

ORDINANCE NO. 255

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON,
AMENDING SMC 12.25.090, AND ESTABLISHING A FEE OF 6% OF
GROSS REVENUES FOR FRANCHISES AND RIGHT-OF-WAY USE
AGREEMENTS**

WHEREAS, SMC establishes a fee for franchises to be established in the franchise agreement or right-of-way use agreement not to exceed the maximum allowed by law; and

WHEREAS, the City Council desires to establish a consistent fee for all utilities granted the privilege of using City rights-of-way and finds that rights conveyed by utility franchises or right-of-way agreements and costs of administration are approximately equivalent regardless of the utility;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE,
WASHINGTON, DO ORDAIN AS FOLLOWS:**

Section 1. Amendment. SMC 12.25.090 is hereby amended to read as follows:

12.25.090 Franchise and Right-of-Way Use Agreement fee.

A. All franchises or right-of-way use agreements executed by the City shall include terms requiring ~~A~~ a grantee, to pay a fee in consideration of the privilege granted under a franchise or right-of-way use agreement to use the public right-of-way and the privilege to construct and/or operate in the City. , shall pay to the city an amount set forth in the franchise agreement, not to exceed the maximum allowed by law, for each year during the term of the franchise. Said franchise fee shall provide the City with compensation equal to 6% of the gross revenues generated by the grantee within the City unless limited by state or federal law. Provided, however, that this fee may be offset by any utility tax paid by grantee or in-kind facilities or services provided to the City. Any Grantee that does not provide revenue-generating services within the City shall provide alternate compensation as set out in the franchise or right-of-way use agreement.

B. A grantee shall file, no later than May 30th of each year, the grantee's financial statements for the preceding year. If the city reasonably determines, after examination of the financial statements provided, that a material underpayment of franchise fees may exist, the city may require a grantee to submit a financial statement audited by an independent public accountant. If the city's determination of underpayment is ultimately correct, the grantee shall bear the cost of such audit.

C. The city shall have the right, upon reasonable notice and consistent with the provisions of SMC 12.25.100, to inspect a grantee's income records, to audit any and all relevant records, and to recompute any amounts determined to be payable under a franchise and this chapter.

D. In the event that any franchise payment is not received by the city on or before the applicable due date, interest shall be charged from such date at the statutory rate for judgments.

E. In the event a franchise is revoked or otherwise terminated prior to its expiration date, a grantee shall file with the city, within 90 days of the date of revocation

or termination, a verified or, if available, an audited financial statement showing the gross revenues received by the grantee since the end of the previous year and shall make adjustments at that time for the franchise fees due up to the date of revocation or termination.

F. Nothing in this chapter shall limit the city's authority to tax a grantee, or to collect any fee or charge permitted by law, and no immunity from any such obligations shall attach to a grantee by virtue of this chapter.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Repealer. Ordinance 221 is repealed.

Section 4. Effective Date. A summary of this ordinance consisting of its title shall be published in the official newspaper of the City. This ordinance shall take effect on December 7, 2000.

PASSED BY THE CITY COUNCIL ON NOVEMBER 27, 2000.




Mayor Scott Jepsen

ATTEST:



Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:



Ian Sievers
City Attorney

Date of Publication: November 29, 2000.

Effective Date: December 7, 2000.