

RESOLUTION 2017-04

A RESOLUTION SETTING RIGHT OF WAY USE FEES FOR ALL COMMUNICATIONS, CABLE, UTILITY PROVIDERS SUBJECT TO ORDINANCE 325, THE CITY'S "RIGHT OF WAY MANAGEMENT ORDINANCE"

WHEREAS, pursuant the Garibaldi Ordinance Number 325 (referred to herein as the Right of Way Management Ordinance) and the City's home rule authority under the Oregon Constitution Article XI, Section 2, the City Council has the authority to establish fees for all Communications, Cable, or Utility Providers using or occupying City right of ways; and

WHEREAS, pursuant to the Right of Way Management Ordinance and the City's home rule authority under the Oregon Constitution Article XI, Section 2, the City Council has the authority to set registration fees or application fees for all such Providers; and

WHEREAS, it is fair and just to ask users or occupiers of City's publicly owned and managed rights of ways to compensate the City for their private, for-profit use of a valuable public asset which is essential to transit throughout our City; and

WHEREAS, the City Council desires to establish generally-applicable Right of Way Use Fees and Franchise Fees consistent with federal and state law; and

WHEREAS, the Cable Communications Policy Act of 1984 (47 USC 521 et seq) authorizes City's to impose a Franchise Fee on Cable Providers for the use and occupation of the public right of way; and

WHEREAS, the Telecommunications Act of 1996 (47 USC 151 et seq) authorizes City's to impose a Franchise Fee on Telecommunication Carriers for the use and occupation of the public right of way,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF GARIBALDI, AS FOLLOWS:

Section 1. The City Council hereby sets the Right of Way Use Fee and Franchise Fee for provide Cable Service Providers occupying the City rights of way at five percent (5%) of the Provider's Gross Revenues derived from the provision of Cable Services within the City.

Section 2. The City Council hereby sets the Right of Way Use Fee and Franchise Fee for all Communications Service Providers who occupy the City rights of way to provide Communications Services other than Cable Service within the City at four percent (4%) of the Provider's Gross Revenues derived from the provision of Communications Services other than Cable Services within the City.

Section 3. The City Council hereby sets the Right of Way Use Fee and Franchise Fee for all Utilities who occupy the City rights of way to provide Utility Services at five percent (5%) of the Provider's Gross Revenues derived from the provision of Utility Services within the City.

Section 4. The City Council hereby sets the Right of Way Use Fee and Franchise Fee for all Communications, Cable and Utility Providers who occupy or use the City Rights of Way but do not provide any Services within the City at \$500 or \$1.00 per linear foot of Right of Way occupied, whichever is greater.

Section 5. As used herein, Gross Revenues shall mean any revenue derived in any way by the Provider from the operation of their Facilities to provide Communications, Cable or Utility Services (as those terms are defined in the Right of Way Management Ordinance) in the City including, but not limited to: amounts for premium cable services, advertising, home shopping channels, revenue-sharing arrangements or use or rental agreements, installation and all leased-access payments to Grantee. However, that "Gross Revenues" shall not include: (1) any taxes, fees or assessments collected by the

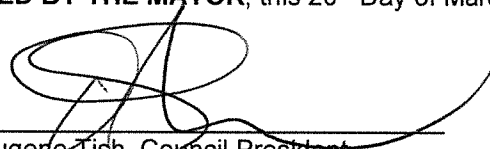
Grantee from Subscribers for pass-through to a government agency, including, without limitation, any state or federal administrative fees or sales or utility taxes; (2) uncollectible bad debt; (3) refunds or deposits paid to subscribers; and (4) other applicable exclusions available under applicable State or federal statutes.

Section 6. The City Council hereby delegates to the City Manager or his or her designee the authority to establish fair and reasonable rules to implement this Right of Way Management Ordinance, including but not limited to: 1) rules regarding the establishment of reasonable pole attachment fees for Providers who attach equipment onto City-owned poles or onto poles within the City's right of way; and 2) rules regarding when the City will deem a Provider's Franchise Agreement expired for the purposes of implementing the Right of Way Management Ordinance.

Section 7. The City Council hereby sets the Registration Fee for Communications, Cable and Utility Providers at \$200.

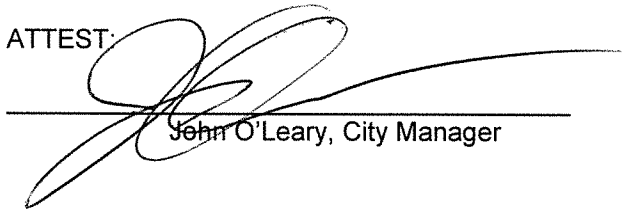
Section 8. The City Council hereby sets a Franchise Application Review Fee for Communications, Cable, and Utility Providers at \$200.

PASSED BY THE COMMON COUNCIL AND APPROVED BY THE MAYOR, this 20th Day of March, 2017.



Hon. Eugene Tish, Council President

ATTEST:



John O'Leary, City Manager