

**CITY OF MARATHON, FLORIDA**

**ORDINANCE NO. 01-02-02**

AN ORDINANCE OF THE CITY OF MARATHON, 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 FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

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

**WHEREAS**, it is the intent of City of Marathon (the "City") 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 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 the 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 existing 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.

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

**Section 1.** That the term “telecommunications company”, as used in this Ordinance, shall have the meaning set forth in Section 364.02(12), Florida Statutes (2000).

**Section 2.** That the purpose of this Ordinance is 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 otherwise having an agreement with the City for occupation of the City's rights-of-way. Any telecommunications company paying fees or having an existing agreement with the City 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 company has been paying them or pursuant to the existing agreement.

**Section 3.** That the fees imposed pursuant to this Ordinance shall apply to all telecommunications companies occupying the City's rights-of-way for telecommunications facilities and which are not otherwise paying a fee to the City or not under an existing agreement for occupation of the City's rights-of-way.

**Section 4.** That the fees imposed pursuant to this Ordinance are a fee and not a tax as specified in Section 337.401, Florida Statutes (2000); consequently, (1) the payments to be made pursuant to this Ordinance shall not be deemed to be in the nature of a tax; (2) such payments shall be in addition to any and all taxes of a general applicability; and (3) the fee specified herein is consideration for occupation of the City's rights-of-way, including all public easements, for the purpose of erecting, constructing and maintaining telecommunications systems.

**Section 5.** That the fees to be paid by telecommunications companies to the City for occupation of the City's rights-of-way shall be determined as follows:

(a) any telecommunications company providing local telephone service, as defined in Section 203.012(3), Florida Statutes (2000), in the City and that is occupying

municipal streets or rights-of-way within the corporate limits of the City with poles, wires or other fixtures, shall pay to the City a fee in the amount of one percent (1%) of the gross receipts on recurring local service revenues for services provided within the corporate limits of the City by such telecommunications company. Included within the fee are all taxes, licenses, fees, in-kind contributions accepted pursuant to Section 337.401, Florida Statutes (2000), and other impositions except ad valorem taxes and amounts for assessments for special benefits, such as sidewalks, street pavings, and similar improvements, and occupational license taxes levied or imposed by the City upon the telecommunications company.

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

(c) the fee or other consideration imposed pursuant to subsection (b) shall not apply in any manner to any telecommunications company that provides local telephone service

as defined in Section 203.012(3), Florida Statutes (2000), for any services provided by such telecommunications company.

**Section 6.** That the fees provided for in Section 5(a) of this Ordinance shall be paid by the telecommunications company to the City in quarterly installments. The installment payments shall be based upon such gross receipts on recurring local service revenues for the immediately preceding installment period or portion thereof after the effective date of this Ordinance, and shall be made within 30 calendar days following the end of the period. Past due payments or underpayments shall ~~bear~~ accrue ~~interest accrued from the last day of the quarter for which the payment was due~~ at the rate of eighteen percent (18%) per annum from the first day after the payment was due to the City period until paid to the City, and the company shall reimburse the City for any actual and reasonable out-of-pocket costs associated with collecting any sums required to remit to the City. Payments shall include a statement as to how the fee amount was determined and the statement shall be certified by the telecommunications company's chief financial officer or other duly authorized representative of the company.

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

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

(b) provide the City with access to copies of the telecommunications company's records in the City or within 50 miles of the City or by an electronic method satisfactory to the City.

However, without the specific written consent of a telecommunications company's audit representative, no company records may be duplicated or taken from the telecommunications company's premises, and the City shall maintain the confidentiality of the information disclosed in these records to the extent permitted by applicable law and shall use the information solely for the purposes of verifying payments by the telecommunications company. No acceptance of payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for sums due and payable under this Ordinance unless the City agrees in writing. In the event that the City, pursuant to final audit findings, determines that there exists a difference between the amount due to the City and the amount paid to the City, indicating an underpayment to the City, in excess of five percent (5%) of the amount due, such telecommunications company shall pay all reasonable costs, fees and expenses of the audit.

**Section 8.** That this Ordinance is adopted consistent with the provisions of Section 337.401, Florida Statutes (2000), and other applicable provisions of law. This section shall not be construed as a waiver or limitation of the power of the City to prescribe and enforce reasonable rules and regulations pursuant to applicable provisions of law.

**Section 9.** That if required by applicable City Ordinances, Codes or Regulations, a telecommunications company shall be registered with the City and obtain all permits that may be

required by the City regarding occupation of the City's public rights-of-way for telecommunications facilities.

**Section 10. Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 11. Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading. This Ordinance shall expire upon the effective date of the tax rate established pursuant to the Communications Services Tax Simplification Law, Chapter 2000-260, Laws of Florida, Section 202.20(1)(b), Florida Statutes (2000).

The foregoing Ordinance as offered by Councilmember MEARNS, who moved for its adoption. This motion was seconded by Councilmember JOHNSON, and upon being put to a vote, the vote was as follows:

Mayor Robert Miller	<u>Y</u>
Vice Mayor John Bartus	<u>Y</u>
Councilman Frank Greenman	<u>Y</u>
Councilman Jon Johnson	<u>Y</u>
Councilman Randy Mearns	<u>Y</u>

PASSED on first reading this 6<sup>TH</sup> day of DECEMBER, 2000

The foregoing Ordinance as offered by Councilmember JOHNSON, who moved for its adoption. This motion was seconded by Councilmember BARTUS, and upon being put to a vote, the vote was as follows:

Mayor Robert Miller	<u>Y</u>
Vice Mayor John Bartus	<u>Y</u>
Councilman Frank Greenman	<u>N</u>
Councilman Jon Johnson	<u>Y</u>
Councilman Randy Mearns	<u>Y</u>

PASSED AND ADOPTED on second reading this 15<sup>TH</sup> day of FEBRUARY, 2001.

  
ROBERT MILLER, MAYOR

ATTEST:

  
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CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

  
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CITY ATTORNEY