

CITY OF VALDEZ, ALASKA

ORDINANCE NO. 17- 05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VALDEZ,
ALASKA AMENDING CHAPTER 3.20 OF THE VALDEZ MUNICIPAL
CODE TITLED ENHANCED 911 SERVICES

WHEREAS, Alaska Statutes Section 29.35.131 through 29.35.137 allows for a municipality to impose an enhanced 911 surcharge within the 911 service area in an amount not to exceed \$2 per month for each wireless telephone number and \$2 per month for each local exchange access line for wireline telephones; and

WHEREAS, this amendment establishes by ordinance the amount of the surcharge, and establishes a surcharge for wireless telephone service to a customer with an address within the city; and

WHEREAS, a municipality may only use the enhanced 911 surcharge revenue for those costs which are directly attributable to the establishment, maintenance, and operation of an enhanced 911 system as follows:

(a) the acquisition, implementation, and maintenance of public safety answering point equipment and 911 service features;

(b) the acquisition, installation, and maintenance of other equipment, identification controllers and displays, automatic location identification controllers and recorders, instant playback recorders, telephone devices for the deaf, public safety answering point backup power systems, consoles, automatic call distributors, and hardware and software interfaces for computer-aided dispatch systems;

(c) the salaries and associated expenses for 911 call takers for that portion of time spent taking and transferring 911 calls;

(d) training costs for public safety answering point call takers in the proper methods and techniques used in taking and transferring 911 calls;

(e) expenses required to develop and maintain all information necessary to properly inform call takers as to location address, type of emergency, and other information directly relevant to the 911 call-taking and transferring function, including automatic location identification and automatic number identification databases and;

WHEREAS, The City of Valdez has not revised its 911 surcharge for wireline telephone service since 2005, and

WHEREAS, The City has never imposed a 911 surcharge for wireless telephone service, and

WHEREAS, City Administration acknowledges the ongoing costs to provide existing 911 services, related staffing and training, future service enhancements, maintenance of existing infrastructure, and eventual replacement of infrastructure; and

WHEREAS, City Administration proposes full utilization of the 911 surcharge as the most equitable means of allocating current and future system costs among all users and stakeholders; and

WHEREAS, City Administration proposes establishing a dedicated reserve account to isolate and track all 911 surcharge receipts and expenditures over time.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA that the following amendments are made to Title 9 of the Valdez Municipal Code:

Section 1: Title 9 of the Valdez Municipal Code is hereby amended to read as follows:

Chapter 3.20

ENHANCED 911 SERVICES

Sections:

- 3.20.010 Establishment, service area.
- 3.20.020 Definitions.
- 3.20.030 Acquisition of equipment and services.
- 3.20.040 Customer surcharge.
- 3.20.050 ~~Surcharge receipts segregated and held in trust for the city.~~ Remittance.
- 3.20.060 Surcharge return and remittance.
- 3.20.070 Amended surcharge returns and refunds of excess surcharge paid.
- 3.20.080 Charge-offs and collections.
- 3.20.090 Credit for administrative costs.
- 3.20.100 Role of enhanced 911 system in emergency services.
- 3.20.110 Annual review.
- 3.20.120 Penalties.
- 3.20.130 Interest.
- 3.20.140 Inspection of records.
- 3.20.150 Remedies for a telephone company aggrieved.

3.20.010 Establishment, service area.

A. Pursuant to AS 29.35.131 through 29.35.137, any wireline or wireless telephone company providing service within the city shall, together with the police department, fire

department and other emergency service providers using the system, cooperate in the establishment of an enhanced 911 emergency reporting system to serve the entire city.

B. The city hereby designates the entire city as the enhanced 911 service area for the city under AS 29.35.137(2). (Ord. 04-01 § 1 (part))

3.20.020 Definitions.

A. For the purposes of this chapter, any word or term not interpreted or defined by this section shall be used with a meaning of common or standard utilization.

B. The following words and phrases shall have the meanings respectively ascribed to them by this section:

“Amounts collected” means amounts billed, less amounts written off, plus net recoveries of amounts previously written off. Based on collection experience, this may be initially calculated on an estimated basis with periodic adjustment to reflect actual experience.

“Customer” means each separately billed account, including internal accounts of telephone companies. Each wireless telephone number constitutes a separate customer for the purposes of the surcharge.

“Enhanced 911 equipment” means any equipment dedicated to the operation of, or use in, the establishment, operation or maintenance of an enhanced 911 system, including customer premises’ equipment, automatic number identification or automatic location identification controllers and display units, printers, cathode ray tubes, recorders, software and other essential communication equipment.

“Enhanced 911 system” or “system” means a telephone system consisting of network, database and enhanced 911 equipment that uses the single three-digit number “911” for reporting a police, fire, medical or other emergency situation, and which enables the users of a public telephone system to reach a public safety answering point to report emergencies by dialing 911. An enhanced 911 system includes the personnel required to acquire, install, operate and maintain the system and its facilities and to dispatch the calls generated by the system.

“Local exchange access line” means a telephone line that connects a local exchange service customer to the wireline telephone company switching office and has the capability of reaching local public safety agencies, but does not include a line used by a carrier to provide interexchange services. Local exchange access line, as used in Valdez Municipal Code Chapter 3.20, means each line which is assessed a subscriber line charge (SLC) or a universal access surcharge (UAS), and shall also include any wireline telephone company official line. However, local exchange access lines shall not include public pay phones, interoffice trunks, toll trunks, direct inward dialing trunks or cellular or wireless telephones.

“Local exchange service” means the transmission of two-way interactive switched voice communications furnished by a local exchange telephone company within the city, including access to enhanced 911 systems.

“Local exchange telephone company” or “wireline telephone company” means any telephone utility certified to provide local exchange service or wireline telephone service in the city by the Regulatory Commission of Alaska.

“911 service area” and “enhanced 911 service area” mean the area within the city that has been designated to receive an enhanced 911 system. An area designated to receive an enhanced 911 system is not a service area under Article X, Section 5 of the state constitution or Charter Section 9.01.

“Public safety answering point” means a twenty-four-hour local communications facility that receives 911 service calls and directly dispatches emergency response services or that relays calls to the appropriate public or private safety agency.

“Surcharge” means an enhanced 911 system surcharge imposed by this chapter on wireline and wireless telephones for support of the enhanced 911 system.

“Surcharge return” means the monthly report submitted to the finance director as required by section 3.20.060.

“Telephone company” means a local exchange telephone company, wireline telephone company or wireless telephone company as defined in this section.

“To bill” or “bill” means to add the surcharge to the customer’s account at the time an invoice or similar document is generated for delivery to the customer, or to add the surcharge to the purchase of replenishments of prepaid wireless services.

“Wireless telephone company” means any telephone company that provides wireless telephone service through cellular, satellite, broadband, radio based telephone or data transport service, and bills or sells wireless telephone service to a customer with an address within the city.

“Wireless telephone” means any telephone that is not a wireline telephone that is capable of communication with another device by use of radio waves or satellite signal, which includes cellular, mobile, radio-based, and broadband telephones. Each wireless telephone number is considered a separate wireless telephone for purposes of the surcharge.

“Wireline telephone” means any telephone that uses a local exchange access line. (Ord. 04-01 § 1 (part))

3.20.030 Acquisition of equipment and services.

A. The city may purchase, lease or contract for any enhanced 911 equipment or services required to establish, maintain, or upgrade an enhanced 911 system at public safety answering points from a wireline telephone company, wireless telephone company, or other qualified vendor of an enhanced 911 system. (Ord. 04-01 § 1 (part))

B. If the enhanced 911 system is to be provided for an area that is included in more than one telephone company service area, the city may enter into such agreements as are necessary to establish and operate the system.

3.20.040 Customer surcharge.

A. A surcharge of \$2.00 per month per local access line and for each wireless telephone number that is billed or sold to a customer with an address within the city shall be collected to fund the enhanced 911 system.

1. A wireline telephone or wireless telephone customer shall not be subject to more than one surcharge per local access line or wireless telephone number.

2. A customer with more than 100 local exchange access lines from a wireline telephone company in the city is liable for the surcharge only on 100 local exchange access lines.

B. The telephone companies shall bill and collect the surcharge from its wireline and wireless telephone customers who are subject to the surcharge. The surcharge shall be stated as a separate line item on the billing statement or similar document.

C. A wireless or wireline telephone customer is liable for payment of the surcharge in the amounts billed by the telephone company until the amounts have been paid to the telephone company.

~~A.— A surcharge to be established by a formal resolution of the city council shall not exceed the amount per month per local access line as established in AS 29.35.131(a) and shall be collected only to fund the enhanced 911 system. The city council shall annually review this surcharge to determine whether the level of surcharge is adequate, excessive or insufficient to meet the anticipated enhanced 911 system needs. A wireline telephone customer may not be subject to more than one 911 surcharge per local exchange access line. A customer that has more than one hundred wireline access lines from a wireline telephone company in the city is liable for the 911 surcharge only on one hundred wireline access lines.~~

~~B.— The telephone company shall bill and collect the 911 surcharge from its wireline customers. The 911 surcharge billed shall be accounted for separately from other charges.~~

~~C.— The telephone company shall remit that portion of the surcharge receipts allocable to the city no later than sixty days after the end of the month in which the amount was collected. From each remittance made in a timely manner, the telephone company is entitled to deduct the greater of one percent of the amount collected or a total of one hundred fifty dollars per month as the cost of administration for collecting the 911 surcharge. The telephone company shall annually furnish a complete list of amounts due for nonpayment of surcharges, together with the names and addresses of those customers who carry a balance of what can be determined by the company to be for nonpayment of the surcharge.~~

~~D. The city may, by its own expense, require an annual audit of a telephone company's books and records concerning collection and remittance of the surcharge.~~

~~E. A wireline customer is liable for payment of the enhanced 911 surcharge in the amounts billed by the telephone company until the amounts have been paid to the telephone company. (Ord. 04-01 § 1 (part))~~

3.20.050 Surcharge receipts segregated and held in trust for the city.

- A. Surcharges collected pursuant to this chapter belong to the city at the time collected by the telephone company.
- B. The telephone company has a fiduciary duty to the city for these surcharges.
- C. The surcharges shall be segregated from the telephone company's funds, at least by book account, for the exclusive benefit of the city until remitted to the city.
- D. A telephone company shall remit collected surcharge receipts to the city within 60 days from the end of the month in which collected.

3.20.0650 Surcharge return and remittance.

- A. A telephone company shall submit to the finance director a return, upon forms provided by the finance department, and submit payment for the surcharges due the city.
 - 1. A surcharge return shall be filed every month, even if there are no surcharges due for the month being reported.
 - 2. Each monthly surcharge return is due on or before the last day of the second month following the month in which the surcharges were billed.
 - 3. Surcharge returns and surcharges to be remitted under this chapter must be received by the finance director within the time prescribed by this section.
- B. The return shall be signed upon oath executed by the agent of the telephone company preparing the return and must include:
 - 1. The name and address of the telephone company;
 - 2. The name and title of the person preparing the return;
 - 3. The month being reported for which the surcharges were billed;
 - 4. The amount of gross surcharges billed for the month;
 - 5. The amount of deduction claimed for surcharges previously billed and remitted to the finance director, but charged off as uncollectible during the month being reported or estimated charge-offs;
 - 6. The prorated recoveries, representing the month's collection of surcharges previously written off as uncollectible;

7. The amount of deduction claimed for the telephone company's administrative costs to collect the surcharges provided the surcharge return is timely filed and surcharges are timely remitted;
 8. The net amount of remittance due to the finance director; and
 9. Other information and supporting documentation which may be required by the city.
- C. The finance director shall provide the chief of police and fire chief with copies of returns filed by the telephone company.
- D. The chief fiscal officer may prepare and file an involuntary surcharge return on behalf of the telephone company, if a telephone company fails to:
1. File a surcharge return under this section; or
 2. When the chief fiscal officer finds a surcharge return filed by a telephone company is not supported by the telephone company's records.
 3. Surcharges due, as reflected on a return filed on behalf of a telephone company under this subsection, may be premised upon any information available to the chief fiscal officer.
 4. In the event an involuntary return is filed for a telephone company under this subsection, the telephone company shall be liable for the surcharges stated on the return, plus all penalties and interest provided for in this chapter.
- E. A payment submitted to the finance director for amounts due under this chapter shall be credited to the surcharge return period for which remitted, in the following order:
1. Payment of costs;
 2. Penalties;
 3. Interest; and
 4. Surcharges.

~~A. On or before sixty days following the end of the month in which the surcharge was billed, the telephone company shall submit to the finance director a return, upon forms provided by the finance director, and submit payment for the surcharge due the city.~~

~~B. The return shall be signed by the agent of the telephone company and include:~~

- ~~1. The name and address of the telephone company;~~
- ~~2. The name and title of the person preparing the return;~~
- ~~3. The month being reported for which the surcharges were billed;~~
- ~~4. The amount of gross surcharges billed for the month of the return;~~

- ~~5. The deduction claimed for the surcharges previously billed and remitted to the finance director, but charged off as uncollectible during the month being reported;~~
- ~~6. The prorated recoveries representing the month's collection of surcharges previously written off as uncollectible;~~
- ~~7. The amount of deduction claimed for the telephone company's administrative costs to collect the surcharges, which may be the greater of one percent of the collected amount or one hundred fifty dollars;~~
- ~~8. The net amount of remittance due to the city; and~~
- ~~9. Other information and supporting documentation that may be required by the city.~~
(Ord. 04-01 § 1 (part))

3.20.070 Amended surcharge returns and refunds of excess surcharge paid.

- A. Any surcharge return filed under section 3.20.060 A. may be amended by the telephone company.
- B. If surcharges remitted exceed the amount due, the finance director shall, upon written request of the telephone company, refund the excess to the telephone company, without interest, and reduced by the excess portion of the credit for administrative costs claimed on the original surcharge return.
- C. Any claim for a refund filed more than one year after the due date of the surcharge return is forever barred.

3.20.080 Charge-offs and collections.

- A. Any amounts recovered after being charged off by the telephone company as uncollectible shall, after deduction of external collection costs, shall be prorated between the telephone company and the surcharge based upon their respective percentages of the customer account balance which was charged off.
- B. Each telephone company shall annually furnish a complete list of those customers with surcharges charged off as uncollectible during the calendar year. The list shall include the customer name, address and amount charged-off as uncollectible surcharges. The list shall be submitted to the finance director as a required component of the December surcharge return.

3.20.090 Credit for administrative costs.

- A. Provided a surcharge return is timely filed and the related amount due is timely remitted pursuant to section 3.20.060, a telephone company may deduct and retain, as the cost of administration for collecting the surcharge, the greater of:
1. \$150.00, or
 2. One percent of the surcharge due to the municipality for the month being reported.

- B. The amount of credit claimed for a month shall not exceed the net reported amount of surcharge, charge-offs, and recoveries for the month.

3.20.100 Role of enhanced 911 system in emergency services.

The establishment, operation and response to calls utilizing the system is a part of the city's coordinated effort to provide emergency aid to its residents and visitors. As such, the processing and response to a 911 call is considered by the city to be an integral part of providing emergency care or counseling as those terms are used in AS 9.65.090.

3.20.110 Annual review.

The chief of police and fire chief ~~city council~~ shall annually, in conjunction with the city manager and in connection with preparation of the municipal budget, review the revenues generated from the surcharge and the expenses incurred for operation, maintenance, and upgrade of the enhanced 911 system to determine whether the level of surcharge is adequate, excessive or insufficient to meet the enhanced 911 system needs. (Ord. 04-01 § 1 (part))

3.20.120 Penalties.

- A. A telephone company failing to file a surcharge return within seven calendar days following its due date shall automatically incur a civil penalty equal to ten percent of the surcharge amount due to the city. A telephone company failing to remit the full amount of surcharges due within seven calendar days following the due date shall automatically incur an additional civil penalty equal to ten percent of the surcharges due to the city but remaining unpaid.
- B. A telephone company failing to bill the surcharge levied by this chapter shall become liable for the amount of the surcharge that should have been billed to the customer.

3.20.130 Interest.

In addition to any penalties imposed, interest at the rate of 12 percent per annum shall accrue and be due on the unremitted balance of surcharges after the date on which their remittance was due.

3.20.140 Inspection of records.

- A. The city may, at its own expense, require an audit of a local exchange telephone company's or wireless telephone company's books and records concerning the collection and remittance of the surcharge.
- B. No telephone company shall deny the chief fiscal officer, subsequent to identification during normal business hours, access to the telephone company's

records documenting the billing, collecting, prorating, reporting, and remitting of the surcharge for purposes of inspection under this chapter.

3.20.150 Remedies for a telephone company aggrieved.

- A. A telephone company aggrieved by any determination of the finance department under this chapter may apply to the finance department and request a hearing before the finance director on the department's action or determination within 30 days from the date the department mails notice of the department's action or determination.
1. An application for a hearing must notify the finance department of the specific determination complained of and the amount of surcharge, interest, cost or penalty contested, and the reason for such contest.
 2. The uncontested portion of any surcharge due under this chapter shall be paid when due regardless of any application for a hearing. Payment of the total amount due may be made at any time before the hearing. Payment in full does not affect the right to a hearing.
- B. Upon timely application for a hearing under this section, the finance director, as the hearing officer, shall hold a hearing and render a decision or determination to determine whether a correction or reversal of the department's determination is warranted.
1. If a telephone company requesting a hearing fails to appear at the hearing, the hearing officer shall issue a decision without taking evidence from that company, unless the company shows reasonable cause for failure to appear within seven days after the date scheduled for the hearing.
- C. Within 30 days after receipt of a written final decision by the finance director, a telephone company aggrieved by the decision may appeal the decision to the Superior Court of the Third Judicial District.
1. The company aggrieved shall be given access to the finance department's file in the matter for preparation of such appeal.
 2. Surcharges, costs, penalties, and interest declared to be due in the decision of the finance director must be paid within 30 days after the date of the decision or a supersedeas bond guaranteeing payment must be filed with the court in accordance with Alaska Court Rules of Appellate Procedures.
- D. Hearings before the finance director under this chapter may, at the option of the finance director, be conducted by an administrative hearing officer designated by the finance director.
1. If the finance director refers such a matter to an administrative hearing officer, the administrative hearing officer shall conduct the hearing and prepare findings and conclusions.

2. These findings and conclusions shall be forwarded to the finance director for adoption, rejection or modification and issuance of a final order or decision by the finance director.

Section 2. This ordinance takes effect immediately upon passage and approval.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, this _____ day of _____, 2017.

CITY OF VALDEZ, ALASKA

Ruth E. Knight, Mayor

ATTEST:

Sheri L. Pierce, MMC, City Clerk

APPROVED AS TO FORM:

Anthony S. Guerriero, City Attorney
Brena, Bell, & Clarkson, P.C.

First Reading:
Second Reading:
Adoption:
Yeas:
Nays:
Absent:
Abstain: