

ORDINANCE NO. 777

AN ORDINANCE ADOPTING A NEW CHAPTER 3.26 OF THE TROUTDALE MUNICIPAL CODE IMPOSING A PRIVILEGE TAX ON TELECOMMUNICATIONS CARRIERS FOR USE OF THE RIGHTS-OF-WAY

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City of Troutdale is authorized under ORS 221.515 and the City Charter to impose a privilege tax on telecommunications carriers for the use of the City's streets, alleys and highways in an amount not to exceed 7% of gross revenues.
2. The City Council finds that enactment of a privilege tax is necessary to ensure telecommunication carriers fairly compensate the City for the privilege of using rights-of-way in the City.

NOW, THEREFORE, IT IS ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. A new chapter 3.26 of the Troutdale Municipal Code imposing a privilege tax on telecommunication carriers is hereby adopted to read as follows:

Chapter 3.26 PRIVILEGE TAX UPON TELECOMMUNICATIONS CARRIERS

Sections:

3.26.010	Privilege tax imposed
3.26.020	Definitions
3.26.030	Payment dates
3.26.040	Interest on late payments
3.26.050	Audits
3.26.060	Additional Requirements
3.26.070	Penalty for violations
3.26.080	Appeals
3.26.090	Severability

3.26.010 Privilege tax imposed.

A privilege tax of seven percent (7%) is hereby imposed on the gross revenues of any telecommunications carrier that is has equipment in the rights-of-way in the City.

3.26.020 Definitions.

As used in this Chapter, the following terms have the following meaning:

- A. Equipment means any tangible component, whether referred to singly or collectively, installed, maintained, or operated by a telecommunications carrier.
- B. Gross revenues means revenue earned within the boundaries of the city from exchange access services, as defined in ORS 401.710, less net uncollectibles.
- C. Rights-of-way means the space in, upon, above, along, across, over or under the public streets, 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.
- D. Telecommunications carrier means a telecommunications utility as defined in ORS 759.005 or a cooperative corporation organized under ORS chapter 62 that provides telecommunication services.

3.26.030 Payment dates.

The privilege tax imposed in this Chapter shall be due quarterly on before the fifteenth day after the end of the preceding quarter (April 15, July 15, September 15, and January 15). The privilege tax shall be paid to the City on or before the due date for each quarter and shall be accompanied by a written report. The written report shall be verified and executed by an officer or other authorized representative of the telecommunications carrier, containing an accurate statement of the privilege tax revenues from exchange access services for the period covered by the payment.

3.26.040 Interest on late payments.

In the event the privilege tax is not paid on or before the due date, interest shall be owed on the tax in the amount of eight percent (8%) from the date due to the date on which payment is received by the City, compounded daily.

3.26.050 Audits.

A. The City shall have the right to conduct or cause to be conducted an audit of gross revenues as defined herein for the purpose of ascertaining whether the telecommunications carrier's tax payments have met the requirements of this Chapter.

B. Upon receipt of a written request, telecommunication carriers shall provide the City copies of documents the City requests that are necessary to conduct an audit. If the telecommunications carrier believes the requested documents contain confidential information that is not subject to public disclosure, the

telecommunications carrier shall mark the documents as confidential and exempt from public disclosure. The City shall not disclose to third parties any documents that the telecommunications carrier provides that are marked as confidential and exempt from public disclosure unless such disclosure is required to comply with the Public Records Law.

C. Any undisputed differences of payment due either the City or the telecommunications carrier following audit shall be payable within thirty (30) days after written notice to the affected party.

3.26.060 Additional Requirements.

A. Nothing in this Chapter is intended to excuse a telecommunications carrier from the obligation to obtain a permit as required under Chapter 12.12 of the Troutdale Municipal Code or any other applicable law, ordinance or resolution. Acceptance of privilege tax payments pursuant to this Chapter shall not be construed as a waiver by the City of such requirements.

B. If a telecommunications carrier fails to pay the privilege tax under this Chapter, fails to obtain a permit under Chapter 12.12 or fails to comply with any other applicable law, ordinance or resolution, the City may demand that the telecommunications carrier make the payment, obtain the permit or comply with the applicable law, ordinance or resolution, or remove its equipment from the rights-of-way.

3.26.070 Penalty for violations.

A telecommunications carrier that violates any of the provisions in this Chapter may be ordered to pay a fine in an amount of up to \$5,000 for each day of the violation and ordered to remove its equipment from the rights-of-way after having been given notice of the violation and thirty days to comply, or after failing to enter into a compliance agreement or failing to comply with the agreement. Notice shall be mailed certified mail to the last known address on file with the City and shall be effective upon receipt. In addition to imposing civil penalties or ordering the removal of equipment from the rights-of-way, the City may initiate legal action to enforce the requirements of this Chapter.

3.26.080 Appeals.

A telecommunications carrier that receives notice of a violation or that receives notice that an administrative fine has been imposed may appeal to the city council by filing a written appeal with the city administrator within ten days of receipt of the notice of violation or notice of the administrative fine. The appeal shall set forth the reasons why the telecommunications carrier does not believe a violation has occurred or the reasons why the administrative fine is unreasonable. Upon receipt of a timely appeal, the city administrator shall schedule an appeal hearing before the city council. The hearing shall be set no less than ten days after the timely appeal is filed. The council shall affirm the findings that a violation occurred and impose a

penalty or reverse the finding that a violation occurred, thereby resolving the matter. If the appeal is challenging the imposition of a penalty, the council shall affirm or modify the penalty.


3.26.090 Severability.

If any section, subsection, sentence, clause, phrase or portion of this Chapter is, for any reason, held invalid, pre-empted or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Chapter.

Section 2. Effective Date.

This ordinance shall take effect June 1, 2006, however, it shall be applied retroactively to any telecommunications carrier that had equipment in rights-of-ways in the City without a franchise, subject to the following. Payment of the privilege tax for the period prior to June 1, 2006, shall be made with the first quarterly payment that is due under the ordinance (payment for 2nd quarter of 2006 paid on or before July 15, 2006). The privilege tax that is owed for the period prior to June 1, 2006, shall be credited for payments that the City received from the telecommunications carrier during the applicable time period (prior to June 1, 2006 and when the carrier did not have a franchise).

**YEAS: 5
NAYS: 0
ABSTAINED: 0**



Paul Thalhofer, Mayor
April 26, 2006

Date



Sarah Skroch, Office Support Specialist

Adopted: April 25, 2006