

City of Durham, Oregon

RESOLUTION NO. 559-13

**A RESOLUTION SETTING THE FEE FOR USE AND OCCUPANCY
OF CITY PUBLIC RIGHTS OF WAY BY CERTAIN
TELECOMMUNICATIONS PROVIDERS**

WHEREAS, the Council by its Ordinance No. 256-13 provided for the issuance of licenses for certain telecommunications providers using City public rights of way for their facilities and equipment and defined certain terms in that Ordinance (shown herein in **boldface**) also for use in this Resolution; and,

WHEREAS, the Council desires to regulate those providers' use of that right of way so as not to effectively prohibit any such provider from offering service and so as to treat all such providers on a competitively neutral basis; and,

WHEREAS, Oregon municipal finance law and the Government Accounting Standards Board require that the City report the value of City rights of way as a depreciable asset, and the Council finds that use of those rights of way by utility providers contributes to that depreciation, making payment of fees for private use of rights of way appropriate, and,

WHEREAS, the Council finds that fair and reasonable compensation for use of City public rights of way by those telecommunications providers not a party to a franchise or subject to a privilege tax, may be calculated as a percentage of gross revenues earned from services to premises within the City, or as a fee per lineal foot of facilities and equipment within City public rights of way, and that a minimum annual fee for all providers is appropriate to minimally compensate for the City's cost to manage the rights of way and the licensing process;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF DURHAM, OREGON as follows:

1. A **Provider** who seeks a license for use of **City rights of way** shall pay to the City annually for that license for that use, the greater of the following amounts:
 - a. A minimum fee of \$2,500 for each year or any portion thereof; or,
 - b. An annual fee of 5% of **Gross City Revenue** earned from the use of the **Provider's Facilities and Equipment** to provide **Telecommunications** or **Telecommunications Services** or both to premises within the City, as **Gross City Revenue** is further defined in Ordinance 256-13.
2. The minimum annual fee payable as required by this Resolution shall be paid upon application for the original license and again upon application for each renewal of that license. The minimum annual fee when paid shall be credited against the license fee calculated as a percentage of **Gross Revenues** or calculated per lineal foot of **Facilities and equipment** if the license fee payable under either such calculation exceeds the minimum fee in any license year.

3. The annual fee payable for each one-year license term shall be due and payable no later than 30 days following the end of the preceding license term and shall be accompanied by information showing the Provider's calculation of the fee, a description of any revenues or sources of revenue that the **Provider** deems to be exempt from inclusion in the calculation of the fee if the fee is based on the **Provider's Gross Revenues**, information identifying the **Provider** on whose behalf the payment is offered and the identity and contact information of the person offering the payment if offering on behalf of another person.
4. The City's acceptance of payment of an amount offered by or on behalf of any **Provider** as the amount due from that **Provider** as an annual license fee shall not constitute the City's agreement that the amount offered constitutes full and final payment of the amount due. The City may dispute the amount offered as not constituting full payment at any time within the time allowed for the City's inspection of the **Provider's** records under Ordinance 256-13.
5. An annual license fee not fully paid when due shall be assessed interest on the unpaid amount equal to 9% over the existing prime rate as published by bankrate.com, compounded daily from the date due until paid. A final determination made after any review by the City of a **Provider's** payment of the license fee that the **Provider** has overpaid shall entitle the Provider to deduct the overpayment from the license fee due from that Provider in the succeeding calendar year(s) until the overpayment is fully accounted for.

PASSED AND ADOPTED this 25th day of February 2014.

CITY OF DURHAM

By: 
Gery Schirado, Mayor

ATTEST:


Linda Tate, City Administrator / Recorder