

# ORDINANCE NO. 2010-036

Adopted by the Sacramento City Council

November 4, 2010

**AN ORDINANCE AMENDING ARTICLE IV OF CHAPTER 1.24 OF TITLE 1; AMENDING SECTION 3.04.070, SECTION 3.08.250, SECTION 3.16.170, SECTION 3.28.150, SECTION 3.32.160, AND SECTION 3.32.170, AND REPEALING SECTION 3.28.190, OF TITLE 3; AMENDING SECTION 12.12.200 OF TITLE 12; AND AMENDING SECTION 13.08.520 OF TITLE 13, OF THE SACRAMENTO CITY CODE, RELATING TO PROCEDURES FOR ADMINISTRATIVE APPEALS OF FEES AND CHARGES AND PRESENTATION OF CLAIMS AGAINST THE CITY.**

**BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:**

Section 1

Article IV of Chapter 1.24 of the Sacramento City Code is amended to read as follows:

## **Article IV. Administrative Appeal of Fees and Charges**

### **1.24.115 Definitions.**

For purposes of this Article IV, the following definitions shall apply:

“City manager” means the city manager or the manager’s designee.

### **1.24.120 Administrative appeal of fees and charges.**

- A. In the case of a fee or charge which by law may not exceed the estimated reasonable cost of providing the service for which it is imposed, any person or entity who contends that a fee or charge imposed upon the person or entity by or on behalf of the city exceeds the estimated reasonable cost of providing the service for which the fee or charge is imposed, may appeal the fee or charge, or the amount thereof, according to the procedure set forth in this article.
- B. The administrative hearing available under this article is intended to be an informal proceeding. Discovery shall not be permitted and the hearing need not be conducted according to technical rules relating to evidence and witnesses. The procedure set forth in this article shall not apply to fees or charges for which a different appeal procedure has been established by state law or city ordinance or resolution.
- C. For fees and charges to which this article applies, failure to appeal as permitted by this article shall constitute a failure to exhaust available administrative remedies, and shall bar any further or other review or appeal.

#### **1.24.130 Payment of fee or charge – Filing of appeal and payment of appeal fee.**

Any person or entity desiring to assert an appeal pursuant to this article shall first pay the full amount of the disputed fee or charge to the city, which may be paid under protest. A written appeal including the grounds for the appeal and any written material which will be used to support the appeal, shall be filed with the city clerk not later than fifteen (15) calendar days after payment of the disputed fee or charge. The appeal shall be heard by the city manager.

#### **1.24.140 Hearing and decision.**

- A. The city manager shall schedule a hearing with no less than ten (10) calendar days written notice to the appellant. The hearing shall be held within sixty (60) calendar days after the date the appeal is filed with the city clerk, unless it is postponed pursuant to section 1.24.150 of this chapter. The appellant and any representative of the appellant may attend the hearing and may present any evidence relevant to the appeal. The city manager shall decide the appeal considering evidence from the appellant, from the city department imposing the fee or charge, and from other persons who may have personal knowledge of relevant information concerning the fee or charge. The proceedings shall be recorded.
- B. The appellant shall have the initial burden to establish a prima facie case that the fee or charge exceeds the estimated reasonable cost of providing the service for which it is imposed. In those cases where the appellant establishes a prima facie case, the burden shall shift to the city to establish by a preponderance of the evidence that the fee or charge does not exceed the estimated reasonable cost of providing the service for which it is imposed.
- C. Written notice of the city manager's decision on the appeal after hearing shall be mailed to the appellant within thirty (30) days after the hearing. The decision of the city manager shall be the final and conclusive administrative remedy.

#### **1.24.150 Postponement of hearing.**

Either the appellant or the city department imposing the fee or charge may request a postponement of the hearing for good cause. The request shall be submitted to the city manager in writing for decision. Good cause shall include (without limitation) the ground that data necessary to determine the estimated reasonable cost of the service is not yet available. In such cases, the hearing may be postponed until after the service has been provided or to another appropriate time.

#### **1.24.160 Claim presentation.**

To challenge the city manager's decision in court, the appellant must first present a claim to the city in accordance with section 3.04.070 of this code. The claim must be presented within one year of when the appeal is denied.

## Section 2

Section 3.04.070 of the Sacramento City Code is amended to read as follows:

### **3.04.070 Claims.**

- A. Claims Generally.
1. No claim for money or damages shall be made against the city unless a written claim is presented in accordance with this section, including claims that are required to be presented or that are exempt from presentation under the Government Claims Act (Government Code § 900 *et seq.*).
  2. Every claim shall be signed by the claimant under penalty of perjury and shall state the dollar amount claimed and the specific grounds upon which the claim is founded.
  3. Except as provided otherwise in subsection C, all claims shall be presented to the city clerk and shall be submitted in accordance with this section and the Government Claims Act. Claims shall be presented to the city clerk within the time limits prescribed by Government Code section 911.2. For purposes of determining whether a claim is timely presented, a claim is presented to the city clerk when it is received in the Office of the City Clerk.
  4. A claim shall be submitted on the claim form furnished by the city. A claim may be returned if it was not presented using the proper form.
  5. Where there is a conflict between the provisions of the Government Claims Act and this section, the provisions of this section shall apply.
- B. Tax Refund Claims. In addition to the presentation requirements set forth in subsection A, tax refund claims shall be subject to the presentation requirements set forth in this subsection and to any other legal requirements or conditions stated in applicable tax refund provisions in this Title 3. Every tax refund claim shall be signed under penalty of perjury, stating (1) the specific amount claimed to have been overpaid or paid more than once, or erroneously or illegally collected or received by the city, (2) the tax period at issue, and (3) the grounds upon which the claim is founded, with specificity sufficient to enable city officials to understand and evaluate the claim. A tax refund claim shall be signed by the taxpayer or, if applicable, the person obligated to remit the tax, or such person's guardian or conservator. No agent, including the taxpayer's attorney, may sign a tax refund claim. Class claims for tax refunds shall not be permitted. A tax refund claim shall be filed on the tax refund claim form furnished by the city. A claim may be returned if it was not presented using the proper form.
- C. Retirement System Claims. Applications or claims for money or benefits under the Sacramento City Employees' Retirement System shall be filed with the Retirement System Manager in accordance with Chapter 2.124 of this Code.

- D. Claims Exempt from Presentation. No claim need be presented for the following types of claims:
1. Claims described in Government Code section 905(b) (claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any law relating to liens of mechanics, laborers, or materialmen).
  2. Claims described in Government Code section 905(c) (claims by public employees for fees, salaries, wages, mileage, or other expenses and allowances):
  3. Claims described in Government Code section 905(d) (claims for which the workers' compensation authorized by Division 4 (commencing with § 3200) of the Labor Code is the exclusive remedy).
  4. Claims described in Government Code section 905(e) (applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods services, provisions, or other assistance rendered for or on behalf of any recipient of any form of public assistance).
  5. Claims described in Government Code section 905(j) (claims arising under any provision of the Unemployment Insurance Code, including, but not limited to, claims for money or benefits, or for refunds or credits of employer or worker contributions, penalties, or interest, or for refunds to workers of deductions from wages in excess of the amount prescribed).
  6. Claims described in Government Code section 905(k) (claims for the recovery of penalties or forfeitures made pursuant to Article 1 (commencing with § 1720) of Chapter 1 of Part 7 of Division 2 of the Labor Code).
  7. Requests for the return of unused money deposited with the city as a security for a particular purpose.
  8. Requests for the return of unused development impact fees and other similar fees paid to the city which are governed by limitations and procedures under other provisions of this code.
  9. Requests for the return of money made in response to a notice initiated by the city; provided, however, if the amount to be paid is in dispute, a claim must be presented in accordance with this section as a prerequisite to filing a lawsuit.
  10. Requests for the return of parking citation penalties made pursuant to the procedures under chapter 10.56 of this code.
- E. Exhaustion of Administrative Remedies.

1. Lawsuits Generally. Unless exempt from the claims presentation requirement as provided in subsection D, no suit for money or damages may be brought against the city or any officer, employee, board, commission or authority of the city until (a) a written claim therefore has been presented in accordance with this section and has been rejected by the city or deemed to have been rejected, and (b) the claimant has exhausted all administrative remedies applicable to the claim.
  2. Lawsuits for Tax Relief. No suit for a tax refund or for injunctive relief to prevent or enjoin the collection of taxes may be brought against the city or any officer, employee, board, commission or authority of the city until (a) the disputed tax, interest and penalties owing have been first paid to the city, (b) a claim for refund has been presented by the claimant in accordance with this section and the city has rejected the claim or the claim is deemed to have been rejected, and (c) the claimant has exhausted all administrative remedies applicable to the claim.
- F. Lawsuits for Retirement System Claims. No suit for money or damages may be brought against the Sacramento city employees' retirement system or the retirement hearing commission of the city for benefits claimed payable pursuant to Article XVII of the Sacramento City Charter until (1) a written claim therefor has been presented to the retirement system manager in accordance with Chapter 2.124 of this code and has been acted upon by the retirement system manager, and (2) the claimant has exhausted all administrative remedies available under Chapter 2.124. The limitation periods provided in section 2.124.2330 shall apply for lawsuits filed pursuant to chapter 2.124.
- G. Limitation Period. Except as provided otherwise in subsection F, the limitation periods set forth in the Government Claims Act shall govern all claims presented and lawsuits filed under this section unless a longer limitation period is provided for such claim under this code, in which case the longer limitation period shall apply. Under no circumstances shall any longer limitation periods apply, whether based in law or equity.

### Section 3

Section 3.08.250 of the Sacramento City Code is amended to read as follows:

#### **3.08.250 Refunds.**

No tax collected under the provisions of this chapter shall be refundable or prorated in any manner unless the business subject to the tax presents, within a period of one year from the day on which the overpayment was made, a claim for refund in accordance with the provisions of section 3.04.070 of this code and establishes that it has overpaid the tax. The administrator may refund, or allow credit on a renewal, of the sum so overpaid.

### Section 4

Section 3.16.170 of the Sacramento City Code is amended to read as follows:

**3.16.170 Refunds.**

Whenever the amount of any tax, penalty or interest has been overpaid, or paid more than once, or has been erroneously collected or received by the city under this chapter, it may be refunded provided a written claim therefore is presented in accordance with the provisions of section 3.04.070 within one year of the date of payment. The director may make such refund if he or she is satisfied that the claimant is entitled to the refund under the provisions of this section. No refund shall be paid under the provisions of this section unless the claimant establishes a right thereto by written records showing entitlement thereto.

Section 5

Section 3.28.150 of the Sacramento City Code is amended to read as follows:

**3.28.150 Refunds.**

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this chapter it may be refunded as provided in subsections B and C of this section, provided that a claim in writing therefor is presented in accordance with the provisions of section 3.04.070 within one year of the date of payment.
- B. An operator may request a refund for the amount overpaid, paid more than once or erroneously or illegally collected or received, by establishing a right to a refund. In lieu of refunding an overpayment, the assessor-collector may allow the operator a credit of equal value to be applied against taxes to be remitted by the operator in the future. However, neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.
- C. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city, but only if it is established that the tax was not owed. If the transient has paid the tax to the operator the transient may obtain a refund of the overpayment only if the transient establishes that he or she has been unable to obtain a refund from the operator who collected the tax.
- D. No refund shall be paid under the provisions of this section unless the claimant establishes a right thereto by written records showing entitlement thereto.

Section 6

Section 3.28.190 of the Sacramento City Code is repealed.

## Section 7

Section 3.32.160 of the Sacramento City Code is amended to read as follows:

### **3.32.160 Refunds.**

- A. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city collector under this chapter, it may be refunded as provided in subsections B and C of this section, provided that a claim in writing therefor is presented in accordance with the provisions of section 3.04.070 within one year of the date of payment.
- B. A person required to collect and remit taxes imposed under this chapter may request a refund for the amount overpaid, paid more than once or erroneously or illegally collected or received by establishing a right to a refund. In lieu of refunding an overpayment, the city collector may allow such person a credit of equal value to be applied against taxes to be remitted in the future. However, neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the person required to collect and remit.
- C. A person who is a service user may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city, but only if it is established that the tax was not owed. If the person has paid the tax to the service supplier, the person may obtain a refund of the overpayment only if the person establishes that he or she has been unable to obtain a refund from the service supplier who collected the tax.
- D. No refund shall be paid under the provisions of this section unless the claimant establishes a right thereto by written records showing entitlement thereto.

## Section 8

Section 3.32.170 of the Sacramento City Code is amended to read as follows:

### **3.32.170 Low income citizen refunds and credits.**

- A. Notwithstanding the provisions of section 3.32.160 of this chapter, refunds or credits may be made to certain service users as provided in this section.
- B. A refund of the communications user tax imposed by section 3.32.030 and cable television user tax imposed by section 3.32.090 may be made upon valid application under the following conditions:
  - 1. The service user is a "head of household"; and
  - 2. The "household income" of the service user, as that term is defined in Section 20504 of the Revenue and Taxation Code, shall not exceed twenty-five

thousand dollars (\$25,000) for the calendar year ending in the fiscal year in which application for the refund is made; and

3. The "gross income" of the service user, as that term is defined in section 17071 of the Revenue and Taxation Code, shall not exceed twenty-five thousand dollars (\$25,000) for the calendar year ending in the fiscal year in which application for the refund is made; and
  4. The utility services for which the service user has paid tax were delivered to such service user's residence and such residence is located within the city; and
  5. The service user has paid the tax for all or part of the twelve (12) months of the calendar year ending in the fiscal year in which application for the refund is made; and
  6. The service user has made no other application for a refund in the same calendar year.
- C. The amount of the refund made pursuant to subsection B shall be the total amount of the eligible tax for the calendar year ending in the fiscal year in which application for refund is made. The eligible tax is the tax paid as follows:
1. The tax imposed by section 3.32.030, not to exceed the total annual tax on the telephone "lifeline flat rate service" rate as published by the largest local provider as of June 1st of the calendar year.
  2. The tax paid as imposed by section 3.32.090, not to exceed the total annual tax on the "economy basic" cable service rate as published by the largest local provider as of June 1st of the calendar year.
- D. The refund provided for in subsections B and C shall be applied for on or before March 15th, in the year following the calendar year for which the tax is imposed on a form prescribed by the city and shall be payable by the city periodically on a timely basis as the validity of the applications made is established, but no later than June 30th of that year.
- E. As used in this section, "head of household" means the person filing or who would file a federal income tax return as a head of household, or a single individual, or the husband or wife if a joint return is filed, but in such case, the individual applying for the refund must additionally declare that his or her spouse has not also applied for a refund for the same period of time.
- F. The director of finance may audit applications made pursuant to this section and may require such proof as necessary to document conditions of eligibility. The director may deny in whole or in part refunds for applications found by the director to be in noncompliance, and the director shall seek repayment of any refund amounts paid by the city in excess of the amount for which the service user is qualified under subsection B or C.



- G. A credit in an amount equal to the electrical user and additional electrical user taxes imposed by sections 3.32.050 and 3.32.060 of this chapter may, upon valid application to the electrical service provider, be issued to a low-income service user under the following conditions:
1. The electrical energy was delivered to the service user's residence and such residence is located within the city; and
  2. The service user is duly enrolled in a low-income assistance program provided by the person supplying the electrical energy. For the purposes of this subdivision, a low-income assistance program includes, but is not limited to, the Sacramento Municipal Utility District's Energy Assistance Program; and
  3. The eligibility criteria of the low-income assistance program of the person supplying electrical energy are based, in whole or in part, on the Federal Poverty Guidelines.
- H. A credit in an amount equal to the gas user and additional gas user taxes imposed by sections 3.32.070 and 3.32.080 of this chapter may, upon valid application to the gas service provider, be issued to a low-income service user under the following conditions:
1. The gas was delivered to the service user's residence and such residence is located within the city; and
  2. The service user is duly enrolled in a low-income assistance program of the person selling the gas. For the purposes of this subsection, a low-income assistance program includes, but is not limited to, Pacific Gas and Electric Company's California Alternative Rates for Energy Programs; and
  3. The discount and eligibility criteria of the low-income assistance program of the person selling the gas are established by the California Public Utilities Commission.
- I. Notwithstanding sections 3.32.050(C), 3.32.060, 3.32.070(D) and 3.32.080 of this chapter, a person who supplies electrical energy or sells gas shall not be required to collect and remit the taxes that are imposed by sections 3.32.050, 3.32.060, 3.32.070 and 3.32.080 from a service user who qualifies for a credit pursuant to subsection G or H of this section; provided, however, where a person is not required to collect and remit taxes pursuant to this subsection, the person shall include a statement in his or her monthly remittance to the city of the total taxes that have been imposed pursuant to sections 3.32.050, 3.32.060, 3.32.070 and 3.32.080, but that have not been collected as a result of the credit provided for in subsections G and H of this section.
- J. The city council shall review annually the refund and credit policies and procedures established by the ordinance codified in this section to determine how to continue the program.

## Section 9

Section 12.12.200 of the Sacramento City Code is amended to read as follows:

### **12.12.200 Appeal of director's decision—Protest of trench cut cost recovery fee.**

- A. Any person required to pay a trench cut cost recovery fee pursuant to Section 12.12.140(B) of this chapter who desires to protest or otherwise challenge imposition of the fee shall tender to the city full payment when due, accompanied by a written notice containing the following information:
  - 1. A statement that the required payment is tendered under protest; and
  - 2. A description of the factual and legal basis for the protest.
- B. A person directly and adversely affected by a decision made by the director pursuant to the provisions of this chapter may appeal the director's decision by filing a written notice of appeal with the city manager no later than ten (10) working days after receiving notice of the director's decision. Likewise, a person who pays a fee under protest may appeal the fee by filing a notice of appeal with the city manager no later than ten (10) working days after payment of the disputed fee. For purposes of this section, "city manager" means the city manager or the manager's designee. The notice of appeal shall set forth the name, mailing address and telephone number of the person appealing, and a statement describing the action being appealed, setting forth the grounds for the appeal and the relief requested. The scope of the appeal shall be limited to the grounds specified in the notice of appeal. The city manager shall hear the appeal, and shall render a decision on the appeal no later than thirty (30) days after the filing of a timely notice of appeal. The city manager's decision may affirm, reverse or modify the director's decision. The city manager's decision shall be the final and conclusive administrative remedy. A copy of the city manager's decision shall be provided to the person appealing at the address shown on the notice of appeal.
- C. To challenge the city manager's decision in court, the appellant must first present a claim to the city in accordance with section 3.04.070 of this code, within one year of when the appeal is denied.

## Section 10

Section 13.08.520 of the Sacramento City Code is amended to read as follows:

### **13.08.520 Appeal.**

- A. There is established a sewer development fee determination board. The board's membership shall consist of the director and the building official, or their respective designees. Any person desiring to contest or dispute the determination of the sewer development fee or combined sewer development fee that applies to the person's sewer service must first pay the fee, then file a

written appeal with the building official. The appeal shall be reviewed by the board, and notice of the determination of the board shall be given to the person filing the appeal. If the board grants the appeal, an appropriate refund shall be made, based on the recalculated development fee.

- B. If the board does not grant the, a notice that briefly specifies the reason(s) for the board's decision shall be provided to the person filing the appeal. Any appellant receiving this notice who desires to have the appeal reconsidered by the board must apply for a hearing by filing a written application with the building official not later than fifteen (15) days following receipt of the notice. Not later than thirty (30) days after application for a hearing, the board shall schedule a hearing and shall provide the appellant no less than ten (10) days written notice of the hearing. At the hearing, the appellant or his or her representative may present any evidence relevant to the appeal. The board shall reevaluate the appeal. In considering the appeal, the board may obtain an inspection report from the department. Written notice of the board's determination shall be given to the appellant. The determination of the board shall be the final administrative remedy.
- C. To challenge the board's decision in court, the appellant must first present a claim to the city in accordance with section 3.04.070 of this code, within one year of when the appeal is denied.

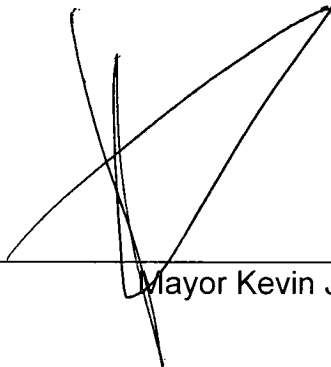
Adopted by the City of Sacramento City Council on November 4, 2010 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, Pannell, Sheedy, Tretheway, Waters,  
and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: Councilmember McCarty.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

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