

ORDINANCE NO. 616

AN ORDINANCE OF THE CITY OF WILSONVILLE IMPOSING A PRIVILEGE TAX, AMENDING CHAPTER 3 OF THE WILSONVILLE CODE BY ADDING SECTION 3.500 – 3.560 THERETO

WHEREAS, the City of Wilsonville is authorized under ORS 221.450 and ORS 221.515 to impose privilege taxes on telecommunications carriers, utilities, and others for the use of city streets, alleys or highways for other than travel; and

WHEREAS, the City holds public right-of-way in trust for the citizens; and

WHEREAS, this trust extends to assuring that the current and ongoing costs of granting access to and the use of public ways are fully compensated by persons seeking such access and causing such costs; and,

WHEREAS, the ordinance is necessary to secure fair and reasonable compensation to the city and its residents for permitting use of the public right-of-way,

NOW THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

Section 1. Chapter 3 of the Wilsonville Code is amended by adding the following sections:

PRIVILEGE TAXES

3.500 Purpose

The purposes of this ordinance are to require utilities and others occupying rights of way administered by the City to compensate the public for the use of those rights of way and to assure that the City's costs related to maintenance, administration and preservation of rights of way for such use are paid for by those who cause such costs.

3.510 Definitions

As used in this chapter, the following terms have the following meanings:

(1) Equipment or Facilities. "Equipment or Facilities" shall have the meaning given that term in W.C. 3.310 (4), viz, any tangible component, whether referred to singularly or collectively, installed, maintained, or operated by User within the right-of-way, public easement, or public utility easement. By way of example, the terms mean any pole, wire, pipe, conduit, line, main, duct, cable, wire, switch, transformer, valve, or other equipment, including any

equipment box or vault, located wholly or in part under, on, or above the surface of the ground within any right of way. "Facility" includes any item placed in the right of way for the purpose of providing electric power, natural gas, telephone, telecommunications, radio, cable television, internet access, sewer, water, storm sewer or other utility or similar service.

(2) Right-of-Way. "Right-of-Way" shall have the meaning given that term in W. C. 3.310(8), viz, the space in, upon, above, along, across, over or under the public street, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places used or intended to be used by the general public for travel as the same now or may hereafter exist, that the City has the right to allow User to use. Right-of-Way also includes public utility easements.

(3) Telecommunications carrier. "Telecommunications carrier" has the meaning given that term in ORS 133.721.

(4) Gross revenues. As used in Section 3.530 (1), "gross revenues" has the meaning given that term in ORS 221.515(2). As used elsewhere in Section 3.530 (2), "gross revenues" means all revenue, including but not limited to monthly service charges received from customers within the City, any separately charged amounts received from customers within the City (excluding amounts collected for taxes and paid to the taxing entity), and any other amounts received for services (including resale services and rent) that use facilities but excluding any amount paid directly by the United States Government, or revenue from Cellular Mobile Radio Services/Mobile Telephone ("CRMS") services.

3.520 Tax Imposed

Except as provided in this Section, a privilege tax is imposed on all persons who place equipment or facilities in or on City right of way.

3.530 Amount of Tax

The privilege tax shall be as established by Resolution of the City Council or as follows:

(1) The privilege tax for a telecommunications carrier with facilities in rights of way and who provide service within the City shall be seven percent of gross revenues earned within the City.

(2) The privilege tax for all others with facilities in rights-of-way within the City and serving city residents shall be five percent of gross revenues.

(3) The privilege tax for those with antennas or other facilities in the right-of-way, public easement or public utility easement, e.g., wireless/CMRS providers, shall be as negotiated and agreed to by the city and provider.

(4) The privilege tax for persons who have facilities in rights of way but do not provide service within the City shall be \$.75 per calendar quarter per foot of line, wire, pipe, or conduit in the right-of-way

(5) The privilege tax shall be cumulative. By way of example, a person required to pay tax on both antennas and facilities shall pay both the tax on antennas and the tax on facilities.

3.540 Credit

Any person paying a franchise fee to the City shall be entitled to a credit towards the Privilege Tax in the full amount of the franchise fee paid.

The gross revenues of a telecommunication carrier that provides telecommunication services using utility facilities owned or operated by other utilities may be reduced by the amount paid for the use of such utility facilities if the utility that owns or operates the utility facilities reports the amount paid to them as gross revenue as required by this section.

3.550 Payment, Accounting and Audit

(1) The privilege tax shall be paid quarterly within 30 days after the end of the quarter. Unless otherwise agreed to by the City in writing, quarters shall end on March 31, June 30, September 30 and December 31 of each year. Each payment shall be accompanied by an accounting of applicable gross revenues and a calculation of the amount payable. Late payment fees shall be assessed at 12% per annum.

(2) The City may audit any person subject to or paying the privilege tax as follows:

(a) The City may, at any time within six years of receipt, investigate any accounting submitted and determine the accuracy of the amount reported. The utility shall make available for investigation all records, including historical records and books of the utility necessary for verification of the report. Such investigation may be done by the City or any person selected by the City. Neither acceptance of payment nor a failure to make an investigation shall be deemed to prevent subsequent investigation by the City, or to estop the City from collecting any amount due.

(b) If, upon investigation or otherwise, the fee or tax paid is determined to be excessive, a refund of the excess will be paid. If the fee paid is found to be insufficient, the manager shall notify the utility of the amount of the deficiency and demand payment of the amount.

(c) If a utility fails to properly report the true amount of gross revenue or other basis from all accounts within the City as determined by the city after investigation, a late payment charge will be owed on the under reported gross revenue calculated from the first day of the calendar quarter in which the error occurred to the date on which the city received payment, compounded monthly. The late payment charge shall be due at the same time that the utility is required to make payment of any insufficiency of the license fee or privilege tax. If the city manager determines that the insufficiency is due to fraud, intent to evade the fee or tax, or is greater than 15% of the total amount due, a penalty of

25% of the amount of the total fee or tax shall be paid in addition to the amount due and the late payment charge.

(d) Within 10 days from the receipt of notice by the manager that the license fee or privilege tax paid is insufficient and demands payment, the utility may appeal to the council. Such appeal must be in writing and specifying the grounds of such appeal. If no such appeal is taken, if the council decides adversely,, or if the council decides that any other amount is due, the manager shall proceed to collect the amount determined to be due and unpaid.

(e) In addition to any other penalties prescribed by law, if a licensee fails to make payment of any deficiency determined to be due and unpaid in accordance with the provisions of this subsection within 10 days of such final determination, the manager may suspend the license issued to the licensee.

(f) If any person operates without a license as required by this Article, operates during a period of suspension after licensee has exhausted all due process rights, or materially under reports the license fee or privilege tax which is due, such person shall be liable for an additional penalty, computed at two percent (2%) of the gross revenues received during the applicable period, which shall be paid in addition to the applicable license fee or privilege tax.

(3) Refunds. In the event that a utility is ordered to refund any revenues by a governmental entity or agency with jurisdiction to make such an order and such refund will affect the license fee or privilege tax paid pursuant to this section, the calculation of the license fee or privilege tax shall not include the refund except pursuant to a mutually agreed upon schedule. If there is a substantial budgetary impact, such schedule may include spreading the impact of the refund on the future license fee or privilege tax to be paid to the City over a period of time commencing the first full fiscal year following the ordering of the refund. Such schedule shall minimize the administrative impact to the Licensee and may include interest on the unpaid refund.

(4) Other City Costs. All licensees shall, within thirty (30) days after written demand, reimburse the city for all reasonable costs and expenses incurred by the City in connection with any termination, revocation or lesser sanction of the license consistent with applicable state and federal laws.

3.560 Exemptions

Any facility placed in the right of way solely to provide service for transportation or vehicular use of the right of way is exempt from the tax.

Section 2. Severability. In the event any provisions of this Ordinance shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 3. Effective date. This ordinance shall be effective March 1, 2007.

SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 4th day of December, 2006, at the hour of 7:00 p.m. at the Wilsonville City Hall, 29799 Town Center Loop E., Wilsonville, Oregon, and scheduled for second reading on the 18th day of December, 2006, commencing at the hour of 7:00 p.m. at the Wilsonville Community Center.



Sandra C. King, MMC, City Recorder

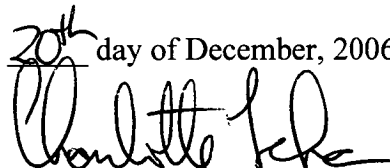
ENACTED by the City Council on the 18th day of December, 2006, by the following

votes: YEAS: -4- NAYS: -0-



Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this 20th day of December, 2006.



Charlotte Lehan, Mayor

SUMMARY OF VOTES:

Mayor Lehan	<u>Yes</u>
Council President Kirk	<u>Yes</u>
Councilor Holt	<u>Excused</u>
Councilor Knapp	<u>Yes</u>
Councilor Ripple	<u>Yes</u>