

ORDINANCE NO. 00-121012

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORTH LAUDERDALE, FLORIDA, ASSESSING A FEE ON TELECOMMUNICATIONS COMPANIES THAT OCCUPY MUNICIPAL RIGHTS-OF-WAY FOR TELECOMMUNICATIONS FACILITIES; PROVIDING FOR WHEN PAYMENTS ARE DUE; PROVIDING FOR INTEREST; PROVIDING FOR REVIEW OF RECORDS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 337.401, Florida Statutes (2000), references fees or other consideration which municipalities may require from telecommunications companies to occupy municipal rights-of-way for telecommunications facilities; and

WHEREAS, it is the City's intent 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 having entered into an agreement with the City for occupation of the City's rights-of-way; and

WHEREAS, it is the City's intention that any existing telecommunications company paying fees for the occupation or having entered into an agreement for payment of fees 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 telecommunications company has been paying them, or pursuant to the existing Agreement between the company and the City and that any new telecommunications company occupying the City's rights-of-way for telecommunications facilities pay the fees for occupation set forth in this Ordinance.

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2 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
3 CITY OF NORTH LAUDERDALE, FLORIDA, THAT:
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5 **Section 1: Recitals.** The foregoing "WHEREAS" clauses are hereby
6 ratified and confirmed as being true and correct and are hereby made a specific part of this
7 Ordinance upon adoption hereof.
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9 **Section 2: Purpose and application.** The purpose of this Ordinance is to
10 establish fees for occupation of the City's rights-of-way for telecommunications facilities of
11 telecommunications companies not otherwise paying a fee to the City or not otherwise
12 having an agreement with the City for occupation of the City's rights-of-way. Any
13 telecommunications company paying fees or having an existing agreement with the City for
14 the occupation of the City's rights-of-way for telecommunications facilities as of the
15 effective date of this Ordinance shall continue to pay fees to the City as the company has
16 been paying them or pursuant to the existing Agreement.
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18 **Section 3:** The term "telecommunications company," as used in this
19 Ordinance, shall have the meaning set forth in Section 364.02(12), Florida Statutes (2000).
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21 **Section 4:** The fees imposed pursuant to this Ordinance shall apply to all
22 telecommunications companies occupying the City's rights-of-way for telecommunications
23 facilities and not otherwise paying a fee to the City or not under an existing agreement for
24 occupation of the City's rights-of-way.
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26 **Section 5:** The fees imposed pursuant to this Ordinance are a fee and not a tax
27 as specified in Section 337.401, Florida Statutes (2000); consequently, (1) the payments to
28 be made pursuant to this Ordinance shall not be deemed to be in the nature of a tax; (2)
29 such payments shall be in addition to any and all taxes of a general applicability; and (3)
30 the fee specified herein is consideration for occupation of the City's rights-of-way,
31 including all public easements, for the purpose of erecting, constructing and maintaining
32 telecommunications systems.
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34 **Section 6: Fee for telecommunications company occupation of rights-of-way.**
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36 (a) (i) Any telecommunications company providing local telephone
37 service, as defined in Section 203.012(3), Florida Statutes (2000), in the City and that is
38 occupying municipal streets or rights-of-way within the corporate limits of the City with
39 poles, wires or other fixtures shall pay to the City a fee in the amount of one percent
40 (1%) of the gross receipts on recurring local service revenues for services provided
41 within the corporate limits of the City by such telecommunications company. Included
42 within the fee are all taxes, licenses, fees, in-kind contributions accepted pursuant to
43 Section 337.401, Florida Statutes (2000), and other impositions except ad valorem taxes
44 and amounts for assessments for special benefits, such as sidewalks, street pavings, and
45 similar improvements, and occupational license taxes levied or imposed by the City
46 upon the telecommunications company.

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

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

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

33
34 **Section 7:** If the City wishes to verify the payments due to the City under this
35 section, the telecommunications company shall permit the City or a designated
36 representative of the City, upon reasonable advance written notice, and during normal
37 business hours at the location of the telecommunications company where such records are
38 maintained in the City, at another location satisfactory to the City, or elsewhere pursuant
39 to (i) or (ii) below, to review or audit the telecommunications company's billing and
40 payment records kept in the ordinary course of business upon which the payments were
41 based. If a telecommunications company's records are not maintained in the City, the
42 telecommunications company shall either:

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

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2 (ii) provide the City with access to copies of the telecommunications
3 company's records in the City or within 55 miles of the City or by an electronic method
4 satisfactory to the City.
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6 However, without the specific written consent of a telecommunications
7 company's audit representative, no company records may be duplicated or taken from the
8 telecommunications company's premises, and the City shall maintain the confidentiality
9 of the information disclosed in these records, to the extent permitted by applicable law,
10 and use the information solely for the purposes of verifying payments by the
11 telecommunications company. No acceptance of payment shall be construed as a release
12 or as an accord and satisfaction of any claim the City may have for sums due and payable
13 under this Ordinance unless the City agrees in writing. In the event that the City, pursuant
14 to final audit findings, determines that there exists a difference between the amount due to
15 the City and the amount paid to the City, indicating an underpayment to the City, in excess
16 of five percent (5%) of the amount due, such telecommunications company shall pay all
17 reasonable costs, fees and expenses of the audit.

18 **Section 8:** This Ordinance is adopted consistent with the provisions of
19 Section 337.401, Florida Statutes (2000), and other applicable provisions of law. This
20 section shall not be construed as a waiver or limitation of the power of the City to
21 prescribe and enforce reasonable rules and regulations pursuant to applicable provisions
22 of law.
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24 **Section 9:** If required by applicable City ordinances, codes or regulations, a
25 telecommunications company shall be registered with the City and obtain all permits that
26 may be required by the City regarding occupation of the City's public rights-of-way for
27 telecommunications facilities.
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29 **Section 10: Codification.**
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31 It is the intention of the City Council of the City of North Lauderdale that the
32 provisions of this Ordinance shall become and be made a part of the Code of Ordinances
33 of the City of North Lauderdale, Florida, and that the Sections of this Ordinance may be
34 numbered, renumbered, re-lettered and the word "Ordinance" may be changed to
35 "Section," "Article," or such other word or phrase in order to accomplish such intention.
36

37 **Section 11: Severability.**
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39 If any clause, section, or other part of this Ordinance shall be held by any court
40 of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or
41 invalid part shall be considered as eliminated and in no way effecting the validity of the
42 other provisions of this Ordinance.
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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, 12/11/00
SAMUEL S. GOREN
CITY ATTORNEY

Gary Frankel
MAYOR GARY FRANKEL

Michael Zeitchik
VICE MAYOR MICHAEL ZEITCHIK

ATTEST:

C. Milldyer
C. MILLDYER, CMC



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