

**SAN LEANDRO 911 EMERGENCY
COMMUNICATION SYSTEM ACCESS
TAX MEASURE SS**

SS

MEASURE SS: Shall the City of San Leandro, with no increase in rates, convert its existing 911 Emergency Communication System Access Fee Ordinance into an Emergency Communication System Access Tax, to insure that all future modifications to the tax rate structure require a vote of the people rather than a vote of the Council, and to maintain enhanced 911 Emergency Services to San Leandro residents?

YES

NO

from doing so. Approval of the proposed tax requires a 2/3 vote of the electorate and the established rates cannot be changed (other than an annual CPI increase), absent a vote of the electorate. The proceeds from the tax would continue to be restricted for uses related to the operation of and enhancements to the City's 9-1-1 communication system.

s/JAYNE W. WILLIAMS

City Attorney
City of San Leandro

**CITY ATTORNEY IMPARTIAL ANALYSIS OF
MEASURE SS**

**City of San Leandro 9-1-1 Emergency
Communication System Access Tax**

In 2004 the City adopted Ordinance No. 2004-015, as codified in Sections 2-16 -200 *et. seq.* of the San Leandro Municipal Code, to establish a fee to provide funding in support of the City's 9-1-1 communication system. The system directs critical police, fire and medical resources to calls for emergency service. The program also provides equipment, software, facilities and personnel staffing to operate the system. The Emergency Communication System Access fee is paid by telephone subscribers in an amount that reasonably reflects the costs associated with providing per-line access to the City's emergency communications system. The fees for fiscal year 2008-09 are \$2.06 per single access line, \$14.41 per trunk line and \$450.44 per super trunk line, per month. Revenues generated by the 9-1-1 fee on an annual basis total approximately \$2.5 million.

Like San Leandro, several California cities adopted similar 9-1-1 communication fees. The fee has interpreted to be a user fee that can be enacted by the City Council without voter approval. This interpretation has, however, resulted in legal challenges. Most recently, on April 29, 2008 the First Appellate District, Division Four issued a decision in *Bay Area Cellular Co. v. City of Union City* that upheld a trial court decision that the City of Union City's 9-1-1 Fee was in fact a "special tax" requiring a two-thirds vote of the electorate prior to adoption in compliance with California Constitution, article XIII C, section 2 (Proposition 218). The City of Union City has filed a Petition to the California Supreme Court seeking review of the decision.

In the event the trial court decision is upheld, the City of San Leandro would be precluded from continuing collection of the current fee. To secure this revenue source, the City is proposing an Emergency Communication System Access Tax measure to enact a special tax at the same rate as the current fee. If adopted, the current fee ordinance would be repealed. If the measure fails, the City would continue collecting the fee, unless it is legally precluded