

**CITY OF MONROE
RESOLUTION NO. 011C/2021**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, APPROVING IN PART A REQUEST BY ZIPLY FIBER TO VARY ITS RIGHT-OF-WAY DISTURBANCE PERMIT FEES FROM THE FEE SCHEDULE ADOPTED BY RESOLUTION No. 023A/2020

WHEREAS, Ziplly Fiber submitted an application on October 1, 2021 requesting a variance from the 2021 permit fees adopted by the City Council in Resolution No. 023A/2020 for their Right-of-Way Disturbance Permits; and

WHEREAS, Section 12.36.180 of the Monroe Municipal Code (MMC) states “the City Council shall have the authority to grant variances from any and all provisions of this chapter and any standards adopted hereunder;” and

WHEREAS, the City Council reviewed the Ziplly Fiber fee variance request at a Council Study Session on November 16, 2021 with the explicit understanding that further consideration and formal action on the fee variance request would be made at a later Council Business Meeting; and

WHEREAS, the City Clerk notified Ziplly Fiber of the Council review of its fee variance request via email and physical mail more than ten days in advance of both the November 16, 2021 Council Study Session and the December 14, 2021 Council Business Meeting as required by MMC 12.36.180(A); and

WHEREAS, the notification from the City Clerk to Ziplly Fiber informed Ziplly that Ziplly may submit written evidence and/or written argument for the City Council’s consideration at the December 14, 2021 Council Business Meeting at any point up to 4:00 p.m. on Friday, December 10, 2021; and

WHEREAS, at the December 14, 2021 City Council Business Meeting the Ziplly Fiber fee variance request was processed as an open record proceeding; and

WHEREAS, at the December 14, 2021 City Council Business Meeting the Council was provided with three draft resolutions for consideration with clear communication that any resolution could be adopted as presented, revised as directed by Council, or a completely new resolution could be created as directed by Council; and

WHEREAS, at the December 14, 2021 City Council Business Meeting the Ziplly Fiber fee variance request was considered in relation to the following requirements of the MMC 12.36.180(A):

“ . . .the city council may grant a variance only upon finding that all of the following facts and conditions exist:

- 1. A literal enforcement of this chapter would cause practical difficulties or a unique hardship which was not self-generated; and*
- 2. No material detriment will result to public health, safety or welfare; and*
- 3. No material increase in the likelihood of exposure of the city to liability for claims or damages; and*
- 4. No violation of any other laws, rules, regulations or policies applicable to the applicant’s intended use.*

B. In approving a variance request, the city council may impose such conditions as it deems necessary and appropriate to carry out the spirit and purposes of this chapter and to protect the long-range plans of the city rights-of-way system and the public interest. Each variance shall be considered on a case-by-case basis and shall not be construed as setting precedent for any subsequent application. The decision of the city council shall be final. Any party aggrieved by the decision of the city council on a variance shall have a right to file an application for writ of certiorari in the Snohomish County superior court; provided, that the application must be filed and served within a twenty-day period after the effective date of the decision.

WHEREAS, the City Council has considered the ROWD permit fee variance request and the responses of Ziplly Fiber found in the Ziplly variance request letter dated October 1, 2021 exclusively in relation to the four criteria required for a variance as stated in MMC 12.36.180(A).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROE DOES RESOLVE AS FOLLOWS:

Section 1. The City Council adopts as findings and conclusions the following:

- 1. A literal enforcement of this chapter would cause practical difficulties or a unique hardship which was not self-generated.*

Ziplly Fiber is undertaking a project that is extraordinarily large in scope for the issuance of Right-of-Way Disturbance (ROWD) permits compared to previous projects processed by the City requiring ROWD permits. The fundamental purpose of the City’s permit fee framework is to reimburse the City for its incurred expenses in reviewing and processing ROWD permit applications. The ROWD permitting system fees were developed based on the City’s past history of ROWD permit applications that were an order of magnitude smaller than Ziplly’s current project. While the standard fee structure is documented, factually balanced and appropriate for the vast majority of ROWD permitting situations, there is an economy of scale inherent in both reviewing, processing, and inspecting ROWD permits that is not reflected in the current ROWD permit fee

system. The City Council concludes that the extraordinarily large scope of the Ziplly project would create a unique hardship because the fee structure was not developed for projects of this size. Requiring Ziplly to remit the full, standard fee amount would potentially result in a financial cost that is disproportionate to the City's administrative expenses and thus inconsistent with the underlying purpose of the fee.

The Council concludes that, under the unique circumstances implicated by this situation, it is appropriate for the ROWD permit fees imposed upon Ziplly's project to be based more closely on actual City costs, as set forth below, rather than through a rigid, formulaic imposition of the City's standard fee structure. The City Council further concludes that Ziplly's project should instead be subject to a reduced ROWD permit fee for new structures placed in the ROW from \$151 per structure to \$75.50 per structure for all structures beyond ten on a single ROWD permit application, as set forth below.

2. No material detriment will result to public health, safety or welfare.

The Council concludes that a ROWD fee variance would not result in material detriment to public health, safety or welfare.

3. No material increase in the likelihood of exposure of the city to liability for claims or damages.

The Council concludes that the City will have no material increase in the likelihood of exposure to liability for claims or damages.

4. No violation of any other laws, rules, regulations or policies applicable to the applicant's intended use.

The Council finds no violation of any other laws, rules, regulations or polices that are related to Ziplly Fiber's use of the ROWD permits for telecommunications installation.

Section 2. Based upon the above-referenced findings and conclusions, the City Council hereby **approves** a Ziplly Fiber ROWD permit fee variance under which the City will charge \$75.50 instead of \$151 for each structure beyond the tenth on any single ROWD permit application. This ROWD fee variance shall only apply to Ziplly Fiber ROWD permits not yet issued as of the effect date of this resolution. Without limitation of the foregoing, the fee reduction authorized by this resolution shall not apply in any manner to any ROWD permit applications already submitted by Ziplly but not yet issued that are combined in any manner that would otherwise benefit from the fee reduction.

Section 3. No Precedential Effect. The City Council decision set forth in this resolution shall be limited to the facts and circumstances of the underlying variance request and shall not be construed as setting precedent for any subsequent application.

Section 4. Finality of Decision; Distribution; Appeal. The City Clerk is directed to promptly provide a copy of this resolution to the applicant via electronic mail and U.S. Mail. The decision of the City Council set forth in this resolution shall be final, subject only to timely appeal as provided in this section. In accordance with MMC 12.36.180(B), any party aggrieved by the City Council's decision may file an application for writ of certiorari in the Snohomish County Superior Court; provided, that any such application must be filed and served within twenty (20) days after the effective date of the Council's decision.

Section 5. Effective Date. This resolution and the decision set forth herein shall take effect immediately upon passage.

ADOPTED by the City Council of the City of Monroe, at its regular meeting thereof, and APPROVED by the Mayor this 14th day of December, 2021.

Resolution No. 011C/2021
Adopted: 12/14/2021
Effective: 12/14/2021

CITY OF MONROE, WASHINGTON:


[Geoffrey Thomas \(Dec 15, 2021 20:56 HST\)](#)

Geoffrey Thomas, Mayor

ATTEST:

APPROVED AS TO FORM:


[Jodi Wycoff \(Dec 16, 2021 10:41 PST\)](#)

Jodi Wycoff, City Clerk


[Zach Lell \(Dec 15, 2021 16:04 PST\)](#)

J. Zachary Lell, City Attorney

RES_011C-2021 - fee reduction after 10 structures

Final Audit Report

2021-12-16

Created:	2021-12-15
By:	Jodi Wycoff (jwycoff@monroewa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAE38nbCiW9NJib9rKsMhEx2OZYrudluFW

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