Intro. Res. No. 1638-2009 Laid on Table 8/4/2009
Introduced by Legislators Horsley, Kennedy and Nowick

RESOLUTION NO. 974 -2009, ADOPTING LOCAL LAW NO. 1 -2010, A LOCAL LAW AUTHORIZING A WIRELESS COMMUNICATIONS SURCHARGE

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on August 4, 2009, a proposed local law entitled, "**A LOCAL LAW AUTHORIZING A WIRELESS COMMUNICATIONS SURCHARGE**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 1 -2010, SUFFOLK COUNTY, NEW YORK

A LOCAL LAW AUTHORIZING A WIRELESS COMMUNICATIONS SURCHARGE

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that Local Law No. 25-1995 imposed a thirty-five cent surcharge per access line per month on each telephone subscriber in Suffolk County to assist in the payment of the costs associated with establishing and maintaining an enhanced 911 system within Suffolk County.

This Legislature further finds that in the intervening years wireless communication has become commonplace in Suffolk County and throughout the State and nation. With the increase in the availability and use of wireless communication devices, there has been a corresponding increase in the number and frequency of emergency response lines, or 911, calls.

This Legislature also determines that the increased volume on 911 lines increased the costs of operating an emergency response system in Suffolk County while, at the same time, revenues from the surcharge on land lines have been reduced dramatically in recent years.

This Legislature further finds that the State of New York has authorized, and numerous counties around the State have enacted, a surcharge on wireless services to offset the costs with providing enhanced wireless 911 services.

This Legislature also finds that the State of New York recently enacted legislation that authorizes Suffolk County to establish a wireless surcharge, not to exceed thirty cents per month.

This Legislature also determines that the revenues generated by such a surcharge enhances public safety in Suffolk County by paying for the actual costs related to the design, installation and maintenance of a system to provide enhanced wireless 911 services.

Therefore, the purpose of this local law is to establish a surcharge on wireless communications devices, not to exceed thirty cents per month, for the purpose of funding enhanced 911 emergency service.

Section 2. Amendments.

Chapter 278 of the SUFFOLK COUNTY CODE is hereby amended by the addition of a new Article II to read as follows:

Chapter 278, EMERGENCY TELEPHONE SYSTEM

* * * *

Article II, Enhanced Wireless 911 Service

§ 278-11. Definitions.

A. "Place of Primary Use" shall mean the street address representative of where a wireless communications customer's use of the wireless telecommunications service primarily occurs, which address must be (i) the residential street address or the primary business street address of the customer and (ii) within the licensed service area of the wireless communications service supplier.

B. "Wireless Communications Device" shall mean any equipment used to access a wireless communications service.

C. "Wireless Communications Service" shall mean all commercial mobile services, that term is defined in Section 332(d) of title 47, United States Code, as amended from time to time, including, but not limited to, all broadband personal communications services, wireless radio telephone services, geographic area specialized and enhanced specialized mobile radio services, and incumbent-wide area specialized mobile radio licensees, which offer real time, two-way voice or data service that is interconnected with the public switched telephone network or otherwise provides access to emergency communications services.

D. "Wireless Communications Service Supplier" shall mean any commercial entity that operates a wireless communications service.

§ 278-12. Surcharge Authorized.

Effective January 1, 2010, a monthly thirty (30) cent surcharge shall be imposed on each wireless communications device and such surcharge shall be reflected and made payable on bills rendered for wireless communications service that is provided to a customer whose place of primary use is within the County of Suffolk.

§ 278-13. Notice of Surcharge.

The County of Suffolk shall give at least forty-five (45) days written notice to wireless communications service suppliers prior to the date it shall begin to add such surcharge to the billing of its customers or prior to any modification to or change in the surcharge amount.

§ 278-14. Collection of Surcharge.

A. Each wireless communications service supplier serving the County of Suffolk shall act as a collection agency for the County and shall remit the funds collected pursuant to this article to the Suffolk County Comptroller within thirty (30) days after the last business day of the month.

B. Each wireless communications service supplier shall be entitled to retain, as an administrative fee, an amount equal to two percent (2%) of its collections of the surcharge authorized by this Article.

C. The surcharge required to be collected by a wireless communications service supplier shall be added to and separately stated in its billings to customers.

D. The wireless communications service supplier may keep the address used by such supplier for any wireless communications customer under a service contract or agreement in effect on the effective date of this Article imposing such surcharge, as that wireless communications customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdiction with respect to taxes on wireless communications service.

E. Each wireless communications service supplier subject to this Article shall annually provide to the Suffolk County Comptroller an accounting of the surcharge amounts collected and billed.

§ 278-15. Liability for a Surcharge.

A. Each wireless communications service customer who is subject to the provisions of this Article shall be liable to the County of Suffolk for the surcharge until it has been paid to the County of Suffolk except that payment to a wireless communications service supplier is sufficient to relieve the customer from further liability for such surcharge.

B. No communications service supplier shall have a legal obligation to enforce the collection of any surcharge imposed under the provisions of this Article, provided, however, that whenever the wireless communications service supplier remits the funds collected to the County of Suffolk, it shall also provide the County of Suffolk with the name and address of any customer refusing or failing to pay the surcharge imposed under the provision of this Article and shall state the amount of such surcharge remaining unpaid.

§ 278-16. Use of Surcharge Monies.

A. All surcharge monies remitted to the County of Suffolk pursuant to this Article shall be expended only upon authorization of the County Legislature and only for payment of actual costs incurred by the County related to design, installation or maintenance of the system to provide enhanced wireless 911 service, including, but not limited to hardware, software, consultants, financing, and other acquisition costs.

B. The Suffolk County E-911 Commission is hereby authorized to include in their annual budget request a proposed allocation of wireless surcharge monies to qualified Public Safety Answering Points (PSAP's).

C. No less than 20% of the surcharge monies remitted to the County of Suffolk in any fiscal year shall be allocated to the Public Safety Answering Points, excluding the Suffolk County Police Department PSAP.

Section 3. Applicability.

The surcharge authorized by this law shall take effect on January 1, 2010 and shall apply to bills rendered to wireless communications service customers on and after that date, subject to the notice period requirement as set forth in section 278-13 of the Suffolk County Code.

Section 4. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 5. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 6. Effective Date.

This law shall take effect immediately upon its filing in the Office of the Secretary of State.

___ Underlining denotes addition of new language.

DATED: November 17, 2009

APPROVED BY:

VETOED

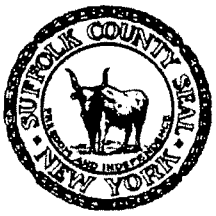
County Executive of Suffolk County

Date: 12-16-09

VETO OVERRIDE ADOPTED ON FEBRUARY 2, 2010

Secretary of State After a public hearing duly held on November 30, 2009
Filed with the Secretary of State on March 8, 2010

COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

Steve Levy
COUNTY EXECUTIVE

2009 DEC 16 P 4:39

December 16, 2009

Presiding Officer William J. Lindsay and
Members of the Suffolk County Legislature
William H. Rogers Legislative Building
725 Veterans Memorial Highway
Smithtown, New York 11787

RE: RESOLUTION 974-2009; A LOCAL LAW AUTHORIZING A WIRELESS COMMUNICATIONS SURCHARGE

Dear Presiding Officer Lindsay and Members of the Legislature:

I am returning herein Resolution No. 974-2009; "a Local Law Authorizing a Wireless Communications Surcharge" vetoed in its entirety. While the intent of this legislation is in accordance with the policy decision made by both State and County government, the percentage of revenue allocation is troublesome due to the hole it will create in the 2010 Operating Budget.

I introduced a more fiscally responsible bill in August with regard to implementing a wireless surcharge to aid the County in paying the costs associated with wireless 911 services, but it continues to remain tabled in committee. My version appropriates 8% of the total to Public Safety Answering Points (PSAP's) while not creating a budget hole. The 8% allocation is based on the fact that the PSAP's handle 8% of all the incoming calls County wide. Giving a 20% match to those entities dealing in only 8% of the calls shortchanges the rest of the system.

The Legislative Budget Review Office agreed this legislation, passed by the Legislature, will create a $464,000 hole in next year's budget which we simply cannot afford. If the Legislature had wished to give the PSAP's more than the 8% in my budget, it had ample opportunity to amend the budget this past October. It is disingenuous to have done nothing during the budget process to cut areas to make up for the additional $464,000. Basically, the Legislature waited until after the budget was complete and then passed this bill leaving it to the Executive to "find" the extra needed money. If the Legislature wanted to add this money it should have had the courage to raise taxes or cut elsewhere to pay for it.

LOCATION:
H. LEE DENNISON BUILDING, 12th FLOOR
100 VETERANS MEMORIAL HIGHWAY

MAILING ADDRESS:
P.O. BOX 6100
HAUPPAUGE, NY 11788-0099

OFFICE (631) 853-4000
FAX (631) 853-4818

For the reasons enumerated above, I strongly urge the legislature to heed the advice of the Budget Review Office and sustain my veto of this resolution.

Sincerely,

Steve Levy
County Executive of Suffolk County

SL:srt

cc: All Suffolk County Legislators
Tim Laube, Clerk of the Legislature
Christine Malafi, Esq., Suffolk County Attorney
Lynne A. Bizzarro, Esq., Chief Deputy County Attorney
Christopher Kent, Chief Deputy County Executive
Ed Dumas, Chief Deputy County Executive for Policy and Management
Connie Corso, Deputy County Executive for Finance
Ben Zwirn, Deputy County Executive
Eric Naughton, Budget Director
Dan Aug, Director of Communications
Mark Smith, Deputy Director of Communications

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY

This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on November 17, 2009 and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.

Tim Laube

Clerk of the Legislature

Intro. Res. 1638 Res. No. 974 November 17, 2009

Motion:
Romaine, Schneiderman, Browning, Beedenbender, Losquadro
Eddington, Montano, Alden, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Co-Sponsors:
Romaine, Schneiderman, Browning, Beedenbender, Losquadro
Eddington, Montano, Alden, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Second:
Romaine, Schneiderman, Browning, Beedenbender, Losquadro
Eddington, Montano, Alden, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE				✓	
2	Jay H. SCHNEIDERMAN	✓				
3	Kate M. BROWNING					
4	Brian BEEDENBENDER		✓			
6	Daniel P. LOSQUADRO	✓				
7	Jack EDDINGTON	✓				
9	Ricardo MONTANO		✓			
10	Cameron ALDEN		✓			
11	Thomas F. BARRAGA		✓			
12	John M. KENNEDY, JR.	✓				
13	Lynne C. NOWICK	✓				
14	Wayne R. HORSLEY	✓				
15	DuWayne GREGORY	✓				
16	Steven H. STERN	✓				
17	Lou D'AMARO	✓				
18	Jon COOPER	✓				
5	Vivian VILORIA-FISHER, D.P.O.	✓				
8	William J. LINDSAY, P.O.	✓				
	Totals	13	4	–	1	–

MOTION

X Approve
___ Table: _____
___ Send To Committee
___ Table Subject To Call
___ Lay On The Table
___ Discharge
___ Take Out of Order
___ Reconsider
___ Waive Rule ___
___ Override Veto
___ Close
___ Recess

APPROVED X FAILED ___
No Motion ___ No Second ___

RESOLUTION DECLARED

X ADOPTED
___ NOT ADOPTED

Roll Call ___ Voice Vote X

Tim Laube
Tim Laube, Clerk of the Legislature

Intro. Res. 1638-09 Res. No. 974-09

February 2, 2010

Motion:
Romaine, Schneiderman, Browning, Muratore, Losquadro
Eddington, Montano, Cilmi, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Co-Sponsors:
Romaine, Schneiderman, Browning, Muratore, Losquadro
Eddington, Montano, Cilmi, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Second:
Romaine, Schneiderman, Browning, Muratore, Losquadro
Eddington, Montano,Cilmi, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE		✓			
2	Jay H. SCHNEIDERMAN	✓				
3	Kate M. BROWNING	✓				
4	Thomas MURATORE		✓			
6	Daniel P. LOSQUADRO		✓			
7	Jack EDDINGTON	✓				
9	Ricardo MONTANO	✓				
10	Thomas CILMI		✓			
11	Thomas F. BARRAGA		✓			
12	John M. KENNEDY, JR.	✓				
13	Lynne C. NOWICK	✓				
14	Wayne R. HORSLEY	✓				
15	DuWayne GREGORY	✓				
16	Steven H. STERN	✓				
17	Lou D'AMARO	✓				
18	Jon COOPER	✓				
5	Vivian VILORIA-FISHER, D.P.O.	✓				
8	William J. LINDSAY, P.O.	✓				
	Totals	13	5	—	—	—

MOTION

____Approve
____Table:_____
____Send To Committee
____Table Subject To Call
____Lay On The Table
____Discharge
____Take Out of Order
____Reconsider
____Waive Rule ____
X Override Veto
____Close
____Recess

APPROVED X FAILED____
No Motion___ No Second___

RESOLUTION DECLARED

X ADOPTED
____NOT ADOPTED

Roll Call X Voice Vote___

Tim Laube
Tim Laube, Clerk of the Legislature

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY

This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on February 2, 2010 and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.

Tim Laube

Clerk of the Legislature