

CITY OF SOUTH LAKE TAHOE

ORDINANCE NO. 943

AN ORDINANCE AMENDING CHAPTER 11 OF THE SOUTH LAKE TAHOE CITY CODE, BY ADDING ARTICLE IX ENTITLED EMERGENCY COMMUNICATION SYSTEM ACCESS FEE

The City Council of the City of South Lake Tahoe does hereby ordain as follows:

Section 1. **Enactment.** Chapter 11 of the South Lake Tahoe City Code is hereby amended as designated in Exhibit "A" attached hereto and incorporated herein by reference.

Section 2. **Conflicting Ordinances Repealed.** All other ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. **Summary Publication.** Within fifteen (15) days after final adoption of this Ordinance, the City Clerk shall have a summary of the ordinance prepared by the City Attorney and published as required.

Section 4. **Effective Date.** This ordinance shall take effect thirty (30) days after its adoption.

FIRST READING: August 17, 2004

SECOND READING: September 7, 2004

PASSED AND ADOPTED by the City Council of the City of South Lake Tahoe at a regular meeting held on September 7, 2004, by the following vote:

AYES: Councilmembers DAVIS, LOVELL, BROWN, COLE & UPTON

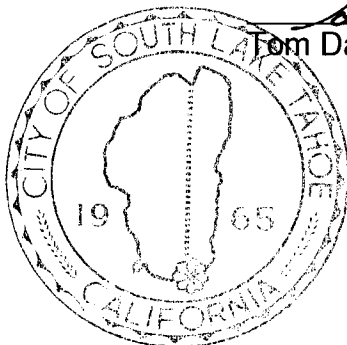
NOES: Councilmembers _____

ABSENT: Councilmembers _____

ABSTAIN: Councilmembers _____

ATTEST:

Susan Alessi
Susan Alessi, City Clerk (City Seal)



Tom Davis
Tom Davis, Mayor

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COMMUNICATION SYSTEM ACCESS FEE**

The City Council of the City of South Lake Tahoe does hereby ordain as follows:

Chapter 11 of the South Lake Tahoe City Code is hereby amended to add a new Article IX which shall read as follows:

ARTICLE IX

EMERGENCY COMMUNICATION SYSTEM ACCESS FEE

SECTION 11-86. TITLE/PURPOSE.

(a) In order to ensure and improve the performance of the City's 911 communication system, the City must impose a fee. This ordinance shall be known as the "Emergency Communication System Access Fee Ordinance" and the fee imposed herein shall be known as the "Emergency Communication System Access Fee."

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

(c) The Emergency Communication System Access Fee is the most practical and equitable revenue mechanism to finance the acquisition and construction of land, equipment, software, and facilities which are needed to provide an adequate and reliable 911 communication system. The fee is intended to recover all costs related to the benefits the 911 system will provide to nonexempt telephone subscribers.

(d) The fee imposed by the provisions of this Article is intended solely to provide revenue for eligible project costs and eligible operating costs, as defined in this Article. Fee revenues shall be deposited in the 911 Emergency Response Fund of the City of South Lake Tahoe. The provisions of this Article are not enacted for regulatory purposes or for general revenue purposes.

SECTION 11-87. DEFINITIONS.

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

(a) 911 Communication System. "911 communication system" means an enhanced emergency telephone service which automatically connects a person dialing the digits 9-1-1 to an answering point established within a City department and shall incorporate all aspects of the call delivery system, the call processing system and the call dispatch system, including, but not limited to, selective routing, automatic number identification (ANI), automatic location identification (ALI), and wireless 911. "911 communication system" includes the functions of the South Lake Tahoe Dispatch Division; however, it does not include the Police Department and Fire Department staff who respond to requests for assistance by traveling to a site to which they are dispatched as a result of an emergency call.

(b) Access Line. "Access line" means any connection from a customer location to a provider of local telephone service offered to the public for compensation. Within the meaning of this ordinance, and without limitation, access lines include connections providing residential basic exchange service, business basic exchange service, PBX service (private branch 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, and 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 South Lake Tahoe. Notwithstanding the foregoing, "access line," does not include any connection from a customer location within the City to a provider of local telephone service when for any reason a customer cannot use, or as demonstrated by the customer to the City's satisfaction the customer does not use for purposes of two-way voice telephony, that connection to dial the digits 9-1-1 to reach the 911 communication system within the City at an answering point within the City.

(c) Eligible Operating Costs. "Eligible operating costs" means the portion of operating costs reflecting the benefit estimated to be provided by operation of the 911 Communication System to telephone subscribers who are required to pay the fee imposed by the provisions of this Article on access lines, trunk lines and high capacity trunk lines subject to the fee. Eligible Operating Costs shall not include Exempt Operating Costs.

(d) Exempt Operating Costs. "Exempt operating costs" means the portion of Operating Costs reflecting the benefits estimated to be provided by operation of the 911 Communication System to telephone subscribers who are exempted from the fee by provision of this Article or are otherwise not required to pay the fee imposed by the provisions of this Article.

(e) Eligible Project Costs. "Eligible project costs" means the portion of project costs reflecting the benefit estimated to be provided by the project to telephone subscribers who are required to pay the fee imposed by the provisions of this Article on access lines, trunk lines and high capacity trunk lines subject to the fee. Eligible project costs shall not include exempt project costs.

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

(g) Fee. "Fee" means the Emergency Communication System Access Fee imposed under the provisions of this Article.

(h) High Capacity Trunk Line. "High capacity trunk line" shall mean a trunk line with a capacity of at least 24 channels over a high capacity service, such as a 1.544 Mb, T-1, or Integrated Services Digital Network (ISDN) Primary Rate Interface (PRI) line. Notwithstanding the foregoing, "high speed trunk line" does not include any trunk line which does not come within the definition of Section 11- (q) of this Article.

(i) Lifeline Service. "Lifeline service" means discounted telephone service available to eligible low income residential customers.

(j) Local Telephone Service. "Local telephone service" means access to a local telephone system, providing two-way telephonic quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system, whether or not such service uses transmission wires. "Local telephone service" shall include wireless telephone service. "Local telephone service" shall also include service provided through any technology currently existing, or that may exist in the future, allowing a person within the City of South Lake Tahoe to access the 911 Communication System using that technology. For the purposes of the Emergency Communication System Access Fee, a person shall be construed to subscribe to "local telephone service" within the City of South Lake Tahoe 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 South Lake Tahoe. "Local telephone service" does not include any system that is expressly excluded from the definition of "access line," "trunk line," or "high capacity trunk line."

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

(k) "Operating Costs." Operating costs means any costs to operate, repair or maintain the 911 Communication System or backup 911 communication system, including but not limited to costs for personnel, training, software and hardware

maintenance and upgrades, facility maintenance and repair, depreciation equipment replacement, technical infrastructure, and attorneys fees.

(l) Project Costs. "Project costs" means any costs of: acquiring land on which to locate a 911 communication system facility or backup 911 communication system, acquiring, re-financing and installing computerized call delivery processing and dispatch equipment and software, and/or any other acquisition or construction necessary to combine 911 communication staff, to the maximum extent allowed by law, under a single uniform command structure and to house 911 communication system equipment and staff in a seismically safe and fireproof facility or backup system, including any debt service payments related thereto.

(m) 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. For wireless telephone service, "service location" is the "place of primary use" as such term is defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Section 124(8).

(n) Service Supplier. "Service supplier" means any person supplying local 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 South Lake Tahoe. Service suppliers also include, without limitation, local exchange carriers, inter-exchange carriers, competitive access providers, cable television providers offering telecommunications services, providers of wireless telephone service, and any other entity offering direct connections between their premises and the premises of telephone subscribers. Service suppliers also include any person supplying local telephone service who is exempt from California Public Utilities Commission or Federal Communications Commission regulation.

(o) 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 or corporation providing wireless telephone service.

(p) Telephone Subscriber. "Telephone subscriber" means any person who receives local telephone service, or its functional equivalent regardless of the technology used to provide the service.

(q) Trunk Line. "Trunk line" means a line between a service supplier's switching device and a private branch exchange, automatic call distributing system, or other similar device, at a telephone subscriber location. Notwithstanding the foregoing, "trunk line," does not include any line between a service suppliers' switching device and a private branch exchange, automatic call distributing system, or other similar device, at a telephone subscriber location when for any reason a customer cannot use, or is demonstrated by the customer to the City's satisfaction the customer does not use for

purposes of two-way voice telephony, that line to dial the digits 9-1-1 to reach the 911 communication system within the City at an answering point within the City.

(r) "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.

SECTION 11-88. FINDINGS.

The City Council hereby finds and declares as follows:

(a) The 911 communication system provides immediate access to emergency services for telephone subscribers. The life saving importance of an up to date and modernized emergency response system was acknowledged by the federal September 11 Commission in its investigation finding that deficiencies that existed resulted in impaired response. Subscribers to telephone service derive significant benefit from on-going operation of the modernized integrated system installed at the City of South Lake Tahoe Joint Dispatch Center at the South Lake Tahoe Police Department. This improved 911 communication system has enhanced call delivery, call processing and call dispatch and has provided for more speedy and reliable emergency services. Telephone subscribers will benefit from maintaining and upgrading the improved 911 communication system so it continues to operate at a state of the art level and will further benefit from providing a back-up 911 communication system and facility that can be immediately available and operational in the event of a failure at the City of South Lake Tahoe Joint Dispatch Center. A portion of the costs associated with operating, maintaining and upgrading the 911 communication system and facility and backup 911 communications system and facility should be allocated among all telephone subscribers because telephone subscribers will reap this significant benefit.

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

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

(d) Subscribers who maintain trunk lines derive more benefit, in terms of access to emergency communication service, from each telephone line than other subscribers and should pay a higher fee. Based on information from the California Public Utilities Commission and the Federal Communications Commission, the council now finds that on average, a trunk line provides 7.5 times the access to the 911 communication system provided by a single access line.

(e) The portion of operating costs reflecting the benefits estimated to be provided by operation of the 911 communication system to telephone subscribers who are subject to the fee ("Eligible Operating Costs") may be financed from emergency communication system Access fee revenues. The portion of operating costs reflecting the benefits estimated to be provided by operation of the 911 communication system to telephone subscribers who are exempted from the fee may not be financed from emergency communication system Access fee revenues.

SECTION 11-89. IMPOSITION OF EMERGENCY COMMUNICATION SYSTEM ACCESS FEE.

(a) There is hereby imposed an Emergency Communication System Access Fee on every person who maintains access to the 911 communication system by subscribing to local telephone service within the City of South Lake Tahoe. For purposes of this Article, with respect to wireless telephone services, a person shall be construed to subscribe to local telephone service within the City of South Lake Tahoe 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.

(b) The amount of the fee imposed by this Section shall be established by City Council Resolution and shall be paid, on a per line basis, by the person paying for such local telephone service. Unless otherwise set by resolution the amount of the fee shall be adjusted annually by the Consumer Price Index: All Urban Consumers as reported by the United States Bureau of Labor Statistics. However, no subscriber shall be required to pay fees in excess of \$10,000 per account per service location in any twelve-month period ending on or before December 31, 2005. The amount of the cap established by this subsection shall be adjusted annually by the Consumer Price Index: All Urban Consumers as reported by the United States Bureau of Labor Statistics.

(c) Only one payment of the fee herein imposed shall be required for any access line, trunk line or high capacity trunk line, notwithstanding that access lines of more than one service supplier are used in furnishing local telephone service to a telephone subscriber.

(d) Revenues generated by the Emergency Communication System Access Fee shall be deposited in the 911 emergency response fund and shall be used exclusively to pay for eligible project costs and eligible operating costs, including eligible operating costs accruing in Fiscal Year 2003-2004 before adoption of this ordinance.

SECTION 11-90. EXEMPTIONS.

Nothing in this Article shall be construed as imposing a fee upon the access lines of:

(a) A lifeline 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 fee 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 South Lake Tahoe offices.

SECTION 11-91. REPORTS.

(a) The Finance Director shall identify data required and make appropriate requests to each service supplier for information sufficient to identify the number of access lines maintained by that service supplier during the preceding twelve months, including separate identification of the number of trunk lines and high-capacity trunk lines that are "access lines" for purposes of this Article as well as the number of exempt lines as specified in Section 11-90 of this Article. Service suppliers shall respond to such request within 60 days. Upon a request by any service supplier, the Finance Director shall provide the requesting service supplier with a non-disclosure, confidentiality agreement on behalf of the City of South Lake Tahoe and shall remain under a continuing duty to protect all information provided by service suppliers subject to such agreement from any use other than that described in this section, and from disclosure to any third parties including, but not limited to, other service suppliers.

(b) No later than March 15 of each year and using the data provided by the service suppliers pursuant to the immediately preceding subsection, the Finance Director shall estimate the percentage of access lines that are subject to payment of the Emergency Communication System Access Fee during the immediately prior fiscal year. The Finance Director's report shall also identify the adjusted amount of the fee cap established by this Article that will apply in the following fiscal year. The Finance Director shall report his findings to the City Council.

(c) No later than March 15 in each even numbered year, the Finance Director will evaluate information from industry sources, regulatory bodies, and City experience to determine whether the fee rates for trunk lines and high capacity trunk lines continue to reasonably reflect the increased estimated access to the 911 communication system provided to trunk line subscribers relative to access line subscribers. The Finance Director shall report the findings to the City Council who shall adjust the fees accordingly.

(d) No later than March 15 in each even numbered year, the Finance Director will evaluate information from industry sources, regulatory bodies, and City experience to determine whether the fee rates continue to reasonably reflect the cost of providing a reliable 911 communication system. The Finance Director shall report the findings to the City Council who shall adjust the rates accordingly.

SECTION 11-92. COLLECTION OF FEE.

(a) The fee imposed by this Article shall be billed to the telephone subscriber by the service supplier with its regular bill in accordance with the service supplier's normal billing procedures, and service suppliers shall collect such fees as are remitted from telephone subscribers so billed, on behalf of the City of South Lake Tahoe. Service suppliers shall hold fee revenues in trust for the City and shall remit the access fee revenues collected to the Finance Director on a monthly basis on or before the last day of the following month in which they were collected.

(b) The fee required to be collected by service suppliers under this ordinance shall be added to and stated separately as the South Lake Tahoe Emergency Communication System Access Fee in the service supplier's billings to telephone subscribers, on billings by service suppliers whose billing systems as presently configured are capable of such programming. The Finance Director is authorized to enter into such Administrative Agreements as may be required to accommodate appropriate billing of the fee as provided in this Article. Where authorized by federal or state law, the Finance Director may require reasonable modifications to a service supplier 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 provided in this Article.

(c) In the event a telephone subscriber makes partial payment of the total charges billed for service and the Emergency Communication System Access Fee which have 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 and state 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 Fee (USF) charges; and (4) charges for which service providers are acting as mere conduits for collection and remittance including the City of South Lake Tahoe Emergency Communication System Access Fee. Service suppliers shall pursue the normal course of collection efforts for deficiencies in payment of the fee from telephone subscribers. Notwithstanding the foregoing, a telephone subscriber shall not be relieved of the duty to pay the fee to the service supplier in any dispute of other items billed except in cases in which the dispute arises from claims of interruption or impairment of service on the access line on which the fee under this Part is assessed.

(d) The duty to collect the fee from a telephone subscriber shall commence with bills issued on or after the operative date of this Article.

(e) The service supplier, at its option, may assess a service charge of up to one-eighth (1/8) of one percent (1%) of Emergency Communication System Access Fees actually collected by the service supplier and remitted to the City at the time of remission. The service charge may be deducted from the Emergency Communication System Access Fees remitted to the City at the time of remission.

SECTION 11-93 Emergency Communication System Fund.

A. Establishment of Fund. The Emergency Communication System Fund is established to receive all monies collected pursuant to this Article, and any other monies transferred into the fund.

B. Use of Fund. The fund shall be used solely for the following purposes:

1. For the payment of costs of acquiring and developing land on which to locate a 911 communications system facility or backup 911 communications system facilities, acquiring and installing computerized call delivery processing and dispatch equipment and software, and/or any other acquisition necessary to provide emergency communication within the City;

2. For the payment of operating, repair and maintenance expenses for the 911 communication system, including but not limited to costs for personnel, planning, training, software and hardware maintenance and upgrades, facility maintenance and repair, depreciation, equipment replacement, technical infrastructure, and attorney's fees;

C. Administration of Fund. Expenditures and encumbrances from this fund shall be subject to the budget and fiscal provisions of the City.

SECTION 11-94. LIABILITY FOR FEE.

(a) Any fee required to be paid by a telephone subscriber under the provisions of this Article 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 fee.

(b) Any fee required to be collected under the provisions of this Article shall be deemed a debt owed to the City of South Lake Tahoe by the person required to bill and remit such fee. The service supplier's service charge may be removed from the collection prior to remitting the fee.

(c) With the exception of the requirement to bill telephone subscribers for the fee and to pursue the normal course of collection efforts for deficiencies in payment by telephone subscribers, nothing in this Section shall impose any duty on a service

supplier to enforce the collection of the fee hereinabove imposed. However, whenever a service supplier remits funds collected as an Emergency Communication System Access Fee to the City, the service supplier shall also provide the City with the name and address of any telephone subscriber refusing or failing to pay the fee for a period of four or more billing periods and shall state the amount of such fee remaining unpaid. A service supplier in compliance with this paragraph shall, following the provision of its report, be relieved of any further duty under this Article for billing and attempts to collect uncollected fees from the telephone subscribers identified in the report identified in this subsection for the stated periods. The Finance Director shall notify the telephone subscriber that the Finance Director has assumed responsibility to collect the fees due for the stated periods and demand payment of such fees.

(d) A service supplier shall be obligated to bill and remit fees collected consistent with the provisions of Section 11- . In the event a service supplier willfully refuses to bill or to remit those fees collected in due course, the service supplier shall be liable to the City in the amount of fees that were to be collected, as determined by the Finance Director pursuant to this Article.

(e) Any person owing money to the City under the provisions of this Article shall be liable to an action brought in the name of the City for the recovery of such amount.

SECTION 11-95. REGISTRATION, REPORTING AND REMITTING.

(a) Each service supplier providing local telephone service to telephone subscribers within the City shall register with the Finance Director upon a form prescribed by the Finance Director and shall set forth the name under which the service supplier transacts or intends to transact business, such other information as the Finance Director may require, 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 Article shall be directed. All notices and communications required by this Article 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, make a return to the Finance Director, on forms provided by the Finance Director, stating the amount of fees collected by the service supplier during the preceding month. At the time the return is filed, the full amount of the fee collected shall be remitted to the Finance Director, less any amount retained as a service charge pursuant to section of this Article. The Finance Director may require further readily attainable information in the return. Returns and remittances are due immediately upon cessation of business for any reason. Service suppliers must maintain records of fees collected and remitted to the City for a period of at least three years after the date the fee is remitted.

SECTION 11-96. INTEREST AND PENALTIES.

(a) Fees required to be collected from a telephone subscriber which are not remitted to the Finance Director on or before the due date provided in this Article are delinquent.

(b) **Service Suppliers.** Interest and penalties for delinquency in remittance of any fee not remitted shall be assessed as follows:

(i) Any service supplier who fails to remit any fee imposed by this Article within 10 days after receipt of written notice from the Finance Director of such failure shall pay a penalty of 10 percent of the amount of the fee.

(ii) If the Finance Director determines that the nonpayment of any remittance due hereunder is due to fraud, a penalty of 100 percent of the amount of the fee shall be added thereto in addition to the penalty stated in Subparagraph (i) of this subsection.

(iii) In addition to the penalties imposed in this Subsection (b), any service supplier who fails to remit any fee imposed by this Article, shall pay interest on the amount of the fee, exclusive of penalties, from the date on which the remittance first became delinquent until paid. Interest shall be paid at the rate of one percent per month, or fraction thereof.

(c) **Telephone Subscribers.** Failure by a telephone subscriber to pay any fee herein imposed shall result in the following interest and penalties on the telephone subscriber:

(i) Any telephone subscriber who fails to pay any fee imposed by this Article within 120 days of the date of the receipt of notice of the amount of fee due from the service supplier shall pay a penalty of 10 percent of the amount of the fee.

(ii) Any telephone subscriber who fails to pay any delinquent remittance within 180 days after the date of the receipt of notice of the amount of fee due from the service supplier shall pay a second delinquency penalty of 10 percent of the amount of the fee in addition to the ten percent penalty first imposed.

(iii) In addition to the penalties imposed in this Subsection (c), any telephone subscriber who fails to pay any fee imposed by this Article, shall pay interest on the amount of the fee, exclusive of penalties, from the date on which the fee first became delinquent until paid plus an additional collection charge for each delinquent account in an amount to be determined by rules and regulations of the Finance Director. The Finance Director shall establish collection charges which reimburse the costs incurred by the City for collecting delinquent fees. Interest shall be paid at the rate of one percent per month, or fraction thereof.

(iv) The penalties, interest and collection charges imposed in this Subsection (c) shall not be collected by the service supplier, but shall be determined and collected by the City as set forth hereinafter.

(d) Every penalty imposed and such interest as accrues under the provisions of this Section shall become a part of the fee herein required to be paid.

SECTION 11-97. AUTHORITY TO PERFORM COMPLIANCE AUDITS.

The Finance Director shall have the authority to conduct audits of service providers including inspection, auditing, and copying relevant records and material during the service supplier's regular business hours, upon written request and not less than five business day's notice in order to review compliance with this Article.

SECTION 11-98. FAILURE TO COLLECT AND REPORT FEE; DETERMINATION OF FEE BY FINANCE DIRECTOR.

If any service supplier shall fail or refuse to collect any fee imposed by this Article and to make, within the time provided in this Article, any report and remittance of said fees collected from telephone subscribers or any portion thereof required by this Article, the Finance Director shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the fee due. As soon as the Finance Director procures such facts and information as he is able to obtain upon which to base the assessment of any fee imposed by this Article and payable by any service supplier who has failed or refused to collect the same and to make such report and remittance, the Finance Director shall proceed to determine and assess against such service supplier the fee, interest and penalties provided by this Article. In case such determination is made, the Finance Director shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the service supplier so addressed at its last known place of address. Such service supplier may within 10 days after the serving or mailing of such notice make application in writing to the Finance 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 fee, interest and penalties, if any, determined by the Finance Director shall become final and conclusive and immediately due and payable. If such application is made, the Finance Director shall give not less than five days' written notice in the manner prescribed herein to the service supplier to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such fee, interest and penalties. At such hearing, the service supplier may appear and offer evidence why such specified fee, interest and penalties should not be so fixed. After such hearing, the Finance Director shall determine the proper fee to be remitted and shall thereafter give written notice to the service supplier in the manner prescribed herein of such determination and the amount of such fee, interest and penalties. The amount determined to be due shall be payable after 15 days unless an appeal is taken as provided hereinafter.

SECTION 11-99. REFUNDS.

(a) A service supplier may claim a refund or claim a credit against fees to be collected and remitted of the amount overpaid or paid more than once, or erroneously or illegally collected or received, by filing a written claim in the manner provided by law; provided, however, that neither a refund or a credit shall be allowed unless the amount of the fee so collected has either been refunded to the person entitled thereto or credited to the charges subsequently payable by such person to the service supplier.

(b) A telephone subscriber may obtain a refund of fees overpaid or paid more than once or erroneously or illegally collected or received by the City, by filing a written claim in the manner provided by law; but only when the fee was paid by the telephone subscriber directly to the Finance Director.

SECTION 11-100. FAILURE TO PAY FEE; ADMINISTRATIVE REMEDY.

Whenever the Finance Director determines that a telephone subscriber has deliberately withheld the amount of the fee owed by him for the amounts remitted to a service supplier or that a telephone subscriber has failed to pay the amount of the fee for a period of four or more billing periods, or whenever the Finance Director deems it in the best interest of the City, he shall relieve the service supplier of the obligation to collect fees due under this ordinance from certain named service users for specified billing periods. The Finance Director shall notify the telephone subscriber that the Finance Director has assumed responsibility to collect the fees due for the stated periods and demand payment of such fees. The notice shall be served on the telephone subscriber by handing it to him personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the telephone subscriber at the address to which billing was made by the service supplier, or, should the telephone subscriber have changed his or her address, to his or her last known address. If a telephone subscriber fails to remit the fee to the Finance Director within 15 days from the date of the service of the notice upon him, which shall be the date of mailing if service is not accomplished in person, a penalty of 100 percent of the amount of the fee set forth in the notice, but not less than \$5, shall be imposed. The penalty shall become a part of the fee herein required to be paid. Such penalty shall be in addition to any other penalty imposed by this Article.

SECTION 11-101. ADMINISTRATIVE AGREEMENTS.

The Finance Director may make administrative agreements with service suppliers to vary the strict requirements of this Article so that collection of any fee imposed herein may be made in conformance with the billing procedures of a particular service supplier so long as the overall result of said agreements results in billing of the fee in conformance with the general purpose and scope of this Article. A copy of each such agreement shall be on file and available for public examination in the Finance Director's office, except that portions of such agreements that may be designated as proprietary and confidential by the service supplier shall be excluded from the public records maintained by the Finance Director, and shall be subject to a duty of

confidentiality and non-disclosure by those representatives of the City who may have a need to review and obtain knowledge of those portions of said agreements designated proprietary and confidential.

SECTION 11-102. APPEALS OF DECISION OF THE FINANCE DIRECTOR.

A. Who May Appeal. Any person aggrieved by any decision of the Finance Director regarding the amount of fee or penalty owed or the duty or obligation to collect, report or pay a fee, pursuant to this Article may appeal the decision of the Finance Director by filing a notice of appeal with the City Clerk within fifteen days of the serving or mailing of such decision. The notice of appeal shall set forth in writing the grounds for the appeal and shall be accompanied by an appeal fee in an amount established by resolution of the City Council and shall state the grounds for the appeal. Once a notice of appeal is received, an appeal hearing shall be scheduled before the City's Hearing Officer. The City Manager or a delegee of the City Manager shall provide written notice of the time and place of the hearing and shall mail such notice to Appellant at least ten calendar days prior to the date of the hearing. The form and substance of the notice shall be in accordance with the rules and policies for appeal hearings. At the hearing, the Appellant bears the burdens of production and persuasion to establish the factual and legal issues upon which the appeal is based.

B. Hearing. A hearing to consider the appeal shall follow the procedures set forth in Section 1-18. The Hearing Officer shall, at the conclusion of the hearing, 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 Hearing Officer's decision in writing. The Hearing Officer'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. Due Date of Fee. The amount of any fee finally determined as provided in this section shall be due and payable as of the date the original fee, together with any penalties that may be due thereon; provided, however, that if the amount of such fee is fixed in accordance with the original statement of the appellant no penalty shall attach by reason of any delinquency.

SECTION 11-103. ADMINISTRATIVE RULES AND REGULATION.

The Finance Director may promulgate regulations and issue rules, determinations and interpretations consistent with this Article as may be necessary or appropriate for the purpose of carrying out and enforcing the payment, collection and remittance of the fee and to apply this Article and any rules and regulations promulgated there under in a lawful manner. The Finance Director shall hold a public hearing and allow public comment on any proposed rule or regulation prior to adoption thereof, upon at least 10 day's notice of such public hearing. A copy of such rules and regulations shall be on file and available for public examination in the Office of the City Clerk.

Failure or refusal to comply with any rules and regulations promulgated by the Finance Director shall be deemed a violation of this Article.

SECTION 11-104. CALIFORNIA PUBLIC UTILITIES COMMISSION JURISDICTION.

Nothing contained in this Article is intended to conflict with applicable rules, regulations and tariffs of any service supplier subject to the jurisdiction of the California Public Utilities Commission. In the event of any conflict, the provisions of said rules, regulations and tariffs shall control.

SECTION 11-105. SEVERABILITY.

In the event any section or portion of this Article shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

SECTION 11-106. HOLD HARMLESS.

Service suppliers shall not be liable to any telephone subscriber for billing, collecting or remitting the fee on behalf of the City and the service supplier shall not be responsible for investigating the validity of the fee or assisting in the refunding of any fee determined to be invalid or improperly imposed, pursuant to an administrative or judicial ruling, order or determination.

SECTION 11-107. EFFECTIVE DATE.

This Article shall be in force and effect thirty (30) days after its passage.

SECTION 11-108. OPERATIVE DATE.

This Article becomes operative on January 1, 2005.