

ORDINANCE NO. 1174

AN ORDINANCE IMPOSING A PRIVILEGE TAX

WHEREAS, the City of Prineville is authorized under ORS 221.450 and ORS 221.515 to impose privilege taxes on telecommunications carriers, utilities, and others for the use of city streets, alleys, or highways for other than travel; and

WHEREAS, the City holds public right-of-way in trust for the citizens; and

WHEREAS, this Trust extends to assuring that the current and ongoing cost of granting access to and the use of public ways are fully compensated by persons seeking such access and causing such costs; and

WHEREAS, this Ordinance is necessary to secure fair and reasonable compensation to the City and its residents for permitting use of the public right-of-way,

NOW, THEREFORE, the people of the City of Prineville ordain as follows:

1. Purpose. The purposes of this ordinance are to require utilities and others occupying rights of way administered by the City to compensate the public for the use of those rights of way and to assure that the City's costs related to maintenance, administration and preservation of rights of way for such use are paid for by those who cause such costs.

2. Definitions. As used in this chapter, the following terms have the following meanings:

(a) *City*. "City" shall mean the City of Prineville, an Oregon municipal corporation, and all of the territory within its corporate boundaries, as may changes from time to time.

(b) *Equipment or Facilities*. "Equipment" or "Facilities" shall mean any tangible component, whether referred to singularly or collectively, installed, maintained, or operated by User within the right-of-way, public easement, or public utility easement. By way of example, the terms mean any pole, wire, pipe, conduit, line, main, duct, cable, wire, switch, transformer, valve, or other equipment, including any equipment box or vault, located wholly or in part under, on, or above the surface of the ground within any right of way. Facility includes any item placed in the right of way for the purpose of providing electric power, natural gas, telephone, telecommunications, radio, cable television, internet access, sewer, water, storm sewer or other utility or similar service.

(c) *Gross revenues*. As used in this Ordinance, "gross revenues" has the meaning given that term in ORS 221.515(2). As used elsewhere in this Ordinance, gross revenues means all revenue, including but not limited to monthly service charges received from customers within the City, any separately charged amounts received from customers within the City (excluding amounts collected for taxes and paid to the taxing entity), and any other amounts received for services (including resale services and rent) that use facilities but excluding any amount paid directly by the United States Government, or revenue from Cellular Mobile Radio Services/Mobile Telephone ("CRMS") services.

(d) *Person*. "Person" means any individual, sole proprietorship, partnership, corporation, limited liability company, association, or other organization authorized to do business in the state of Oregon, and includes any natural person.

(e) *Public Easement*. “Public Easement” means the space identified within the easement document that is in, upon, above, along, across, over, or under the publicly owned and maintained storm, sanitary, or water facility.

(f) *Public Utility Easement*. “Public Utility Easement” means the space in, upon, above, along, across, over, or under the easement as identified within the easement document. By way of general description, Public Utility Easements are typically created along the border(s) of a tax lot or frontage along public right-of-way and are intended for the use of utility companies and other authorized users to operate, place, relocate, and maintain facilities in accordance with City requirements and standards.

(g) *Right-of-Way*. “Right-of-way” shall mean the space in, upon, above, along, across, over or under the public street, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places used or intended to be used by the general public for travel as the same now or may hereafter exist, that the City has the right to allow User to use. Right-of-Way also includes public utility easements.

(h) *Telecommunications Carrier*. “Telecommunications carrier” has the meaning given that term in ORS 133.721.

(i) *User*. “User” means a person that performs work within the rights-of-way, public easement, or public utility easements.

(j) *Work*. “Work” means excavation or fill, or the construction, demolition, installation, replacement, or relocation of Equipment, within the right-of-way, Public Easement, or Public Utility Easement.”

3. Tax Imposed. Except as provided in this Ordinance, a privilege tax is imposed on all persons who place equipment or facilities in or on City right-of-way.

4. Amount of Tax. The privilege tax shall be as established by Resolution of the City Council or as follows:

(a) The privilege tax for a telecommunications carrier with facilities in rights-of-way and who provide service within the City shall be seven percent of gross revenues earned within the City.

(b) The privilege tax for all others with facilities in rights-of-way within the City and serving city residents shall be five percent of gross revenues.

(c) The privilege tax for those with antennas or other facilities in the right-of-way, public easement or public utility easement, e.g., wireless/CMRS providers, shall be as negotiated and agreed to by the city and provider.

(d) The privilege tax for persons who have facilities in rights of way but do not provide service within the City shall be \$1.50 per year per foot of line, wire, pipe, or conduit in the right-of-way.

(e) The privilege tax shall be cumulative. By way of example, a person required to pay tax on both antennas and facilities shall pay both the tax on antennas and the tax on facilities.

5. Credit. The gross revenues of a telecommunication carrier that provides telecommunication services using utility facilities owned or operated by other utilities may be reduced by the amount paid for the use of such utility facilities if the utility that owns or operates the utility facilities reports the amount paid to them as gross revenue as required by this Ordinance.

6. Payment, Accounting, and Audit.

(a) The privilege tax shall be paid quarterly within 30 days after the end of the quarter. Unless otherwise agreed to by the City in writing, quarters shall end on March 31, June 30, September 30 and December 31 of each year. Each payment shall be accompanied by an accounting of applicable gross revenues and a calculation of the amount payable. Late payment fees shall be assessed at 12% per annum.

(b) The City may audit any person subject to or paying the privilege tax as follows:

(i) The City may, at any time within six years of receipt, investigate any accounting submitted and determine the accuracy of the amount reported. The utility shall make available for investigation all records, including historical records and books of the utility necessary for verification of the report. Such investigation may be done by the City or any person selected by the City. Neither acceptance of payment nor a failure to make an investigation shall be deemed to prevent subsequent investigation by the City, or to estop the City from collecting any amount due.

(ii) If, upon investigation or otherwise, the fee or tax paid is determined to be excessive, a refund of the excess will be paid. If the fee paid is found to be insufficient, the manager shall notify the utility of the amount of the deficiency and demand payment of the amount.

(iii) If a utility fails to properly report the true amount of gross revenue or other basis from all accounts within the City as determined by the city after investigation, a late payment charge will be owed on the under reported gross revenue calculated from the first day of the calendar quarter in which the error occurred to the date on which the city received payment, compounded monthly. The late payment charge shall be due at the same time that the utility is required to make payment of any insufficiency of the license fee or privilege tax. If the city manager determines that the insufficiency is due to fraud, intent to evade the fee or tax, or is greater than 15% of the total amount due, a penalty of 25% of the amount of the total fee or tax shall be paid in addition to the amount due and the late payment charge.

(iv) Within ten (10) days from the receipt of notice by the manager that the privilege tax paid is insufficient and demands payment, the utility may appeal to the council. Such appeal must be in writing and specifying the grounds of such appeal. If no such appeal is taken, if the council decides adversely, or if the council decides that any other amount is due, the manager shall proceed to collect the amount determined to be due and unpaid.

(v) In addition to any other penalties prescribed by law, if a person fails to make payment of any deficiency determined to be due and unpaid in accordance with the provisions of this subsection within ten (10) days of such final determination, such person will be liable for an additional penalty computed at two percent (2%) of the gross revenues during the applicable period.

(c) Refunds. In the event that a utility is ordered to refund any revenues by a governmental entity or agency with jurisdiction to make such an order and such refund will affect the privilege tax paid pursuant to this Ordinance, the calculation of the privilege tax shall not include the refund except pursuant to a mutually agreed upon schedule. If there is a substantial budgetary impact, such schedule may include spreading the impact of the refund on the future privilege tax to be paid to the City over a period, shall minimize the administrative impact to the tax payer and may include interest on the unpaid refund.

7. Exemptions. Any facility placed in the right of way solely to provide service for transportation or vehicular use of the right of way is exempt from the tax.

A Person shall be exempt from the Privilege Tax for any Equipment or Facilities used to provide services or a product, subject to a franchise fee paid to the City.

A Person who has a franchise agreement with the City at the time this Ordinance becomes effective is exempt from the Privilege Tax until expiration of the term of that franchise agreement.

8. Miscellaneous. If any section, sentence, paragraph, term, or provision hereof is for any reason is determined to be unconstitutional, illegal, or invalid by any court of competent jurisdiction, such section, sentence, paragraph, term, or provision shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect.

Passed by the City Council this _____ day of September, 2010.

Mike Wendel, Mayor

ATTEST:

Lisa Morgan, City Recorder