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Chapter 3.08 PUBLIC UTILITY TAXES

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3.08.010 Franchise required. A. All persons, firms, copartnerships, associations, corporations, districts, and quasi-municipal or public corporations operating a utility as defined in this chapter within the corporate limits of the city shall obtain a franchise regulating use of city streets and rights-of-way.

B. Any utility desiring to operate within the corporate limits of the city shall apply to the city council for a franchise to do so.

C. If any utility operates unregulated upon streets and rights-of-way within the corporate limits of the city without a franchise, the city council may take action to refuse to allow such utility the use of city streets and rights-of-way or to set conditions of permission to use the streets and public areas in the event city is unable to deny the utility access to streets, alleys or public areas. (Ord. 493 §1, 1986)

3.08.020 Definitions. As used in this chapter:

"Gross revenue" means and includes any revenue earned within the city from the sale of utility services after adjustment for the net write-off of uncollectible accounts computed on the average annual rate for the entire utility, excluding sales of utility services by the utility to any other utility when the utility purchasing such utility services is not the ultimate consumer. Gross revenues do not include proceeds from the sale of bonds, mortgages, or other evidence of indebtedness, securities, or stocks and do not include revenue paid directly by the United States of America or its agencies.

"Utility" means and includes the business of supplying electrical energy, gas, communications, and other services through or associated with telephone or telegraph utilizing city streets or rights-of-way. (Ord. 493 §2, 1986)

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3.08.030--3\_08.032

3.08.030 Privilege tax. Any utility, using and/or occupying and continuing to use and/or occupy the whole or any part of the streets, avenues, lanes, alleys, public highways, public grounds, or public places within the corporate limits of the city without a franchise shall pay a privilege tax for the use and occupancy of the whole or any part of the streets, avenues, lanes, alleys, public highways, public grounds, or public places within the corporate limits of the city. The privilege tax shall be in an amount of five percent of the gross revenue earned by the utility every three months within the corporate limits of the city. The privilege tax shall be computed as of the commencement of business, or upon the expiration of any franchise under which such utility might formerly have operated and shall be due

and payable as hereinafter provided so long as the utility continues to operate within the city and to use and/or occupy the whole or any part of the streets, avenues, lanes, alleys, public highways, public grounds, or public places without a franchise. In the event a franchise is granted to any utility that is subject to the privilege tax herein required and the franchise becomes effective, then the privilege tax shall cease to apply from the effective date of the franchise. But the franchise holder shall pay the proportionate earned amount of the privilege tax for the period. The privilege tax shall in such cases become immediately due and payable. In the event that any such utility shall operate under a permit granted by the city council and accepted in writing by it, there shall be no tax applicable under this section. This chapter does not constitute a waiver of the city's rights to require the utility to remove its facilities or have the facilities or installations escheat to the city per ORS 221.470. (Ord. 493 §3, 1986)

3.08.032 Right-of-way permits. A. In the event a utility uses or requests the use of a city right-of-way but does not provide service to customers within the city or otherwise earn revenue within the city from such service, such utility shall obtain an annual permit from the city for such use by paying an annual fee established by the city council by resolution.

B. The initial permit fee payment and the first annual payment shall be made prior to any use of the city rights-of-way, and subsequent annual permit fees shall be paid within thirty days of expiration of each annual permit.

C. In the event that a utility commences use of a city right-of-way without a permit, such permit shall be obtained within thirty days of adoption of the ordinance codified in this chapter. (Ord. 645 §1, 1996)

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3.08.040--3.08.070

3.08.040 Franchise expiration. The privilege tax herein required shall immediately apply and continue to apply to all utilities using and/or occupying and continuing to use and/or occupy the whole or any part of the streets, avenues, lanes, alleys, public highways, public grounds, or public places within the corporate limits where the utility's franchise to so operate expires and no new franchise shall have been granted and become in full force and effect. (Ord. 493 §4, 1986)

3.08.050 Report of gross earnings. Each utility subject to the privilege tax provided for in Section 3.08.030 shall file with the city recorder-treasurer a statement verified under oath of the utility's gross revenues earned within the boundary of the city for each three-month period. The first quarterly report shall be filed on or before April 15, 1986. Subsequent quarterly reports shall be filed on or before July 15, October 15, January 15, and April 15 of each year, and as long as the utility operates without a franchise. In the event a franchise is granted to any utility that is subject to the privilege tax required by this chapter and the franchise becomes effective, then a report shall be filed within ten days after the franchise becomes effective showing the gross revenues earned for the proportionate period of the quarter in which the franchise is granted. (Ord. 493

§5, 1986)

3.08.060 Payment--Penalty and interest. The first payment for operations from the commencement of utility service within the city through April 1, 1986, shall be made on or before April 20, 1986. Payments shall be made quarterly on or before July 20, October 20, January 20, and April 20 of each year. In the event the utility fails to pay the privilege tax within the times fixed, the city recorder-treasurer shall notify the city attorney of such fact, and the city attorney is authorized to and shall institute an action in the Circuit Court of the State of Oregon for Columbia County against the utility to recover the amount of the privilege tax due the city. Interest shall be charged and collected on any taxes not paid when due, at the rate of one percent per month or fraction of a month until paid. (Ord. 493 §6, 1986)

3.08.070 Retroactivity. A. It is the express intent of the city council that this chapter apply retroactively to any utility that begins its operations creating gross revenues prior to the effective date of the ordinance codified in this chapter to accomplish uniformity of taxation among utilities in the city. The privilege tax shall apply to any utility operating without a franchise from the commencement of utility service within the city.  
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B. If a court of competent jurisdiction rules that the five percent privilege tax portion of Section 3.08.030 cannot be applied at a rate higher than an existing electric utility franchise rate, then the privilege tax shall be three and one-half percent. (Ord. 493 §8, 1986)

44a (Scappoose 8/99)