance amending Articles 6 and 10a of The San Francisco Business And Tax**
 4 **Regulations Code by amending Sections 6.15-1, 750, 751, 753, 755 and 757, deleting**
 5 **Section 756, and adding Sections 752.2 and 755.1 to clarify that the Code's time for**
 6 **filing refund claims applies to the Emergency Response Fee; to provide for use of**
 7 **Emergency Response Fee revenues for operating costs of the 911 communication**
 8 **system; to update the findings supporting the fee; to increase the amount of the annual**
 9 **cap on fee payments per account, per service location to reflect inflation; to increase**
 10 **the fee rate for trunk line subscribers; and to eliminate the fee sunset, and amending**
 11 **section 10.100-67 of the San Francisco Administrative Code to allow for use of monies**
 12 **in the Emergency Communications 911 Emergency Response Fund for operating costs**
 13 **of the 911 communication system.**

14 Note: Additions are single-underline italics Times New Roman;
 15 deletions are ~~strikethrough italics Times New Roman~~.
 16 Board amendment additions are double underlined.
 Board amendment deletions are ~~strikethrough normal~~.

17 Be it ordained by the People of the City and County of San Francisco:

18 Section 1. The San Francisco Business and Tax Regulation Code is hereby amended
 19 by amending Sections 6.15-1, 750, 751, 753, 755 and 757, deleting Section 756, and adding
 20 Sections 752.2 and 755.1 to read as follows:

21 SEC. 6.15-1. REFUNDS.

22 (a) Except as otherwise provided in subdivision (c) below, whenever the amount of
 23 any tax, fee, interest or penalty ("tax or fee") has been overpaid or paid more than once, or has
 24 been erroneously or illegally collected or received by the City and County under Part III of the
 25 Municipal Code, so much of the tax or fee as has been overpaid or paid more than once or

1 has been erroneously collected or received by the City and County of San Francisco may be
2 refunded, provided a verified claim in writing therefor, stating under penalty of perjury the
3 specific grounds upon which the claim was founded, with specificity sufficient to enable the
4 Tax Collector to understand and evaluate the claim, is filed with the Tax Collector within six
5 months from the time the return was due or the tax or fee was paid, whichever of such periods
6 expires later; provided, however, that in no event shall the period to file such claim expire prior
7 to shortest period allowable for filing a tax refund claim under Title 1, Division 3.6, Part 3,
8 Section 911.2 of the California Government Code or any successor provision as amended
9 from time to time. For purposes of this Section 6.15-1, a claim shall be deemed to accrue on
10 the later of the date the return was due or the tax or fee was paid.

11 (b) The claim shall be on a form furnished by the Tax Collector. A refund claim may
12 only be signed by the taxpayer or other person determined to be liable for the tax or fee or said
13 person's guardian or conservator. No other agent, including the taxpayer's attorney, may sign
14 a refund claim. Class claims for refunds shall not be permitted. If the claim is approved by the
15 department which collected said tax or fee and by the Controller, the excess amount collected
16 or paid may be refunded or may be credited on any amount due and payable, from the person
17 from whom it was collected or by whom paid and the balance may be refunded to such
18 person, his administrator or executors.

19 (c) The Tax Collector, in his or her discretion and upon good cause shown, may
20 waive the requirement set forth in subdivision (a) above that a taxpayer file a verified claim in
21 writing stating under penalty of perjury the specific grounds upon which a claim for refund is
22 founded in any case in which the Tax Collector can and does determine on the basis of other
23 evidence presented to him or her that (i) an amount of tax, fee, interest or penalty has been
24 overpaid or paid more than once, or has been erroneously or illegally collected or received by
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1 the City and County under Part III of the Municipal Code, and (ii) all other conditions
2 precedent to the payment of a refund to the taxpayer have been satisfied.

3 (d) Transitional Rule. The period of limitation for filing claims as amended by this
4 Ordinance shall not be applied to extinguish existing causes of action. However, pursuant to
5 Brown v. Bleiberg (1982) 32 Cal. 3d 426, a cause of action that is not time-barred as of the
6 effective date of this amendment shall expire on the date six months after the effective date of
7 this amendment or on the date such cause of action would have expired in the absence of this
8 amendment, whichever of such dates occurs first. The Clerk of the Board of Supervisors is
9 directed to remove this subdivision (d) from this Section 6.15-1 upon the expiration of a 42-
10 month period commencing on the effective date of this amendment.

11 SEC. 750. TITLE/PURPOSE.

12 (a) In order to substantially improve the performance of the City's 911
13 communication system, the City and County must impose a fee. This ordinance shall be
14 known as the "Emergency Response Fee Ordinance" and the fee imposed herein shall be
15 known as the "Emergency Response Fee."

16 (b) The purpose of this ordinance is to require subscribers to telephone service in
17 the City and County to pay a fee which is directly related to the benefit subscribers derive from
18 the improvements to and operation of the 911 communication system that will be financed by
19 fee revenues.

20 (c) The emergency response fee is the most practical and equitable temporary
21 revenue mechanism to finance the acquisition and construction of land, equipment, software,
22 and facilities which are needed to provide an adequate and reliable 911 communication
23 system under a single uniform command structure and to operate that improved 911
24 communication system. The fee is intended to recover all costs related to the benefits the
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1 improved system will provide to nonexempt telephone subscribers. Benefits provided to
2 exempt telephone subscribers will be financed through other revenue mechanisms.

3 (d) The fee imposed by the provisions of this Article is intended solely to provide
4 revenue for eligible project costs and eligible operating costs, as defined in this Article. Fee
5 revenues shall be deposited by the Controller in the 911 Emergency Response Fund
6 authorized by Section ~~10.204~~10.100-67 of the San Francisco Administrative Code. The
7 provisions of this Article are not enacted for regulatory purposes or for general revenue
8 purposes.

9 SEC. 751. ADDITIONAL DEFINITIONS.

10 Except where the context or particular provisions require otherwise, the following
11 definitions shall govern the construction of this Article.

12 (a) 911 Communication System. "911 communication system" means an enhanced
13 emergency telephone service which automatically connects a person dialing the digits 9-1-1 to
14 an answering point established within a City department and shall incorporate all aspects of
15 the call delivery system, the call processing system and the call dispatch system, including,
16 but not limited to, selective routing, automatic number identification (ANI), ~~and~~ automatic
17 location identification (ALI), and wireless 911. "911 communication system" includes the
18 functions of the Emergency Communications Department; ~~primary dispatch center operated, at the~~
19 ~~time this Article was adopted, by the San Francisco Police Department and the secondary dispatch~~
20 ~~centers operated by the San Francisco Fire Department and the San Francisco Department of Public~~
21 ~~Health~~; however, it does not include the Police Department, ~~and~~ Fire Department ~~and Health~~
22 ~~Department~~ staff who respond to requests for assistance by traveling to a site to which they are
23 dispatched as a result of an emergency call.

24 (b) Access Line. "Access line" means any connection from a customer location to a
25 provider of local telephone service offered to the public for compensation. Within the meaning

1 of this ordinance, and without limitation, access lines include connections providing residential
2 basic exchange service, business basic exchange service, PBX service (private branch
3 exchange), foreign exchange service, and Centrex service.

4 (c) Eligible Operating Costs. "Eligible Operating Costs" means the portion of operating
5 costs reflecting the benefit estimated to be provided by operation of the 911 communication system to
6 telephone subscribers who are required to pay the fee imposed by the provisions of this Article on
7 access lines subject to the fee. Eligible operating costs shall not include Exempt operating costs.

8 (d) Exempt Operating Costs. "Exempt Operating Costs" means the portion of operating
9 costs reflecting the benefits estimated to be provided by operation of the 911 communication system to
10 telephone subscribers who are exempted from the fee by Section 754 of this Article or are otherwise not
11 required to pay any fee imposed by the provisions of this Article.

12 (ee) Eligible Project Costs. "Eligible project costs" means the portion of project costs
13 reflecting the benefit estimated to be provided by the project to telephone subscribers who are
14 required to pay the fee imposed by the provisions of this Article on access lines subject to the
15 fee. Eligible project costs shall not include exempt project costs.

16 (ef) Exempt Project Costs. "Exempt project costs" means the portion of project costs
17 reflecting the benefits estimated to be provided by the project to telephone subscribers who
18 are exempted from the fee by Section 754 of this Article or are otherwise not required to pay
19 any fee imposed by the provisions of this Article.

20 (eg) Fee. "Fee" means the Emergency Response Fee imposed under the provisions
21 of this Article.

22 (fh) Lifeline Service. "Lifeline service" means discounted telephone service available
23 to eligible low- income residential customers.

24 (gi) Local Telephone Service. "Local telephone service" means access to a local
25 telephone system, providing two-way telephonic quality communication with substantially all

1 persons having telephone or radio telephone stations constituting a part of such local
2 telephone system, whether or not such service uses transmission wires.

3 "Local telephone service" shall not include land mobile services or maritime mobile
4 services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations, as said
5 Section existed on January 1, 1970. Notwithstanding this exclusion, "local telephone service"
6 shall include ~~cellular~~ wireless telephone service.

7 (hj) "Operating Costs" means any costs to operate, repair or maintain the 911
8 Communication System or backup 911 communication system, including but not limited to costs for
9 personnel, training, software and hardware maintenance and upgrades, facility maintenance and
10 repair, and attorneys fees.

11 (k) Project Costs. "Project costs" means any costs of: acquiring land on which to
12 locate a 911 communication system facility or backup 911 communication system facility,
13 acquiring and installing computerized call delivery processing and dispatch equipment and
14 software, and/or any other acquisition or construction necessary to combine 911
15 communication staff, to the maximum extent consistent with the Charter, under a single
16 uniform command structure and to house 911 communication system equipment and staff in a
17 seismically safe and fireproof facility or backup facility contiguous or proximate to the Central Fire
18 Alarm Station on Turk Street, including any debt service payments related thereto. ~~Project costs~~
19 ~~shall include conversion costs as defined in this Article.~~

20 (jl) Service Location. "Service location" means the premises of a telephone
21 subscriber at which a working service point or primary station set provides the subscriber with
22 basic exchange service and to which extension services are charged.

23 (km) Service Supplier. "Service supplier" means any person supplying local
24 telephone service to any telephone subscriber, pursuant to authority granted by the California
25 Public Utilities Commission, at a location within the City and County of San Francisco. Service

1 suppliers may include, without limitation, local exchange carriers, interexchange carriers,
2 competitive access providers, cable television providers offering telecommunications services,
3 and any other entity offering direct connections between their premises and the premises of
4 telephone subscribers.

5 (~~tn~~) Telephone Corporation. "Telephone corporation" shall have the same meaning
6 as defined in Section 234 of the Public Utilities Code of the State of California or the most
7 comparable successor definition.

8 (~~no~~) Telephone Subscriber. "Telephone subscriber" means any person required to
9 pay a fee imposed under the provisions of this Article.

10 (~~pd~~) Trunk Line Service. "Trunk line service" means access to local telephone
11 service provided by means of a central office line to or from a private branch exchange or
12 automatic call distributing system, or other similar service, at a telephone subscriber location.

13 SEC 752.2. ADDITIONAL FINDINGS.

14 (a) The 911 communication system provides immediate access to emergency services for
15 telephone subscribers. Subscribers to telephone service derive significant benefit from ongoing
16 operation of the modernized integrated system installed at the Combined Emergency Communications
17 Center at 1011 Turk Street. This improved 911 communication system has enhanced call delivery, call
18 processing and call dispatch and thus provided for more speedy and reliable emergency services.
19 Telephone subscribers will benefit from maintaining and upgrading the improved 911 communication
20 system so it continues to operate at a state of the art level and from providing a backup 911
21 communication system and facility that can be immediately available and operational in the event of a
22 failure at the Combined Emergency Communications Center. A portion of the costs associated with
23 operating, maintaining and upgrading the 911 Communications System and facility and backup 911
24 communication system and facility should be allocated among all telephone subscribers because
25 telephone subscribers will reap this significant benefit.

1 (b) The specific findings of the Board of Supervisors that supported the structure of the
2 Emergency Response Fee as it was originally adopted remain valid and applicable to the fee to the
3 extent that it supports the ongoing operating costs of the 911 communication system as well as project
4 costs. In particular:

5 (i) Every telephone access line can provide independent access to the 911
6 communication system. Therefore, allocating operating costs on a per line basis fairly
7 distributes these costs according to the benefit telephone subscribers derive from
8 standby availability of a modernized 911 communication system.

9 (ii) Subscribers to trunk line services derive more benefit, in terms of access to
10 emergency communication service, from each telephone line than other subscribers and
11 therefore should pay a higher fee.

12 (iii) The concentration of a large number of access lines in a single location diminishes
13 the marginal benefit of improved access provided by each additional access line;
14 therefore it is appropriate to place a cap on the number of access lines per account per
15 service location on which the fee is charged.

16 (c) Since original adoption of the Emergency Response Fee in 1993, the Board finds that
17 the average increased access to emergency communication services available to subscribers to trunk
18 lines relative to access lines is greater than the Board originally estimated. In another context, the
19 Federal Communications Commission concluded that there is a 9:1 ratio between trunk lines and
20 access lines. The Board now finds that, on average, a trunk line provides nine times the benefit
21 provided by a single access line.

22 (d) The portion of operating costs reflecting the benefits estimated to be provided by
23 operation of the 911 communication system to telephone subscribers who are subject to the fee
24 ("eligible operating costs") may be financed from emergency response fee revenues. The portion of
25 operating costs reflecting the benefits estimated to be provided by operation of the 911 Communication

1 System to telephone subscribers who are exempted from the fee ("exempt operating costs") may not be
2 financed from emergency response fee revenues.

3 SEC. 753. IMPOSITION OF EMERGENCY RESPONSE FEE.

4 (a) Commencing on the date specified in Section 772 of this Article, there is hereby
5 imposed an emergency response fee on every person who maintains access to the 911
6 communication system by subscribing to local telephone service within the City and County of
7 San Francisco.

8 (b) The amount of the fee imposed by this Section shall be paid, on a per-access-
9 line basis, by the person paying for such local telephone service; however, ~~no fee shall be~~
10 ~~charged to more than 1,667 access lines or 333 trunk lines per account per service location, and in no~~
11 ~~circumstance shall any~~ no telephone subscriber shall be required to pay fees in excess of
12 \$10,000 per account per service location in any twelve-month period ending on or before
13 December 31, 1997. Commencing in 1998, no telephone subscriber shall be required to pay
14 fees in excess of \$20,000 ~~per account per service location in any~~ per calendar year. Commencing
15 in 2002, no telephone subscriber shall be required to pay fees in excess of \$25,000 per account per
16 service location in any calendar year. The cost of wireless telecommunications services shall not be
17 considered for purposes of this subsection (b). The amount of the cap established by this subsection
18 shall be adjusted annually by the Consumer Price Index: All Urban Consumers for the San Francisco /
19 Oakland / San Jose Area for All Items as reported by the United States Bureau of Labor Statistics.

20 (c) Only one payment of the fee herein imposed shall be required for any access
21 line, notwithstanding that access lines of more than one person are used in furnishing local
22 telephone service to a telephone subscriber.

23 (d) Revenues generated by the emergency response fee shall be deposited in the
24 911 emergency response fund authorized by Section ~~10.204~~10.100-67 of the San Francisco
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1 Administrative Code and shall be used exclusively to pay for eligible project costs and eligible
2 operating costs.

3 SEC. 755. FEE SCHEDULE.

4 The amount of the fee shall be \$.50 per month per access line or \$2.50 (5 x \$.50) per month
5 per trunk line. Commencing on December 1, 1997, the amount of the fee shall be \$1.00 per
6 month per access line or \$5.00 per month per trunk line. Commencing on July 1, 2002, the
7 amount of the fee shall be \$1.00 per month per access line and \$9.00 per month per trunk line.

8 SEC. 755.1 ANNUAL REPORT. No later than October 1 each year, the Controller shall estimate the
9 percentage of access lines that were subject to payment of the emergency response fee during the
10 immediately prior fiscal year. This percentage shall be identified as the percentage of project costs and
11 operating costs that are eligible project costs and eligible operating costs for the following fiscal year.
12 The Controller's report shall also identify the adjusted amount of the fee cap established by subsection
13 (b) of Section 753 that will apply in the following calendar year.

14 SEC. 756. This section intentionally left blank. ~~SUNSET OF FEE~~

15 ~~———— The fee imposed by this Article shall expire upon the Controller's written certification to the~~
16 ~~Clerk of the Board of Supervisors, at least 120 days before the expiration date, that total fee revenues~~
17 ~~will have been sufficient to recover actual eligible project costs, as these costs have been determined by~~
18 ~~the Controller. However, under no circumstances shall total fee revenues exceed \$100,000,000. The~~
19 ~~Tax Collector shall notify service suppliers within 15 days of a Controller's certification that the fee~~
20 ~~will expire as of the date identified in the certification.~~

21 SEC. 757. COLLECTION OF FEE.

22 (a) The fee imposed by this Article shall be collected from the telephone subscriber
23 by the service supplier. Service suppliers shall hold fee revenues in trust for the City and shall
24 remit the revenues collected as the fee to the Tax Collector on a monthly basis on or before
25 the last day of the following month.

1 (b) The fee required to be collected by service suppliers under this ordinance shall
2 be added to and stated separately as the San Francisco emergency response fee in the
3 service supplier's billings to telephone subscribers.

4 (c) If the amount paid by a telephone subscriber is less than the full amount of the
5 charges for service and the emergency response fee which have accrued for the billing
6 period, a proportionate share of both the charges for service and the fee shall be deemed to
7 have been paid.

8 (d) The duty to collect the fee from a telephone subscriber shall commence with
9 bills issued on or after the operative date of this Article, ~~as specified by Section 772, and shall~~
10 ~~cease on the date identified by the Controller or the Tax Collector under Section 756 of this Article.~~

11 Section 2. The San Francisco Administrative Code is hereby amended by amending
12 Section 10.100-67 to read as follows:

13 SEC. 10.100-67. EMERGENCY COMMUNICATIONS 911 EMERGENCY RESPONSE
14 FUND.

15 (a) Establishment of Fund. The Emergency Communications 911 Emergency
16 Response Fund is established as a category four fund to receive all monies collected
17 pursuant to Article 10A of Part III of the San Francisco Municipal Code, ~~those monies which are~~
18 ~~specifically set aside for deposit into the fund pursuant to the provisions of Section 720 of Article 10 of~~
19 ~~Part III of the San Francisco Municipal Code,~~ and any other monies transferred into the fund.

20 (b) Use of Fund. The fund shall be used solely for the following purposes:

- 21 1. For the payment of costs of acquiring land on which to locate a 911
22 communication system facility or backup 911 communication system facility, acquiring and
23 installing computerized call delivery processing and dispatch equipment and software, and/or
24 any other acquisition or construction necessary to combine 911 communication staff under a
25 single uniform command structure and to house 911 communication system equipment and

1 staff in a seismically safe and fireproof facility ~~or backup facility contiguous or proximate to the~~
2 ~~Central Fire Alarm Station on Turk Street~~, including any debt service payments related thereto;

3 2. ~~For the payment of "Conversion Costs," as that term is defined in Section 751(d)~~
4 ~~of Part III of the San Francisco Municipal Code, to telephone suppliers;~~

5 ~~3. For the payment of extensions, replacements and improvements to a 911~~
6 ~~communication system;~~

7 ~~4. For the payment of operating, repair and maintenance expenses for ~~a~~the~~
8 ~~911 communication system and backup 911 communication system, including but not limited to costs~~
9 ~~for personnel, training, software and hardware maintenance and upgrades, facility maintenance and~~
10 ~~repair and attorneys fees;~~

11 ~~5. For the payment of personnel costs related to the operation and maintenance of~~
12 ~~a 911 communication system.~~

13 ~~No expenditures for the purposes set forth in Subparagraphs (3), (4) and (5) shall be~~
14 ~~made from the fund until the costs set forth in Subparagraphs (1) and (2) have been paid.~~—The term
15 “911 communication system” shall have the meaning set forth in Section 751(a) of Part III of
16 the San Francisco Municipal Code.

17 (c) Administration of Fund. Expenditures ~~from the fund for the purposes set forth in~~
18 ~~Subparagraphs (1) and (2) of Subsection (b) above shall be made upon the recommendation of the~~
19 ~~Director of Telecommunications and Information Services. Expenditures for the purposes set forth in~~
20 ~~Subparagraphs (3), (4) and (5) of Subsection (b) above~~ shall be made upon the recommendation of
21 the Director of Emergency CommunicationsServices. Expenditures and encumbrances from this
22 fund shall be subject to the budget and fiscal provisions of the Charter.

23 APPROVED AS TO FORM:
24 DENNIS J. HERRERA, City Attorney

By:

Julia M. C. Friedlander
Deputy City Attorney

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