

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
ORDINANCE NO. 12-04

AN ORDINANCE AMENDING THE TIGARD MUNICIPAL CODE SECTION 15.06.100 TO CLARIFY THE PAYMENT SCHEDULE APPLICABLE TO THE RIGHT-OF-WAY USAGE FEE, AND TO INCREASE THE FEE APPLICABLE TO ELECTRIC UTILITIES OPERATING IN THE CITY.

WHEREAS, Tigard Municipal Code (“TMC”) section 15.06.100 currently contains internally inconsistent language and does not reflect provisions in utility franchises regarding the payment schedule for franchise fees; and

WHEREAS, TMC Section 15.06.100(5) sets forth the appropriate semi-annual payment schedule for the Right-of-Way Usage fee; and

WHEREAS, the City desires to clarify the language of Section 15.06.100 in order to remove any ambiguity or inconsistencies, as well as to recognize that there may be varying payment schedules in individual franchises existing at the time the Right-of- Way Usage Fee provisions were enacted or subsequently granted by the City; and

WHEREAS, the City Council deems it to be in the public interest to increase the annual Right-of-Way Usage Fee for electric service providers from 3.5% to 5%, as authorized by Oregon law.

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

SECTION 1: Tigard Municipal Code Section 15.06.100(1) is amended as shown on the attached Exhibit A to specify semiannual payment of the Right-of-Way Usage Fee.

SECTION 2: Tigard Municipal Code Section 15.06.100(2) is amended as shown on the attached Exhibit A to amend the annual Right-of-Way Usage Fee for electric service providers by changing the fee amount to 5%.

SECTION 3: This ordinance is effective thirty days after its passage by the council, signature by the mayor, and posting by the city recorder.

PASSED: By unanimous vote of all Council members present after being read by number and title only, this 12th day of June, 2012.

Cathy Wheatley
Cathy Wheatley, City Recorder

APPROVED: By Tigard City Council this 12th day of June, 2012.

Craig Dirksen
Craig Dirksen, Mayor

Gretchen E Buehner, Council President

Approved as to form:

Paula J. Bury
City Attorney - Special Counsel

6/12/12
Date

Exhibit A

Tigard Municipal Code

15.06.100 Right-of-Way Usage Fee.

1. All persons using a utility system or facility in the right-of-way to provide service to customers within the City of Tigard shall ~~annually~~ pay a right-of-way usage fee that is the greater of (i) the applicable percentage of gross revenues set forth in subparagraph 2 of this section 15.06.100 or (ii) the linear foot fee set by Council resolution pursuant to subparagraph 3 of this section 15.06.100, subject to any applicable limitations imposed by federal and state statutes, including the privilege tax limitations set forth in ORS 221.410 through 221.655, on the schedule set forth in Section 5 below or as specified in a franchise agreement.

2. The right-of-way usage fee percentage applicable to each class of utility shall be as follows:

Telecommunications:	5.0%
Electric:	3.5% <u>5.0%</u>
Natural Gas:	5.0%
Water:	5.0%
Sanitary Sewer:	5.0%

3. The City Council is hereby authorized to establish by resolution a right-of-way usage fee calculated based on the total linear feet of a utility operator's facilities in the rights of way.

4. Right-of-way usage fee payments shall be net of any franchise fee payments received by the City, but in no case will be less than \$0.

5. Unless otherwise agreed to by the City, the right-of-way usage fee shall be payable semiannually on or before March 15 for the six month period ended December 31, and September 15 for the six month period ended June 30. The utility shall pay interest at the rate of nine percent per year for any payment made after the due date. (Ord. 08-21-A; Ord. 06-11)