

**BEFORE THE CITY COUNCIL OF THE CITY OF OAKRIDGE
STATE OF OREGON, COUNTY OF LANE**

AN ORDINANCE AMENDING CHAPTER 117 OF THE OAKRIDGE MUNICIPAL CODE

ORDINANCE NO. 923

WHEREAS, the Charter of the City of Oakridge grants to the City all powers that the constitutions, statutes and common law of the United States and of the State of Oregon now or hereafter expressly or impliedly grant or allow; and

WHEREAS, among the powers granted to the City is the power to impose license requirements and charges. Such licenses may include charges for the privilege of conducting business within the City; and

WHEREAS, numerous utilities rely on the existence of the City to enable them to provide goods and services to citizens of the City, including, telephone, cable television, and other information and telecommunications services; and

WHEREAS, telecommunication carriers and cable providers seek to provide services which require, for their effective delivery, connection to, interaction with, or other use of facilities placed in the Public Ways; and

WHEREAS, the City desires to champion the ready availability of telecommunication and cable services for all its residential and commercial citizens by providing infrastructure and amenities that make Oakridge a better place to do business. The City is committed to authorizing the managed, private access and use of the Public Ways for telecommunications and cable services so long as such use is consistent with and does not unduly burden or interfere with the principal purpose of the Public Ways, which is to facilitate the free transit of Persons and goods in commerce; and

WHEREAS, the City holds the health, safety, quality of life and opportunities to prosper, as well as such physical assets as the Public Ways, in trust for all of its citizens and has a fiduciary responsibility to assure that any use of the City, and especially its Public Ways, are used in a manner that benefits all of the citizens and, where it is deemed appropriate, allow for the recovery of a fair and reasonable compensation for the use of the City as a place to do business; and

WHEREAS, the Oregon Supreme Court recently affirmed a city's right to charge fair and reasonable franchise fees based on a telecommunications or cable provider's use of the City rights of way and using a percentage of gross revenue calculation that includes a provider's revenues derived from all the services provided within the City; and

WHEREAS, many Telecommunications Providers use and/or occupy the public ways to provide their services and some Telecommunications Providers make little or no

use of the public ways. Telecommunications Providers who use and/or occupy the public ways prosper due to the City's publicly-owned assets and management of those assets. Telecommunications providers who make little or no use of the public ways prosper in large part due to the City amenities, regulations, and infrastructure which make possible the critical mass of residents and businesses within the City; and

WHEREAS, regardless of whether they occupy or use the public ways, telecommunications and cable providers who make franchise or fee payments under this ordinance using a "percentage of gross revenue" methodology based on all services provided within the City are compensating the City fairly for their private use and enjoyment of public assets and resources. Further, telecommunications and cable providers who make franchise or license fee payments under this ordinance using a "cost per linear" foot methodology are also compensating the City fairly for their private use and enjoyment of public assets and resources; and

WHEREAS, if Telecommunications or Cable Providers make "percentage of gross revenue" payments which include only portion of the services they provide within the City, then they are not compensating the City fairly for their private use and enjoyment of public assets and resources. Such Telecommunications and Cable Providers may derive an unfair advantage and their failure to compensate may place similarly-situated telecommunications providers in an inferior and unfair competitive position. Unfair competition does not foster the City's desired technological and business growth. Among the purposes of this chapter is not only to ensure that the public is properly compensated for the private use and enjoyment of City assets and resources, but also to ensure that all similarly-situated telecommunications providers are treated similarly and fairly in order to foster technological growth and innovation.

THE CITY OF OAKRIDGE DOES ORDAIN AS FOLLOWS:

Section 1. The Oakridge Municipal Code, Chapter 117, is hereby amended as shown in the attached Exhibit A, which by this reference is incorporated herein.

Section 2. The City Recorder is authorized and directed to take the necessary clerical and administrative actions to insure that the amendments on Exhibit A are properly incorporated into the municipal code.

Section 3. This ordinance shall become effective thirty days after final passage and its signature by the Mayor.

READ BY TITLE ONLY, PASSED AND ADOPTED by a vote of the Oakridge City Council this 6th Day of April, 2017.

PASSED BY THE COUNCIL of the City of Oakridge this 6th Day of April, 2017.

APPROVED AND SIGNED BY THE MAYOR of the City of Oakridge this 6th Day of April, 2017.

Signed:



James B. Coey

Attest:



Susan M. LaDuke, City Recorder

TELECOMMUNICATIONS LICENSE**§ 117.00 Findings**

(1) The Oakridge City Charter grants to the city all powers that the constitutions, statutes and common law of the United States and of the state of Oregon now or hereafter expressly or impliedly grant or allow, expressly including the city's home rule authority.

(2) Among the powers granted to the city is the power to impose license requirements and charges. Such licenses may include charges for the privilege of conducting business within the city and for the use of the city rights of way.

(3) Numerous utilities rely on the existence of the city to enable them to provide goods and services to citizens of the city, including, without limitation, telephone, cable television, and other information and telecommunications services.

(4) Telecommunication providers also seek to provide services which require, for their effective delivery, connection to, interaction with, or other use of facilities placed in the public ways by themselves and others.

(5) The city desires to facilitate making telecommunication services available to citizens by itself working to provide amenities that make Oakridge a better place to do business. For most utilities this includes, but is not limited to, the city permitting use of the public ways for the support of utility services, so long as such use is consistent with and does not unduly burden or interfere with the principal purpose of the public ways, which is to facilitate the free movement of persons and goods in commerce.

(6) The city holds the health, safety, quality of life and opportunities to prosper, as well as such physical assets as the public ways, in trust for all of its citizens, and has a responsibility to assure that any use of the city amenities, and

especially its public ways, are used in a manner that benefits all of the citizens. Where it is deemed appropriate, the city should provide for the recovery of a fair and reasonable compensation for the use of the city and the city's assets for the purpose of doing business.

(7) Many telecommunications providers use and/or occupy the public ways to provide their services. Some telecommunications providers make little or no use of the public ways. Telecommunications providers who use and/or occupy the public ways prosper due to the City's publicly-owned assets and management of those assets. Telecommunications providers who make little or no use of the public ways still prosper in large part due to the City amenities, regulations, and infrastructure which make possible the critical mass of residents and businesses within the City.

(8) Regardless of whether they occupy or use the public ways, telecommunications providers who make franchise fee or utility license payments under this ordinance using a "percentage of gross revenue" methodology based on all telecommunications services provided within the City are compensating the City fairly for their private use and enjoyment of public assets and resources. Further, telecommunications providers who make franchise fee or utility license payments under this ordinance using a "cost per linear" foot methodology are also compensating the City fairly for their private use and enjoyment of public assets and resources.

(9) If telecommunications providers fail to make franchise fee or utility license fee payments as required under this ordinance or make "percentage of gross revenue" payments which include only portion of the telecommunications services they provide within the City, then such providers are not compensating the City fairly for their private use and enjoyment of public assets and resources. Such telecommunications

providers derive an unfair advantage which places similarly-situated telecommunications providers in an inferior and unfair competitive position. Unfair competition does not foster the City's desired technological and business growth. One of the purposes of this chapter is not only to ensure that the public is properly compensated for the private use and enjoyment of City assets and resources, but also to ensure that all similarly-situated telecommunications providers are treated similarly and fairly in order to foster technological growth and innovation. (Ord. 516 § 1, 2014; Ord. 482 § 1, 2008)

§ 117.01 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AFFILIATE. A person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

CABLE ACTS. The Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, as amended by The Telecommunications Act of 1996 and as hereafter amended.

CABLE OPERATOR. An entity providing or offering to provide "cable service" within the city as that term is defined in the Cable Acts.

CABLE SERVICE. Shall have the same meaning as defined in the Cable Acts.

EXCESS CAPACITY. The volume or capacity in any existing or future duct, conduit, maintenance hole, handhole or other utility facility within the public way that is or will be available for use for additional

telecommunications facilities, including that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Public Utility Commission, to allow its use by a telecommunications carrier for a pole attachment.

FCC or FEDERAL COMMUNICATIONS COMMISSION. The Federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

LICENSEE. Any entity granted a license hereunder.

OVERHEAD FACILITIES. Utility poles, utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

PERSON. Any individual or entity engaging in activities regulated by this chapter.

PUBLIC STREET. Any highway, street, alley or other public right-of-way dedicated for motor vehicle travel under the jurisdiction and control of the city.

PUBLIC UTILITY EASEMENT. Any easement granted to the city, acquired, established, dedicated or devoted for access for public utility facilities for construction, operations, and maintenance purposes.

PUBLIC WAY or Right of Way. Includes all public streets owned by the city and public utility easements granted to the city, as those terms are defined herein, but only to the extent of the city's right, title, interest or authority to grant permission to

occupy and use such streets and easements.

ADMINISTRATOR. The City Administrator of the city or designee.

TELECOMMUNICATIONS CARRIER.

Includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the city, used or to be used for the purpose of offering telecommunications service.

TELECOMMUNICATIONS FACILITIES OR SYSTEM. The plant, equipment and property including, but not limited to, cables, wires, conduits, ducts, pedestals, antennae, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications service.

TELECOMMUNICATIONS PROVIDER. Includes every person who provides telecommunications service over telecommunications facilities.

TELECOMMUNICATIONS SERVICE. The providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming or any other information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

UNDERGROUND FACILITIES. Utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

USABLE SPACE. The total distance between the top of a utility pole and the

lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the Public Utility Commission.

UTILITY. Any telecommunications utility as defined in ORS 759.005(1), and telecommunications carrier, telecommunications provider or other entity providing telecommunications services.

UTILITY FACILITIES. The plant, equipment and property including, but not limited to, the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the public ways of the city and used or to be used for the purpose of providing utility services. The term shall include all such things owned by the utility and all such things as the utility shall have a property interest in, including things held by the utility or on its behalf under a lease, rental agreement or indefeasible right of use for a term of years.

UTILITY SERVICES. All services provided by a utility to customers located within the city limits or provided to customers wherever located using facilities physically located within the city limits. (Ord. 877, passed 12-16-04)

§ 117.02 TELECOMMUNICATIONS UTILITY LICENSE REQUIRED.

A telecommunications utility license shall be required of any utility who desires to provide telecommunications service to persons in the city or to persons or areas outside the city using facilities located in the city or using the city public way. No utility shall provide services within the city nor shall such utility provide services outside the city using facilities located within the city or using the city public way unless licensed as provided herein. Any violation of the

provisions of this chapter shall be a misdemeanor punishable in accordance with city ordinances. Utilities who utilize facilities of another licensed utility for the distribution of their services shall be required to have a separate license. The purpose of licensing under this chapter is to:

- (A) Provide the city with accurate and current information concerning the utilities who offer telecommunications services within the city, or that own or operate utility facilities within the city;
- (B) Assist the city in enforcement of this chapter and in managing and protecting the public ways;
- (C) Assist the city in the collection and enforcement of any municipal, franchise fees, license, permit or other fees or charges that may be due the city;
- (D) Assist the city in monitoring compliance with local and, to the extent authorized by law, with state and federal laws.
(Ord. 877, passed 12-16-04)

§ 117.03 LICENSE APPLICATION.

Any utility that is required to have a telecommunications utility license shall file an application, using the form provided for such purpose, with the city, which shall include the following information:

- (A) The identity of the license applicant, including all affiliates of the applicant.
- (B) A description of the telecommunications services that are or will be offered or provided by licensee, the location of any customers or recipients of the services, and a map and description depicting the proposed use or occupation of the right of way.

(C) Information to establish that the applicant has obtained or has applied for all other governmental approvals and permits to construct and operate the facilities and to offer or provide the services. Such approvals include, without limitation, any land use decisions. In the event any other required government approval is not obtained any license granted hereunder shall be subject to modification to reflect the absence of such approval upon the city's discovery of, or notice of the absence of required information.

(D) Identification of any circumstances affecting the use of the public way, and a description of efforts to mitigate or lessen any damage to the public way.

(E) All fees, deposits or charges required pursuant to this chapter.
(Ord. 877, passed 12-16-04)

§ 117.04 DETERMINATION BY CITY.

(A) Within 120 days after receiving a complete application under § 117.32 hereof, the city shall, if the application conforms with the requirements of law, issue the license.

(B) If the application is denied, the denial shall be in writing and state the reasons for denial.
(Ord. 877, passed 12-16-04)

§ 117.05 EFFECT OF UTILITY LICENSE.

(A) The license granted hereunder shall authorize and permit the licensee, subject to other provisions of city ordinances and other applicable provisions of state or federal law, to operate in the city and provide the telecommunications services covered by the license. In addition to a grant of authority to operate within the city, and subject to other requirements of law regarding the activities

involved in the placement of facilities in the public ways of the city, the license shall authorize the licensee to maintain facilities in, and occupy, the public ways of the city for so long as the licensee shall comply with the provisions of this code, and continue to hold any and all licenses and permits required by state or federal law for the provision of such services as covered by this license; provided, however, that all work, construction, placement or operation of such facilities shall be in compliance with the provisions of the city code, including the Standard Construction Specification. Nothing in such license shall authorize the licensee to use the facilities or property of another, which use, if any, shall be subject to agreement with the owner of such facility or property and any applicable provisions of law. Nothing in such license shall operate or be construed as an approval of such business or a regulation of the practices of such business.

(B) The city reserves the right, in every event, without limitation, to:

(1) Construct, install, maintain and operate any public improvement, work or facility in, on, over or under the public ways;

(2) Perform or authorize or direct the performance of any work that the city may find desirable or convenient in, on, over or under any public way; or

(3) Vacate, alter, or close any public way; provided, however, that no vacation shall obligate a utility to remove or abandon any facility located within such public way; or

(4) Require, in the public interest, the removal or relocation, temporarily or permanently, of facilities maintained by the utility in the public ways of the city. The utility shall remove and relocate such

facilities within 120 days after receiving notice in writing to do so from the city. Such removal or relocation shall be without cost or expense to the city. When such removal or relocation is required for the convenience or benefit of any private person, or non-governmental agency or instrumentality, the utility may be entitled to reimbursement for the reasonable cost thereof from such person, agency or instrumentality, to the extent permitted by law.

(C) Whenever the city shall perform, or cause or permit to be performed, any work in the public way or the vicinity of the public way where such work may disturb or interfere with a utility's facilities, the city shall notify, or shall require its permittee to notify, in writing, the utility sufficiently in advance of such contemplated work to enable the utility to take such measures, including removal or relocation of such facilities, as may be deemed necessary to protect such facilities, at its own expense.

(D) The possession of a utility license from the city shall not provide the licensee with any right or privilege to alter or avoid any charge or cost allocation for the relocation of utility facilities, nor shall a license provide a different or greater claim for compensation than otherwise apportioned by law or agreement.
(Ord. 877, passed 12-16-04)

§ 117.06 NONEXCLUSIVE GRANT.

No license granted under this chapter shall confer any exclusive right, privilege, license or franchise to conduct business in the city, or to occupy or use the public ways of the city for delivery of utility services or any other purposes.
(Ord. 877, passed 12-16-04)

§ 117.07 RIGHTS GRANTED; CONFLICTS AND SEVERABILITY.

No license granted under this chapter shall convey any right, title or interest in the public ways, but shall be deemed a license only to conduct authorized activities within the city to offer telecommunications services and, where appropriate, to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no license shall be construed as any warranty of title.

Utilities shall comply with all applicable federal and state laws, as well as all city ordinances, resolutions, rules and regulations. To the extent that this ordinance is not in conflict with and can be implemented consistently with existing ordinances and unexpired franchise agreements pertaining to the utility services provided and/or use and occupation of the right of way, this ordinance shall apply to all existing ordinances and unexpired franchise agreements pertaining to the utility services provided and/or their use of the right of way. In the event that an express conflict arises or is discovered between the terms or requirements of this chapter and the terms or requirements of any other ordinance adopted by the city of Oakridge, the most recently adopted or amended ordinance shall prevail. In the event of an express conflict between this ordinance and the terms of an unexpired franchise agreement adopted after the effective date of this ordinance, the terms of this ordinance shall prevail.

If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this ordinance is for any reason held by a court of competent jurisdiction to be invalid or unenforceable, or is held to be superseded by state or federal legislation, rules, regulations or decision, the remainder of the ordinance shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding

shall not affect the validity of the remaining portions of the ordinance. Each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this ordinance shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or state laws, rules or regulations expressly preempt a provision or limit the enforceability of a provision of this ordinance, then the provision shall be read to be preempted or limited only to the extent required by law. In the event such federal or State law, rule, or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding, without the requirement of further action on the part of the City.

(Ord. 877, passed 12-16-04)

§ 117.08 TERM OF GRANT.

Unless otherwise specified in a license or franchise agreement, a telecommunications license granted hereunder shall be in effect for a term of five years.

(Ord. 877, passed 12-16-04)

§ 117.09 COORDINATION OF ACTIVITIES.

Wherever possible, all holders of a license are directed to coordinate their activities affecting the public ways and shall be obliged to participate in coordination meetings to be held by the city for the purpose of facilitating such cooperation and coordination.

(Ord. 877, passed 12-16-04)

§ 117.10 AMENDMENT OF LICENSE.

A new license application and grant shall be required of any utility that desires to extend additional or different services in the city which are not included in a license previously granted under this chapter. (Ord. 877, passed 12-16-04)

§ 117.11 RENEWAL APPLICATIONS.

A licensee that desires to renew its license under this chapter shall, not more than 180 days nor less than 90 days before expiration of the current license, file an application with the city for renewal of its license which shall include the information required for initial licensing. (Ord. 877, passed 12-16-04)

§ 117.12 RENEWAL DETERMINATIONS.

(A) Within 90 days after receiving a complete application under § 117.11 hereof, the city shall issue a written determination applying the following standards, as applicable, and, if the application conforms with the requirements of law, grant the application:

- (1) Demonstrated legal qualifications, financial and technical ability of the applicant;
- (2) Compliance with requirements of applicable state and federal laws and regulations; and
- (3) The applicant's compliance with the requirements of this chapter and other city ordinances.

(B) If the renewal application is denied, the written determination shall include the reasons for non-renewal. (Ord. 877, passed 12-16-04)

§ 117.13 OBLIGATION TO CURE AS CONDITION OF RENEWAL.

No license shall be renewed until any existing violations or defaults in the licensee's performance of the requirements of this chapter have been cured or a plan detailing the corrective action to be taken by the licensee has been approved by the city. (Ord. 877, passed 12-16-04)

UTILITY LICENSE; FEES AND COMPENSATION

§ 117.30 PURPOSE.

It is the purpose of this subchapter to provide for the payment and recovery of all direct and indirect costs and expenses of the city related to the enforcement and administration of this chapter and other city practices and policies, such as the construction and maintenance of the right of way, that make possible the favorable conditions that allow licensees to operate and prosper by providing utility services. (Ord. 877, passed 12-16-04)

§ 117.31 APPLICATION AND REVIEW FEE.

(A) Any applicant for a license, including a renewal or amendment of an existing license, pursuant to §§ 117.01 through 117.13, shall pay a fee fixed by resolution of the Council.

(B) The application and review fee shall be deposited with the city as part of the application filed pursuant to §§ 117.01 through 117.13.

(C) An applicant whose license or franchise application has been withdrawn, abandoned or denied within 60 days of its application and review fee written request shall be refunded the balance of its deposit under this section, less:

(1) The non-refundable portion of the application and review fee, as fixed by resolution of the Council, or

(2) All ascertainable costs and expenses incurred by the city in connection with the application, whichever is greater.

(D) The council may elect to establish a graduated scale of application fees, reflecting the relative scope of utility activities within the city. Any applicant seeking to qualify for a reduced fee shall provide the necessary documentation at the time of application showing eligibility for any fee reduction. The decision of the City Administrator regarding the applicability of a fee reduction shall be final.

(Ord. 877, passed 12-16-04)

§ 117.32 OTHER CITY COSTS.

In addition to the application and review fee, all license or franchise grantees shall, within 30 days after written demand therefore, reimburse the city for all direct and indirect costs and expenses incurred by the city in connection with any issuance, modification, amendment, renewal or transfer of the license or franchise or any license or franchise agreement to the extent permitted by law.

(Ord. 877, passed 12-16-04)

§ 117.33 COMPENSATION FOR CITY PROPERTY.

If the right is granted, by lease, license, franchise or other manner, to use and occupy city property other than the public ways for the installation of facilities, the compensation to be paid shall be fixed by the city and shall be separate and distinct from any fees and taxes imposed herein.

(Ord. 877, passed 12-16-04)

§ 117.34 REGULATORY FEES AND COMPENSATION NOT A TAX.

The regulatory fees and costs provided for in this chapter, and any compensation charged and paid for city property provided for in § 117.33, are separate from, and additional to, any and all federal, state, local and city taxes as may be levied, imposed or due from a utility, its customers or subscribers, or on account of the lease, sale, delivery or transmission of utility services.

(Ord. 877, passed 12-16-04)

§ 117.35 PENALTIES AND INTEREST FOR LATE PAYMENT.

If any fee provided for herein shall not be timely paid, a penalty in the amount of 10% of such fee shall be assessed and due as of the date the underlying fee was due. Interest on fees and penalties shall accrue at the rate of 1.5% per month, commencing with the fifteenth day after the fee or penalty shall be due.

(Ord. 877, passed 12-16-04)

**TELECOMMUNICATIONS UTILITY
LICENSE FEE**

**§ 117.50 TELECOMMUNICATIONS
PROVIDER FEE IMPOSED.**

There is hereby imposed a fee in the amount of 5% of gross revenue, as that term is defined in this Section 117, upon the privilege of conducting a utility business and providing telecommunications services required to be licensed under § 117.02, upon any telecommunications provider required to be licensed, as defined herein, in consideration of the city's grant of authority to conduct such business and to take advantage of the business conditions provided by the city, including the use of public assets, such as the rights of way, for a private business purpose.. (Ord. 877, passed 12-16-04)

§ 117.51 MINIMUM FEE.

In no event shall the fee due for any calendar year be less than:

(A) In the case of a telecommunications provider providing services within the city, \$500.

(B) In the case of a telecommunications provider not providing services within the city, the greater of the product of the number of linear feet of public ways occupied by the facilities of the provider and \$3 per linear foot, or \$500.

(C) Licensees who can show that their gross revenues for services provided within the city are less than \$10,000 per year may apply for an exemption from the payment of the license fee. Where the Administrator can determine from the evidence provided that the applicant for an exemption is providing less than \$10,000 worth of services within the city, and where the

evidence shows that the applicant is receiving a concomitantly small advantage derived from doing business within the city, and where the administrative costs to the city of processing the license fee payments would exceed the benefit to the city, the Administrator may grant an exemption. Such an exemption shall be good only for the calendar year granted. (Ord. 877, passed 12-16-04)

§ 117.52 STATEMENT

(A) For purposes of calculating fees due under this section, every telecommunications provider subject to licensing and fees shall pay such fee on the basis of a calendar year, and shall file, quarterly, before the 45th day following the end of a calendar quarter, a statement certified by an officer of the provider showing the amount of fee due and accompanied by the amount due.

(B) Such statement shall show the amount of gross revenue of the utility within the city for the period covered by the payment computed on the basis set out in this section, and shall show any offsets, deductions or credits against the revenue or the amount of fee due. The compensation for the period covered by the statement shall be computed on the basis of the gross revenue so reported. If the licensee fails to pay the entire amount of compensation due the city through error or otherwise, the difference due the city shall be paid by the licensee within 15 days from discovery of the error or determination of the correct amount, with interest at the rate of 10% per annum, compounded monthly. Any overpayment to the city through error or otherwise shall be offset against the next payment due from the licensee.

(C) In the event a licensee files a statement claiming the minimum fee

provided by § 117.51 shall be due, the licensee shall also file a statement as provided in division (B) hereof and shall, if claiming under § 117.51(B), file a report duly certified by an engineer, licensed to practice within the State of Oregon, setting forth the calculation of the number of linear feet of public way occupied by the licensee. After the first such report, the licensee claiming under § 117.51(B) may substitute for the engineer's report a statement from a person knowledgeable about such matters, attesting that no additional installations have been made, if such a statement can be made.

(D) The city may audit any statement filed by the licensee and require the licensee to submit such information as shall reasonably be required to establish the accuracy of any payment of fee or statement documenting the amount of fee due. In the event such audit shall disclose a discrepancy in favor of the city in excess of 5% of the amount paid, there is hereby imposed a penalty in the amount of 10% of the difference between the amount paid and the amount found, upon audit, to be due.

(E) Acceptance by the city of any payment due under this section shall not be deemed to be a waiver by the city of any rights to conduct such audit, nor shall the acceptance by the city of any such payments preclude the city from later establishing that a larger amount was actually due, or from collecting any balance due to the city.

(Ord. 877, passed 12-16-04)

§ 117.53 GROSS REVENUE.

For purposes of this ordinance, gross revenue shall mean any and all revenue, of any kind, nature or form, without deduction for expense; all inflows or enhancements of assets or settlements of its liabilities (or a

combination of both) of whatsoever kind and nature derived by the licensee and any affiliates, subsidiaries or parent of the licensee on account of goods or services from the licensee's ongoing operations delivered within the city. Gross revenue shall include any and all subsidies, discounts, rebates or other considerations or forbearances by the licensee associated with the delivery of such goods and services within the city. In determining gross revenues for the calculation of fees, the city shall consider mobile telecommunications services to occur within the city if they are used by a customer whose place of primary use is within the city. As used in this section, "place of primary use" means the residential street address or the primary business street address of the customer. The city shall apply this provision consistently with the Mobile Telecommunications Sourcing Act, 4 U.S.C. 116 to 126.

(Ord. 877, passed 12-16-04)

§ 117.54 EXEMPTIONS AND CREDITS.

If any licensee is a party to a franchise, public way use agreement, or other contract with the city which requires the payment of a fee for the use of the public ways of the city, any payments made to the city under such agreement during the filing year shall be credited against any fee due hereunder for that same year to the extent the revenue upon which such franchise, public way use agreement or contract fees are based is subject to the fees provided herein. Revenues not included in the franchise or other agreement but otherwise earned because of telecommunications services provided within the city or use of the public ways shall remain subject to the license fee.

(A) If a licensee asserts that any other provisions of local, state or federal law imposes a limit upon the revenue subject to

taxation that can be imposed in connection with the use of public ways, such licensee shall file a statement which:

(1) Itemizes the gross revenue subject to taxation under this chapter; and

(2) Itemizes the portion of such revenue that is subject to the limitation claimed to exist under other provisions of local, state or federal law.

(B) If the city agrees that the limitation applies to the city's license fee, the liability of a licensee claiming a limitation shall be the sum of:

(1) The fee due hereunder on that portion of the licensee's revenue not subject to the limitation; and

(2) On the portion of revenue subject to a limitation, the lesser of:

(a) The fee due under this chapter; or

(b) The amounts due under the other cited provision of local, state or federal ordinances or statutes.

(C) At the city's discretion, a licensed utility may be allowed, as a credit against amounts due hereunder, the reasonable value of any and all services rendered to or goods provided to the city without fee, if any, during the preceding calendar year. (Ord. 877, passed 12-16-04)

§ 117.55 PENALTIES AND INTEREST.

(A) If any payment due hereunder shall not be timely made, there is imposed a penalty in the amount of 10% of the amount due.

(B) Interest on any payment not timely made, and upon all penalties imposed, shall accrue at the annual rate of 9%, compounded daily, for each day beyond the due date, until the date paid. (Ord. 877, passed 12-16-04)

§ 117.56 LIEN.

(A) The fee imposed by § 117.50, together with the interest and penalties provided by § 117.55 and the filing fees paid to the Department of Records of Lane County, Oregon, and auditing or other costs which may be incurred when the fee becomes delinquent under § 117.52 shall be, and until paid remain, a lien from the date of its recording with the Department of Records of Lane County, Oregon, and superior to all subsequent recorded liens on all real property or tangible personal property of the licensee located within the city and may be foreclosed on and sold as necessary to discharge the lien, if the lien has been so recorded. Notice of lien may be issued by the Administrator whenever the operator is in default in the payment of the fee, interest and penalty, and shall be recorded with the Department of Records and a copy sent to the delinquent licensee. The personal property subject to the lien and seized by any deputy of the Administrator may be sold by the Administrator at public auction after 10-days' notice thereof published in a newspaper in the city.

(B) Any such lien as shown on the records of the Department of Records shall, upon the payment of the fees, penalty and interest for which the lien has been imposed, be released by the Administrator when their full amount has been paid to the city. The person making the payment shall receive a receipt therefore stating that the full amount of the fees, penalties, and interest have been paid and that the lien is

thereby released and the record of lien
satisfied.
(Ord. 877, passed 12-16-04)