

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2016

COUNCIL BILL NO. CB16-0254
COMMITTEE OF REFERENCE:
Finance & Services

5 **A BILL**

6 **For an ordinance amending Article III, Chapter 16 of the Denver Revised
7 Municipal Code relating to the collection of the emergency telephone charge.**

8
9 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

10 **Section 1.** That Article III, Chapter 16 of the D.R.M.C. shall be amended by adding the
11 language underlined and deleting the language stricken, to read as follows:

12
13 **ARTICLE III. - EMERGENCY TELEPHONE CHARGE SERVICE**

14
15 **Sec. 16-21. - Definitions.**

16 (a) The following terms shall have the same meaning as provided in Section 29-11-101, C.R.S.
17 (1986 Repl. Vol., as amended): "basic emergency service provider ("BESP")," "emergency
18 telephone charge," "emergency telephone service," "exchange access facilities,"
19 "Interconnected Voice-Over-Internet-Protocol Service" "rates," "service supplier," "service
20 user" and "wireless communications access."

21 (b) ~~"Manager" shall mean the manager of safety.~~

22
23 **Sec. 16-22. – ~~Authorization of e~~ Emergency telephone charge.**

24 (a) ~~There is hereby authorized to be imposed, upon all exchange access facilities within the
25 City and County of Denver and upon all wireless communications access and
26 Interconnected Voice Over Internet Protocol Service having a billing address within the City
27 and County of Denver, an emergency telephone charge in an amount not to exceed
28 seventy cents (\$0.70) per month per exchange access facility, not to exceed seventy cents
29 (\$0.70) per month per wireless communications access, and not to exceed seventy cents
30 (\$0.70) per month per Interconnected Voice Over Internet Protocol Service.~~

31 (a) There is hereby imposed an emergency telephone charge upon all exchange access
32 facilities, wireless communication access, and interconnected voice-over-internet-protocol
33 service within the city in the amount of \$0.70 per month per exchange access facility, per
34 wireless communications access, and per interconnected voice-over-internet-protocol

1 access. The emergency telephone charge shall be imposed only upon service users
2 having a billing address within the city.

3 (b) Funds collected from the emergency telephone charge imposed by this section shall be
4 spent solely as authorized by C.R.S. Section 29-11-104(2), (3) and (4), C.R.S., as
5 amended, or for other lawful purposes as delineated by rule or regulation.

6 ~~(c) Regardless of the level at which the emergency telephone charge is set, the amount of~~
7 ~~such charge imposed per exchange access facility and the amount of such charge imposed~~
8 ~~per wireless communications access and the amount for Interconnected Voice Over-~~
9 ~~Internet Service shall be equal.~~

10
11 **Sec. 16-23. - Collection of emergency telephone charge.**

12 ~~Service suppliers providing telephone service in the city are hereby authorized to collect the~~
13 ~~emergency telephone charge imposed under this article and shall transmit quarterly the receipts~~
14 ~~collected to the city. Every service supplier providing service within the city shall collect the~~
15 ~~emergency telephone charge in accordance with Section 29-11-101, C.R.S., et seq., and remit the~~
16 ~~charges so collected to the manager of finance monthly along with such forms as prescribed by~~
17 ~~the manager of finance.~~

18
19 **Sec. 16-24. – Service supplier responsible for payment of the emergency telephone charge.**

20 **Authority of manager of safety.**

21 ~~(a) The manager of safety shall be the authority for the emergency telephone service system~~
22 ~~for the city and shall be authorized to set the rate for the emergency telephone charge~~
23 ~~authorized in section 16-22.~~

24 ~~(b) Each year no later than September 1, the manager shall fix a rate of charge, not to exceed~~
25 ~~the amount authorized by section 16-22, that together with any surplus revenues carried~~
26 ~~forward will produce sufficient revenues to fund the expenditures authorized in section 16-~~
27 ~~22 and shall fix the new rate to take effect commencing with the first billing period of each~~
28 ~~customer on or following the next January 1. The manager shall publish the new rate in an~~
29 ~~official publication of the city and shall notify by registered mail every service supplier at~~
30 ~~least sixty (60) days before the new rate will become effective.~~

31 (a) Amount. Every service supplier shall be liable for: (i) the charges imposed and collected
32 under this article until they have been remitted to the manager of finance and (ii) the

1 charges imposed under this article that the service supplier does not bill and collect from
2 the service user.

3 (b) Registration. Every service supplier providing service within the city shall register with the
4 manager of finance.

5 (c) Remittance. Every service supplier shall on or before the last day of each month file a
6 remittance form with the manager of finance for the preceding calendar month and remit to
7 the manager simultaneously therewith the total amount of the charges collected under this
8 article for the preceding calendar month. Service suppliers may retain two percent (2%) of
9 the total amount of the charges collected as a discount allowable for prompt payment. If
10 any service provider is delinquent in remitting the charges imposed by this article, other
11 than in unusual circumstances shown to the satisfaction of the manager, the service
12 supplier shall not be allowed to retain any discount allowable for the prompt payment, and
13 the full amount shall be remitted to the manager by any such delinquent service supplier
14 together with any other applicable interest or penalties payable under the terms of this
15 article.

16 (d) Interest and penalties.

17 (i) In any case in which a service supplier fails to file a remittance form or remit the
18 charges within the time required by this article, but without the intent to defraud,
19 there shall be added as a penalty fifteen percent (15%) of the total amount of the
20 deficiency, but not less than twenty-five dollars (\$25.00), and interest in such cases
21 shall be collected at the rate of one percent (1%) each month, or fraction thereof, on
22 the amount due on the deficiency from the time the remittance form was due to the
23 date the charge is paid, which interest and addition shall become due and payable
24 within thirty (30) days after the written notice and demand by the manager of
25 finance, and such penalty and interest shall be assessed, collected and paid in the
26 same manner as the charge itself.

27 (ii) If any part of a deficiency is due to fraud with the intent to evade the charge, there
28 shall be added as a penalty fifty percent (50%) of the total amount of the deficiency,
29 and in such case the whole amount of the charge unpaid, including the additions,
30 shall become due and payable thirty (30) days after written notice and demand by
31 the manager of finance, and an additional one percent (1%) each month, or fraction
32 thereof, on said amounts shall be added from the date the remittance form was due

1 until paid, and such addition shall be assessed, collected and paid in the same
2 manner as the charge itself.

- 3 (e) Delinquent payments. Payments of part but less than all of a deficiency, including interest,
4 or interest and penalty, shall be first applied to penalty, if any, secondly to accrued interest
5 and, lastly, to the charge itself.

6
7 **Sec. 16-25. - Duty to keep books and records.**

8 It shall be the duty of every service supplier hereunder to keep and preserve suitable records of all
9 charges collected by the service supplier and such other books or accounts as may be necessary
10 to determine the amount of the charge for the collection or payment of which the service supplier
11 is liable under this article. It shall be the duty of every service supplier to keep and reserve for a
12 period of one year following the due date of the remittance form or the payment of the charge all
13 such books, invoices and other records necessary to determine the charge, and the same shall be
14 open for examination by the manager of finance. Upon demand by the manager, the service
15 supplier shall make the books, invoices, accounts or other records it maintains available at the
16 office of the manager or some other place designated by the manager for examination, inspection
17 and audit by the manager. The manager, in the manager's discretion, may make, permit or cause
18 to be made the examination, inspection or audit of books, invoices, accounts and other records so
19 kept or maintained by the service supplier.

20
21 **Sec. 16-26. - Audit; estimate of charges, penalty, and interest; notice; assessment.**

- 22 (a) The manager of finance is authorized to examine, inspect and audit the books, invoices,
23 accounts and other records kept or maintained by the service supplier for the collection
24 of the charges imposed by this article. If the manager determines that any service
25 supplier neglects or refuses to make a timely remittance form in payment of the charges
26 or to pay or to correctly account for any charges as required by this article, the manager
27 shall make an estimate, based upon such information as may be available, with or
28 without employing investigative powers vested in the manager by this article, of the
29 amount of the charges due for the period or periods for which the service supplier is
30 delinquent; and upon the basis of such estimated amount, compute and assess in
31 addition thereto a penalty equal to fifteen percent (15%) thereof, together with the
32 interest on such delinquent charges at the rate of one percent (1%) each month, or a
33 fraction thereof, from the date when due until the date paid.

- 1 (b) Promptly thereafter the manager of finance shall notify the delinquent service supplier in
2 writing and demand payment thereof of such estimated charges, penalty and interest.
- 3 (c) Such estimated amounts shall thereupon become an assessment, and such assessment
4 shall be final and due and payable from the service supplier to the city thirty (30) days
5 from the date of the notice and demand; provided, however, that within said thirty-day
6 period the delinquent service supplier may petition the manager of finance in writing for
7 review of the assessment in the manner provided in this article. The filing of a petition
8 shall not toll the accrual of interest on the amount of charges due.

9

10 **Sec. 16-27. - Review by the manager of finance.**

- 11 (a) *Petitions.* Petitions submitted to the manager of finance shall be in writing and shall
12 contain a statement of facts and reasons for and the amount of the requested changes in
13 the assessment, and shall otherwise comply with the applicable rules promulgated by the
14 manager relating to petitions and hearings.
- 15 (b) *Time limit for filing petitions.* Petitions shall be submitted to the manager within thirty (30)
16 days from the date of the assessment. If a petition is not submitted within this time, the
17 assessment or decision is final and no further review is available.
- 18 (c) *Notice of hearing.* The manager shall notify the service supplier in writing of the time and
19 place within the city fixed for hearing.
- 20 (d) *Hearings.* A hearing, if any, shall be conducted in accordance with applicable rules
21 promulgated by the manager relating to petitions and hearings.
- 22 (e) *Manager may appoint designee.* A hearing, if any, shall be before the manager or its
23 designee, who is authorized to administer oaths, to take testimony, to hear arguments,
24 and to issue all necessary and appropriate orders and decisions.
- 25 (f) *Burden of proof.* The burden of proof that the assessment is incorrect shall be on the
26 service supplier and such proof shall be by a preponderance of evidence.
- 27 (g) *Final order or decision.* The final order or decision of the manager or its designee shall
28 be in writing and notice thereof shall be mailed to the service supplier forthwith.

29

30 **Sec. 16-28. - Review of manager's final order or decision.**

- 31 (a) Should the service supplier be aggrieved by a final order or decision of the manager of
32 finance, the service supplier may proceed to have the same reviewed under Colorado
33 Rule of Civil Procedure 106(a)(4) by the district court for the second judicial district of the

1 state. The petition or complaint for review must be filed within thirty (30) days from the
2 date of the final order or decision. Any party, including the city, may appeal the final order
3 or decision of the manager and, also, the decision of the district court (or such other
4 tribunal having jurisdiction), using all judicial, appellate, and extraordinary proceedings
5 available.

6 (b) Before filing a petition or complaint for review under Colorado Rules of Civil Procedure
7 106(a)(4), the service supplier shall file with the manager a bond in twice the amount of
8 the charges, interest and penalties stated in the final order or decision of the manager of
9 finance, with surety as is provided in other cases of appeal, or may deposit lawful money
10 of the United States in the same manner as herein provided.

11
12 **Sec. 16-29. – Lien.**

13 The charge imposed by this article, together with the interest and penalties herein provided and
14 the costs of collection which may be incurred, shall be and, until paid, remain a lien upon the
15 goods, merchandise, furniture and fixtures, tools and equipment of any service supplier, or used
16 by any service supplier in conducting its business under lease, title retaining contract or other
17 contract arrangement, within the city and shall have priority over other liens except for general
18 taxes. No delays, mistakes, errors, defects or irregularities in an act or proceeding authorized
19 herein shall prejudice or invalidate any assessment or affect the lien thereof. Such liens may be
20 foreclosed by seizing under distraint warrant and selling so much of said merchandise, furniture
21 and fixtures, tools and equipment as may be necessary to discharge said lien.

22
23 **Sec. 16-30. – Statute of Limitations.**

24 (a) Except as provided in this section and unless such time is extended by waiver, the amount
25 of the charge imposed by this article and the penalty and interest applicable thereto, other
26 than interest accruing thereafter, shall be assessed within one year after the remittance
27 form is due, and no action to collect the same commenced after the expiration of such
28 period unless the manager of finance issues a notice of assessment for a charge deficiency
29 within such period.

30 (b) In the case of failure to file a remittance form or the filing of a false or fraudulent remittance
31 form with intent to evade the charge, the charge together with penalty and interest may be
32 assessed and collected at any time.

1 (c) Where, before the expiration of the time prescribed in this section for the assessment of the
2 charge, both the manager of finance and the service supplier have consented in writing to
3 an assessment after such time, the charge may be assessed at any time prior to the
4 expiration of the period agreed upon. The period so agreed upon may be extended by
5 subsequent agreements in writing made before the expiration of the period previously
6 agreed upon. No lien shall continue under this article beyond the period provided for
7 assessing the charge unless the charges have been assessed within the period, as it may
8 be extended, and the lien shall then continue for one (1) year after the expiration of any
9 such period, unless otherwise specifically provided in this article.

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Sec. ~~16-25,16-31~~. - ~~Emergency telephone service advisory committee.~~ Authority of the Manager of Safety.

The manager of safety shall have the authority over the emergency telephone service system for the city. There is hereby established an emergency telephone service advisory committee (ETSAC) composed of representatives from city agencies delivering emergency services, who shall be appointed by the manager. The purpose of this committee shall be to advise the manager regarding the equipment needs of all emergency service agencies and to coordinate the enhancement and maintenance of emergency telephone service in the city.

Sec. ~~16-26,16-32~~. - Misuse unlawful.

It shall be unlawful for any person to misuse or abuse the emergency telephone system.

Secs. ~~16-27,16-33—16-99~~. - Reserved.

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1 COMMITTEE APPROVAL DATE: April 14, 2016 by Consent
2 MAYOR-COUNCIL DATE: April 19, 2016
3 PASSED BY THE COUNCIL: _____, 2016
4 _____ - PRESIDENT
5 APPROVED: _____ - MAYOR _____, 2016
6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER
9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2016; _____, 2016
10 PREPARED BY: Charles T. Solomon, Assistant City Attorney Date: April 21, 2016
11 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
12 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
13 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §
14 3.2.6 of the Charter.
15 D. Scott Martinez, City Attorney
16 BY: _____, Assistant City Attorney Date: _____, 2016