

## Chapter 13.24 - TELECOMMUNICATIONS FACILITIES

### 13.24.010 - Scope of chapter.

Chapter 13.24 shall apply to telecommunications carriers, as defined below, with valid telecommunications franchises granted pursuant to this chapter prior to December 6, 2013. After December 6, 2013, all telecommunications carriers that do not have a valid franchise, or whose franchise expires, shall be subject to the provisions of Chapter 13.34 and the provisions of this chapter shall not apply to such telecommunications carriers.

(Ord. 99-1003 §1 (part), 1999)

(Ord. No. 13-1014, § 4, 11-6-2013)

**Editor's note**— Ord. No. 13-1014, § 4, adopted Nov. 6, 2013, deleted § 13.24.010 in its entirety and replaced it to read as herein set out. Former § 13.24.010 pertained to jurisdiction and management of the public rights-of-way.

### 13.24.020 - Regulatory fees and compensation not a tax.

- A. The fees and costs provided for in this chapter, and any compensation charged or paid for use of the public rights-of-way provided for in this chapter, are separate from, and in addition to, any and all federal, state, local, and city charges as may be levied, imposed, or due from a telecommunications carrier, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of telecommunications services.
- B. The city has determined that any fee provided for by this chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners, and these fees are not new or additional fees.
- C. The fees and costs provided for in this chapter are subject to applicable federal and state laws.

(Ord. 99-1003 §1 (part), 1999)

### 13.24.030 - Definitions.

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined herein shall be given the meaning set forth in the Communications Policy Act of 1934, as amended, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996. If not defined there, the words shall be given their common and ordinary meaning.

"Aboveground facilities" means utility poles, utility facilities and telecommunications facilities above the surface of the ground, including the underground supports and foundations for such facilities.

"Affiliated interest" means (1) every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of such telecommunications utility; (2) every corporation and person in any chain of successive ownership of five percent or more of voting securities of such telecommunications utility; (3) every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such telecommunications utility or by any person or corporation in any chain of successive ownership of five

percent or more of voting securities of such telecommunications utility; (4) every person who is an officer or director of such telecommunications utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of such telecommunications utility; (5) every corporation which has two or more officers or two or more directors in common with such telecommunications utility; (6) every corporation and person, five percent or more of which is directly or indirectly owned by a telecommunications utility; (7) every corporation or person which the Public Utility Commission determines as a matter of fact, after investigation and hearing, actually is exercising any substantial influence over the policies and actions of such telecommunications utility, even though such influence is not based upon stockholdings, stockholders, directors or officers to the extent specified herein; and, (8) every person or corporation who or which the Public Utility Commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of such telecommunications utility in conjunction with one or more other corporations or persons with whom they are related by ownership or blood or by action in concert that together they are affiliated with such telecommunications utility within the meaning herein even though no one of them alone is so affiliated.

"Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. 521 et seq., as now and hereafter amended.

"Cable service" is to be defined consistent with federal laws and means the one-way transmission to subscribers of video programming, or other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"City" means the city of Oregon City, an Oregon municipal corporation, and individuals authorized to act on the city's behalf.

"City commission" means the elected governing body of the city of Oregon City, Oregon.

"Control or controlling interest" means actual working control in whatever manner exercised.

"City property" means and includes all property owned by the city, other than public rights-of-way and [public](#) utility easements as those are defined herein, and all property held in a proprietary capacity by the city, which are not subject to right-of-way franchising as provided in this chapter.

"Conduit" means any structure, or portion thereof, containing one or more ducts, conduits, manholes, handholes, bolts, or other facilities used for any telegraph, telephone, cable television, electrical, or communications conductors, or cable right-of-way, owned or controlled, in whole or in part, by one or more public utilities.

"Construction" means any activity in the public rights-of-way resulting in physical change thereto, including excavation or placement of structures, but excluding routine maintenance or repair of existing facilities.

"Days" means calendar days unless otherwise specified.

"Duct" means a single enclosed raceway for conductors or cable.

["Easement" means the space in, upon, above, along, across, over or under a private property for constructing, reconstructing, operating, maintaining, inspecting, and repairing a facility owned by someone other than the private property owner whereby the easement is located.](#)

"Emergency" shall have the meaning provided for in ORS 401.025.

"Federal Communications Commission or FCC" means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

"Franchise" means an agreement between the city and a grantee which grants a privilege to use public right-of-way and [public](#) utility easements within the city for a dedicated purpose and for specific compensation.

"Grantee" means the person to which a franchise is granted by the city.

"Gross revenue" means any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectible, derived from the operation of utility facilities in the City, subject to all applicable limitations in federal or state law.

"Oregon Public Utilities Commission or OPUC" means the statutorily created state agency in the state of Oregon responsible for licensing, regulation and administration of certain telecommunications carriers as set forth in Oregon law, or its lawful successor.

"Overhead or aboveground facilities" means utility poles, utility facilities and telecommunications facilities above the surface of the ground, including the underground supports and foundations for such facilities.

"Person" means an individual, corporation, company, association, joint stock company or association, firm, partnership, or limited liability company.

"Private telecommunications network" means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for resale, directly or indirectly. "Private telecommunications network" includes services provided by the state of Oregon pursuant to ORS 190.240 and 283.140.

"Public rights-of-way" means and includes, but is not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and all other public ways or areas, including the subsurface under and air space over these areas. This definition applies only to the extent of the city's right, title, interest or authority to grant a franchise to occupy and use such areas for telecommunications facilities. "Public rights-of-way" shall also include [public](#) utility easements as defined below.

"Public utility easement" means an easement that allows a utility the right to use and access specific areas of another's property for constructing and maintaining gas, electric, telecommunication, fiberoptic, water, and sewer lines.

"State" means the state of Oregon.

"Telecommunications Act" means the Communications Policy Act of 1934, as amended by subsequent enactments including the Telecommunications Act of 1996 (47 U.S.C. 151 et seq.) and as hereafter amended.

"Telecommunications carrier" means any provider of telecommunications services and includes every person that directly or indirectly owns, controls, operates or manages telecommunications facilities within the city.

"Telecommunications facilities" means the plant and equipment, other than customer premises equipment, used by a telecommunications carrier to provide telecommunications services.

"Telecommunications service" means any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed and whether or not the transmission medium is owned by the provider itself. Telecommunications service includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public rights of way; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act; and (6) commercial mobile radio services as defined in 47 C.F.R. 20.

"Telecommunications system" means the plant and equipment, other than customer premises equipment, used by a telecommunications carrier to provide telecommunications services.

"Telecommunications utility" shall have the same meaning as ORS 759.005(1).

"Underground facilities" means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for "overhead facilities."

"Usable space" means all the space on a pole, except the portion below ground level, the twenty feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that six feet of a pole is buried below ground level.

~~"Utility easement" means any easement granted to or owned by the city and acquired, established, dedicated or devoted for public utility purposes.~~

"Utility facilities" means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, plant and equipment located under, on, or above the surface of the ground within the public right-of-way of the city and used or to be used for the purpose of providing utility or telecommunications services. (Ord. 99-1003 §1 (part), 1999)

(Ord. No. 11-1009, §§ 1, 2, 9-7-2011)

13.24.040 - Registration of telecommunications carriers.

A. Purpose. The purpose of registration is:

1. To assure that all telecommunications carriers who have facilities and/or provide services within the city comply with the ordinances, rules and regulations of the city.
2. To provide the city with accurate and current information concerning the telecommunications carriers who offer to provide telecommunications services within the city, or that own or operate telecommunications facilities within the city.
3. To assist the city in the enforcement of this chapter and the collection of any city franchise fees or charges that may be due the city.

B. Registration Required. Except as provided in subsection D of this section, all telecommunications carriers having telecommunications facilities within the corporate limits of the city, and all telecommunications carriers that offer or provide telecommunications service to customer premises within the city, shall register. The appropriate application and license from: (a) the Oregon Public Utility Commission (PUC); or (b) the Federal Communications Commission (FCC) qualify as necessary registration information. Applicants also have the option of providing the following information:

1. The identity and legal status of the registrant, including the name, address, and telephone number of the duly authorized officer, agent, or employee responsible for the accuracy of the registration information.
2. The name, address, and telephone number for the duly authorized officer, agent, or employee to be contacted in case of an emergency.
3. A description of the registrant's existing or proposed telecommunications facilities within the city, a description of the telecommunications facilities that the registrant intends to construct, and a description of the telecommunications service that the registrant intends to offer or provide to persons, firms, businesses, or institutions within the city.
4. Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided, or to be provided, by the registrant constitutes an occupation or privilege subject to any business license requirements. A copy of the business license or the license number must be provided.

C. Registration Fee. Each application for registration as a telecommunications carrier shall be accompanied by a nonrefundable registration fee in the amount of thirty-five dollars, or as otherwise established by resolution of the city commission.

D. Exceptions to Registration. The following telecommunications carriers are excepted from registration:

1. Telecommunications carriers that are owned and operated by the state or a political subdivision of this state exclusively for its own use.
2. A private telecommunications network, provided that such network does not occupy any public rights-of-way of the city. (Ord. 99-1003 §1 (part), 1999)

#### 13.24.050 - Construction standards.

A. General. No person shall commence or continue with the construction, installation or operation of telecommunications facilities within a public right-of-way except as provided in this chapter and in compliance with all applicable codes, rules, and regulations.

B. Construction Codes. Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including the National Electrical Code and the National Electrical Safety Code.

C. Construction Permits. No person shall construct or install any telecommunications facilities within a public right-of-way without first obtaining a construction permit, and paying the construction permit fee established pursuant to subsection G of this section. No permit shall be issued for the construction or installation of telecommunications facilities within a public right-of-way:

1. Unless the telecommunications carrier has first filed a registration statement with the city pursuant to Section 13.24.040(B) of this code; and if applicable,
2. Unless the telecommunications carrier has first applied for and been granted a franchise pursuant to Section 13.24.070 of this code.

D. Permit Applications. Applications for permits to construct telecommunications facilities shall be submitted on forms to be provided by the city and shall be accompanied by drawings, plans and specifications. The drawings, plans and specifications must:

1. Provide sufficient detail to demonstrate that the facilities will be constructed in accordance with all applicable codes, rules and regulations;
2. Demonstrate that the facilities will be constructed in accordance with the franchise agreement;
3. Provide the location and route of all facilities to be installed aboveground or on existing utility poles;
4. Provide the location and route of all new facilities to be installed underground on or in a public right-of-way, including the line and grade proposed for the burial at all points along the route that are within the public right-of-way. Existing facilities shall be distinguished from new construction;
5. Provide the location of all of the applicant's existing underground utilities, conduits, ducts, pipes, mains and installations that are within the public rights-of-way along the underground route proposed by the applicant. A cross section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk or right-of-way; and
6. Provide a summary of the construction methods to be employed in performing the work and protecting existing structures, fixtures and facilities within or adjacent to the public right-of-way; including a description of any improvements that the applicant proposes to temporarily or permanently remove or relocate.

E. Applicant's Verification. All permit applications shall be accompanied by the verification of a registered professional engineer, or other qualified and duly authorized representative of the applicant, and the drawings, plans and specifications submitted with the application must comply with applicable technical codes, rules and regulations.

- F. Construction Schedule. All permit applications shall be accompanied by a written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the city.
- G. Construction Permit Fee. Unless otherwise provided in a franchise agreement, prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount consistent with this chapter or as otherwise determined by resolution of the city commission. Such fee shall be designed to defray the costs of city administration of the requirements of this chapter.
- H. Issuance of Permit. If satisfied that the applications, plans and documents submitted comply with all requirements of this chapter, the franchise agreement, and all applicable provisions of the city code or other law, the city shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as the city may deem necessary or appropriate.
- I. Notice of Construction. Except in the case of an emergency, the permittee shall notify the city not less than two working days in advance of any excavation or construction in the public rights-of-way.
- J. Compliance with Permit. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The city shall be provided access to the work site and such further information as it may require to ensure compliance with such requirements.
- K. Noncomplying Work. Subject to the notice requirements in Section 13.24.060(C), all work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this chapter, shall be removed at the sole expense of the permittee.
- L. Completion of Construction. The permittee shall promptly complete all construction activities so as to minimize disruption of the city rights-of-way and other public and private property. All construction work within city rights-of-way, including restoration, must be completed within one hundred twenty days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved pursuant to the schedule submitted and approved by the appropriate city official as contemplated by subsection F of this section.
- M. As-Built Drawings. If requested by the city, the permittee shall furnish the city with two complete sets of plans drawn to scale and certified to the city as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit. These plans shall be submitted to the city engineer or designee within sixty days after completion of construction, in a format mutually acceptable to the permittee and the city.
- N. Restoration of Public Rights-of-Way and City Property:
  - 1. When a permittee, or any person acting on its behalf, does any work in or affecting any public rights-of-way or city property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to good order and condition unless otherwise directed by the city and as determined by the city engineer or designee.
  - 2. If weather or other conditions do not permit the complete restoration required by this section, the permittee shall temporarily restore the affected rights-of-way or property. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule shall be subject to approval by the city.
  - 3. If the permittee fails to restore rights-of-way or property to good order and condition, the city shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding thirty days to restore the rights-of-way or property. If, after said notice, the permittee fails to restore the rights-of-way or property to as good a condition as existed before the work was undertaken, the city shall cause such restoration to be made at the expense of the permittee.

4. A permittee or other person acting in its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures that are required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights-of-way or property.
- O. Performance and Completion Bond. Unless otherwise provided in a franchise agreement, a performance bond or other form of surety acceptable to the city equal to at least one hundred percent of the estimated cost of constructing permittee's telecommunications facilities within the public rights-of-way of the city, shall be provided before construction is commenced.
1. The surety shall remain in force until sixty days after substantial completion of the work, as determined in writing by the city, including restoration of public rights-of-way and other property affected by the construction.
  2. The surety shall guarantee, to the satisfaction of the city:
    - a. Timely completion of construction;
    - b. Construction in compliance with applicable plans, permits, technical codes and standards;
    - c. Proper location of the facilities as specified by the city;
    - d. Restoration of the public rights-of-way and other property affected by the construction; and
    - e. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

(Ord. 99-1003 §1 (part), 1999)

#### 13.24.060 - Location of telecommunications facilities.

- A. Location of Facilities. All facilities located within the public rights-of-way shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement:
1. Whenever all existing electric utilities, cable facilities or telecommunications facilities are located underground within a public right-of-way of the city, a grantee with permission to occupy the same public right-of-way must also locate its telecommunications facilities underground.
  2. Whenever all new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public right-of-way of the city, a grantee that currently occupies the same public right-of-way shall relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the public right-of-way, absent extraordinary circumstances or undue hardship as determined by the city and consistent with applicable state and federal law.
- B. Interference with the Public Rights-of-Way. No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public rights-of-way by the city, by the general public or by other persons authorized to use or be present in or upon the public rights-of-way. All use of public rights-of-way shall be consistent with city codes, ordinances and regulations.
- C. Relocation or Removal of Facilities. Except in the case of an emergency, within ninety days following written notice from the city, a grantee shall, at no expense to grantor, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public rights-of-way whenever the city shall have determined that such removal, relocation, change or alteration is reasonably necessary for:
1. The construction, repairs, maintenance or installation of any city or other public improvement in or upon the public rights-of-way.
  2. The operations of the city or other governmental entity in or upon the public rights-of-way.

3. The public interest.
- D. Removal of Unauthorized Facilities. Within thirty days following written notice from the city, any grantee, telecommunications carrier, or other person that owns, controls or maintains any unauthorized telecommunications system, facility, or related appurtenances within the public rights-of-way of the city shall, at its own expense, remove such facilities or appurtenances from the public rights-of-way of the city. A telecommunications system or facility is unauthorized and subject to removal in the following instances:
1. One year after the expiration or termination of the grantee's telecommunications franchise.
  2. Upon abandonment of a facility within the public rights-of-way of the city. A facility will be considered abandoned when it is deactivated, out of service, or not used for its intended and authorized purpose for a period of ninety days or longer. A facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the facility is being replaced.
  3. If the system or facility was constructed or installed without the appropriate prior authority at the time of installation.
  4. If the system or facility was constructed or installed at a location not permitted by the grantee's telecommunications franchise or other legally sufficient permit.
- E. Coordination of Construction Activities. All grantees are required to make a good faith effort to cooperate with the city.
1. By January 1st of each year, grantees shall provide the city with a schedule of their proposed construction activities that may affect the public rights-of-way, including specifically any proposed construction activities in or around a public right-of-way.
  2. If requested by the city, each grantee shall meet with the city annually or as determined by the city, to schedule and coordinate construction in the public rights-of-way. At that time, city will provide available information on plans for local, state, and/or federal construction projects.
  3. All construction locations, activities and schedules shall be coordinated, as ordered by the city engineer or designee, to minimize public inconvenience, disruption or damages.

(Ord. 99-1003 §1 (part), 1999)

13.24.070 - Telecommunications franchise.

- A. Telecommunications Franchise. A telecommunications franchise shall be required of any telecommunications carrier who desires to occupy public rights-of-way of the city.
- B. Application. Any person that desires a telecommunications franchise must register as a telecommunications carrier and shall file with the city an application which includes the following information:
1. The identity of the applicant.
  2. A description of the telecommunications services that are to be offered or provided by the applicant over its telecommunications facilities.
  3. Engineering plans, specifications, and a network map in a form customarily used by the applicant of the facilities located or to be located within the public rights-of-way in the city, including the location and route requested for applicant's proposed telecommunications facilities.
  4. The area or areas of the city the applicant desires to serve and a preliminary construction schedule for build-out to the entire franchise area.

5. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services proposed.
  6. An accurate map showing the location of any existing telecommunications facilities in the city that applicant intends to use or lease.
- C. Application and review fee:
1. Subject to applicable state law, applicant shall reimburse the city for such reasonable costs as the city incurs in entering into the franchise agreement.
  2. An application and review fee of two thousand dollars shall be deposited with the city as part of the application filed pursuant to subsection B of this section. Expenses exceeding the deposit will be billed to the applicant or the unused portion of the deposit will be returned to the applicant following the determination granting or denying the franchise.
- D. Determination by the City. The city shall issue a written determination granting or denying the application in whole or in part. If the application is denied, the written determination shall include the reasons for denial.
- E. Rights Granted. No franchise granted pursuant to this chapter shall convey any right, title or interest in the public rights-of-way, but shall be deemed a grant to use and occupy the public rights-of-way for the limited purposes and term stated in the franchise agreement.
- F. Term of Grant. Unless otherwise specified in the franchise agreement, a telecommunications franchise granted hereunder shall be in effect for a term of five years.
- G. Franchise Territory. Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be limited to a specific geographic area of the city to be served by the franchise grantee, and the public rights-of-way necessary to serve such areas, and may include the entire city.
- H. Franchise Fee. Each franchise granted by the city is subject to the city's right, which is expressly reserved, to fix a fair and reasonable compensation to be paid for the privileges granted; provided, nothing in this code shall prohibit the city and a grantee from agreeing to the compensation to be paid. The compensation shall be subject to the specific payment terms and conditions contained in the franchise agreement and applicable state and federal laws.
- I. Amendment of Grant. Conditions for amending a franchise:
1. A new application and grant shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public rights-of-way of the city which are not included in a franchise previously granted under this chapter.
  2. If ordered by the city to locate or relocate its telecommunications facilities in public rights-of-way not included in a previously granted franchise, the city shall grant an amendment without further application.
  3. A new application and grant shall be required of any telecommunications carrier that desires to provide a service which was not included in a franchise previously granted under this chapter.
- J. Renewal Applications. A grantee that desires to renew its franchise under this chapter shall, not less than one hundred eighty days before expiration of the current agreement, file an application with the city for renewal of its franchise which shall include the following information:
1. The information required pursuant to subsection B of this section.
  2. Any information required pursuant to the franchise agreement between the city and the grantee.
- K. Renewal Determinations. Within ninety days after receiving a complete application, the city shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for non-renewal.

1. The financial and technical ability of the applicant.
  2. The legal ability of the applicant.
  3. The continuing capacity of the public rights-of-way to accommodate the applicant's existing and proposed facilities.
  4. The applicant's compliance with the requirements of this chapter and the franchise agreement.
  5. Applicable federal, state and local telecommunications laws, rules and policies.
  6. Such other factors as may demonstrate that the continued grant to use the public rights-of-way will serve the community interest.
- L. **Obligation to Cure as a Condition of Renewal.** No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the agreement, or of the requirements of this chapter, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the city.
- M. **Assignments or Transfers of System or Franchise.** Ownership or control of a majority interest in a telecommunications system or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the city, which consent shall not be unreasonably withheld or delayed, and then only on such reasonable conditions as may be prescribed in such consent.
1. Grantee and the proposed assignee or transferee of the franchise or system shall agree, in writing, to assume and abide by all of the provisions of the franchise.
  2. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the telecommunications system pursuant to this chapter.
  3. Unless otherwise provided in a franchise agreement, the grantee shall reimburse the city for all direct and indirect fees, costs, and expenses reasonably incurred by the city in considering a request to transfer or assign a telecommunications franchise.
  4. Any transfer or assignment of a telecommunications franchise, system or integral part of a system without prior approval of the city under this code or pursuant to a franchise agreement shall be void and is cause for revocation of the franchise.
- N. **Revocation or Termination of Franchise.** A franchise to use or occupy public rights-of-way of the city may be revoked for the following reasons:
1. Construction or operation in the city or in the public rights-of-way of the city without a construction permit.
  2. Construction or operation at an unauthorized location.
  3. Failure to comply with subsection M of this section with respect to sale, transfer or assignment of a telecommunications system or franchise.
  4. Misrepresentation by or on behalf of a grantee in any application to the city.
  5. Abandonment of telecommunications facilities in the public rights-of-way.
  6. Failure to relocate or remove facilities as required in this chapter.
  7. Failure to pay taxes, compensation, fees or costs when and as due the city under this chapter.
  8. Insolvency or bankruptcy of the grantee.
  9. Violation of material provisions of this chapter.
  10. Violation of the material terms of a franchise agreement.
- O. **Notice and Duty to Cure.** In the event that the city believes that grounds exist for revocation of a franchise, the city shall give the grantee written notice of the apparent violation or noncompliance,

providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time, not exceeding thirty days, to furnish evidence that:

1. Corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;
  2. Rebutts the alleged violation or noncompliance; and/or
  3. It would be in the public interest to impose some penalty or sanction less than revocation.
- P. Public Hearing. In the event that a grantee fails to provide evidence reasonably satisfactory to the city of its compliance with the franchise or with this chapter, city staff shall refer the apparent violation or noncompliance to the city commission. The Commission shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.
- Q. Standards for Revocation or Lesser Sanctions. If persuaded that the grantee has violated or failed to comply with material provisions of this chapter, or of a franchise agreement, the city commission shall determine whether to revoke the franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors:
1. Whether the violation or failure to comply was egregious;
  2. Whether substantial harm resulted from the violation or failure to comply;
  3. Whether the violation or failure to comply was intentional;
  4. Whether the grantee has violated or failed to comply with the provision(s) before;
  5. Whether the violation or failure to comply was voluntarily disclosed, admitted or cured; and
  6. The grantee's overall history of compliance.
- R. Other City Costs. All grantees shall, within thirty days after written demand therefore, reimburse the city for all reasonable direct and indirect costs and expenses incurred by the city in connection with any modification, amendment, renewal or transfer of the franchise or any franchise agreement consistent with applicable state and federal laws.

(Ord. 99-1003 §1 (part), 1999)

#### 13.24.080 - General franchise terms.

- A. Facilities. Upon request, each grantee shall provide the city with an accurate map or maps certifying the location of all of its telecommunications facilities within the public rights-of-way. Each grantee shall provide updated maps annually.
- B. Damage to Grantee's Facilities. Unless directly and proximately caused by wilful, intentional or malicious acts by the city, the city shall not be liable for any damage to or loss of any telecommunications facility within the public rights-of-way of the city as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public rights-of-way by or on behalf of the city, or for any consequential losses resulting directly or indirectly therefrom.
- C. Duty to Provide Information. Within ten business days of a written request from the city, each grantee shall furnish the city with information sufficient to demonstrate that the grantee has complied with all requirements of this chapter. All books, records, maps and other documents, maintained by the grantee with respect to its facilities within the public rights-of-way shall be made available for inspection by the city at reasonable times and intervals.
- D. Service to the City. If the city contracts for the use of telecommunications facilities, telecommunications services, installation, or maintenance from the grantee, the grantee shall charge

the city the grantee's most favorable rate offered at the time of the request charged to similar users within Oregon for a similar volume of service, subject to any of grantee's tariffs or price lists on file with the OPUC. With the city's permission, the grantee may deduct the applicable charges from fee payments. Other terms and conditions of such services may be specified in a separate agreement between the city and grantee.

- E. Compensation for City Property. If any right is granted, by lease, franchise or other manner, to use/or occupy city property for the installation of telecommunications facilities, the compensation to be paid for such right and use shall be fixed by the city.
- F. Cable Franchise. Telecommunication carriers providing cable service shall be subject to the separate cable franchise requirements of the city and other applicable authority.
- G. Leased Capacity. A grantee shall have the right, without prior city approval, to offer or provide capacity or bandwidth to its customers; provided that the grantee shall notify the city that such lease or agreement has been granted to a customer or lessee.
- H. Grantee Insurance. Unless otherwise provided in franchise agreement, each grantee shall, as condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the city, and its elected and appointed officers, officials, agents and employees as coinsured:
  - 1. Comprehensive general liability insurance with limits not less than:
    - a. Three million dollars for bodily injury or death to each person;
    - b. Three million dollars for property damage resulting from any one accident; and,
    - c. Three million dollars for all other types of liability.
  - 2. Automobile liability for owned, non-owned and hired vehicles with a limit of one million dollars for each person and three million dollars for each accident.
  - 3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars.
  - 4. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars.
  - 5. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the telecommunications franchise, and such other period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

It is hereby understood that, at least ninety (90) days before this policy is canceled or an intention not to renew this policy is stated, the grantee and the insurer must provide written notice addressed to the city of such intent to cancel or not to renew.
  - 6. Within sixty days after receipt by the city of said notice, and in no event later than thirty days prior to said cancellation, the grantee shall obtain and furnish to the city evidence that the grantee otherwise meets the requirements of this section.
  - 7. As an alternative to the insurance requirements contained herein, a grantee may provide evidence of self-insurance subject to review and acceptance by the city.
- I. General Indemnification. Each franchise agreement shall include, to the extent permitted by law, grantee's expressed undertaking to defend, indemnify and hold the city and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its

telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this chapter or by a franchise agreement made or entered into pursuant to this chapter.

- J. Performance Surety. Before a franchise granted pursuant to this chapter is effective, and as necessary thereafter, the grantee shall provide a performance bond, in form and substance acceptable to the city, as security for the full and complete performance of a franchise granted under this chapter, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the city. This obligation is in addition to the performance surety required for construction of facilities.

(Ord. 99-1003 §1 (part), 1999)

#### 13.24.090 - General provisions.

- A. Governing Law. Any franchise granted under this chapter is subject to the provisions of the Constitution and laws of the United States, and the state of Oregon and the ordinances and Charter of the city.
- B. Written Agreement. No franchise shall be granted hereunder unless the agreement is in writing.
- C. Nonexclusive Grant. No franchise granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public rights-of-way of the city for delivery of telecommunications services or any other purposes.
- D. Severability and Preemption. If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this chapter is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of the chapter shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of the chapter shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of the chapter, then the provision shall be read to be preempted to the extent and or the time required by law. In the event such federal or state law, rules or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding, without the requirement of further action on the part of the city, and any amendments hereto.
- E. Penalties. Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs. The enforcement of this provision shall be consistent with the provisions of this code regulating code enforcement.
- F. Other Remedies. Nothing in this chapter shall be construed as limiting any judicial remedies that the city may have, at law or in equity, for enforcement of this chapter.
- G. Captions. The captions to sections throughout this chapter are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this chapter.
- H. Compliance With Laws. Any grantee under this chapter shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all ordinances, resolutions, rules and regulations of the city heretofore or hereafter adopted or established during the entire term of any franchise granted under this chapter, which are relevant and relate to the construction, maintenance and operation of a telecommunications system.

- I. Consent. Wherever the consent of either the city or of the grantee is specifically required by this chapter or in a franchise granted, such consent will not be unreasonably withheld.
- J. Application to existing ordinance and agreements. To the extent that this chapter is not in conflict with and can be implemented with existing code and franchise agreements, this chapter shall apply to all existing ordinances and franchise agreements for use of the public rights-of-way for telecommunications.
- K. Confidentiality. The city agrees to use its best efforts to preserve the confidentiality of information as requested by a grantee, to the extent permitted by the Oregon public records law.
- L. Interest on late payments. If any fee or charge provided for under this chapter or in a franchise agreement shall not be timely paid, interest shall accrue on such fees at the rate of nine percent per annum, commencing the fifteenth day after payment was due. If such fee or charge is not paid within sixty days of the due date, an additional penalty in the amount of ten percent of such fee shall be assessed and due as of the date the underlying fee was due. Such penalty amount shall also bear interest at the rate provided for herein until paid.

(Ord. 02-1012, 2002: Ord. 99-1003 §1 (part), 1999)

#### Chapter 13.34 - UTILITY FACILITIES IN PUBLIC RIGHTS-OF-WAY

##### Sections :

##### 13.34.010 - Title.

The ordinance codified in this chapter shall be known and may be referenced as the utility facilities in public rights-of-way ordinance.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

##### 13.34.020 - Purpose and intent.

The purpose and intent of this chapter is to:

- A. Permit and manage reasonable access to the rights-of-way of the city for utility purposes and conserve the limited physical capacity of those rights-of-way held in trust by the city consistent with applicable state and federal law;
- B. Assure that the city's current and ongoing costs of granting and regulating access to and the use of the rights-of-way are fully compensated by the persons seeking such access and causing such costs;
- C. Secure fair and reasonable compensation to the city and its residents for permitting use of the rights-of-way;
- D. Assure that all utility companies, persons and other entities owning or operating facilities and/or providing services within the city register and comply with the ordinances, rules and regulations of the city;
- E. Assure that the city can continue to fairly and responsibly protect the public health, safety and welfare of its citizens;
- F. Encourage the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the city; and
- G. Comply with applicable provisions of state and federal law.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

13.34.030 - Jurisdiction and management of the public rights-of-way.

- A. The city has jurisdiction and exercises regulatory management over all rights-of-way within the city under authority of the city charter and state law.
- B. The city has jurisdiction and exercises regulatory management over each right-of-way whether the city has a fee, easement, or other legal interest in the right-of-way, and whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
- C. The exercise of jurisdiction and regulatory management of a right-of-way by the city is not official acceptance of the right-of-way, and does not obligate the city to maintain or repair any part of the right-of-way.
- D. The provisions of this chapter are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and, to the extent possible, shall be interpreted to be consistent with such laws, rules and regulations.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

13.34.040 - Regulatory fees and compensation not a tax.

- A. The fees and costs provided for in this chapter, and any compensation charged and paid for use of the rights-of-way provided for in this chapter, are separate from, and in addition to, any and all other federal, state, local, and city charges as may be levied, imposed, or due from a utility operator, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.
- B. The city has determined that any fee or tax provided for by this chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or property owners.
- C. The fees and costs provided for in this chapter are subject to applicable federal and state laws.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

13.34.050 - Definitions.

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive.

"Cable service" is to be defined consistent with federal laws and means the one-way transmission to subscribers of: (i) video programming, or (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"City" means the city of Oregon City, an Oregon municipal corporation, and individuals authorized to act on the city's behalf.

"City commission" means the elected governing body of the city of Oregon City, Oregon.

"City facilities" means city- or publicly-owned structures or equipment located within the right-of-way or public easement used for governmental purposes.

"Communications services" means any service provided for the purpose of transmission of information, including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. Communications service includes all forms of telephone services and voice, video, data or information transport, but does not include:

1. Cable service;
2. Open video system service, as defined in 47 C.F.R. 76;
3. Private communications system services provided without using the public rights-of-way;
4. Public communications systems;
5. Over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and
6. Direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

"Easement" means the space in, upon, above, along, across, over or under a private property for constructing, reconstructing, operating, maintaining, inspecting, and repairing a facility owned by someone other than the private property owner whereby the easement is located.

"Gross revenue" means any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectible, derived from the operation of utility facilities in the City, subject to all applicable limitations in federal or state law.

"License" means the authorization granted by the city to a utility operator pursuant to this chapter.

"Person" means and includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint-stock company, trust, limited liability company, governmental entity, association or other organization, including any natural person or any other legal entity.

"Private communications system" means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for sale or resale, including trade, barter or other exchange of value, directly or indirectly.

"Public communications system" means any system owned or operated by a government entity or entities for their exclusive use for internal communications or communications with other government entities, and includes services provided by the state of Oregon pursuant to ORS 190.240 and 283.140. "Public communications system" does not include any system used for sale or resale, including trade, barter or other exchange of value, of communications services or capacity on the system, directly or indirectly, to any person.

"Public utility easement" means an easement that allows a utility the right to use and access specific areas of another's property for constructing and maintaining gas, electric, telecommunication, fiberoptic, water, and sewer lines.  
~~means the space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utilities facilities. "Public utility easement" does not include an easement solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of city facilities, or where the proposed use by the utility operator is inconsistent with the terms of any easement granted to the city.~~

"Public works director" means the public works director for the city of Oregon City or any designee.

"Right-of-way" means and includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other city

property not generally open to the public for travel. This definition applies only to the extent of the city's right, title, interest and authority to grant a license to occupy and use such areas for utility facilities.

"State" means the state of Oregon.

"Utility facility" or "facility" means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the rights-of-way, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

"Utility operator" or "operator" means any person who owns, places, operates or maintains a utility facility within the city.

"Utility service" means the provision, by means of utility facilities permanently located within, under or above the rights-of-way, whether or not such facilities are owned by the service provider, of electricity, natural gas, communications services, cable services, water, sewer, and/or storm sewer to or from customers within the corporate boundaries of the city, and/or the transmission of any of these services through the city whether or not customers within the city are served by those transmissions.

"Work" means the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation.

#### 13.34.060 - Registration.

- A. Registration Required. Every person that desires to provide utility services to customers within the city shall register with the city prior to providing any utility services to any customer in the city. Every person providing utility services to customers within the city as of the effective date of this chapter shall register within sixty days of the effective date of this chapter.
- B. Annual Registration. After registering with the city pursuant to subsection A of this section, the registrant shall, by December 31 of each year, file with the city a new registration form if it intends to provide utility service at any time in the following calendar year. Registrants that file an initial registration pursuant to subsection A of this section on or after September 30 shall not be required to file an annual registration until December 31 of the following year.
- C. Registration Application. The registration shall be on a form provided by the city, and shall be accompanied by any additional documents required by the city to identify the registrant and its legal status, describe the type of utility services provided or to be provided by the registrant and list the facilities over which the utility services will be provided.
- D. Registration Fee. Each application for registration shall be accompanied by a nonrefundable registration fee in an amount to be determined by resolution of the city commission in an amount sufficient to fully recover all of the city's costs of administering the registration program.
- E. Exception. A person with a valid franchise agreement or license from the city shall not be required to register to provide the utility services expressly permitted by the franchise agreement or license.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

#### 13.34.070 - Right-of-way usage licenses.

- A. License Required.
  1. Except those utility operators with a valid franchise agreement from the city, every person shall obtain a license from the city prior to conducting any work in the rights-of-way.
  2. Every person that owns or controls utility facilities in the rights-of-way as of the effective date of this chapter shall apply for a license from the city within sixty days of the later of: (l) the effective

date of this chapter, or (2) the expiration of a valid franchise from the city, unless a new franchise is granted by the city pursuant to subsection E of this section.

- B. License Application. The license application shall be on a form provided by the city, and shall be accompanied by any additional documents required by the application to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, and the facilities over which the utility service will be provided, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this chapter.
- C. License Application Fee. The application shall be accompanied by a nonrefundable application fee or deposit set by resolution of the city commission in an amount sufficient to fully recover all of the city's costs related to processing the application for the license.
- D. Determination by City. The city shall issue, within a reasonable period of time, a written determination granting or denying the license in whole or in part. If the license is denied, the written determination shall include the reasons for denial. The license shall be evaluated based upon the provisions of this chapter, the continuing capacity of the rights-of-way to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.
- E. Franchise Agreements. If the public interest warrants, as determined by the city, the city and utility operator may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this chapter, consistent with applicable state and federal law. The franchise may conflict with the terms of this chapter with the review and approval of [the] city commission. The franchisee shall be subject to the provisions of this chapter to the extent such provisions are not in conflict with any such franchise.
- F. Rights Granted.
  - 1. The license granted hereunder shall authorize and permit the licensee, subject to the provisions of the city code and other applicable provisions of state or federal law, to construct, place, maintain and operate utility facilities in the rights-of-way for the term of the license.
  - 2. Any license granted pursuant to this chapter shall not convey equitable or legal title in the rights-of-way, and may not be assigned or transferred except as permitted in subsection K of this section.
  - 3. Neither the issuance of the license nor any provisions contained therein shall constitute a waiver or bar to the exercise of any governmental right or power, police power or regulatory power of the city as may exist at the time the license is issued or thereafter obtained.
- G. Term. Subject to the termination provisions in subsection M of this section, the license granted pursuant to this chapter will remain in effect for a term of five years.
- H. License Nonexclusive. No license granted pursuant to this section shall confer any exclusive right, privilege, license or franchise to occupy or use the rights-of-way for delivery of utility services or any other purpose. The city expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the city's right to use the rights-of-way, for similar or different purposes. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the rights-of-way. Nothing in the license shall be deemed to grant, convey, create, or vest in licensee a real property interest in land, including any fee, leasehold interest or easement.
- I. Reservation of City Rights. Nothing in the license shall be construed to prevent the city from grading, paving, repairing and/or altering any rights-of-way, constructing, laying down, repairing, relocating or removing city facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any city facilities. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any rights-of-way, public work, city utility, city improvement or city facility, except those providing utility services in competition with a licensee, licensee's facilities shall be removed or relocated as provided in subsections C, D

and E of Section 13.34.090, in a manner acceptable to the city and consistent with industry standard engineering and safety codes.

J. Multiple Services.

1. A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the license and right-of-way usage fee requirements of this chapter for the portion of the facilities and extent of utility services delivered over those facilities.
2. A utility operator that provides or transmits more than one utility service over its facilities is not required to obtain a separate license or franchise for each utility service, provided that it gives notice to the city of each utility service provided or transmitted and pays the applicable right-of-way usage fee for each utility service.

K. Transfer or Assignment. To the extent permitted by applicable state and federal laws, the licensee shall obtain the written consent of the city prior to the transfer or assignment of the license. The license shall not be transferred or assigned unless the proposed transferee or assignee is authorized under all applicable laws to own or operate the utility system and the transfer or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer or assignment. If a license is transferred or assigned, the transferee or assignee shall become responsible for all facilities of the licensee at the time of transfer or assignment. A transfer or assignment of a license does not extend the term of the license.

L. Renewal. At least ninety, but no more than one hundred eighty, days prior to the expiration of a license granted pursuant to this section, a licensee seeking renewal of its license shall submit a license application to the city, including all information required in subsection B of this section and the application fee required in subsection C of this section. The city shall review the application as required by subsection D of this section and grant or deny the license within ninety days of submission of the application. If the city determines that the licensee is in violation of the terms of this chapter at the time it submits its application, the city may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the city, before the city will consider the application and/or grant the license. If the city requires the licensee to cure or submit a plan to cure a violation, the city will grant or deny the license application within ninety days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

M. Termination.

1. Revocation or Termination of a License. The city commission may terminate or revoke the license granted pursuant to this chapter for any of the following reasons:
  - a. Material violation of any of the provisions of this chapter;
  - b. Material violation of any provision of the license;
  - c. Material misrepresentation in a license application;
  - d. Failure to pay related taxes, compensation, fees or costs due the city after final determination of the taxes, compensation, fees or costs;
  - e. Failure to restore the rights-of-way after construction as required by this chapter or other applicable state and local laws, ordinances, rules and regulations;
  - f. Failure to comply with technical, safety and engineering standards related to work in the rights-of-way; or
  - g. Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance and/or operation of the utility facilities.
2. Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:

- a. The egregiousness of the misconduct;
  - b. The harm that resulted;
  - c. Whether the violation was intentional;
  - d. The utility operator's history of compliance; and/or
  - e. The utility operator's cooperation in discovering, admitting and/or curing the violation.
3. Notice and Cure. The city shall give the utility operator written notice of any apparent violations before terminating a license. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than twenty and no more than forty days) for the utility operator to demonstrate that the utility operator has remained in compliance, that the utility operator has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the utility operator is in the process of curing a violation or noncompliance, the utility operator must demonstrate that it acted promptly and continues to actively work on compliance. If the utility operator does not respond or if the city manager or designee determines that the utility operator's response is inadequate, the city manager or designee shall refer the matter to the city commission, which shall provide a duly noticed public hearing to determine whether the license shall be terminated or revoked.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

#### 13.34.080 - Construction and restoration.

- A. Construction Codes. Utility facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including but not limited to the National Electrical Code and the National Electrical Safety Code and the city's pavement cut standards. When a utility operator, or any person acting on its behalf, does any work in or affecting the rights-of-way, the utility operator shall, at its own expense, promptly restore the rights-of-way as directed by the city consistent with applicable city codes, rules and regulations. A utility operator or other person acting on its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting the rights-of-way or property.
- B. Construction Permits.
1. No person shall perform any work on utility facilities within the rights-of-way without first obtaining all required permits. The city shall not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the utility operator of the facilities has applied for and received the license required by this chapter, or has a current franchise with the city, and all applicable fees have been paid. No permit is required for service drops to customer premises or routine maintenance or repairs where such drops, repairs or maintenance do not require cutting, digging, or breaking of, or damage to, the right-of-way and do not result in closing or blocking any portion of the travel lane for vehicular traffic, bicycle lanes or sidewalks.
  2. In the event of an emergency, a utility operator with a license pursuant to this chapter or its contractor may perform work on its utility facilities without first obtaining a permit from the city, provided that, to the extent reasonably feasible, it attempts to notify the city prior to commencing the emergency work and in any event applies for a permit from the city as soon as reasonably practicable, but not more than forty-eight hours after commencing the emergency work. As used in this subsection, "emergency" means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

3. Applications for permits to construct utility facilities shall be submitted upon forms to be provided by the city and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:
    - a. That the facilities will be constructed in accordance with all applicable codes, rules and regulations.
    - b. The location and route of all utility facilities to be installed aboveground or on existing utility poles.
    - c. The location and route of all utility facilities on or in the rights-of-way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route that are within the rights-of-way. Applicant's existing utility facilities shall be differentiated on the plans from new construction. The public works director may require additional information necessary to demonstrate that the proposed location can accommodate the utility facilities.
    - d. The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the rights-of-way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.
  4. All permit applications shall be accompanied by the verification of a professional engineer, or other qualified and duly authorized representative of the applicant, that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.
  5. All permit applications shall be accompanied by a written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by public works director.
  6. Prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount to be determined by resolution of the city commission.
  7. If satisfied that the applications, plans and documents submitted comply with all requirements of this chapter, the public works director shall issue a permit authorizing construction of the utility facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as they may deem necessary or appropriate.
  8. Except in the case of an emergency, the permittee shall notify the public works director not less than two working days in advance of any excavation or construction in the rights-of-way.
  9. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the utility facilities. The public works director and designated representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.
  10. All work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this chapter, shall be removed at the sole expense of the permittee. The city is authorized to stop work in order to assure compliance with the provision of this chapter. If the permittee fails to remove work as required in this subsection, the city may remove the work at the expense of the permittee, after notice and opportunity to cure.
  11. The permittee shall promptly complete all construction activities so as to minimize disruption of the city rights-of-way and other public and private property. All construction work within the rights-of-way, including restoration, must be completed within sixty days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved by the appropriate city official.
- C. Performance Surety.

1. The city may require a performance bond or other form of surety acceptable to the city equal to at least one hundred percent of the estimated cost of the work within the rights-of-way of the city be provided before construction is commenced.
  2. In the event the performance bond or other form of surety acceptable to the city is required, it shall:
    - a. Remain in force until sixty days after substantial completion of the work, as determined in writing by the city, including restoration of rights-of-way and other property affected by the construction; and
    - b. The performance bond or other form of surety acceptable to the city shall guarantee, to the satisfaction of the city:
      - i. Timely completion of the work;
      - ii. That the work is performed in compliance with applicable plans, permits, technical codes and standards;
      - iii. Proper location of the facilities as specified by the city;
      - iv. Restoration of the rights-of-way and other property affected by the work; and
      - v. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.
- D. Injury to Persons or Property. A utility operator shall preserve and protect from injury or damage other utility operators' facilities in the rights-of-way, the public using the rights-of-way and any adjoining property, and take other necessary measures to protect life and property, including but not limited to buildings, walls, fences, trees or facilities that may be subject to damage from the permitted work. A utility operator shall be responsible for all injury to persons or damage to public or private property resulting from its failure to properly protect people and property and to carry out the work.
- E. Restoration.
1. When a utility operator, or any person acting on its behalf, does any work in or affecting any rights-of-way, it shall, at its own expense, promptly restore such ways or property to the same or better condition as existed before the work was undertaken, in accordance with applicable federal, state and local laws, codes, ordinances, rules and regulations, unless otherwise directed by the city and as determined by the public works director.
  2. If weather or other conditions beyond the utility operator's control do not permit the complete restoration required by the city, the utility operator shall temporarily restore the affected rights-of-way or property. Such temporary restoration shall be at the utility operator's sole expense and the utility operator shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the city.
  3. If the utility operator fails to restore rights-of-way or property as required in this chapter, the city shall give the utility operator written notice and provide the utility operator a reasonable period of time not less than ten days, unless an emergency or threat to public safety is deemed to exist, and not exceeding thirty days, or such additional time agreed to in writing by the city, to restore the rights-of-way or property. If, after said notice, the utility operator fails to restore the rights-of-way or property as required in this chapter, the city shall cause such restoration to be made at the expense of the utility operator.
- F. Inspection. Every utility operator's facilities shall be subject to the right of periodic inspection by the city to determine compliance with the provisions of this chapter and all other applicable state and city codes, ordinances, rules and regulations. Every utility operator shall cooperate with the city in permitting the inspection of utility facilities upon request of the city. The utility operator shall perform all testing, or permit the city to perform any testing at the utility operator's expense, required by the city to determine that the installation of the utility operator's facilities and the restoration of the right-

of-way comply with the terms of this chapter and applicable state and city codes, ordinances, rules and regulations.

- G. Coordination of Construction. All utility operators are required to make a good faith effort to both cooperate with and coordinate their construction schedules with those of the city and other users of the rights-of-way.
1. Prior to January 1 of each year, utility operators shall provide the city with a schedule of known proposed construction activities for that year in, around or that may affect the rights-of-way.
  2. Utility operators shall meet with the city annually, or as determined by the city, to schedule and coordinate construction in the rights-of-way.
  3. All construction locations, activities and schedules within the rights-of-way shall be coordinated as ordered by the public works director, to minimize public inconvenience, disruption, or damages.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

#### 13.34.090 - Location of facilities.

- A. Location of Facilities. Unless otherwise agreed to in writing by the city:
1. Utility facilities shall be installed underground in all areas of the city where there are no existing poles in the right-of-way or no space on existing poles in the right-of-way. This requirement shall not apply to pedestals, cabinets or other above-ground equipment of any utility operator. The city reserves the right to require written approval of the location of any such above-ground equipment in the right-of-way.
  2. Whenever any existing electric utilities, cable facilities or communications facilities are located underground within a right-of-way of the city, the utility operator with permission to occupy the same right-of-way shall locate its facilities underground at its own expense. This requirement shall not apply to facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand volts in areas where there are existing poles in the right-of-way, or to pedestals, cabinets or other above-ground equipment of any utility operator. The city reserves the right to require written approval of the location of any such above-ground equipment in the right-of-way.
- B. Interference with the Rights-of-Way. No utility operator or other person may locate or maintain its facilities so as to unreasonably interfere with the use of the rights-of-way by the city, by the general public or by other persons authorized to use or be present in or upon the rights-of-way. All use of the rights-of-way shall be consistent with city codes, ordinances, rules and regulations.
- C. Relocation of Utility Facilities.
1. A utility operator shall, at no cost to the city, temporarily or permanently remove, relocate, change or alter the position of any utility facility within a right-of-way, including relocation of aerial facilities underground, when requested to do so in writing by the city.
  2. Nothing herein shall be deemed to preclude the utility operator from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements, provided that the utility operator shall timely comply with the requirements of this section regardless of whether or not it has requested or received such reimbursement or compensation.
  3. The city shall provide written notice of the time by which the utility operator must remove, relocate, change, alter or underground its facilities. If a utility operator fails to remove, relocate, alter or underground any utility facility as requested by the city and by the date reasonably established by the city, the utility operator shall pay all costs incurred by the city due to such failure, including but not limited to costs related to project delays, and the city may cause the

utility facility to be removed, relocated, altered or undergrounded at the utility operator's sole expense. Upon receipt of a detailed invoice from the city, the utility operator shall reimburse the city for the costs the city incurred within thirty days.

D. Removal of Unauthorized Facilities.

1. Unless otherwise agreed to in writing by the public works director, within thirty days following written notice from the city or such other time agreed to in writing by the city, a utility operator and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within a right-of-way shall, at its own expense, remove the facility and restore the right-of-way.
2. A utility system or facility is unauthorized under any of the following circumstances:
  - a. The utility facility is outside the scope of authority granted by the city under the license, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised but for which the license or franchise has expired or been terminated. This does not include any facility for which the city has provided written authorization for abandonment in place.
  - b. The facility has been abandoned and the city has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of twelve consecutive months. A utility operator may overcome this presumption by presenting plans for future use of the facility.
  - c. The utility facility is improperly constructed or installed or is in a location not permitted by the construction permit, license, franchise or this chapter.
  - d. The utility operator is in violation of a material provision of this chapter and fails to cure such violation within thirty days of the city sending written notice of such violation, unless the city extends such time period in writing.

E. Removal by City.

1. The city retains the right and privilege to cut or move the facilities of any utility operator or similar entity located within the rights-of-way of the city, without notice, as the city may determine to be necessary, appropriate or useful in response to a public health or safety emergency. The city will use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practicable without impeding the city's response to the emergency. The city will use best efforts to provide the utility operator with notice prior to cutting or moving facilities. If prior notice is not possible, the city will provide such notice as soon as reasonably practicable after taking such action.
2. If the utility operator fails to remove any facility when required to do so under this chapter, the city may, upon at least ten days' prior written notice, remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations and industry standards, and the utility operator shall be responsible for paying the full cost of the removal and any administrative costs incurred by the city in removing the facility and obtaining reimbursement. Upon receipt of a detailed invoice from the city, the utility operator shall reimburse the city for the costs the city incurred within thirty days. The obligation to remove shall survive the termination of the license or franchise.
3. The city shall not be liable to any utility operator for any damage to utility facilities, or for any consequential losses resulting directly or indirectly therefrom, by the city or its contractor in removing, relocating or altering the facilities pursuant to subsections B, C or D of this section or undergrounding its facilities as required by subsection A of this section, or resulting from the utility operator's failure to remove, relocate, alter or underground its facilities as required by those subsections, unless such damage arises directly from the city's negligence or willful misconduct.

- F. Engineering Record Drawings. The utility operator shall provide the city with two complete sets of record drawings in a form acceptable to the city upon completion of construction.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

13.34.100 - Leased capacity.

A utility operator may lease capacity on or in its systems to others, provided that, upon request, the utility operator provides the city with the name and business address of any lessee. A utility operator is not required to provide such information if applicable law or a valid agreement between the utility operator and the lessee expressly prohibits such disclosure.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

13.34.110 - Maintenance.

- A. Every utility operator shall install and maintain all facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The utility operator shall, at its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.
- B. If, after written notice from the city of the need for repair or maintenance to address a significant risk to life or property, a utility operator fails to repair and maintain facilities as requested by the city and by the date reasonably established by the city, the city may perform such repair or maintenance using qualified personnel or contractors at the utility operator's sole expense. Upon receipt of a detailed invoice from the city, the utility operator shall reimburse the city for the costs the city incurred within thirty days.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

13.34.120 - Vacation.

If the city vacates any right-of-way, or portion thereof, that a utility operator uses, the utility operator shall, at its own expense, remove its facilities from the right-of-way unless the city reserves a public utility easement, which the city shall make a reasonable effort to do provided that there is no expense to the city, or the utility operator obtains an easement for its facilities. If the utility operator fails to remove its facilities within thirty days after a right-of-way is vacated, or as otherwise directed or agreed to in writing by the city, the city may remove the facilities at the utility operator's sole expense. Upon receipt of an invoice from the city, the utility operator shall reimburse the city for the costs the city incurred within thirty days.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

13.34.130 - Right-of-way usage fee.

- A. Except as set forth in subsection B of this section, every person that owns utility facilities in the city and every person that uses utility facilities in the city to provide utility service, whether or not the person owns the utility facilities used to provide the utility services, shall pay the right-of-way usage fee for every utility service provided using the rights-of-way in the amount determined by resolution of the city commission.
- B. A utility operator whose only facilities in the right-of-way are facilities mounted on structures within the right-of-way, which structures are owned by another person, and with no facilities strung between

such structures or otherwise within, under or above the right-of-way, shall pay the attachment fee set by commission resolution for each attachment, or such other fee set forth in the license granted by the city. Unless otherwise agreed to in writing by the city, the fee shall be paid annually, in arrears, for each year during the term of this license within thirty days after the end of each calendar year, and shall be accompanied by information sufficient to illustrate the calculation of the amount payable. The utility shall pay interest at the rate of nine percent per year for any payment made after the due date.

- C. Right-of-way usage fee payments required by this section shall be reduced by any franchise fee payments received by the city, but in no case will be less than zero dollars.
- D. Unless otherwise agreed to in writing by the city, the right-of-way usage fee set forth in subsection A of this section shall be paid quarterly, in arrears, for each quarter during the term of the license within thirty days after the end of each calendar quarter, and shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable. The utility shall pay interest at the rate of nine percent per year for any payment made after the due date.
- E. The calculation of the right-of-way usage fee required by this section shall be subject to all applicable limitations imposed by federal or state law.
- F. The city reserves the right to enact other fees and taxes applicable to the utility operators subject to this chapter. Unless expressly permitted by the city in enacting such fee or tax, or required by applicable state or federal law, no utility operator may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the right-of-way usage fee or any other fees required by this chapter.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

#### 13.34.140 - Audits.

- A. Within thirty days of a written request from the city, or as otherwise agreed to in writing by the city:
  - 1. Every provider of utility service shall furnish the city with information sufficient to demonstrate that the provider is in compliance with all the requirements of this chapter and its franchise agreement, if any, including but not limited to payment of any applicable right-of-way usage fee or franchise fee.
  - 2. Every utility operator shall make available for inspection by the city at reasonable times and intervals all maps, records, books, diagrams, plans and other documents, maintained by the utility operator with respect to its facilities within the rights-of-way or public utility easements. Access shall be provided within the city unless prior arrangement for access elsewhere has been made with the city.
- B. If the city's audit of the books, records and other documents or information of the utility operator or utility service provider demonstrate that the utility operator or provider has underpaid the right-of-way usage fee or franchise fee by three percent or more in any one year, the utility operator shall reimburse the city for the cost of the audit, in addition to any interest owed pursuant to Section 13.34.130 or as specified in a franchise.
- C. Any underpayment, including any interest or audit cost reimbursement, shall be paid within thirty days of the city's notice to the utility service provider of such underpayment.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

#### 13.34.150 - Insurance and indemnification.

- A. Insurance.

1. All utility operators shall maintain in full force and effect the following liability insurance policies that protect the utility operator and the city, as well as the city's officers, agents, and employees:
    - a. Comprehensive general liability insurance with limits not less than:
      - i. Three million dollars for bodily injury or death to each person;
      - ii. Three million dollars for property damage resulting from any one accident; and
      - iii. Three million dollars for all other types of liability.
    - b. Motor vehicle liability insurance for owned, non-owned and hired vehicles with a limit of one million dollars for each person and three million dollars for each accident.
    - c. Worker's compensation within statutory limits and employer's liability with limits of not less than one million dollars.
    - d. If not otherwise included in the policies required by subsection A.1.a. above, maintain comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars.
    - e. Utility operator may utilize primary and umbrella liability insurance policies to satisfy the preceding insurance policy limit requirements.
  2. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the state of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name, or the certificate of insurance shall name, with the exception of worker's compensation, as additional insureds the city and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The policy shall provide that the insurance shall not be canceled or no longer comply with this section, without thirty days prior written notice first being given to the city. If the insurance is canceled or materially altered, the utility operator shall obtain a replacement policy that complies with the terms of this section and provide the city with a replacement certificate of insurance. The utility operator shall maintain continuous uninterrupted coverage, in the terms and amounts required. The utility operator may self insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.
  3. The utility operator shall maintain on file with the city a certificate of insurance, or proof of self-insurance acceptable to the city, certifying the coverage required above.
- B. Financial Assurance. Unless otherwise agreed to in writing by the city, before a franchise granted or license issued pursuant to this chapter is effective, and as necessary thereafter, the utility operator shall provide a performance bond or other financial security, in a form acceptable to the city, as security for the full and complete performance of the franchise or license, if applicable, and compliance with the terms of this chapter, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the city. This obligation is in addition to the performance surety required by subsection C of Section 13.34.080.
- C. Indemnification.
1. Each utility operator shall defend, indemnify and hold the city and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility operator or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this chapter or by a franchise agreement, unless the utility operator's

failure arises directly from the city's negligence or willful misconduct. The acceptance of a license under Section 13.34.070 shall constitute such an agreement by the applicant whether the same is expressed or not. Upon notification of any such claim the city shall notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.

2. Every utility operator shall also indemnify the city for any damages, claims, additional costs or expenses assessed against or payable by the city arising out of or resulting, directly or indirectly, from the utility operator's failure to remove or relocate any of its facilities in the rights-of-way or easements in a timely manner, unless the utility operator's failure arises directly from the city's negligence or willful misconduct.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

#### 13.34.160 - Compliance.

Every utility operator shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules and regulations of the city, heretofore or hereafter adopted or established during the entire term of any license granted under this chapter.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

#### 13.34.170 - Confidential/proprietary information.

If any person is required by this chapter to provide books, records, maps or information to the city that the person reasonably believes to be confidential or proprietary, the city shall take reasonable steps to protect the confidential or proprietary nature of the books, records or information, to the extent permitted by Oregon public records laws, provided that all documents are clearly marked as confidential by the person at the time of disclosure to the city. The city shall not be required to incur any costs to protect such document, other than the city's routine internal procedures for complying with the Oregon public records law.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

#### 13.34.180 - Penalties.

- A. Any person found guilty of violating any of the provisions of this chapter or the license shall be subject to a penalty of not less than one hundred dollars nor more than one thousand dollars for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.
- B. Nothing in this chapter shall be construed as limiting any judicial or other remedies the city may have at law or in equity, for enforcement of this chapter.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

#### 13.34.190 - Severability and preemption.

- A. The provisions of this chapter shall be interpreted to be consistent with applicable federal and state law, and shall be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.

- B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition or portion of this chapter is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this chapter shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, clause, phrase, term, provision, condition, covenant and portion of this chapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the city.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)

13.34.200 - Application to existing agreements.

To the extent that this chapter is not in conflict with and can be implemented consistent with existing franchise agreements, this chapter shall apply to all existing franchise agreements granted to utility operators by the city.

(Ord. No. 13-1014, § 1(Exh. A), 11-6-2013)