REPORT TO LAW & LEGISLATION COMMITTEE
City of Sacramento

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915 I Street, Sacramento, CA 95814-2671

Consent
~~**September 7, 2010**~~
September 21, 2010

Honorable Members of the
Law and Legislation Committee

Title: Ordinance Amendment: Amendments Relating to Procedures for Administrative Appeals of Fees and Charges and Presentation of Claims against the City

Location/Council District: Citywide

Recommendation: 1) Approve proposed amendments to Section 3.04.070 and Chapters 1.24 and 3.28 of the Sacramento City Code relating to procedures for administrative appeals of fees and charges and presentation of claims against the City, and 2) forward the proposed amendments to the full City Council for approval.

Contact: Brad Wasson, Revenue Manager, 916-808-5844

Patrick Flaherty, Risk Manager, 916-808-8587

Presenters: Brad Wasson, Revenue Manager, 916-808-5844

Department: Finance and Human Resources

Division: Revenue and Risk Management

Dept. ID: 06001211 and 08001311

Description/Analysis

Issues:

1. Claims Procedures. Although it is not expressly stated so anywhere in the City Code, the language of City Code section 3.04.070 implies that all claims filed against the City must be presented in accordance with the Government Claims Act (Gov. Code §§ 900 *et seq.*) unless exempt from doing so under the Act itself. However, claims exempt under the Act must comply with the Government Claims Act pursuant to section 3.04.070. Due to recent litigation relating to local tax refund ordinances, it is in the City's best interest to clarify its claims procedure ordinance for claims generally, as well as to provide clear procedures for tax refund claims.

2. Pay first, litigate later. One California appellate court recently held that online travel companies (OTCs) do not have to pay the disputed Transient Occupancy

Tax (TOT) before litigating their dispute unless the local ordinance so provides. The City recently amended Chapter 3.28 of the City Code to require a "pay first, litigate later" requirement for litigating TOT claims. This ordinance would impose a "pay first, litigate later" requirement for litigating tax refund claims or tax disputes concerning any City taxes. This change will protect the City against delay tactics that could preclude collection of any of the City's taxes legitimately due and owing to the City.

3. Class action claims in tax refund cases prohibited. Another area of recent litigation has involved disputes relating to whether class action lawsuits can be filed in tax refund claims for utility user taxes. California appellate courts are split on this issue, and it will likely have to be resolved by the California supreme court. In the meantime, it will be best for the City to amend the City Code to expressly prohibit class action claims for all tax refund claims.

4. Claims presentation. Historically, most California municipal governments have assumed that claims for tax refunds of local taxes are exempt from the claims presentation requirements under the Government Claims Act, but recent court rulings have indicated otherwise. This ordinance would establish procedures requiring tax refund claims of City taxes to comply with the Government Claims Act and the City Code.

5. Exhaustion of administrative remedies. This ordinance would provide that all administrative remedies, where available, must be exhausted prior to pursuing an action in court on any claim against the City.

6. Administrative Appeals of Fees and Charges. Chapter 1.24 of the City Code provides an outdated administrative procedure for appealing City fees and charges. This ordinance will simplify the appeal process by making such appeals heard only by the City Manager or his designee, whose decision shall be the final administrative remedy. In order to file an action for court review of the City Manager's decision, the appellant would be required to first present a claim to the City in accordance with the Government Claims Act.

7. Limitation period. The Government Claims Act provides specific limitation periods that apply for presenting claims and filing lawsuits against the City. The City Code provides various other limitation periods for requesting tax refunds of the different city taxes. This ordinance would conform the limitation periods for the City Code tax refund provisions to be consistent with the limitation periods under Government Claims Act.

Policy Considerations: Adoption of the proposed ordinance will clarify the claims presentation requirements and provide the City with the same benefits as the State and other local jurisdictions. Furthermore, it will provide for the timely recovery of taxes due and owing to the City and reduce costs associated with potential delays incurred in litigation.

Committee Action: None.

Environmental Considerations: None. The ordinance recommended in this report is not considered a project so it does not have any potential to effect the environment as stated in the California Environmental Quality Act ("CEQA").

Rationale for Recommendation: This ordinance will clarify the claims presentation procedure under the Sacramento City Code, and allow the City to collect taxes due to it prior to litigation of a refund claim, consistent with the Constitutional requirement for State taxes.

Financial Considerations: The ordinance recommended in this report will not have a negative financial impact on the City and may in fact reduce costs associated with litigating tax refund issues.

Emerging Small Business Development (ESBD): Not applicable.

Respectfully Submitted by: _____
Brad Wasson, Revenue Manager

Approved by: _____
Leyne Milstein, Finance Director

Recommendation Approved:

for Patti Bishop
Gus Vina
Interim City Manager

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Attachment 1

Background

During efforts to resolve tax refund claims over the past couple of years, the City Attorney's Office has observed a lack of clarity and consistency in the City's claims procedures for claims generally, and for tax refund claims in particular. These observations are further complicated by recent court rulings relative to various tax refund issues.

1. Claims Procedures. City Code section 3.04.070 provides procedural requirements for submitting claims to the City for money or damages for claims that are exempt from the presentation requirement under the California Government Claims Act (Gov. Code §§ 900 *et seq.*). Although it is not expressly stated so anywhere in the City Code, section 3.04.070 implies that ordinarily all claims against the City must be presented in accordance with the Government Claims Act unless they are exempt from doing so under the Act itself. Section 3.04.070 then goes on to require all claims that are exempt from presentation under the Act to nonetheless be presented in compliance with the Act. This ordinance would expressly require all claims to comply with the claims presentation requirement except as exempted therefrom in the ordinance itself.

Due to recent litigation, there is some confusion as to the state of the law in regarding procedures for presenting tax refund claims for local taxes. This ordinance will provide clear claim presentation procedures for tax refund claims.

2. Pay first, litigate later. Art. XIII, Sec. 32 of the California Constitution provides:

> *SEC. 32. No legal or equitable process shall issue in any proceeding in any court against this State or any officer thereof to prevent or enjoin the collection of any tax. After payment of a tax claimed to be illegal, an action may be maintained to recover the tax paid, with interest, in such manner as may be provided by the Legislature.*

Based on this section of the Constitution, the State requires that all taxes due to the State be paid before seeking judicial review of a tax assessment. This "pay first, litigate later" rule allows revenue collection to continue during litigation so funds necessary for essential public services are not withheld from the State. However, there is no comparable constitutional provision for local taxes. Although there is case law that arguably requires taxpayers to pay contested local taxes before they can litigate the matter, even if the local ordinance does not so require, one appellate court has recently ruled to the contrary. Therefore, until this matter is resolved by the California supreme court, out of an abundance of caution many local governments throughout California have added this rule to their municipal codes. Because of an imminent threat of potential litigation over transient occupancy tax (TOT) disputes throughout the State, the City recently added a "pay first, litigate later" requirement to the TOT ordinance. This ordinance would now add a "pay first, litigate later" requirement to apply to tax refund lawsuits concerning any City taxes.

3. Class action claims in tax refund cases prohibited. Another area of recent litigation has involved disputes relating to whether class action lawsuits can be filed in tax refund claims for utility users taxes. In *Batt v. San Francisco*, (2001) 155 Cal. App. 4th 65, the first appellate district upheld the City of San Francisco's ordinance prohibiting class action lawsuits for tax refunds. But in *County of Los Angeles v. Superior Court (Oronoz)*, (2008) 159 Cal. App. 4th 353, the second appellate district disagreed, and held that Los Angeles' claims ordinance prohibiting class action lawsuits for tax refunds was ineffective because only the Government Claims Act applies to local tax claims, and class claims are permissible under Act. However, in *Ardon v. City of Los Angeles*, (2009) 174 Cal. App. 4th 369, the second appellate district reversed itself, overruling *Oronoz,* and held that class action lawsuits are not permissible in tax refund cases under the Government Claims Act. The California supreme court has since granted review in *Ardon*. In the meantime, however, staff recommends an amendment to the City Code expressly prohibiting class action lawsuits for all tax refund claims with the City.

4. Claims presentation. The California Government Claims Act requires that a claim must be presented and acted upon or rejected by the City before a lawsuit can be brought against the City. Historically, most local governments have assumed that claims for tax refunds of local taxes are exempt from the Government Claims Act, but the recent court rulings have indicated otherwise. Consequently, this ordinance would establish procedures requiring tax refund claims for City taxes to comply with the Government Claims Act and the City Code.

5. Exhaustion of administrative remedies. Because some of the City's tax provisions make certain administrative remedies available, the ordinance would make it clear that all administrative remedies must be exhausted prior to pursuing an action in court. Also, where administrative remedies are made available for other claims, the ordinance would require the claimant to exhaust such administrative remedies before pursuing an action in court.

6. Administrative Appeals of Fees and Charges. Chapter 1.24 of the City Code provides an administrative procedure for appealing City fees and charges. Those procedures provide for the appeals to be heard first by an "appeals board" consisting of the City Manager and directors of two defunct agencies, and then to be heard by the City Council, and then may be reviewed by administrative mandamus in superior court. This ordinance will simplify the appeal process by making the appeal heard only by the City Manager or his designee, whose decision shall be the final administrative remedy. In order to file an action in court, the appellant would be required to first present a claim to the City in accordance with the Government Claims Act. The same requirements would be imposed for various other administrative appeal procedures.

7. Limitation period. The Government Claims Act provides specific limitation periods for presenting claims and filing lawsuits against the City. The City Code provides various limitation periods for requesting tax refunds of the different city taxes. This ordinance would conform the limitation periods under the City Code tax refund provisions to be consistent with the limitation periods under Government Claims Act. In addition, the ordinance would specify that under no circumstances would any longer

limitation period under the Code of Civil Procedure (CCP) apply to claims presented to the City pursuant to section 3.04.070. However, the ordinance would keep in effect the existing limitation periods under Chapter 2.124 of the City Code that apply to claims filed with the Sacramento City Employees Retirement System.

Attachment 2

ORDINANCE NO. _____

ADOPTED BY THE SACRAMENTO CITY COUNCIL
ON _____

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.http://www.qcode.us/codes/sacramento/view.php?topic=1-1_24-iv-1_24_120&frames=on

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.http://www.qcode.us/codes/sacramento/view.php?topic=1-1_24-iv-1_24_120&frames=on

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.http://www.qcode.us/codes/sacramento/view.php?topic=1-1_24-iv-1_24_160&frames=on

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.
http://www.qcode.us/codes/sacramento/view.php?topic=3-3_04-3_04_070&frames=on -startContent#startContent

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.

http://www.qcode.us/codes/sacramento/view.php?topic=3-3_08-iv-3_08_250&frames=on - startContent#startContent

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.
http://www.qcode.us/codes/sacramento/view.php?topic=3-3_16-3_16_170&frames=on - startContent#startContent

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.
http://www.qcode.us/codes/sacramento/view.php?topic=3-3_28-3_28_150&frames=on - startContent#startContent

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.
http://www.qcode.us/codes/sacramento/view.php?topic=3-3_32-3_32_160&frames=on -startContent#startContent

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.

http://www.qcode.us/codes/sacramento/view.php?topic=3-3_32-3_32_170&frames=on - startContent#startContent

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 ~~S~~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 by the following vote:

Ayes:

Noes:

Abstain:

Absent:

_____
MAYOR

Attest:

_____
City Clerk

Passed for Publication:
Published:
Effective:

Attachment 3

ORDINANCE NO. _____

ADOPTED BY THE SACRAMENTO CITY COUNCIL
ON _____

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.http://www.qcode.us/codes/sacramento/view.php?topic=1-1_24-iv-1_24_120&frames=on

A. ~~Any,~~ 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~~, or the amount thereof, (1)~~ exceeds the estimated reasonable cost of providing the service for which the fee or charge is imposed, ~~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, or (2) violates any federal, state, or local law or regulation relating to the procedure, methodology, or basis for, or the manner of, establishment or setting and collection of fees or charges by or on behalf of the city,~~ 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, ~~the administrative appeal procedure set forth herein is the exclusive remedy to challenge a fee or charge. F~~ 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~~– Fee appeals board~~.

Any person or entity desiring to assert an appeal pursuant to this article shall first ~~tender~~ pay the full amount of the disputed fee or charge to the city, which ~~tender~~ may~~, but need not,~~ be ~~made~~ 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~~, who shall serve as the clerk of the fee appeals board,~~ not later than fifteen (15) calendar days after payment of the disputed fee or charge. ~~The fee appeals board shall consist of the director of administrative services or the director's designee, the director of public works or the director's designee, and~~ The appeal shall be heard by the city manager ~~or the manager's designee~~. ~~The city manager or the manager's designee shall serve as the chair of the board.~~

1.24.140 ~~Review of appeal~~ – Hearing and decision.

A. ~~The appeal shall first be reviewed preliminarily by the city manager. The city manager may confer with, or request a written submittal from, the city department imposing the fee or charge. Notice of the city manager's preliminary decision shall be given to the appellant within thirty (30) days after the appeal is filed. In the event the appeal is granted, an appropriate refund shall be made, based on the recalculated fee or charge. In the event the appeal is not granted, or is granted only in part, notice shall be mailed to the appellant by first class mail to the address set forth in the written appeal, which notice shall briefly specify the reason for the decision of the city manager. Any appellant may request a de novo hearing before the board. Any such application for~~

~~hearing shall be filed with the city clerk within fifteen (15) calendar days after the date of the notice of the city manager's preliminary decision and shall be accompanied by an appeal fee established by resolution of the city council. The board shall thereafter~~ 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 ~~of the notice of preliminary decision~~ the appeal is filed with the city clerk, unless it is postponed pursuant to ~~S~~section 1.24.150 of this chapter. The appellant and any representative of the appellant may ~~be present at~~ attend the hearing and may present any evidence relevant to the appeal. The ~~board~~ city manager shall decide the appeal considering evidence from the appellant, ~~and evidence~~ 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 ~~tape~~ recorded. ~~The proceedings may also be reported by a certified shorthand reporter provided at the appellant's expense.~~

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 ~~violates applicable law~~. In those cases where the appellant establishes a prima facie case, the burden shall shift to the city ~~shall have the burden~~ 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 ~~complies with applicable law~~.

C. Written notice of the ~~board's~~ 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 ~~board~~ city manager shall be the final and conclusive administrative remedy. ~~The city clerk shall give notice to the appellant of the time limits for judicial review set forth in Section 1.24.160 of this chapter.~~

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 ~~board chair~~ 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 ~~Judicial review~~ Claim presentation.

~~Any judicial action taken by the appellant in any manner to set aside, annul or vacate any decision of the fee appeals board shall be filed within the time limits prescribed in Code of Civil Procedure Section 1094.6.~~ 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.
http://www.qcode.us/codes/sacramento/view.php?topic=3-3_04-3_04_070&frames=on -startContent#startContent

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. ~~Claims against the city for money or damages which are exempted by Government Code Section 905 from Chapter 1 and~~

~~Chapter 2 of Part 3 of Division 3.6 of Title 1 of the Government Code of the state of California, and which are not governed by any other statutes or regulations expressly related thereof, shall be governed by this section. A claim relating to such a cause of action shall be presented not later than one year after the accrual of the cause of action. Such claims shall be presented and processed as provided by Chapters 1 and 2 of Part 3 of Division 3.6 of Title 1 of the Government Code insofar as such provisions are not in conflict with this section.~~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. ~~Except as otherwise provided herein~~ 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 ~~to the city council~~ in accordance with this section and has been ~~acted upon~~rejected by the city or ~~has been~~ deemed to have been rejected ~~by the city council, in accordance with this section~~, 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 ~~XXIX~~ XVII of the Sacramento City Charter until (1) a written claim therefor has been presented to the retirement system manager in accordance with ~~this section.~~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. ~~Pursuant to Chapter 5 of Part 3 of Division 3.6 of Title 1 of the Government Code, written agreements entered into by or in behalf of the city may provide all claims arising out of or related to the agreement must be presented not later than six months after the accrual of the cause of action, and such claims shall be governed by the provisions of this section.~~

SECTION 3

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

3.08.250 Refunds.
http://www.qcode.us/codes/sacramento/view.php?topic=3-3_08-iv-3_08_250&frames=on - startContent#startContent

No tax collected under the provisions of this chapter shall be refundable or prorated in any manner~~, except that if~~ unless the business subject to the tax ~~shall establish to the satisfaction of the administrator it has overpaid tax and shall~~ presents, within a period of one year from the day on which the overpayment was made, ~~file with the administrator~~ a claim for refund ~~of such overpayment~~ in accordance with the provisions of section 3.04.070 of this code and establishes that it has overpaid the tax. ~~t~~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.
http://www.qcode.us/codes/sacramento/view.php?topic=3-3_16-3_16_170&frames=on - startContent#startContent

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 ~~as hereinafter provided in this section,~~ provided a written claim therefore ~~stating under penalty of perjury the specific grounds under which the claim is found is filed with the director~~ is presented in accordance with the provisions of section 3.04.070 within ~~three years~~ one year of the date of payment. ~~The claims shall be on forms furnished by the director.~~ 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 ~~his~~ 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.
http://www.qcode.us/codes/sacramento/view.php?topic=3-3_28-3_28_150&frames=on - startContent#startContent

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~~, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the assessor-collector~~ is presented in accordance with the provisions of section 3.04.070 within ~~three years~~ one year of the date of payment. ~~The claim shall be on forms furnished by the assessor-collector.~~

B. An operator may ~~claim~~ request a refund ~~or take as credit against taxes collected and remitted~~ for the amount overpaid, paid more than once or erroneously or illegally collected or received ~~when it is established in a manner prescribed by the assessor-collector~~, 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. ~~that the person~~

~~from whom the tax has been collected was not a transient; provided, however, that~~ 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 ~~by filing a claim in the manner provided in subsection A of this section~~, but only ~~when~~ if it is established that the tax was ~~paid by the transient directly to the assessor-collector, or when the transient, having~~ not owed. If the transient has paid the tax to the operator, ~~establishes to the satisfaction of the assessor-collector that~~ 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 ~~his or her~~ 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.
http://www.qcode.us/codes/sacramento/view.php?topic=3-3_32-3_32_160&frames=on -startContent#startContent

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. ~~this section.~~

B. A person required to collect and remit taxes imposed under this chapter may ~~claim~~ request a refund ~~or take as credit against taxes collected and remitted~~ for the amount overpaid, paid more than once or erroneously or illegally collected or received ~~when it is established in a manner prescribed by the city collector that the service user from whom the tax has been collected did not owe the tax; provided, however, that~~ 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 ~~his or her~~ 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.

http://www.qcode.us/codes/sacramento/view.php?topic=3-3_32-3_32_170&frames=on - startContent#startContent

A. Notwithstanding the provisions of ~~S~~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 ~~telephone, additional telephone,~~ communications user tax imposed by section 3.32.030 and cable television user tax~~es~~ imposed by ~~Sections 3.32.030, 3.32.040, and~~ section 3.32.090 ~~of this chapter~~ 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 ~~S~~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 ~~S~~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 ~~imposed by Sections 3.32.030, 3.32.040 and 3.32.090 of this chapter (or the tax imposed by (i) Sections 3.32.030 and 3.32.040 of this chapter or (ii) Section 3.32.090 of this chapter if only telephone or cable television service is provided to the individual's residence)~~ 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~~ of this section~~ 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 ~~S~~sections 3.32.030,~~ and 3.32.040 of this chapter but~~ 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 ~~S~~section 3.32.090,~~ of this chapter but~~ 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~~ of this section~~ 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~~ of this section~~.

G. A credit in an amount equal to the electrical user and additional electrical user taxes imposed by ~~S~~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 ~~S~~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 ~~S~~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 ~~S~~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 ~~include a statement~~ of the total taxes that have been imposed pursuant to ~~S~~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~~. The notice of appeal shall include or attach~~ a statement describing the action being appealed, setting forth the grounds for the appeal~~,~~ and ~~describing the action~~ the relief requested ~~of the city manager~~. 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 ~~No~~ later than thirty (30) days after the filing of a timely notice of appeal~~, the city manager shall render a decision on the appeal~~. The city manager's decision may affirm, reverse or modify the director's decision ~~appealed~~. 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. ~~Said person may appeal the city manager's decision to the city council by filing a written notice of appeal no later than ten (10) working days after the city manager's decision is received by the person, in accordance with the provisions of Sections 1.24.010 and following of this code.~~

~~B. 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 payment in full of the fee 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.~~

C. ~~Any judicial action or proceeding to attack, review, set aside, void or annul the imposition of a trench cut cost recovery fee for which a written notice of protest is filed pursuant to subsection B of this section, shall be filed no later than ninety (90) days after the notice is received by the city.~~ 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 ~~is granted~~, an appropriate refund shall be made, based on the recalculated development fee.

B. If the board does not grant the ~~an~~ appeal ~~is not granted~~, a notice that briefly specifies the reason(s) for the board's decision ~~of the board~~ shall be provided to the person filing the appeal. Any ~~person~~ 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 ~~the person's~~ 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 ~~person filing the application~~ appellant no less than ten (10) days written notice of the hearing. At the hearing, the ~~person requesting reconsideration~~ 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 ~~person filing the appeal and 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.