

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
ORDINANCE NO. 08-21-A

AN ORDINANCE AMENDING TIGARD MUNICIPAL CODE SECTION 15.06.100 "RIGHT-OF-WAY USAGE FEE" TO INCLUDE A PER FOOT FEE.

WHEREAS, Tigard Municipal Code ("TMC") Chapter 15.06 governs use of the rights-of-way by utility operators, including the fee to be paid for such use; and

WHEREAS, TMC section 15.06.100 establishes a right-of-way usage fee calculated as a percentage of gross revenues earned within the City from the sale of utility services to customers within the City; and

WHEREAS, the City understands that some utility operators do not earn gross revenues as defined in TMC Chapter 15.06 and thus would owe the City \$0 under the existing right-of-way usage fee; and

WHEREAS, the intent of the right-of-way usage fee is to ensure that the City receives fair and reasonable compensation for private use of the rights-of-way; and

WHEREAS, the City has determined that amending the right-of-way usage fee provisions of the TMC to require payment of the fee that is greater of (1) the gross revenues-based fee currently set forth in TMC 15.06.100, or (2) a per linear foot-based fee of a utility's facilities in the right-of-way will ensure that utility operators with facilities in the right-of-way that do not generate gross revenues as defined in TMC 15.06 will nevertheless pay fair and reasonable compensation for their use of the rights-of-way; and

WHEREAS, the City has determined that the Council should be authorized to establish the fee to be charged per linear foot of facilities in the City's rights-of-way by resolution.

Now, therefore,

THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Section 15.06.100 of the TMC is amended as set forth below. (~~Strike-through~~ text is deleted from the Code and underlined text is added to the Code.)

1. All persons using a utility system or facility in the right-of-way to provide service to customers within the City of Tigard shall annually pay a right-of-way usage fee that is the greater of (i) calculated as a the applicable percentage of gross revenues set forth in subparagraph 2 of this section 15.06.100 or (ii) the linear foot fee set by Council resolution pursuant to subparagraph 3 of this section 15.06.100, subject to any applicable limitations imposed by federal

and state statutes, including the privilege tax limitations set forth in ORS 221.410 through 221.655.

2. The right-of-way usage fee percentage applicable to each class of utility shall be as follows:

Telecommunications:	5.0%
Electric:	3.5%
Natural Gas:	5.0%
Water:	5.0%
Sanitary Sewer	5.0%

3. The City Council is hereby authorized to establish by resolution a right-of-way usage fee calculated based on the total linear feet of a utility operator's facilities in the rights-of-way.

34. Right-of-way usage fee payments shall be net of any franchise fee payments received by the City, but in no case will be less than \$0.

45. Unless otherwise agreed to in writing by the City, the right-of-way usage fee shall be payable semi-annually on or before March 15 for the six month period ended the previous December 31, and September 15 for the six month period ended the previous June 30. The utility shall pay interest at the rate of nine percent per year for any payment made after the due date.

SECTION 2: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By Unanimous vote of all Council members present after being read by number and title only this 16th day of December, 2008.

Catherine Wheatley
Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this 16th day of December, 2008.

C. A. Dirksen
Craig Dirksen, Mayor

APPROVED AS TO FORM:

Smith V. Rasmus
City Attorney

12.16.08
Date