

**CITY OF SHERWOOD, OREGON
ORDINANCE 2002-1140**

**AN ORDINANCE ESTABLISHING A PRIVILEGE TAX TO BE LEVIED AND
COLLECTED FROM VERIZON NORTHWEST, INC., DECLARING AN
EMERGENCY, NEGATING ORDINANCE 2002-1131 AND ESTABLISHING AN
EFFECTIVE DATE**

WHEREAS, the City of Sherwood ("City") and Verizon Northwest, Inc., as successor in interest to GTE Northwest, Inc., have enjoyed a franchise relationship for many years; and

WHEREAS, Verizon Northwest, Inc. is currently operating within the City, its facilities are actually occupying City rights of way, and City residents are receiving local exchange access and other telecommunications services from Verizon Northwest, Inc.; and

WHEREAS, Verizon Northwest, Inc. does not currently have a franchise allowing its use and occupancy of the City's rights of way, the last franchise agreement granted by Ordinance No. 930 having expired on or about June 26, 2001; and

WHEREAS, the City approved Ordinance 2002-1131, same subject, on August 13, 2002 and in subsequent meetings between the City and Verizon Northwest both parties agreed that the timelines and terms of Ordinance 2002-1131 could not be met therefore the Ordinance was negated; and

WHEREAS, both Verizon Northwest, Inc., and its predecessor GTE Northwest, Inc. have continuously paid a franchise fee or privilege tax calculated to be 3.96% of defined gross revenues earned within the City for the privilege of occupying City rights of way pursuant to the concurrent authority granted to the City under state law, the City Charter and ordinances; and

WHEREAS, the City has issued permits and otherwise facilitated Verizon's need to construct, repair, and maintain its physical plant located within the rights of way throughout Verizon's occupancy of City rights of way; and

WHEREAS, Verizon Northwest, Inc. notified the City that Verizon is now unwilling to accept a franchise agreement pending the outcome of current litigation, but wishes to maintain its facilities in City rights of way and to apply for and receive as appropriate and authorized the necessary permits to continue its operations in the City and its use of City rights of way; and

WHEREAS, the City Council desires to continue its course of dealings with Verizon Northwest, Inc., with due regard for the protection of its citizens and the City rights of way, and it is the intent of the Council to levy and collect the full privilege tax authorized by state law; and

WHEREAS, ORS 221.515 authorizes the City to levy a privilege tax in the amount of up to seven percent (7%) of the gross revenues of a telecommunications carrier earned in the provision of telecommunications services within the City, for the use and occupancy of the City's rights of way; and

WHEREAS, the City and Verizon Northwest, Inc. have had an established practice with respect to right of way activities which was based on the expired franchise and which should be continued and formalized by this enactment of the City Council; and

WHEREAS, because the franchise agreement is expired, and it is necessary to clarify the City's authority to receive fair and reasonable compensation for the use and occupancy of its rights of way by Verizon throughout the period following expiration of the franchise and until further action of the Council, an emergency should be declared, and this ordinance should become effective concurrent with the expiration of Ordinance No. 930;

NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1. Privilege Tax Levied. A privilege tax is hereby levied in the amount of 3.96 percent (3.96%) of the gross revenues earned by Verizon Northwest, Inc. in the provision of telecommunications services within the City of Sherwood, consistent with the authority by the City's Charter, ordinances, and ORS 221.515 for the period from July 1, 2001 through December 31, 2002. From and after January 31, 2003, the amount of the privilege tax levied will be in the amount of seven percent (7%) of the gross revenues earned by Verizon Northwest, Inc. in the provision of telecommunications services within the City of Sherwood. Payment of the tax shall be made quarterly on or before February 15, May 15, August 15, and November 15 each year for the prior quarter ending December 31, March 31, June 30 and September 30. Any payment not so made shall bear interest at the rate of nine percent (9%) per annum until paid.

Section 2. Provisions Related to Right of Way Regulation.

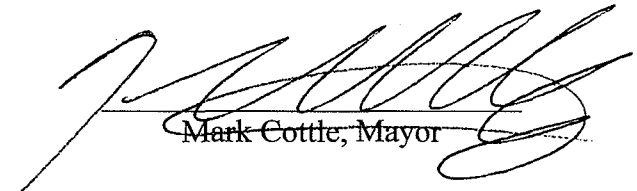
- (a) It shall be lawful for Verizon Northwest, Inc. to make all needful and necessary excavations in any of said streets, alleys, avenues, thoroughfares and public highways under the jurisdiction of the City of Sherwood. Work shall be done with the approval of, to the specifications of, and under permit from the City of Sherwood Engineering Department, which permits shall be obtained prior to the commencement of such work and shall be in the form specified by the City Engineer or designee.
- (b) Whenever Grantee shall disturb any of the streets, alleys, avenues, thoroughfares and public highways for the purposes aforesaid, it shall restore the same to good order and condition as soon as is practicable without unnecessary delay, and failing to do so, City shall have the right to fix a reasonable time within which such repairs and restoration shall be completed, and upon failure of such repairs and restoration being made by Grantee, City shall cause such repairs to be made at the expense of Grantee. The Grantee hereby agrees and covenants to indemnify and save harmless the City and the officers thereof against all damages, costs and expenses whatsoever to which it or they may be subjected in consequence of negligence of the Grantee, or its agents or servants, in any manner arising from the rights and privileges granted herein.
- (c) The City, by its properly constituted authorities, shall have the right to cause the Grantee to move the location of any pole, underground conduit or equipment belonging to Grantee whenever the relocation thereof shall be for public necessity, and the expense thereof shall be paid by Grantee. Whenever it shall be necessary for public necessity to remove any pole, underground conduit or equipment belonging to

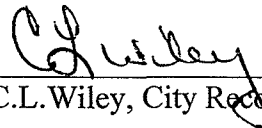
Grantee, or on which any wire or circuit of the Grantee shall be stretched or fastened, the Grantee shall, upon written notice from the City or its properly constituted authorities, meet with City representatives and agree in writing to a plan and date certain to remove such poles, underground conduit, equipment, wire or circuit, at Grantee's expense, and if Grantee fails, neglects or refuses to do so, the City, by its properly constituted authorities, may remove the same at the expense of Grantee.

- (d) Nothing in this Ordinance shall be construed in any way to prevent the proper authorities of the City from sewerage, grading, paving, repairing, altering or improving any of the streets, alleys, avenues, thoroughfares and public highways in or upon which the poles, wires, conductors, pipes or other apparatus may be placed, but all such work or improvement shall be done, if possible, so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes or other apparatus.
- (e) Any payment not made to the City pursuant to this paragraph within 30 days of the City's demand shall bear interest at the rate of nine percent (9%) per annum until paid.

Section 3. Emergency Declared; Effective date. Based on the findings above, an emergency is hereby declared, and this Ordinance shall take effect retroactively as of the expiration of Ordinance No. 930 on June 26, 2001, and shall continue in effect until repealed by the City Council.

Duly passed by the City Council this 10th day of December, 2002.


Mark Cottle, Mayor

ATTEST: 
C.L. Wiley, City Recorder

| | <u>Ayes</u> | <u>Nays</u> |
|-----------------------------|---------------|-------------|
| Heironimus | ✓ | _____ |
| Durrell | ✓ | _____ |
| Claus | <u>Absent</u> | _____ |
| Mays | ✓ | _____ |
| Fox | ✓ | _____ |
| Cottle | ✓ | _____ |
| 7 th seat vacant | _____ | _____ |