

Ordinance No. 00275

[Council Meeting Minutes of Apr 15 2002](#)

ORDINANCE NO. 275

AN ORDINANCE of the City Council of the City of Lakewood, Washington, creating and establishing a new Chapter 3.21, of the Lakewood Municipal Code, relating to Collection of Franchise Fees.

WHEREAS, the City of Lakewood routinely enters into franchise agreements with various utilities; and,

WHEREAS, there are costs associated with the franchise agreements which are collected by the City of Lakewood; and,

WHEREAS, these fees have been found legally to be compensation for costs associated with the franchise and not tax; and,

WHEREAS, on occasion the fees to compensate the City are paid untimely thereby incurring further costs to the City to collect said fees,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN as Follows:

Section 1. That Title 3 of the Lakewood Municipal Code is hereby amended by the addition of a new chapter thereto, to be known and designated as Chapter 3.21, reading as follows:

Chapter 3.21

Collection of Franchise Fees

Sections:

3.21.010 Purpose

3.21.020 Authority

3.21.030 Definitions

3.21.040 Fee Not Tax

3.21.050 Purpose of Penalty and Interest

3.21.060 Fee Delinquency Unlawful Acts

3.21.070 Delinquent Fees Discovered through Audit

3.21.080 Appeal to Hearing Examiner

3.21.090 Non-compliance - Penalty

3.21.100 Designated Official to Administer, Make Rules

3.21.110 Severability

3.21.010 - Purpose

The provisions of this Chapter shall be deemed an exercise of the power of the City to impose and collect franchise fees for the use of City right of ways. The provisions herein are intended to secure fair and reasonable compensation to the City and the residents of the City for permitting private use of public right of ways. Further, this Chapter is intended to assure that the City can continue to fairly and responsibly protect the public health, safety and welfare by controlling access to and use of its public right of ways.

3.21.020 - Authority

Pursuant to RCW 35.21.860, the City of Lakewood is authorized to impose franchise fees as follows:

- A. to recover actual administrative expenses incurred by the City that are directly related to receiving and approving a permit, license, and franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter 43.21C RCW;
- B. that are allowed as franchise requirements and fees for cable television services as allowed by federal law;
- C. upon a site-specific charge pursuant to an agreement between the City and a service provider of personal wireless services acceptable to the parties for:
 - 1. the placement of new structures in the right of way regardless of height, unless the new structure is the result of a mandated relocation in which case no charge will be imposed if the previous location was not charged;
 - 2. the placement of replacement structures when the replacement is necessary for the installation or attachment of wireless facilities, and the overall height of the replacement structure and the wireless facility is more than sixty feet; or
 - 3. the placement of personal wireless facilities on structures owned by the city located in the right of way. However, a site-specific charge shall not apply to the placement of personal wireless facilities on existing structures, unless the structure is owned by the City.

3.21.030 - Definitions

- A. "City" means the City of Lakewood.
- B. "Fee" means any and all lawful monetary compensation, excluding taxes, allowed to the City for the use of or administering or regulating the use or occupation of rights of way.
- C. "Franchise" means an agreement or contract between a service provider and the City of Lakewood whereby said service provider may use or occupy City rights of way for providing utilities, cable television services, telecommunications services, or other similar goods or services to any person or area within the City.
- D. "Service Provider" means any company subject to a franchise agreement with the City of Lakewood for the delivery of utility services, cable television transmission or services, telecommunications transmission or services, or other services, transmissions or goods delivered pursuant to a franchise agreement for use of the City's rights of way between said entity and the City. .

3.21.040 - Fees Not a Tax.

The fees, penalties and interest charges provided for in this chapter are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from a service provider, franchisee or other entity that desires to occupy or use public rights of way of the City to provide goods or services to any person or area within the City. Nothing in the Chapter shall be deemed to create an obligation upon any person for which the City is forbidden to require pursuant to federal,

state or other law.

3.21.050 - Purpose of Penalty and Interest

Any penalty or interest charged to a service provider or franchisee under this Chapter shall be for the purpose of mitigating additional expenses the City may incur in administering or monitoring the use of its rights of way in the event of non-payment, for the purpose of compensation the City for additional staff time and resources expended in the collection of past-due fees, and to compensate the City for loss of use and interest that may have accrued upon funds paid as fees had such fees been paid in a timely manner.

3.21.060 - Fee Delinquency Unlawful Acts

Delinquent Fee Payments. For fees due, if payment is not made by the due date thereof, in addition to any other remedies available under law or contract, there shall be added penalty and interest as follows:

- A. If paid one (1) to ten (10) days late, there shall be a penalty of ten percent (10%) added to the amount of fees due.
- B. If paid eleven (11) to twenty (20) days late, there shall be a penalty of fifteen percent (15%) added to the amount of fees due.
- C. If paid twenty-one (21) to thirty (30) days late, there shall be a penalty of twenty percent (20%) added to the amount of fees due.
- D. If paid more than thirty (30) days late, there shall be a penalty of twenty-five percent (25%) added to the amount of fees due.

~~E.A. In addition to the penalty above~~ If paid 30 days late or more, the City of Lakewood shall charge the franchisee interest on all delinquent fees and penalties at the rate of one percent per month upon all amounts while said amounts remain late.

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~~F.B.~~ The fees imposed under any franchise, and the ~~penalties and~~ interest charged thereon, shall constitute a debt to the City and may be collected by court proceedings in the same manner as any other debt which remedy shall be in addition to all other available remedies. Any judgment entered in favor of the City may include an award to the City of all court and collection costs including attorneys' fees to the extent permitted by law. Amounts delinquent more than 60 days may be assigned to a third party for collection, in which case the amount of any collection charges shall be in addition to all other amounts owed. Amounts due shall not be considered paid until the City of Lakewood has received payment for the full amount due or has discharged the amount due and not paid.

~~B.~~ The fees imposed under any franchise, and the ~~penalties and~~ interest charged thereon, shall constitute a debt to the City and may be collected by court proceedings in the same manner as any other debt which remedy shall be in addition to all other available remedies. Any judgment entered in favor of the City may include an award to the City of all court and collection costs including attorneys' fees to the extent permitted by law. Amounts delinquent more than 60 days may be assigned to a third party for collection, in which case the amount of any collection charges shall be in addition to all other amounts owed. Amounts due shall not be considered paid until the City of Lakewood has received payment for the full amount due or has discharged the amount due and not paid.

3.21.070 - Delinquent Fees Discovered through Audit.

For delinquent fees under this Chapter which were discovered through an audit, the penalty shall be an amount of ~~twenty percent (20%), plus~~ interest at a rate of 1% per month added to the amount of fees due. Plus any additional audit costs.

3.21.080 - Appeal to the Hearing Examiner

The City Manager, or the designee thereof, shall determine the full amount of fees, including penalties and interest, due in accordance with this chapter. Unless a contract or franchise agreement governs disputes regarding the payment of fees, including penalties and interest as provided herein for late or past-due payments, any person, firm or corporation aggrieved

may appeal the determination of the amount owing to the City Hearing Examiner in accordance with, and subject to, the procedures set forth in Chapter 1.36 of the Lakewood Municipal Code or such subsequent superseding procedures as may be adopted by ordinance, provided that in such appeal hearing the Hearing Examiner shall receive and examine available information, conduct public hearings, prepare records and reports thereof, and make decisions, which shall be final and conclusive. Pending a hearing the aggrieved party may withhold the fee, including penalties and interest. If any such payment is withheld, the party withholding such payment will be liable for the full amount of the payment, penalties and interest from the date the amount was withheld should the Hearing Examiner find that the payment, interest or penalty, was wrongfully withheld.

3.21.090 - Noncompliance - Penalty

Any person, firm or corporation subject to the provisions of this Chapter, who fails or refuses to pay any lawful fee, and any penalty or interest accrued upon such fee, or who otherwise violates or refuses to comply with any provision of this Chapter, is guilty of a misdemeanor, and each such person, firm or corporation is guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provision of this Chapter is committed, continued or permitted, and upon conviction of any such violation, such person shall be punished by a fine not to exceed \$1,000.00 for each day or portion thereof which such person, firm or corporation is found guilty of noncompliance with the provisions of this Chapter.

3.21.100 - Designated Official to Administer, Make Rules

The City Manager, or the designee thereof, shall have the power to construe, interpret, administer and enforce the provisions of this Chapter and shall further have the power, and it shall be his or her duty, from time to time, to adopt, publish and enforce rules and regulations not inconsistent with this Chapter or with the law for the purpose of implementing, interpreting and carrying out the provisions thereof, and it is unlawful to violate or fail to comply with any such rule or regulation.

3.21.110 - Severability

If any provision of this Chapter or the application thereof to any person or circumstance is held to be invalid, the remainder of this Chapter and its provisions and regulations or the application thereof to other persons or circumstances shall not be affected.

Section 2. Effective Date. That this Ordinance shall be in full force five (5) days after publication of the Ordinance Summary.

ADOPTED by the City Council 15th day of April, 2002.

CITY OF LAKEWOOD

Bill Harrison, Mayor

Attest:

Alice M. Bush, CMC, City Clerk

Approved as to Form:

Heidi Ann Horst, City Attorney

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