

**CITY OF FLORENCE  
RESOLUTION NO. 5, SERIES 2017**

**A RESOLUTION AMENDING THE CITY OF FLORENCE FEE SCHEDULE AND SETTING  
RIGHT OF WAY USE FEES FOR ALL COMMUNICATIONS PROVIDERS OCCUPYING OR  
OPERATING WITHIN THE CITY'S PUBLIC RIGHT OF WAY**

RECITALS:

1. Pursuant the Florence Ordinance No. 5, Series 2017, Florence City Code Title 8, Chapter 7: Right of Way Management (referred to herein as the Right of Way Management Code Section), and the City's home rule authority under the Oregon Constitution Article XI, Section 2, the City Council has the authority to establish fees for all Communications Providers using or occupying City right of ways to provide Communications Services within the City.
2. Pursuant to the Florence Municipal Code and the City's home rule authority under the Oregon Constitution Article XI, Section 2, the City Council has the authority to set registration fees or application fees for all such Providers.
3. It is fair and just to ask users or occupiers of City's publicly-owned and financed Rights of Ways to compensate the City for the private, for-profit use of a valuable public asset which is essential to transit throughout our City.
4. The City Council desires to establish non-discriminatory, generally-applicable, fair Right of Way Use Fees and Franchise Fees which are consistent with federal and state law for the purpose of protecting the health safety and welfare of its citizens and managing important City infrastructure.
5. The Cable Communications Policy Act of 1984 (47 USC 521 et seq) authorizes City's to impose a Franchise Fee on Cable Providers for the use and occupation of the public right of way.
6. The Telecommunications Act of 1996 (47 USC 151 et seq) authorizes City's to impose a Franchise Fee on Telecommunication Carriers for the use and occupation of the public right of way.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF FLORENCE RESOLVES AS FOLLOWS:

1. The City Council hereby sets the Right of Way Use Fee and Franchise Fee for provide Cable Service Providers occupying the City rights of way and providing Cable Services within the City at five percent (5%) of the Provider's Gross Revenues derived from the provision of Cable Services within the City.
2. The City Council hereby sets the Right of Way Use Fee and Franchise Fee for all Communications Service Providers who occupy the City rights of way to provide Communications Services other than Cable Service within the City at 5% of the Provider's Gross Revenues derived from the provision of Communications Services other than Cable Services within the City.

3. As used herein, Gross Revenues shall mean any revenue derived in any way by the Provider from the operation of their Facilities to provide Communications Services, as that term is defined in City Code Title 8, Chapter 7: Right of Way Management Code Section, in the City including, but not limited to: amounts for premium cable services, advertising, home shopping channels, revenue-sharing arrangements or use or rental agreements, installation and all leased-access payments to Grantee. However, that "Gross Revenues" shall not include:
  - a. Any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, any state or federal administrative fees or sales or utility taxes;
  - b. Uncollectible bad debt;
  - c. Refunds or deposits paid to subscribers; and
  - d. Other applicable exclusions available under applicable State or federal statutes.
4. The City Council hereby delegates to the City Manager or his or her designee the authority to establish fair and reasonable rules to implement this Title 8, Chapter 7: Right of Way Management Code Section, including but not limited to:
  - a. Rules regarding the establishment of reasonable pole attachment fees; and
  - b. Rules regarding when the City will deem a Provider's Franchise Agreement to be "expired" for the purposes of implementing the Right of Way Management Code Section.
5. The City Council hereby sets the Registration Fee for Communications, Providers at \$200.
6. The City Council hereby sets a Franchise Application Review Fee for Communications Providers at \$200.
7. The City Council delegates to the City Manager or his or her designee the authority to develop and adopt reasonable administrative rules for the purpose of fairly and impartially implementing the City's Right of Way Management Code Section in compliance with the Florence Municipal Code.


ADOPTION:

This Resolutions is passed and adopted on the 20<sup>th</sup> day of March, 2017.



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Joe Henry, Mayor

Attest:



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Kelli Weese, City Recorder