

City of Durham, Oregon

RESOLUTION NO. 613-19

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DURHAM, OREGON,
ESTABLISHING A PRIVILEGE TAX FOR UTILITIES OPERATING IN THE CITY OF
DURHAM RIGHTS OF WAY**

WHEREAS, the City of Durham (the "City") has Constitutional and Charter authority to manage its rights-of-way ("ROW"); and

WHEREAS, the Durham City Council has adopted Ordinance 260-18, by which the City regulates utilities operating in the City's ROW; and

WHEREAS, the City Council finds that all utilities should compensate the City for the privilege of using the rights-of-way, which is a limited public asset; and

WHEREAS, the City Council further finds that the City should be compensated for the costs, impacts and burdens related to utility use of the City ROW; and

WHEREAS, ORS 221.515 authorizes the City to impose a privilege tax of up to 7% on telecommunications carriers for use of City public rights of way; and

WHEREAS, Ordinance 260-18 authorizes the City to establish by resolution a privilege tax related to utility use of the City ROW; and

WHEREAS, Ordinance 260-18 contemplates the establishment by separate resolution of fees for the placement of Small Cell Wireless facilities in the City ROW;

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

Section 1. A privilege tax of seven percent (7%) is imposed on the gross revenues of telecommunications utility operators that use utility facilities in the City to provide service, whether or not the utility operator or person owns the utility facilities used to provide the utility services.

Section 2. "Facilities-based Providers" as defined in Ordinance 262-19 shall pay the license fee as provided in that Ordinance in lieu of the privilege tax imposed by this Resolution.

Section 3. Privilege tax payments required by this section shall be reduced by any franchise fee payments received by the City from a utility operator pursuant to any applicable franchise agreement, but in no case will the payment obligation be less than zero dollars (\$0.00).

Section 4. Unless otherwise agreed to in writing by the City, the privilege tax established by this Resolution, shall be paid annually, in arrears, within thirty (30) days after the end of each calendar year or portion of a year during which the utility operator or person owns, places,

operates, maintains or uses utility facilities in the City. Payment shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable. The utility shall pay interest at the rate of nine percent (9%) per year for any payment made after the due date.

Section 5. The calculation of the privilege tax established by this Resolution shall be subject to all applicable limitations imposed by state or federal law.

Section 6. Pursuant to Ordinance 260-18, all fees applicable to the placement Small Cell Wireless Facilities in the City ROW shall be addressed by separate resolution of the City Council.

Section 7. This Resolution shall be effective immediately upon its adoption by the City Council.

PASSED AND ADOPTED at a regular meeting of the Durham City Council held on the 22nd day of January, 2019.

CITY OF DURHAM

Gery Schirado, Mayor

ATTEST:

Linda Tate, City Administrator/Recorder