

ORDINANCE NO. 74**AN ORDINANCE PROVIDING FOR A UTILITY FEE; PROVIDING A PENALTY; AND REPEALING ORDINANCE NO. 1441; AS AMENDED BY ORDINANCE NO. 152.**

The City of Coos Bay ordains as follows:

Section 1. Definitions. As used in this ordinance, the following mean:

Gross Revenues. Those revenues derived from telephone exchange access lines or channels which provide local access from the premises of a subscriber within the city to the local telecommunications network to effect the transfer of information, and, unless a separate tariff rate is charged therefore, any facility or service provided in connection therewith, less net uncollectible from such revenues.

Person. A natural person, firm, partnership, corporation or other association, either acting individually or through an agent or employee.

Service. Includes equipment and facilities. [Section 1 amended by Ordinance No. 152, section 1, passed March 20, 1990.]

Section 2. Privilege Fee. Every telecommunications utility operating within the city and actually using the streets, alleys or highways, or all of them, within the City for other than travel, shall pay a privilege fee or tax for the use of those streets, alleys, or highways, in an amount equal to seven percent (7%) of the gross revenues of the telecommunications utility currently earned within the City.

[Section 2 amended by Ordinance No. 152, section 2, passed March 20, 1990,]

Section 3. Exceptions and Deductions. Excepted and deducted from the total gross income upon which the fee is computed is any part derived from transactions in interstate or foreign commerce, or from business done for the federal government and any amount paid by the utility to the federal, state, or city government as excise taxes levied or imposed upon the sale or distribution of property or service. No fee is required which would cause a violation of federal or state laws.

Section 4. Monthly Payment of Fee. The utility shall pay the fee in monthly installments based on the gross income of the previous month. Each installment shall be paid on or before the 25th day of each month.

Section 5. Sale or Transfer of Business. If the ownership of a utility is sold or transferred, the purchaser or transferee shall be responsible for the payment covering the period of time during which the purchaser or transferee carried on the business.

Section 6. Books and Records; Returns Confidential. Each utility subject to this ordinance shall keep proper records that accurately reflect and efficiently permit verification of the amount of gross income for the utility. The records shall be open to the inspection of the Recorder or designate, and to members of the Council. To the extent allowed by state law, records will not be made public and will be inspected only by authorized city officials.

Section 7. Recorder to Investigate Returns. If a utility fails to make a payment, or if the Recorder is dissatisfied as to the correctness of a payment, the utility shall allow the Recorder or designate to enter the premises of the utility at any reasonable time for the purpose of inspecting the records of account to ascertain the amount of the fee or to determine the correctness of the statements.

Section 8. Over or Underpayment of Fee. If the Recorder finds that the fee paid is more than the amount required of the utility, the overpaid amount shall be refunded. If the Recorder finds that the fee is less than required, a statement showing the balance due shall be sent directing the utility to pay the amount within three days.

Section 9. Remedy for Nonpayment. If a utility fails to pay the fee within three days after it becomes due, the Recorder shall determine the amount of the fee due and notify the utility. The city may collect the amount due by any appropriate means, including suit or action in the name of the city.

Section 10. Appeal to Council.

- (1) A utility may appeal to the Council a fee determination made by the Recorder by filing a written notice of appeal with the Recorder within five days from the time the utility was given notice of the amount due. The Recorder shall notify the utility of the time and place of the hearing, which shall be held not more than 10 days after the filing of the notice.
- (2) The utility shall be entitled to be heard and present evidence in its behalf. The appellant shall appear and produce any pertinent records if requested to do so by the Council.
- (3) The Council shall ascertain the correct amount of the fee by resolution and shall immediately notify the appellant. The amount, together with costs of the appeal if the appellant is unsuccessful, must be paid within three days after notice of the determination is given.

Section 11. Recorder May Make Rules. The Recorder may adopt and enforce rules and regulations not inconsistent with this ordinance for the purpose of carrying out the provisions of this ordinance. No person shall violate or fail to comply with any such rule or regulation.

Section 12. False Returns, Etc. No person shall:

- (1) Fail or refuse to make a report or pay a fee when due, as required by this ordinance.
- (2) Make a false or fraudulent report or any false state or representation in connection with any report required by this ordinance.
- (3) Aid or abet another in an attempt to evade payment of a fee required by this ordinance.
- (4) Testify falsely on any investigation of a report or at an appeal hearing, or in any manner hinder or delay the city or its officers in carrying out the provisions of this ordinance.

Section 13. Severability. The sections and subsections of this ordinance are severable. The invalidity of any one section or subsection shall not affect the validity of the remaining sections or subsections.

Section 14. Penalty. Violation of a provision of this ordinance is punishable by a fine not to exceed \$500. Each day's violation shall constitute a separate punishable offense.

Section 15. Repeal. Ordinance No. 1441, enacted September 21, 1936, as amended by Ordinance No. 2277, enacted October 3, 1966, and No. 2527, enacted August 28, 1972, is repealed.

Section 16. Savings. The repeal of ordinances in section 15 shall not affect the liability of any person to pay any amount due the city under the terms of those ordinances, or any prosecution for violation of a provision of those ordinances when the violation occurred prior to the effective date of this ordinance. This ordinance shall be considered a continuation of those ordinances, and any reference to those ordinances shall be considered a reference to this ordinance.

Section 17. Effective Date. This ordinance shall take effect on July 1, 1990. [Section 17 added by Ordinance No. 152, passed March 20, 1990.]

Passed by the Council and approved by the Mayor May 12, 1986 .