

ORDINANCE NO. 516

AN ORDINANCE PROVIDING FOR FRANCHISE FEE, UTILITY LICENSE AND PENALTY, AND REPEALING ORDINANCE NO. 74 ENACTED MAY 12, 1986 AND ORDINANCE 152 ENACTED MARCH 20, 1990.

The City of Coos Bay ordains as follows:

Section 1. Definitions. As used in this ordinance, the following mean:

Franchise Fee. A fee (fee) paid by every franchised utility operating in the City's right of way; the tax is in an amount equal to seven percent of the gross revenues of the utility currently earned within the city.

Gross Revenue. Those revenues derived from network, infrastructure, services, communications, products, commodities, equipment, technology, access lines or channels which provide local access from the premises of a customer or subscriber within the city to the utilities' local network, infrastructure, service, and or commodity to effect the transfer of information, communications, services, products, commodity, and or technology and, unless a separate tariff rate is charged therefor, any facility or service provided in connection therewith, less net uncollectible from such revenues..

Utility License. A license (license), the amount set by the Coos Bay City Council, paid by telecommunication or other utility for the privilege to occupy the city's right-of-way.

Person. A natural person, firm, partnership, corporation or other association of natural persons, either acting individually or through an agent or employee.

Right-of-way. A street, alley, or other thoroughfare or easement, whether physically accessible or not, that has been permanently established or dedicated for the passage of persons or vehicles. Title to this land remains with the public or private agency until the need no longer exists.

Service. Includes equipment and facilities.

Small Cell Wireless Facility. Small wireless and small wireless facility shall have the same meaning as a small wireless facility as set forth in 47 CFR 1.6002(l).

Telecommunications Utility Company. Includes companies providing services for standard hard-wired telephone, wireless telephone, internet connectivity, and cable television.

Section 2. Fees and Licenses. Every utility occupying the city right-of-way within the city for other than travel shall enter into a franchise or license agreement with the city and pay applicable fees. Every franchised utility occupying and operating within the city right-of-way shall pay a franchise fee for the use of said right-of-way in an amount equal to seven percent of the gross revenues of the utility currently earned within the city or pay the franchise fee whichever is more. Franchise and license fees for small cell wireless facilities and services shall be consistent with federal regulations.

Section 3. Exceptions and deductions. Excepted and deducted from the total gross revenue upon which the fee is computed is any part derived from transactions in interstate or foreign

commerce; or from business done for the federal government and any amount paid by the utility to the federal, state, or city government as excise taxes levied or imposed upon the sale or distribution of property or service. No fee is required which would cause a violation of federal or state laws.

Section 4. Monthly Payment of Fee or License. The utility shall pay the fee or license in monthly installments based on the gross income of the previous month. Each installment shall be paid on or before the 25th day of the month.

Section 5. Sale or Transfer of Business. If the ownership of a utility is sold or transferred, the purchaser or transferee shall be responsible for the payment covering the period of time during which the purchaser or transferee carried on the business.

Section 6. Books and Records; Returns Confidential. Each utility subject to this ordinance shall keep proper records that accurately reflect and efficiently permit verification of the amount of gross income for the utility. The records shall be open to the inspection of the Recorder or designate, and to members of the Council. To the extent allowed by state law, records will not be made public and will be inspected only by authorized city officials.

Section 7. Recorder to Investigate Returns. If a utility fails to make a payment, or if the Recorder is dissatisfied as to the correctness of a payment, the utility shall allow the Recorder or designee to enter the premises of the utility at any reasonable time for the purpose of inspecting the records of account to ascertain the amount of the fee or to determine the correctness of the statements.

Section 8. Over or Underpayment of Fee. If the Recorder finds that the fee or license paid is more than the amount required of the utility, the overpaid amount shall be refunded. If the Recorder finds that the fee or license is less than required, a statement showing the balance due shall be sent directing the utility to pay the amount within three days.

Section 9. Remedy for Nonpayment. If a utility fails to pay the fee or license within three days after it becomes due, the Recorder shall determine the amount of the fee or license due and notify the utility. The city may collect the amount due by any appropriate means, including suit or action in the name of the city.

Section 10. Appeal to Council.

- (1) A utility may appeal to the Council a fee or license determination made by the Recorder by filing a written notice of appeal with the Recorder within five days from the time the utility was given notice of the amount due. The Recorder shall notify the utility of the time and place of the hearing, which shall be held not more than 10 days after the filing of the notice.
- (2) The utility shall be entitled to be heard and present evidence in its behalf. The appellant shall appear and produce any pertinent records if requested to do so by the Council.
- (3) The Council shall ascertain the correct amount of the fee or license by resolution and shall immediately notify the appellant. The amount, together with costs of the appeal if the appellant is unsuccessful, must be paid within three days after notice of the determination is given.

Section 11. Recorder May Make Rules. The Recorder may adopt and enforce rules and regulations not inconsistent with this ordinance for the purpose of carrying out the provisions of this ordinance. No person shall violate or fail to comply with any such rule or regulation.

Section 12. False Returns Etc. No person shall:

- (1) Fail or refuse to make a report or pay a fee when due, as required by this ordinance.
- (2) Make a false or fraudulent report or any false statement or representation in connection with any report required by this ordinance.
- (3) Aid or abet another in an attempt to evade payment of a fee required by this ordinance.
- (4) Testify falsely on any investigation of a report or at an appeal hearing, or in any manner hinder or delay the city or its officers in carrying out the provisions of this ordinance.

Section 13. Severability. The sections and subsections of this ordinance are severable. The invalidity of any one section or subsection shall not affect the validity of the remaining sections or subsections.

Section 14. Penalty. Violation of a provision of this ordinance is punishable by a fine not to exceed \$500. Each day's violation shall constitute a separate punishable offense.

Section 15. Repeal. Ordinance No. 74 enacted May 2, 1986, and amended by Ordinance No. 152 enacted March 20, 1990, is repealed.

Section 16. Savings. The repeal of ordinances in section 15 shall not affect the liability of any person to pay any amount due the City under the terms of those ordinances, or any prosecution for violation of a provision of those ordinances when the violation occurred prior to the effective date of this ordinance. This ordinance shall be considered a continuation of those ordinances and any reference to those ordinances shall be considered a reference to this ordinance.

The foregoing ordinance was enacted by the City Council of the City of Coos Bay this 17th day of September 2019 by the following vote:

- Yes: Mayor Joe Benetti and City Councilors, Stephanie Kilmer, Phil Marler, Carmen Matthews and Rob Miles.
- No: None.
- Absent: Councilor Lucinda DiNovo and Drew Farmer.

ATTEST: Nichole Rutherford
 Nichole Rutherford, Recorder
 City of Coos Bay
 Coos County, Oregon

Joe Benetti
 Joe Benetti, Mayor
 City of Coos Bay
 Coos County, Oregon

STATE OF OREGON)
 COUNTY OF COOS) ss
 CITY OF COOS BAY)

On this 24th day of September 2019, before me personally appeared Joe Benetti, Mayor of the City of Coos Bay and Nichole Rutherford, Recorder of the City of Coos Bay, and the seal affixed hereto is the official seal of the City of Coos Bay.

Tonya L Davis
 Notary Public for Oregon

