

ORDINANCE NO. 18-05

AN ORDINANCE PROVIDING A TELECOMMUNICATIONS SERVICES TAX.

The City of Astoria does ordain as follows:

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

Telecommunications service means any service provided for the purpose of voice, video or data transmission, including, but not limited to, local exchange service, access service, extended area service, call origination, interconnection, switching, transport, call termination and/or any other telecommunications service identified and authorized by the Federal Communications Commission (FCC) or the Public Utility Commission of Oregon. As used in this chapter, the term "telecommunications service" does not include:

- (a) Cable service as defined by 47 USC 522;
- (b) Open video system service as defined in 47 CFR 76;
- (c) Private communications system services provided without using the public rights-of-way;
- (d) Over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the FCC or any successor thereto; and
- (e) Direct-to-home satellite service within the meaning of section 602 of the Telecommunications Act.

"Gross Revenue" means any revenue received from telecommunications services within the City of Astoria less related net uncollectibles. Gross revenues includes revenues from the use, rental, or lease of operating facilities. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer, or revenue from joint pole use.

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 2. Privilege Tax. Every provider of telecommunication services within the city shall pay a privilege tax for the use of those streets, alleys, or highways, in an amount equal to seven percent (7%) of gross revenues.

Section 3. Exceptions and Deductions. Excepted and deducted from total gross income upon which the tax is computed are funds 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 imposed on the sale or distribution of property or service. No tax is required which would cause a violation of federal or state laws or when the provider is a party to a franchise agreement with the City that includes a franchise fee on telecommunications services.

Section 4. Effect of Federal and State Law. To the extent that federal or state law, limits the amount of fees which the City may impose on, or the compensation it may require from, an operator, nothing in this section shall require the payment of any greater amount, unless and until the federal or state limits are raised, or the franchise agreement expires or is otherwise terminated.

Section 5. Payment of Privilege Tax. Unless otherwise specified, the privilege tax described herein shall be paid to the City quarterly, and not later than forty-five (45) days after the end of each calendar quarter.

Each payment shall be accompanied by a statement showing the manner in which the fee was calculated, and shall be personally delivered or mailed to the city on or before the due date. If mailed, the postmark shall be considered the date of delivery.

For good cause, the city may extend for not to exceed one month, the time for making payment and filing the statement. Any person or operator to whom an extension is granted shall pay interest at the rate of 1.5% per month on the amount of fee due, without proration for a fraction of a month. If the statement is not filed and the fee and interest due is not paid by the end of the extension period, then the interest shall become part of the fee for computation of penalties prescribed in this subsection.

The payments hereunder are not in lieu of any other tax, fee or assessment except as as required by applicable law.

Section 6. Penalties and Interest. Each person or operator required to pay a privilege tax who has not been granted an extension of time for remittance of a fee due and who fails to remit any fee imposed under this section prior to delinquency shall pay a penalty of ten percent (10%) of the amount of the fee due in addition to the amount of the fee.

Any person or operator required to pay a privilege tax who has not been granted an extension of time for remittance of a fee due, and who fails to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first becomes delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the fee due plus the amount of the fee and the ten percent (10%) penalty first imposed.

If the city determines that the nonpayment of any remittance due under this section is due to fraud or intent to evade the provisions hereof, a penalty of twenty-five percent (25%) of the amount of the fee shall be added thereto in addition to the penalties stated in this subsection.

In addition to the penalties imposed, any person or operator required to pay a privilege tax who fails to remit any fee imposed by this section shall pay interest at the rate of 1.5% per month or fractions thereof, without proration for portions of a month, on the amount of the fee due, exclusive of penalties, from the date on which the remittance first becomes delinquent, until paid.

Every penalty imposed, and such interest as accrues under the provisions of this section, shall be merged with, and become a part of, the fee required to be paid.

Any person required to pay a penalty under this section may appeal to the city manager as provided in section 1.070 of this code.

Section 7. Sale or Transfer of Business. If ownership of a provider of telecommunications services 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 8. Audit. Every person providing telecommunications *service* in the City of Astoria shall be subject to the audit provisions described in the Astoria Code section 2.745.

PASSED by the City Council of the City of Astoria, Oregon this 21 day
of May, 2018



MAYOR

ATTEST:



CITY RECORDER