

ORDINANCE NO. 00-121012

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3 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
4 OF NORTH LAUDERDALE, FLORIDA, ASSESSING A
5 FEE ON TELECOMMUNICATIONS COMPANIES THAT
6 OCCUPY MUNICIPAL RIGHTS-OF-WAY FOR
7 TELECOMMUNICATIONS FACILITIES; PROVIDING
8 FOR WHEN PAYMENTS ARE DUE; PROVIDING FOR
9 INTEREST; PROVIDING FOR REVIEW OF RECORDS;
10 PROVIDING A SAVINGS CLAUSE; PROVIDING FOR
11 CODIFICATION; PROVIDING FOR SEVERABILITY;
12 PROVIDING FOR CONFLICTS; AND PROVIDING FOR
13 AN EFFECTIVE DATE.
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15
16 WHEREAS, Section 337.401, Florida Statutes (2000), references fees or other
17 consideration which municipalities may require from telecommunications companies to
18 occupy municipal rights-of-way for telecommunications facilities; and

19 WHEREAS, it is the City's intent to establish fees for occupation of the City's
20 rights-of-way for telecommunications facilities of telecommunications companies not
21 otherwise paying a fee to the City or not having entered into an agreement with the City for
22 occupation of the City's rights-of-way; and

23 WHEREAS, it is the City's intention that any existing telecommunications
24 company paying fees for the occupation or having entered into an agreement for payment
25 of fees for the occupation of the City's rights-of-way for telecommunications facilities as of
26 the effective date of this Ordinance shall continue to pay fees to the City as the
27 telecommunications company has been paying them, or pursuant to the existing Agreement
28 between the company and the City and that any new telecommunications company
29 occupying the City's rights-of-way for telecommunications facilities pay the fees for
30 occupation set forth in this Ordinance.
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NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH LAUDERDALE, FLORIDA, THAT:

Section 1: Recitals. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2: Purpose and application. The purpose of this Ordinance is to establish fees for occupation of the City's rights-of-way for telecommunications facilities of telecommunications companies not otherwise paying a fee to the City or not otherwise having an agreement with the City for occupation of the City's rights-of-way. Any telecommunications company paying fees or having an existing agreement with the City for the occupation of the City's rights-of-way for telecommunications facilities as of the effective date of this Ordinance shall continue to pay fees to the City as the company has been paying them or pursuant to the existing Agreement.

Section 3: The term "telecommunications company," as used in this Ordinance, shall have the meaning set forth in Section 364.02(12), Florida Statutes (2000).

Section 4: The fees imposed pursuant to this Ordinance shall apply to all telecommunications companies occupying the City's rights-of-way for telecommunications facilities and not otherwise paying a fee to the City or not under an existing agreement for occupation of the City's rights-of-way.

Section 5: The fees imposed pursuant to this Ordinance are a fee and not a tax as specified in Section 337.401, Florida Statutes (2000); consequently, (1) the payments to be made pursuant to this Ordinance shall not be deemed to be in the nature of a tax; (2) such payments shall be in addition to any and all taxes of a general applicability; and (3) the fee specified herein is consideration for occupation of the City's rights-of-way, including all public easements, for the purpose of erecting, constructing and maintaining telecommunications systems.

Section 6: Fee for telecommunications company occupation of rights-of-way.

(a) (i) Any telecommunications company providing local telephone service, as defined in Section 203.012(3), Florida Statutes (2000), in the City and that is occupying municipal streets or rights-of-way within the corporate limits of the City with poles, wires or other fixtures shall pay to the City a fee in the amount of one percent (1%) of the gross receipts on recurring local service revenues for services provided within the corporate limits of the City by such telecommunications company. Included within the fee are all taxes, licenses, fees, in-kind contributions accepted pursuant to Section 337.401, Florida Statutes (2000), and other impositions except ad valorem taxes and amounts for assessments for special benefits, such as sidewalks, street pavings, and similar improvements, and occupational license taxes levied or imposed by the City upon the telecommunications company.

(ii) In the event that a telecommunications company which provides telecommunications services defined as toll services in Section 203.012 (7), Florida Statutes (2000), occupies the City's rights-of-way, the telecommunications company shall pay to the City annually Five Hundred Dollars (\$500) per linear mile, which amount is prorated for any portion thereof, for any cable, fiber optic, or other pathway that makes physical use of the City's rights-of-way. Such annual fee shall be prorated to reflect the expiration date of this Ordinance and shall be payable annually, in advance. If a telecommunications company that is required to pay a fee pursuant to this subparagraph (a) (ii) increases the amount of its facilities occupying the City's rights-of-way after such advance payment has been made, but prior to the expiration date of this Ordinance, the fees due for the additional facilities shall be prorated and paid in full at the time the facilities are installed in the City's rights-of-way.

The fee or other consideration imposed pursuant to this subsection (ii) shall not apply in any manner to any telecommunications company which provides local telephone service as defined in Section 203.012(3), Florida Statutes (2000), for any services provided by such telecommunications company.

(b) The fees provided for in subsection (a)(i) shall be paid by the telecommunications company to the City in quarterly installment(s). The installment payment(s) shall be based upon such gross receipts on recurring local service revenues for the immediately preceding installment period or portion thereof after the effective date of this Ordinance, and shall be made within 30 calendar days following the end of the period. Past due payments or underpayments shall bear interest accrued from the last day of the quarter for which the payment was due at the rate of 18% per annum from the first day after the payment period until paid to the City. The company shall reimburse the City for any actual and reasonable out-of-pocket expenses associated with collecting any sums it is required to remit to the City. Payments shall include a statement as to how the fee amount was determined and the statement shall be certified by the telecommunications company's chief financial officer or other duly authorized representative of the company.

Section 7: If the City wishes to verify the payments due to the City under this section, the telecommunications company shall permit the City or a designated representative of the City, upon reasonable advance written notice, and during normal business hours at the location of the telecommunications company where such records are maintained in the City, at another location satisfactory to the City, or elsewhere pursuant to (i) or (ii) below, to review or audit the telecommunications company's billing and payment records kept in the ordinary course of business upon which the payments were based. If a telecommunications company's records are not maintained in the City, the telecommunications company shall either:

(i) pay all reasonable expenses, including travel, following the provisions of subsections 112.061 (6), (7) and (8), Florida Statutes (2000), to the City for the City to have a review or audit performed; or

(ii) provide the City with access to copies of the telecommunications company's records in the City or within 55 miles of the City or by an electronic method satisfactory to the City.

However, without the specific written consent of a telecommunications company's audit representative, no company records may be duplicated or taken from the telecommunications company's premises, and the City shall maintain the confidentiality of the information disclosed in these records, to the extent permitted by applicable law, and use the information solely for the purposes of verifying payments by the telecommunications company. No acceptance of payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for sums due and payable under this Ordinance unless the City agrees in writing. In the event that the City, pursuant to final audit findings, determines that there exists a difference between the amount due to the City and the amount paid to the City, indicating an underpayment to the City, in excess of five percent (5%) of the amount due, such telecommunications company shall pay all reasonable costs, fees and expenses of the audit.

Section 8: This Ordinance is adopted consistent with the provisions of Section 337.401, Florida Statutes (2000), and other applicable provisions of law. This section shall not be construed as a waiver or limitation of the power of the City to prescribe and enforce reasonable rules and regulations pursuant to applicable provisions of law.

Section 9: If required by applicable City ordinances, codes or regulations, a telecommunications company shall be registered with the City and obtain all permits that may be required by the City regarding occupation of the City's public rights-of-way for telecommunications facilities.

Section 10: Codification.

It is the intention of the City Council of the City of North Lauderdale that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Lauderdale, Florida, and that the Sections of this Ordinance may be numbered, renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article," or such other word or phrase in order to accomplish such intention.

Section 11: Severability.

If any clause, section, or other part of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part shall be considered as eliminated and in no way effecting the validity of the other provisions of this Ordinance.

Section 12: Conflicts.

All Ordinances or parts of Ordinances, Resolutions, or parts of Resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

Section 13: Effective Date.

This Ordinance shall take effect immediately upon its adoption.

This Ordinance shall expire upon the effective date of the tax rate established pursuant to the Communication Services Tax Simplification Law, Chapter 2000-260, Laws of Florida, Section 202.20(1)(b) Florida Statutes (2000).

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH LAUDERDALE, FLORIDA, ON THE FIRST READING, THIS 11 DAY OF Dec, 2000.

PASSED ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH LAUDERDALE, FLORIDA, ON THE SECOND AND FINAL READING, THIS 11 DAY OF Dec, 2000.

APPROVED AS TO FORM:

Samuel S. Goren
SAMUEL S. GOREN
CITY ATTORNEY

Gary Frankel
MAYOR GARY FRANKEL

ATTEST:

Michael Zeitchik
VICE MAYOR MICHAEL ZEITCHIK

C. Milli Dyer
C. MILLIDYER, CMC

