

Written Comments/Testimony and Submitted Documents



February 10, 2023

City of Keizer
930 Chemawa Rd NE
Keizer, OR 97303
www.keizer.org/city-council

Mayor Cathy Clark
Councilor Laura Reid
Councilor Shaney Starr
Councilor Kyle Juran
Councilor Soraida Cross
Councilor Robert Husseman
Councilor Dan Kohler

RE: City of Keizer “Utility Service Utilizing the Public Rights-of-Way” and “Communications License Law” Ordinances and Related Fee Resolutions

Dear Mayor and Councilors,

CTIA^{®1}, the trade association for the wireless communications industry, appreciates the opportunity to submit these comments on the City of Keizer’s proposed ordinances governing access to and use of the City’s rights-of-way (“ROW”). These comments specifically relate to the “Utility Service Utilizing the Public Rights-of-Way” draft ordinance (“ROW Ordinance”) and “Communications License Law” draft ordinance (“License Ordinance”) as well as the associated “Resolutions” establishing schedules of fees as authorized by the two Ordinances.

CTIA’s members seek to work with Keizer to bring the benefits of fifth-generation (“5G”) and broadband wireless services to the City’s residents, schools, and businesses. The COVID-19 pandemic has highlighted the importance of reliable wireless communications that meet the public’s increasing demand for high-speed connectivity. Our members are investing tens of billions of dollars in wireless networks nationwide to expand the availability of 5G and broadband.

¹ CTIA – The Wireless Association[®] (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, and suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.



However, certain provisions in the proposed Ordinances and the exceedingly high fees that the City proposes to charge would impede the deployment of network infrastructure that is needed to deliver 5G and broadband services to Keizer's residents. They also raise serious legal issues. CTIA has three overall concerns:

- The proposed revenues-based fees are excessive and violate federal law. In addition, imposing fees on service providers who do not deploy any of their own equipment in the ROW is unjustified and itself unlawful. It would generate windfall payments to the City that bear no relationship to the City's costs of managing the ROW.
- Application of a number of the non-fee requirements to entities who do not own facilities in the ROW exceeds the City's authority and is unnecessary.
- Certain non-fee provisions in the proposed updates to the Ordinances are unjustified, would impose excessive obligations on providers that will deter investment in service to Keizer residents and would in some cases violate federal law.

CTIA details its concerns below. Given the many legal and other issues with the proposed Ordinances and the Resolutions, we respectfully urge the City to revise the draft code documents as proposed and release them for further comment. This will enable the City to ensure that it complies with legal requirements and promotes – rather than deters – the availability of advanced, high-speed wireless services in Keizer.

1. Proposed Fees

Federal law limits the fees that localities can charge communications providers for deploying facilities in a ROW because Congress has recognized that excessive ROW fees can impair the public's access to communications services. Section 253(a) of the Communications Act of 1934, as amended (the "Act"), preempts state and local laws that "prohibit or have the effect of prohibiting any entity" from providing service.² Courts have concluded that high fees can have that prohibitive effect and thus held that fees must be based on actual use of the ROW and be proportional to the costs to maintain the ROW.³ Additionally, Section 253(c) only permits fees that recover "fair and reasonable compensation" for ROW use.⁴ Section 332(c)(7) of the Act contains similar language preempting regulation of personal wireless facilities that has the effect of prohibiting those services.⁵

In 2018, the Federal Communications Commission ("FCC") recognized the benefits to the public of speeding the deployment of wireless infrastructure and addressed fee-based and other regulatory barriers to

² 47 U.S.C. § 253(a).

³ See, e.g., *New Jersey Payphone Association, Inc. v. Town of West New York*, 130 F.Supp.2d 631, 638 (D.N.J. 2001); *Puerto Rico Telephone Co. Inc. v. Municipality of Guayanilla*, 450 F.3d 9, 22 (1st Cir. 2006); *AT & T Commc'ns of Sw., Inc. v. City of Dallas*, 8 F. Supp. 2d 582, 593 (N.D. Tex. 1998).

⁴ 47 U.S.C. § 253(c).

⁵ 47 U.S.C. § 332(c)(7).



deployment.⁶ It interpreted Sections 253(a), 253(c) and 332(c)(7) to set guardrails on local regulation. The FCC held that any fee that “materially inhibits” the provision of wireless services is prohibited by 253(a) and 332(c)(7).⁷

The U.S. Court of Appeals for the Ninth Circuit, which has jurisdiction to hear appeals involving Oregon, affirmed the FCC’s interpretation of Sections 253 to limit localities’ fees.⁸ The court rejected localities’ argument that Section 253(c) authorized them to set fees that were not cost based: “The statute requires that compensation be ‘fair and reasonable’; this does not mean that state and local governments should be permitted to make a profit by charging fees above costs.”⁹

Keizer’s proposed fees violate these federal guardrails in multiple ways.

First, Section 14 of the draft ROW Ordinance and Section 5 of the associated Resolution would require a wireless service operator that deploys facilities in the ROW to pay a yearly “usage fee” of “7% of gross revenue, or a minimum of \$5,000, whichever is greater.”¹⁰ But courts have struck down gross revenues fees, finding that they are by definition not based on a locality’s costs and can prohibit service, contrary to the language and purpose of Section 253. For example, one court found that because a 5% gross revenues fee “materially inhibits or limits the ability” of providers to compete, it violates Section 253.¹¹ Summarizing the case law in its 2018 Order, the FCC held: “[W]e agree with courts that have recognized that gross revenue fees generally are not based on the costs associated with an entity’s use of the ROW and where that is the case, are preempted under Section 253(a).”¹²

Section 14(B) of the ROW Ordinance charges wireless licensees that operate only above-ground antenna facilities an attachment fee rather than a gross revenues-based usage fee, and we have been advised other Oregon cities have interpreted a similar section to limit ROW usage fees for wireless facilities to the site-specific attachment fee. However, according to the draft ROW Ordinance, those wireless providers that also rely on other providers’ fiber facilities for backhaul to support their networks would remain subject to the gross-revenues usage fee. Further, all wireless providers that operate anywhere in Keizer still must pay the

⁶ *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) (“Wireless Broadband Order”).

⁷ *Id.* at ¶¶ 35-37.

⁸ *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), *cert. denied*, 594 U.S. ___, 141 S.Ct. 2855 (June 28, 2021)(No. 20-1354)..

⁹ *Id.* 969 F.3d at 7715. The court also affirmed the FCC’s holding that “Section 332 should be construed as having the same meaning and governed by the same preemption standard as the identical language in Section 253(a). *Id.*”

¹⁰ The fee applies to any person that owns or uses facilities in the ROW to provide utility service (which is defined as including wireless service). The fee for a utility “provider” is 7% of gross revenues. .

¹¹ *Puerto Rico Telephone Co. Inc. v. Municipality of Guayanilla*, 450 F.3d 9, 22 (1st Cir. 2006). Similarly, in *XO Missouri, Inc. v. City of Maryland Heights*, 256 F. Supp. 2d 987, 994 (E.D. Mo. 2003), the court held that fees based on providers’ revenues are not permitted by Section 253(c): “The Court adopts the reasoning supporting other courts’ decisions that revenue-based fees are impermissible under the [1996 Telecom Act]. Thus, to meet the definition of “fair and reasonable compensation” a fee charged by a municipality must be directly related to the actual costs incurred by the municipality when a telecommunications provider makes use of the rights-of-way. . . [P]lainly a fee that does more than make a municipality whole is not compensatory in the literal sense, and instead risks becoming an economic barrier to entry.”

¹² Wireless Broadband Order at ¶ 70.



separate – and higher – 7% gross-revenues-based license fee, net of the other fees they pay. The Ordinance thus remains inconsistent with FCC and court rulings invalidating gross revenues fees.¹³

Second, Sections 5 and 6 of the draft License Ordinance and Section 1 of the associated Resolution requires wireless providers to pay an even larger recurring fee of 7% of its gross revenues to obtain the license needed to lawfully operate anywhere in the City.¹⁴ While Section 7 of the License Ordinance enables licensees to deduct the 5% gross revenues-based “usage fee” or the attachment fee from the 7% gross-revenues based license fee, all wireless operators would still be compelled to pay the City a substantial fee based on their revenues – precisely the type of governmental charge that the FCC and courts have invalidated. The license fee imposed by Sections 5 and 6 of the License Ordinance would materially inhibit providers’ ability to provide service in Keizer and is therefore prohibited by Sections 253(a) and 332(c)(7). Because it is a license fee, not a ROW fee, the exception in 253(c) for reasonable ROW fees is inapplicable. Even if 253(c) did apply, the 7% gross revenues fee bears no relationship to the City’s costs to manage the ROW, violating federal guardrails.

Third, these gross revenues fees are particularly exorbitant and unreasonable because they would apply to providers whose traffic is carried over third parties’ ROW facilities but *do not themselves own facilities in the ROW*. For example, if a non-facilities-based provider leases access to use a fiber operator’s fiber optic lines to backhaul wireless traffic, *both* it and the fiber operator would pay separate gross revenues fees because under the ROW Ordinance, both would be engaged in ROW “use.” Keizer incurs zero costs because the provider’s traffic merely traverses already built third-party ROW facilities and there is no new fiber installation that affects the City. The use is effectively invisible, yet the City would collect multiple fees for a single ROW facility. The fiber owner would pay, but so would every provider whose traffic traverses that fiber. Such multiple charges for the same ROW facilities violate Section 253 of the Act because they are clearly not related to ROW management costs.

Fourth, even a wireless service provider who has no facilities in the ROW but deploys only on private property must pay the ROW fee and the license fee. Compelling non-ROW users to pay such fees underscores that the City is not seeking compensation for its costs to manage its ROW; rather, it wants to maximize the revenues it receives. As explained above, such fees do not comply with federal law.

Fifth, if a provider offers more than one type of service that requires a license, the provider must obtain a license for each one *and* pay a separate gross revenues fee.¹⁵ This would result in the same provider paying multiple fees, even though there is no ROW-related impact to the City, because the types of services offered do not affect the degree or amount of ROW use. Double- or triple-charging fees merely because a provider offers different services to customers is excessive and unlawful.

¹³ In addition, the City fails to demonstrate that the attachment fee reasonably approximates the City’s ROW management costs. This fee is thus also inconsistent with federal law.

¹⁴ Per the Resolution associated with the License Ordinance, the recurring license fee is in addition to a \$100 initial license application fee and a \$100 annual license renewal fee.

¹⁵ Section 8(K)(b), which indicates that a licensee must “pay the applicable fee for each utility service.”



Section 3(D) of the ROW Ordinance acknowledges, “The provisions of this Ordinance are subject to and shall be applied consistently with applicable state and federal laws, rules and regulations, and shall be interpreted to be consistent with such laws, rules, and regulations.” Given that the gross revenues fees are unlawful for multiple reasons, they cannot be applied “consistent” with federal law. The City should delete the provisions establishing the ROW usage and license gross revenues fees. Such gross revenues fees should not be assessed on any wireless providers, regardless of whether they own and/or operate ROW facilities or rely on other providers’ facilities.

2. Proposed Non-Fee Provisions that Apply to Entities that Do Not Own ROW Facilities

The proposed Ordinances would regulate entities that do not own or operate facilities in the ROW. Those additional provisions conflict with federal law, impose unreasonable burdens on wireless providers and will create uncertainty and delay in providing new or expanded wireless services in Keizer.

Some CTIA members may choose to locate their facilities on private property, such as commercial centers and apartment buildings rather than in the ROW. Others may choose to transmit their customers’ traffic using equipment that is owned and operated by third parties and that is in the ROW. They may, for example, lease or purchase fiber capacity from a fiber optic operator for backhauling their traffic or obtain capacity on a facilities-based provider’s antennas and resell that capacity to retail customers. In both cases, providers do not install or operate equipment in the ROW. They thus impose no burdens or costs on Keizer ROW, which will already regulate providers that do own and operate physical facilities in the ROW.

The proposed Ordinances, however, clearly intend to regulate entities that do not own or operate facilities in the ROW. Section 5 of the License Ordinance, for example, requires “any person...providing Communications Services” to secure a license.¹⁶ This is an arbitrary and unjustified extension of City regulation. If a provider has no facilities in the ROW, it should not need or pay for a license. In addition, requiring a wireless provider to obtain a license before it may offer service could violate federal law because Section 332(c)(3) of the Act prohibits states and localities from regulating the entry of wireless providers into the market.

Other provisions similarly impose unjustified obligations on entities that do not own or operate equipment or other facilities in the ROW. Section 16(A) of the ROW Ordinance, for example, subjects these entities to audits and information requests “at any time.” Section 17(B) imposes broad obligations to indemnify the City. And Section 17(A)(e) requires all licensees to post a performance bond in the amount of \$350,000 conditioned on the licensee observing, fulfilling, and performing all provisions of the ROW Ordinance. However, the Ordinances supply no basis for extending such requirements to encompass entities that do not own or operate ROW infrastructure.

¹⁶ The definition in Section 4.D of the ROW Ordinance reflects that “communications” includes most commercial wireless communications services.



CTIA thus opposes subjecting non-facilities-based wireless providers or providers that do not own or operate facilities in the ROW to regulation as arbitrary and contrary to law. The City should remove all provisions of the proposed Ordinances that apply to providers that do not own or operate facilities in the City's ROW.

3. Additional Non-Fee Provisions that Should be Deleted or Modified.

Finally, CTIA asks that the City reconsider a number of provisions in the proposed Ordinances because they would impose unjustifiable costs and obligations on providers that likely will impede the expansion of service, and several violate federal law. They should be revised or deleted.

Section 8(H) of the ROW Ordinance sets a five-year term for ROW licenses. Given the substantial investment that providers must make in infrastructure in order to provide service, providers should have more certainty that their investment will not be undercut. This provision should be modified to specify a ten-year initial term, which will be automatically renewed for successive ten-year terms as long as the licensee is in compliance with the terms of its license.

Section 9(B) of the ROW Ordinance requires City approval "prior to the commencement of any construction, extension, or relocation of any facilities," and other provisions of Section 9 set requirements for obtaining approval. However, in 2012, Congress sought to speed wireless deployment by enacting a statute that limits the scope of state and local review of certain modifications to wireless facilities.¹⁷ The FCC implemented that statute by adopting rules that specify that localities do not have discretion to condition or deny certain modifications to facilities – such as the addition of an antenna on an existing utility or streetlight pole – that qualify as "eligible facilities requests." FCC rules provide that the locality "shall approve" such requests; it has no discretion to deny them.¹⁸ Section 9 should accordingly be modified to reflect the limited scope of review applicable to such eligible facilities requests as defined in FCC rules.

Section 9 of the ROW Ordinance also does not set deadlines for the City to approve the construction or modification of wireless facilities. Federal law, however, sets specific deadlines within which localities are to act in order to accelerate the deployment of wireless facilities. Those time periods are (i) 60 days for eligible facilities requests under Section 6409 or for collocating a small wireless facility on an existing structure; (ii) 90 days for installing a new structure to hold small wireless facilities, or to collocate a larger wireless facility on an existing structure; and (iii) 150 days for installing a new larger structure. Section 9 should be modified to include each of these time periods.

Section 11 of the ROW Ordinance states that a ROW licensee "may lease or otherwise provide capacity on or in its facilities to others" only if "all lessees have obtained proper authority, in the form of a permit, license, or franchise from the City before leasing capacity on or in its facilities." By regulating the lease of "capacity" on a facility, Section 11 appears to require that before a licensee leases any of its radio spectrum to another

¹⁷ Section 6409 of the 2012 Spectrum Act, *codified at* 47 U.S.C. § 1455.

¹⁸ 47 C.F.R. § 1.6100(c).



provider, it must obtain the City's consent. But localities have no jurisdiction over leases of radio spectrum, which the FCC exclusively regulates. Section 11 should therefore be deleted.

Section 5 of the License Ordinance requires wireless providers to apply for and obtain a license to provide service. However, Section 332(c)(3) of the Communications Act prohibits states and localities from regulating the entry of wireless providers and may preempt the City from requiring a license to the extent it imposes obligations or conditions on the provider in order to secure grant. In addition, the provision supplies no rationale for allowing license terms of only one year and requiring annual renewal other than to obtain the annual fees. Given these issues, the City should delete the licensing requirements. If it nonetheless determines to retain them, it should clarify that a license will automatically be granted upon application without conditions or change it to a simple registration requirement. Section 5 should also set an initial license term of at least ten years, which can be automatically renewed for successive ten-year terms.

* * *

In sum, the draft proposed Ordinances and Resolutions raise serious legal and policy issues as to both the high fees and the non-fee requirements. We ask that the City work with all communications providers to revise these documents to bring them into compliance with law and remove unnecessary and unjustified requirements in order to promote the deployment of expanded service that will benefit Keizer.

Sincerely,

Jeremy Crandall
Assistant Vice President
State Legislative Affairs

Cc: Ms. Reba Crocker, reba@rowmanagers.com



February 21, 2023

City of Keizer
930 Chemawa Rd NE
Keizer, OR 97303

RE: Utility Service Utilizing the Public Rights of Way and Communications License Ordinance

Dear City Councilors and Mayor Clark:

Founded in 1938, Salem Electric is a not-for-profit 501(c)(12) electric cooperative. Unlike investor-owned utilities, electric cooperatives provide electricity to their member-owners at cost. Our members are the owners of the cooperative and they are also your constituents.

Salem Electric has five goals that guide our business decisions.

1. Reliable Service
2. Good Customer Relations
3. Good Employee Relations
4. Financial Integrity
5. Low Rates

As a cooperative business, Salem Electric also adheres to seven cooperative guiding principles.

1. Open and Voluntary Membership
2. Democratic Member Control
3. Members' Economic Participation
4. Autonomy and Independence
5. Education, Training, and Information
6. Cooperation Among Cooperatives
7. Concern for Community

Salem Electric has been granted a defined service territory through a Public Utility Commission authorized territorial agreement, which requires us to serve all of our members within those boundaries.

We also have a mission to protect the public. We build all of our facilities to the requirements of the National Electric Safety Code and we meet or exceed local requirements for our infrastructure. This investment in our infrastructure helps to reduce power outages, and our members enjoy a steady reliable supply of electricity to power their homes and businesses. When power disruptions occur, such as during severe weather events or traffic accidents, our crews work hand in hand with your public safety officers and public works departments

to help get streets accessible and keep the public out of harm's way until power restoration is complete. We are our community and when the community is safe and successful so are we.

The ordinance has a "one size fits all approach," which does not take into consideration the different requirements of an electric distribution cooperative compared to the needs of communications companies. We provide electricity to our members, which is an essential service. Power outages are emergencies and are different from the loss of phone or internet connections. In the event of an outage, phone and internet services do not work until electricity is restored.

The proposed ordinance for electric service is a concern for us and our membership. Its important that we are able to work with the City and to discuss the needs and requirements of our electric system. Salem Electric prefers to operate under a specific term franchise agreement with bilateral support from both parties. This provides the necessary stability for both of us to undertake the work necessary to provide safe, reliable electric service at reasonable rates. To our knowledge, multiple cities have right of way ordinances but still operate with their electrical providers under an individual franchise agreement.

The proposed ordinance sets a new paradigm required for service from Salem Electric, and if passed, would result in a significant increase in our existing rates for the citizens of Keizer

Under the proposed ordinance, Salem Electric will not be allowed to install new poles into our current overhead system. This may require a complete rebuild of portions of our overhead system to allow for installations that would simply be used for overhead clearance, or a drop pole for a new underground service, or other installations of a similar nature. All of these significant additional costs would be passed along to our Keizer members. In addition to significant cost increases, we would also incur time delays on any project in which we are involved. These delays would affect any development including city driven projects.

The proposed ordinance would require us to underground any facilities that are currently in areas that have underground utilities already in place, which is essentially our service territory within the City of Keizer.

The proposed ordinance requires the relocation of our existing overhead facilities whenever any utility service in the current right of way is being installed underground. This again would force us to replace a working, cost effective, well-maintained system ahead of its useable lifespan with a costly and unnecessary replacement.

Up until now we have typically installed underground facilities in new construction of subdivisions and other developments. To retrofit the entire Keizer franchise area to underground will cost millions of dollars. As a member-owned electric cooperative, that cost is borne by our members in Keizer, your constituents. Depending on the expected timeframe for that conversion, electricity rates could see a substantial increase nearly immediately to pay for the installation.

Salem Electric has been providing power to our membership for over 80 years and we do not anticipate that changing any time soon. We have had a great longstanding relationship with the City of Keizer and expected the franchise renewal/ordinance process to be much more collaborative. I am disappointed that the City allowed our current franchise to lapse before making any effort to discuss the operational change, even after multiple attempts on our part to begin dialogue.

We received a draft ordinance and request to extend the current agreement almost two weeks after the prior franchise agreement had lapsed with an unreasonably short window to provide feedback

I urge the City Council to vote against the ordinance as it is proposed. Salem Electric has been a good steward of our system and we are invested in providing safe, reliable electric service to our members, your constituents, at reasonable rates.

Additionally, I request that the City Council direct staff to enter into a separate franchise agreement with Salem Electric for the use of the right of way so that we may continue to provide safe, reliable electric service to our members, your constituents at reasonable rates. Salem Electric has a long-standing tradition of taking care of our equipment and our members, and we plan to do so for many years to come.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony C. Schacher', written in a cursive style.

Anthony C. Schacher
General Manager

RJJ



March 17, 2023

The Honorable Cathy Clark
City Council
City of Keizer
PO Box 21000
Keizer, OR 97307

Sent to City Recorder via email: DavisT@Keizer.org

Re: Proposed Right-of-Way Utility Regulations and Fees
March 20th Council Meeting, Agenda Item #7(a)

Dear Mayor Clark and Councilmembers:

On behalf of New Cingular Wireless PCS, LLC, (“AT&T”), I write regarding the proposed Right-of-Way Utility Regulations Ordinance (“ROW Ordinance”) and fee resolution related to the same.

AT&T appreciates that City of Keizer (“City”) staff have considered its previous comments and made some revisions to clarify the proposed terms of the ROW Ordinance and fees.

But AT&T is concerned that the revised ordinance now introduces a new fee – a ROW “access” fee applying separately from a ROW “use” fee – that AT&T has not encountered in Oregon before. Neither “access” nor “access fee” are defined in the revised ROW Ordinance, but AT&T understands from the Staff Report that the City will charge its wireless services a percentage of revenue fee even though AT&T has no facilities in the City’s ROW. Such fees are contrary to federal and state law, and AT&T suggests that City Council direct staff to reevaluate the proposed terms of the ROW Ordinance and fee resolution, after consideration of the legal framework described herein.

AT&T provides wireless communication services in the City, but it has no facilities located in the ROW.

The City’s proposed ROW “access” fees are inapplicable to AT&T’s wireless services and barred by state and federal law as follows:

- The “access” fees prohibit or have the effect of prohibiting telecommunications services under the Telecommunications Act of 1996. 47 U.S.C. § 253(a).
 - The City’s attempted extension of ROW “access” fees to AT&T’s wireless services is not saved by 47 U.S.C. § 253(c) because AT&T has

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no facilities in the public ROW. Federal case law and interpretations of similar fee ordinances and franchise agreements conclude that:

- Imposition of ROW fees requires physical occupation of the ROW;¹ and
 - Fees charged to “non-facilities-based” providers violate 47 U.S.C. § 253.²
- The “access” fees are preempted and barred by ORS 317A.158 (the 2019 Corporate Activity Tax).

While the City’s Staff Report states that “[f]ederal law requires municipalities to provide a ‘level playing field’ for providers,”³ which we believe is a reference to the requirements in 47 U.S.C. § 253(c) to regulate the ROW on a “competitively neutral and nondiscriminatory basis” and impose fees “for use of public rights-of-way on a nondiscriminatory basis,” federal courts have rejected this justification for charging those providers not actually using the ROW, such as follows in a wireless provider case:

3. Competitive Neutrality: Dallas also argues that it must impose its franchise obligations on Teligent in order to satisfy the requirement in § 253(c) that it act in a “competitively neutral and nondiscriminatory” manner. The provision simply mandates, however, that when a city imposes fees for the use of the rights-of-way, or imposes conditions on that use, it does so in a way that is competitively neutral and nondiscriminatory. The statute does not require that the City treat all providers of local telephone service identically, regardless of whether or not they use the rights-of-way, or how much of the rights-of-way they use. Because Teligent will not use the City’s rights-of-way at all [because Teligent would only lease capacity from a franchised carrier], the City’s regulatory power is not implicated, and its duty to be competitively neutral is not invoked.⁴

AT&T generally supports the concept of a utility license code that replaces negotiated franchise agreements with a utility license subject to codified terms.⁵

¹ *AT&T Commc’ns of the Southwest, Inc. v. City of Dallas*, 8 F.Supp.2d 582 (N.D.Tex.1998)(“*City of Dallas I*”); *AT&T Commc’ns of the Southwest, Inc. v. City of Dallas* 52 F.Supp.2d 756, 761 (N.D. Tex. 1998)(“*City of Dallas II*”); *AT&T Commc’ns of the Southwest, Inc. v. City of Dallas*, 52 F.Supp.2d 763 (N.D. Tex. 1999), *vacated and remanded on other grounds*, 243 F.3d 928 (5th Cir. 2001)(“*City of Dallas III*”).

² *AT&T Commc’ns of the Southwest, Inc. v. City of Austin*, 40 F.Supp.2d 852 (W.D. Tex. 1998), *vacated on other grounds*, 235 F.3d 241 (5th Cir. 2000). *See* findings of fact on motion for preliminary injunction in 975 F. Supp. 928, 938 (W.D. Tex. 1997).

³ Staff Report, p. 4.

⁴ *City of Dallas II*, at 762 (emphasis added)(citations omitted).

⁵ Note that this general support is subject to a section like proposed ROW Ordinance Section 9(Q), which allows negotiation of a franchise agreement when there is reason to deviate from the terms of the ROW Ordinance.

But the proposed ROW Ordinance does far more than codify typical terms of a franchise agreement. Instead, the ROW Ordinance seeks to regulate utility services for which a franchise agreement is never required for purposes of collecting revenue. The City's stated intent is to charge ROW "access" fees based on any relationship to the ROW, however tenuous,⁶ and charge multiple providers fees for the same impact to the ROW. As noted above, the proposed ROW Ordinance does not define "access" or "access fee," but in AT&T's experience, ROW "access fee" is often used interchangeably or together with ROW "use fee."⁷

For several years, we have understood the City's ROW consultant to believe that a wireless service provider "uses" the ROW when it is a backhaul customer via fiber owned and operated by another service provider. To confirm, AT&T has not installed any fiber facilities within the City's ROW to connect to its wireless facilities located on private property. Further, even if AT&T were to install small wireless facilities in the City's ROW, AT&T's practice in this region has been to contract with a licensed, third-party fiber provider to bring fiber service to its wireless facilities. In other words, for its wireless facilities AT&T is the fiber provider's customer, not a provider of communications service via fiber. The fiber provider will remain the owner and operator of the fiber lines, and as such will be responsible for obtaining its own licenses, permits, and approvals from the City for installation and operation of fiber lines within the City's ROW and paying any relevant fees for its usage of the City's ROW.

The revised ROW Ordinance and fee resolution have renamed the relevant fee to a ROW "access fee," and we believe the City's position is that AT&T is providing communication services "by means of" another provider's facilities located in the ROW.⁸ But no matter what the City calls the proposed fee, it is barred by law.

History of Utility Right-of-Way Ordinances in Oregon Cities

The proposed ROW Ordinance is largely based on a model ordinance prepared in 2010 by Beery, Elsner & Hammond LLP for the League of Oregon Cities (the "League"), which converted a franchising program to a utility license program by codifying typical terms governing access to and use of the ROW.

⁶ It is perhaps telling that "use" of the ROW for which a city may charge a provider under federal law is limited to actual ownership and operation of facilities in the ROW; the proposed code may refer to an "access" fee in an attempt to skirt federal limitations.

⁷ *Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 (2018) *affirmed in part and vacated in part*, *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), *cert. denied*, 594 U.S. ___, 141 S.Ct. 2855 (June 28, 2021)(No. 20-1354)("2018 FCC Order"), footnote 71.

⁸ See definition of "utility service" in Section 5(Z).

Last month, the League published an [updated Telecom Toolkit and model ordinance](#) for its members. Prepared by the Telecom Law Firm, PC, the new model Master Utility Right-of-Way Ordinance imposes fees, identified therein as “privilege taxes,” only on those service providers that “actually use” the ROW.⁹ This language mirrors the privilege tax authorized by state law in ORS 221.515(1).¹⁰ (Note that the state privilege tax does not apply to wireless providers.¹¹)

In explaining the scope of the new model ordinance, the new Toolkit explains:

The MUROW does not cover utilities that do not use the ROW (such as telecommunications service resellers or VOIP providers that lease capacity over lines and facilities owned and operated by other telecommunications carriers). Likewise, this template does not authorize their facilities outside the ROW (such as data centers or other equipment that may be placed on private property adjacent to the facilities in the ROW). Any authorizations, taxes or fees imposed on those excluded utilities and/or facilities would need to be addressed by a separate ordinance.¹²

By focusing on “actual use,” the 2023 Telecom Toolkit and model ordinance are more consistent with federal limitations on local authority in 47 U.S.C. § 253. See detailed discussion below.

The new Telecom Toolkit does not provide advice for a city intending to charge or tax utilities that do not actually use the ROW, but a new local tax based on commercial activity would be preempted by ORS 317A.158. See discussion below.

State Case Law Addressing “Use” of the ROW

In one Oregon case, the court did consider “use” of the ROW by communications service providers, distinguishing between “actual use” and “indirect use.”¹³ At issue there was the

⁹ See Section 14(A) of model ordinance (emphasis added).

¹⁰ “The council of every municipality in this state may levy and collect from every telecommunications carrier operating within the municipality and actually using the streets, alleys or highways, or all of them, in such municipality for other than travel, a privilege tax for the use of those streets, alleys or highways, or all of them, in such municipality in an amount which may not exceed seven percent of the gross revenues of the telecommunications carrier currently earned within the boundaries of the municipality.” ORS 221.515(1)(Emphasis added.)

¹¹ See definitions in ORS 221.515(4), ORS 133.721 (“telecommunications carrier” and “telecommunications service”), and ORS 759.005 (“telecommunications service” and “telecommunications utility” excluding radio common carriers).

¹² 2023 Telecom Toolkit, p. 12/143.

¹³ *Qwest Corp. v. City of Portland*, 275 Or. App. 874, 888-89, 365 P.3d 1157 (2015), *review denied*, 360 Or. 465 384 P.3d 152 (2016).

City of Portland's Utility License Fee ("ULF"), which is a tax charged for the privilege of doing business in Portland (rather than a privilege tax imposed for the use of Portland's ROW). Qwest argued that the ULF was truly a privilege tax for the use of the ROW, and in support of that argument, it claimed that certain resellers were "using" the ROW even though they had no facilities in the ROW. In rejecting Qwest's argument, the court characterized the resellers' use as merely "indirect" use, concluding that "to the extent that they do 'use' the city's rights-of-way, they do so indirectly by either purchasing service from another utility and reselling it or by providing service to a customer who has existing Internet access."¹⁴

Portland was able to charge the "indirect" users of the ROW the ULF because it was a tax charged for the privilege of doing business in Portland regardless of where a provider's facilities were located. More recently, new local taxes similar to the ULF are preempted by ORS 317.158. See discussion below.

Federal Telecom Act Limitations on ROW Fees – "Use" of the ROW

Section 253 of the Telecom Act bars local governments from imposing requirements that would prohibit or have the effect of prohibiting the ability of an entity to provide telecommunications service, although under § 253(c) local governments are allowed to charge telecommunications providers fair and reasonable compensation for "use" of the ROW.

For purposes of both local franchise agreement requirements and fees, "use" of the ROW under § 253(c) requires physical occupation of the ROW:

All of the legislative history surrounding the adoption of § 253(c), and the cases that have since been decided on the issue, have interpreted the provision to apply to physical occupation of a city's rights-of-way.¹⁵

In *City of Dallas II*, Teligent, Inc., ("Teligent"), sought to provide telephone service via microwave transmission and wireless base stations located on private property, outside of the public ROW.¹⁶ Teligent's service was to be provided as follows:

Signals will be transmitted from the base station antennae to the switch either through the air via microwave or through wires in conduits leased from another local telecommunications carrier. These wires may be located

¹⁴ Id. at 889.

¹⁵ *City of Dallas II*, 52 F.Supp.2d at 761.

¹⁶ Id. at 758.

in City rights-of-way, but they will not be owned by Teligent, but by another carrier that has a franchise from the City[.]¹⁷

There, Teligent “would not construct, own, install or maintain any facilities in the City’s public rights-of-way.”¹⁸

Dallas argued that Teligent nevertheless “used” the ROW:

City states that there is no specific language in any of these statutes that limits “use” to mean “occupy” or “construct, own, install, or maintain.” Rather, it argues, the term should be interpreted broadly [... because ...] Teligent admits that it may transmit calls from a base station to its switch using “capacity leased from a franchised carrier that owns facilities, some of which are likely to be located in the public rights-of-way.”¹⁹

But the court was “unpersuaded that transmitting microwaves through the air, or leasing the facilities of other providers constitutes ‘use’ of Dallas’s rights-of-way.”²⁰

“Use” of the ROW under the Telecom Act thus requires something more than reliance upon facilities owned and operated by a third party. In *AT&T Communications of the Southwest, Inc. v. City of Austin*,²¹ where AT&T would only purchase and resell the services of another provider, the court concluded:

The City’s unsupported assertion that a non-facilities-based provider is “using” the City’s public rights-of-way is wholly unpersuasive. In fact, it is a metaphysical interpretation of the term “use” that defies logic and common sense. [...] In enacting the Ordinance, the City overstepped its bounds.²²

Later in the proceedings, in response to the city’s renewed argument that AT&T “used” the ROW because its signals consisting of electrons and light waves traveled through fiber optic lines in the ROW, the judge in *City of Austin* called the city’s arguments “border[ing] on the absurd”²³ and its proposed interpretation of “use” as “bizarre.”²⁴

¹⁷ Id.

¹⁸ Id. at 758-59.

¹⁹ Id. at 761.

²⁰ Id. at 761-62.

²¹ 975 F. Supp. at 938.

²² *Austin*, at 942-43. See also *Chicago v. FCC*, 199 F.3d 424 (7th Cir. 1999)(denying petitions for review of the FCC’s Declaratory Ruling in *In the Matter of Entertainment Connections, Inc.*, 13 FCC Rcd. 14277 (1998).

²³ *AT&T v. Austin*, 40 F.Supp.2d 852, 856 (W.D. Tex. 1998).

²⁴ Id. (“The Court once again rejects the City’s bizarre definition of the term “use.””).

Under federal statutes and case law, the City may not charge AT&T a ROW “use” fee, no matter whether it is called a “use fee” or an “access fee.”

Telecom Act Limitations on ROW Fees – Small Wireless Facilities

In 2018, the FCC addressed the limits imposed by Sections 253 and 332 of the Telecom Act²⁵ on a local jurisdiction’s regulation of small wireless facility deployment.²⁶ The FCC concluded that ROW access fees and other fees violate Sections 253 or 332(c)(7) unless three conditions are met: (1) the fees are a reasonable approximation of the local government’s costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations.²⁷

The FCC explained “that an appropriate yardstick for ‘fair and reasonable compensation,’ and therefore an indicator of whether a fee violates Section 253(c), is whether it recovers a reasonable approximation of a state or local government’s objectively reasonable costs of... maintaining the ROW... or processing an application or permit.”²⁸ The FCC continued, “fees are only permitted to the extent they represent a reasonable approximation of the local government’s objectively reasonable costs...”²⁹ otherwise, the fees violate Sections 253 and 332. ROW fees must be “*related to and caused by*” the location of a small wireless facility and reflect the facility’s “*degree of actual use* of the public rights-of-way.”³⁰ The 2018 FCC Order set a presumptively reasonable recurring fee for small wireless facilities located in the right-of-way of \$270 per year, per facility.³¹

Moreover, the courts have specifically recognized that “gross revenue fees generally are not based on the costs associated with an entity’s use of the ROW, and where that is the case, are preempted under Section 253(a).”³²

The City proposes to adopt a \$270 annual per-facility fee for small wireless facilities in the ROW.³³ If AT&T were to build small wireless facilities in the ROW, it appears that those facilities would also be charged the 7% ROW “access” fee for communications service, which would be contrary to the 2018 FCC Order.

²⁵ 47 U.S.C. §§ 253, 337.

²⁶ 2018 FCC Order.

²⁷ 2018 FCC Order, ¶ 50.

²⁸ 2018 FCC Order, ¶ 72 (citations omitted).

²⁹ Id., ¶ 32, footnote 71.

³⁰ Id. at footnote 131 (emphasis added).

³¹ 2018 FCC Order, ¶ 79.

³² Id., ¶ 70 (citations omitted).

³³ Resolution No. R2023-____, Section 6.

Telecom Act Limitations on ROW Fees – Duplicative Fees

In the end, the City intends to collect duplicative fees for the same impact on the ROW, which is contrary to federal law. Even where a strict cost-based rule may not necessarily apply (such as it does for small wireless facilities), fees imposed under § 253(c) must be related to “use” of the ROW. For a more recent example, where a city attempted to collect duplicative ROW fees from a passive owner of facilities in the ROW after a change in corporate structure, the FCC ruled that the city may collect fees from the operator only.³⁴

Similarly, here, the City’s ROW usage fees are already due from the fiber/wireline providers with which AT&T has agreements as a customer/purchaser, and there is no basis for collecting duplicative fees.

Oregon’s 2019 Preemption of New Local Taxes

Without a direct link to actual usage of the ROW, any new percentage of revenue fees the City attempts to impose on AT&T’s services would be new local taxes preempted by Oregon’s Corporate Activity Tax (“CAT”).

The state’s CAT was enacted in 2019, along with a preemption of local taxes and fees based on commercial activity.

The relevant statute provides as follows:

- (1) Except as expressly authorized by this section, the authority to impose, in this state, a tax upon the commercial activity of an entity is vested solely in the Legislative Assembly. A city, county, district or other political subdivision or municipal corporation of this state may not impose, by ordinance or other law, a tax upon commercial activity or upon receipts from grocery sales.
- (2) Subsection (1) of this section does not apply:
 - (a) To any tax, or to subsequent amendments of the provisions of any tax, if the ordinance or other law imposing the tax is in effect and operative on April 1, 2019, or is adopted by initiative or referendum petition at an election held prior to March 1, 2019; or

³⁴ *Missouri Network Alliance, LLC d/b/a Bluebird Network and Uniti Leasing MW LLC, Petition for Preemption and Declaratory Ruling Pursuant to Section 253(d) of the Communications Act of 1934*, WC Docket 20-46, 35 FCC Rcd 12811 (2020).

(b) To the imposition of privilege taxes not measured by commercial activity, franchise fees or right-of-way fees. [2019 c.122 §67; 2019 c.579 §55]³⁵

This state law precludes new local taxes on commercial activity (*i.e.*, based on gross revenue) except as specified in ORS 317A.158(b), which allows:

- Privilege taxes not measured by corporate activity;
- Franchise fees; and
- Right-of-way fees.

The above analysis confirms that the proposed new percentage of revenue fees cannot be franchise or right-of-way fees as applied to AT&T's wireless services because AT&T is not using the ROW, as required by federal law.

While as explained above, a local privilege tax measured by corporate activity, for the privilege of doing business in the City, was upheld in *Qwest Corp. v. City of Portland*,³⁶ Portland's tax³⁷ predates the CAT and is excepted by ORS 317A.158(2)(a). A new tax based on Portland's ULF is preempted.

The City's proposed 7% ROW "access" fee, with no direct relationship to ROW use, is thus preempted by state law.

In light of these serious questions about the interpretation and applicability of the proposed ordinance and fees, the City should reconsider them in the proper legal framework.

Thank you for your consideration of this information prior to your meeting next week.

Very truly yours,



Meridee Pabst

Copy to: Adam Brown, City Manager
Shannon Johnson, City Attorney

³⁵ ORS 317A.158 (Local Taxes Preempted).

³⁶ 275 Or. App. 874.

³⁷ Portland's ULF does not apply to wireless service providers. Portland Administrative Rule UTL-3.05.



Portland General Electric

121 SW Salmon Street • Portland, OR 97204
portlandgeneral.com

Jan 30, 2023

VIA ELECTRONIC FILING: Reba@ROWmanagers.com and BrownA@keizer.org

Reba Crocker
Adam Brown, City Manager
City of Keizer
930 Chemawa Rd NE
Keizer, OR 97307

Re: Portland General Electric's Comments Regarding Keizer's Proposed Utility Public Right-of-Way (ROW) Ordinance

Dear Ms. Crocker and Mr. Brown:

Portland General Electric (PGE) appreciates the opportunity to provide comments regarding the above referenced Utility Right-Of-Way ordinance. Keizer and PGE have a long history of working together cooperatively to resolve issues and we are thankful for the collaborative approach in asking for input and feedback. Attached are PGE's comments regarding the proposed Utility Public ROW ordinance.

PGE serves approximately 900,000 customers with a service area population of 2 million Oregonians in 51 cities. PGE has franchise agreements in 47 of those 51 cities. In the past year, 15 franchise agreements were expiring or up for renewal and we renewed 15 of them. Based on our experience, cities value a franchise agreement because it serves your residents, our customers, more than a blanket utility right-of-way ordinance since it recognizes the difference between an electric utility and other kinds of utilities that don't have an obligation to serve.

We appreciate the city's concern regarding its legal requirement to treat telecommunications utilities similarly; however, PGE is not subject to the Federal Telecommunications Act as a telecommunications utility, but rather regulated through the Oregon Public Utility Commission as an electric utility.

We understand that good right-of-way management practices are important for keeping roads and facilities in good working order. PGE and Keizer have had a long term, good working relationship, and a good system for regulating what PGE does in the city's rights of way. If you see issues with other utilities, they can be addressed separately without adding undue costs or burdens to electric customers, your residents.

We welcome your consideration of a separate franchise agreement, as permitted by Section Q of the proposed ordinance, to address items that differentiate an electric utility from other utilities; specifically, PGE. PGE welcomes the opportunity to renegotiate a franchise agreement utilizing the current agreement which has served the community well for 10 years.

Although we believe a Franchise Agreement would serve your community the best, in response to your request for comments regarding the ordinance, below is a summary of PGE's comments on the ordinance.

Section M: Definitions

Gross Revenue Definition: We ask for a definition that is consistent with the OPUC's definition set forth in its administrative rules and used in other cities. Therefore, the exclusions should include the following: "sales of electric energy to any public utility when the public utility purchasing such electric energy is not the ultimate consumer, and revenue from joint pole use. For purposes of this section, revenue from joint pole use includes any revenue collected by the franchisee from any other person franchised, permitted, licensed or otherwise granted authority by the City for the right to attach wires, cable or other facilities or equipment to, or place them in, franchisee's Equipment or Facilities."

Section 9: Construction and Restoration

We ask for flexibility in this section that allows the City Public Works Director discretion to waive any or all permitting requirements depending on scope and/impact of project.

Section 9D (c):

We ask for flexibility in this section since this could create significant administrative work. We suggest utilizing the right-of-way permit for providing detail depending on scope and type of project.

Section 9 C and D:

We ask for city notification of potential updates to the permit application requirements and an opportunity to provide feedback. Additionally, this would add cost to customer projects by requiring us to hire an engineering company for the cross-section drawings.

Section 9O: Coordination of Construction

We ask for language that allows for flexibility in a schedule. We may not have a complete list of proposed construction activities for the entire year.

Section 10A: Location of Facilities

We ask for an ability to allow for exceptions due to potential limited ROW space which could create challenges and a cost burden to customers.

Section 10C: Relocation of Facilities

We ask for your consideration of adopting the current franchise language regarding relocation of electric facilities which provides clarity on criteria for relocations and timeframes.

Section 10G: Engineering Designs and Plans

We ask for modifying language to allow for exceptions. This provision could create cost increases for customer projects. We would also need to ensure protection of electric infrastructure system.

Section 13: Vacation of Public Rights-of-Way

We need a city notification of a proposed vacation to allow time to relocate or remove our facilities and additional time to vacate

New Electric Utility Section: We propose a new section within the ordinance that would apply only to electric utilities. However, we would welcome a franchise agreement that solely addresses the specific electric utility items.

Kind Regards,
Wendy Veliz
Local Government Affairs Manager

CC: Tony Eaquinto



Taxpayers Association of Oregon

Since 1999 • OregonWatchdog.com

OregonWatchdog@Gmail.com (503) 603-9009 P.O. Box 23573, Tigard, OR 97281

3/2/2023

Mayor Cathy Clark
Councilor Laura Reid
Councilor Shaney Starr
Councilor Kyle Juran
Councilor Soraida Cross
Councilor Robert Husseman
Councilor Dan Kohler

Keizer City Council
930 Chemawa Rd, NE
Keizer, OR 97303

Urge rejection of exorbitant right-of-way fee increase proposal

Dear Mayor Clark and members of the Keizer City Council:

It has come to our attention that the City of Keizer may be considering an enormous new tax that will increase the costs of energy, phone service, cable television, internet access and other services that nearly all Keizer residents depend upon – including many on fixed incomes. We urge a rejection of this proposal.

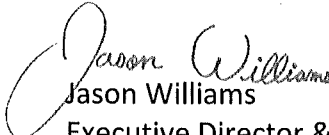
As enough studies have shown, new taxes and fees are passed on to customers it is ultimately local residents and small businesses that bear the costs. Through January, the Consumer Price Index for the region has increased 6.3% year-over-year. With everything from food, fuel and a variety of other services already costing local residents more, now hardly seems like the right time to add another costly and regressive tax.

The public is not in the mood for higher costs.

The concept of expecting users of the public right-of-way to pay for access is not what we are contesting as we are not against user fee systems. However, any fees charged should be reasonable and based on actual use. Unfortunately, the city's proposal bears no relationship to the cost of maintaining the right-of-way. In fact, the proposal would tax some providers who do not even use the right-of-way but instead lease access from others.

The City Council should reject this proposal. There is little justification for the added costs and it will simply cost Keizer residents too much.

Sincerely,


Jason Williams

Executive Director & Founder (1999)

From: [Davis, Tracy](#)
To: [Lockhart, Debbie](#)
Subject: FW: Right of Way Hearing Testimony
Date: Tuesday, March 21, 2023 9:33:00 AM

From: Jonathan Thompson

Sent: Monday, March 20, 2023 9:39 AM

To: Cathy Clark <ClarkC@keizer.org>; reidl@keizer.org <reidl@keizer.org>; Shaney Starr <StarrS@keizer.org>; jurank@keizer.org <jurank@keizer.org>; crosss@keizer.org <crosss@keizer.org>; Robert Husseman <HussemanR@keizer.org>; Daniel Kohler <KohlerD@keizer.org>

Cc: Brown, Adam <browna@keizer.org>; Johnson, Shannon <JohnsonS@keizer.org>; Corri@keizerchamber.com <corri@keizerchamber.com>; Davis, Tracy <DavisT@keizer.org>

Subject: Right of Way Hearing Testimony

Good Morning Mayor Clark and Members of the Keizer City Council-

I am writing on behalf of the Government Affairs Committee at the Keizer Chamber of Commerce. I had hoped to join you in person this evening but I have a mid-term exam due date approaching quickly.

The issue of the Right of Way Ordinance you are considering was brought up by one of our Chamber members. While we did not vote to take a position, we do have some questions.

1. If passed, how will our new fees compare with fees in surrounding jurisdictions?
2. How does this ordinance deal with the issue of "double taxation?" For example, will PGE, for example, need to pay this fee on the income it receives from renting space on its existing poles? Also, if a company plugs into existing cable in the right of way, will both the owner of the cable and the company plugging into it both pay the new fee on the use of the same cable?
3. We understand that FCC rules and some court rulings limit how much we can charge for franchise related fees. Do we know how these proposed fees stack up against these legal tests? I also understand that our consultant has a commission arrangement on this which would provide incentive for her to push us to higher and higher fees. I don't want us to get locked into a court battle we cannot afford on these fees.

Thank you for listening to our questions and we look forward to following the discussion on

this topic as it moves forward.

Warmest Regards,

Jonathan

Jonathan Thompson

Cell: (503) 580-1294



March 17, 2023

City of Keizer
930 Chemawa Rd NE
Keizer, OR 97303

Via Email

<https://www.keizer.org/city-council>

Mayor Cathy Clark
Councilor Laura Reid
Councilor Shaney Starr
Councilor Kyle Juran
Councilor Soraida Cross
Councilor Robert Husseman
Councilor Dan Kohler

RE: March 20, 2023 Council Agenda #7(a)- City of Keizer Utility Ordinance and Related Fee Resolution

Mayor Clark and Councilors:

I am writing to you on behalf of Verizon Wireless to share with you the serious concerns we have regarding the lack of transparency and public process for a significant change in the way wireless carriers access the right of way in the City of Keizer. The proposed ordinance still has serious legal flaws, as was pointed out in the February 10, 2023 letter you received from CTIA. Verizon shares those concerns and has been frustrated by rushed process, very little time to review the multiple components of the draft ordinance and the last-minute nature of contacts with ROW Consultants that did not provide for a thoughtful review and productive dialogue to try to find a collaborative way forward.

The entire process has been rushed through with no opportunity for an explanation of how the specific legal challenges raised in the CTIA letter are addressed in the draft code, with no citation of the applicable federal and state law the City is relying on in bringing this ordinance forward. It is evident that more time is needed to address the

March 17, 2023

Page 2

legal issues with the proposed code and to provide greater public process for new fees that will have financial impacts on wireless users in the City.

While some of the industry concerns were arguably addressed after the last draft revision, there remain serious legal flaws underpinning the proposed new fees. The latest draft seeks to impose a “right of way access fee” on wireless carriers who have no physical presence in the right of way. It is important to note that the term “access” is not defined in the ordinance. This fee, however, is assessed on those who provide utility service within the city, not those who seek to access the right of way. This distinction becomes important in view of the relatively recent adoption of ORS 317A.158 which preempts a local jurisdiction from taxing commercial activities but exempts right of way fees. The proposed “fee” is triggered by the provision of utility services in the city, a commercial activity. Moreover, it is calculated as a percentage of gross revenue earned by provision of utility services. While the City calls this a ROW access fee, there is no factual connection to the right of way required. This is by its nature, a tax on a commercial activity in the city and is not permitted under state law.

The staff report states that there will be no fee increase for those paying the City currently. This is disingenuous because the City has not previously assessed right of way fees on wireless providers who do not have infrastructure in the right of way. The staff report also asserts that imposing right of way access fee on wireless providers with no physical presence in the right of way will somehow “level the playing field”. This is misleading in that it purports to create a level playing field between entities that are not similarly situated. Wireline phone and fiber companies have actual physical assets in the right of way that generate actual impacts to the right of way. Wireless providers that are the customers of these entities for backhaul are not similarly situated, lacking a physical connection to the right of way. Federal law does not require that apples be treated the same as oranges. A strong body of caselaw holds that a municipality may treat providers differently if they are not similarly situated. See e.g. *Portland v. United States*, 969 F.3d 1020, 1040 (9th Cir. 2020), cert. denied, 594 U.S. ___, 141 S.Ct. 2855 (June 28, 2021)(No. 20-1354) (“Because there were differences among providers, those who crafted Section 332(c) sought to preserve state and local governments’ “flexibility to treat facilities that create different . . . concerns differently, . . . even if those facilities provide functionally equivalent services.”) Accordingly, the City has no obligation to impose the same fees on service providers who lack any physical connection or impact to the right of way as it imposes on those who do have a physical presence in the right of way.

March 17, 2023
Page 3

Verizon appreciates the postponement of the last council meeting until March to consider the ordinance but requests that the Council provide some additional time and direct its consultant to arrange for a more substantive meeting with the carriers and City staff present to explain the City's position and address the stakeholder redlines of the newly updated draft of the ordinance from the City. A Verizon representative will attend the hearing on March 20th to answer any questions you might have.

Residents and businesses expect reliable and robust wireless service to be able to connect with family and conduct business where they live, work and play. This proposed ordinance is a serious disincentive to providing and enhancing wireless service in the City of Keizer.

Sincerely,

A handwritten signature in black ink, appearing to be 'Kim Allen', with a long horizontal flourish extending to the right.

Kim Allen
For Verizon Wireless

CC. Shannon Johnson, City Attorney

March 17, 2023
Page 4



VIA EMAIL

January 30, 2023

Ms. Reba Crocker
ROW Consultants LLC

Re: Comcast's Comments Regarding City of Keizer Proposed Code Changes Relating to Use of the Public Right-of-Way

Dear Ms. Crocker:

Comcast appreciates the opportunity to provide comments regarding the proposed City of Keizer Ordinances and Resolutions relating to use of the public right-of-way ("ROW") attached to your email to Stakeholders, dated January 12, 2023. Set forth below is Comcast's understanding of its obligations under the proposed Ordinances and Resolutions should the City adopt them in their current form.

Comcast has a valid cable franchise agreement with the City granting it the right to construct, maintain and operate a cable system in the City's ROW. Comcast and its affiliates provide both cable service and non-cable services over the cable system.

Pursuant to the Federal Communications Commission's ("FCC") "mixed-use rule," federal law preempts the City from regulating the use of the ROW by Comcast or its affiliates to provide non-cable services over its franchised cable system.¹ Accordingly, those provisions in the proposed Ordinances and Resolutions that would require a license and/or the payment of a percentage gross revenues fee for use of the ROW do not apply to Comcast's non-cable services provided over Comcast's cable system.

Thank you again for this opportunity to comment on the City's proposed Ordinances and Resolutions relating to use of the City's ROW. Please let me know if you have any questions.

Sincerely,

Samantha Ridderbusch
Director, Government & Regulatory Affairs

¹ 47 C.F.R. § 76.43; *see also*, *Comcast of Oregon II, Inc. v. City of Beaverton*, -- F.Supp.3d --, 2022 WL 2341961 (USDC OR, June 29, 2022).

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2023-_____

ESTABLISHING FEES FOR ORDINANCE NO. 2023-_____

WHEREAS, the City has constitutional and charter authority to establish fees imposed;

WHEREAS, on _____, 2023, the Keizer City Council adopted Ordinance No. 2023-_____ which imposes a fee on communication services within the City;

WHEREAS, Ordinance No. 2023-_____ provides that the City Council shall by Resolution establish applicable fees;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that:

Section 1. The fees established by Ordinance No. 2023-_____ shall be as follows, and effective as of April 1, 2023, to the extent permitted by applicable law:

Communication services	7% of gross revenue
License Application Fee (includes a one-year license)	\$100.00
License Renewal Fee	\$100.00

Commented [KA1]: How and why are these different from the fees listed in the other fee document? Is this a fee for communications services? If so, why is it called a license?

Gross Revenues shall have the meaning defined in Ordinance No. 2023-_____.

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Section 2. This Resolution shall take effect on April 1, 2023.

PASSED this _____ day of _____, 2023.

SIGNED this _____ day of _____, 2023.

Mayor

City Recorder

1 A BILL ORDINANCE NO.
2 2023-_____
3 FOR
4
5 AN ORDINANCE
6
7
8
9
10
11

12 The City of Keizer ordains as follows:

13 Section 1. TITLE. This Ordinance shall be known and may be referenced as
14 the “Communications License Law.”

15 Section 2. LICENSE REQUIRED. Any person providing communication
16 services within the City shall obtain a communications license covering the period of the
17 calendar year, from January 1 through December 31, or if application is approved after
18 January 1 of any year, then for the balance of the same calendar year.

19 Section 3. ADMINISTRATION.

20 A. The Communications License Law shall be administered by the City, its
21 staff or duly appointed representative.

22 B. Specific Controls the General. If a conflict exists between two City Code
23 provisions, one of them a general requirement and the other a specific requirement, the
24 more specific requirement shall operate as an exception to the general requirement
25 regardless of the priority of enactment.

1
2 Section 4. DEFINITIONS. For the purpose of this Ordinance, the following
3 words, terms, phrases, and their derivations shall have the meanings given below unless
4 the context indicates otherwise. When not inconsistent with the context, words used in
5 the present tense include the future tense. Words in the plural number include the
6 singular number, and words in the singular include the plural number. The word "shall"
7 is always mandatory and not merely directory.

8 A. "Cable Service" is to be defined consistent with of 47 U.S.C. Section
9 522(6), as may be amended or superseded, and means the one-way transmission to
10 subscribers of (a) video programming, or (b) other programming service; and subscriber
11 interaction, if any, which is required for the selection or use of such video programming
12 or other programming service.

13 B. "Calendar year" means January 1 to December 31, unless otherwise noted.

14 C. "City" means the City of Keizer, Oregon, a municipal corporation, and its
15 governing authority, and/or its duly appointed and authorized agents. In addition, the
16 City may refer to all the territory within its corporate boundaries and as such may change
17 from time to time.

18 D. "Communication services" means any service provided for the purpose of
19 transmission of information including, but not limited to, voice, video or data, without
20 regard to the transmission protocol employed, whether or not the transmission medium is

owned by the provider itself. Communications services includes all forms of telephone services and voice, video, data, or information transport, but does not include: (a) cable service; (b) open video system service, as defined in 47 CFR Section 76; (c) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; (d) public communications systems; and (e) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

E. "Days" means calendar days, unless otherwise noted.

F. "Gross Revenue" means any revenue earned within the City, after adjustment for the net write-off of uncollectible accounts within the City, from the provision, furnishing or sale of Telecommunications or associated service by of from a telecommunications or cable communications business, or any revenue earned by any person within the City from the use, rental or lease of operating facilities, or any revenue earned within the City for supplying Communication services.

a. Gross revenues shall include, by way of illustration and not limitation:

1. Fees for installation;
2. Disconnection;
3. Reconnection;
4. Maintenance and services calls;

Commented [RC1]: FYI-I am going to revise this after the provider feedback to be extremely clear.

5. Repair;
6. Charges for equipment sales, rental, or lease;
7. Late fees;
8. Non-sufficient funds (NSF) charges; and
9. Administrative fees.

b. Gross revenues shall not include:

1. Oregon and Federal Universal Service Funding. Revenues associated with Universal Service funding requirements under 47 U.S.C. § 254, ORS 759.425;
2. Revenues associated with taxes for emergency communications under ORS Chapter 403;
3. E9-1-1. Telecommunication revenues, tariffed or non-tariffed charge or service applicable to any connection, circuit or equipment which brings an E9-1-1 call to the appropriate responding Public Safety Answering Point, regardless of where the E9-1-1 call is originated; and
4. Sales of bonds, mortgages, or other evidence of indebtedness, securities, or stocks.

G. ~~"Internet Service" means a service that includes computer processing applications, provides the user with additional or restricted information, or permits the~~

Commented [KA2]: This defined term is never used in the draft and should be omitted.

1 user to interact with stored information through the internet or a proprietary subscriber
2 network. "Internet Service" includes the provision of internet electronic mail, access to
3 the internet for information retrieval, and hosting of information or the retrieval over the
4 internet of the graphical subnetwork called the world wide web. "Internet" means the
5 international computer network of both federal and nonfederal interoperable packet
6 switched data networks, including the graphical subnetwork call the world wide web.

7 H. "License" or "Communications License" means the authorization granted
8 by the City to a person(s) subject to this Ordinance.

9 I. "Licensee" means any person that is subject to the provisions of this
10 Ordinance or has a valid communications license issued by the City.

11 J. "Person" means and includes any individual, firm, sole proprietorship,
12 corporation, company, partnership, co-partnership, joint-stock company, trust, limited
13 liability company, association, local service district, government entity, or other
14 organization, including any natural person or any other legal entity.

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

20 Section 5. APPLICATION AND ISSUANCE. Any person, providing

1 Communication Services, subject to the provisions of the Communications License Law
2 shall apply for a communications license within forty-five (45) days of the later of (a) the
3 effective date of this Ordinance, or (b) the expiration of a valid franchise agreement. The
4 application and renewal application shall be accompanied by a nonrefundable application
5 fee set by Resolution of the City Council.

6 A. License Application. The communications license application shall be on a
7 form provided by the City and shall be accompanied by applicable fees and additional
8 documents required by the City, at the City's sole discretion, at no cost to the City,
9 allowing the City to easily determine whether the license should be issued.

10 B. Communication License Renewal. Every year the licensee that wishes to
11 continue operations within the City shall submit a renewal application, along with
12 applicable fees, to the City, not before September 15th and not later than December 31
13 for each subsequent calendar year. The application shall include such information as the
14 City deems necessary, at its sole discretion and at no cost to the City, to easily determine
15 whether the license should be renewed.

16 C. Upon receiving an application, together with any fees due, any additional
17 information deemed necessary, the City will issue or renew a license to the applicant. A
18 license shall be valid for no longer than the calendar year in which it was approved.
19 Every license shall expire on December 31 of the year of issuance.

20 D. The City shall provide application forms. Failure to receive or obtain a

1 form will not relieve any person from the obligation to obtain a license or pay fees under
2 the Communication License Law.

3 E. Private communication systems and those communication systems owned
4 or operated by the City of Keizer or other municipalities are exempt from this Ordinance.

5
6 Section 6. FEES AND PAYMENT. Except as provided in Section 7, the fee
7 for a communications license shall be measured by a percentage of the gross revenue
8 earned by the licensee for each quarter year of operation. The percentage of gross
9 revenue shall be set by Resolution of the City Council.

10 A. The licensee will compute the license fee by multiplying the percentage, by
11 the gross revenues received during the quarter. The licensee shall complete the forms
12 provided by the City when reporting such revenues and remitting fees.

13 B. No acceptance of any payment shall be construed as accord that the amount
14 paid is in fact the correct amount, nor shall such acceptance of payment be construed as a
15 release of any claim the City may have for further or additional sums payable.

16 C. Unless otherwise agreed to in writing by the City, the fee set forth in this
17 section shall be paid quarterly, in arrears, within forty-five (45) days after the end of each
18 calendar quarter. Each payment shall be accompanied by an accounting of gross
19 revenues, if applicable, and a calculation of the amount payable (a remittance form shall
20 be provided by the City). The City may request and shall be provided at no cost to the

Commented [KA3]: The calculation of this utility service tax based on commercial activity is prohibited by ORS 317A.158.

Commented [KA4]: There is no way to separate out the revenues generated by SWFs, which, under federal law, can only have cost based fees imposed. This gross revenue is calculated based on the entire network, which violates federal law.

City, any additional reports or information it deems necessary, in its sole discretion, to ensure compliance by the licensee. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative documenting calculation, details on number of customers within the city limits, or any other information needed for the City to easily verify compliance.

D. A licensee commencing operations as provided in Section 5, shall make the initial payment to the City on or before the payment date following the first quarter year after commencing operations. In the event a licensee terminates operations which come within the provisions of the Communications License Law, a final remittance shall be made on or before the forty-fifth (45) day following the date of such termination.

Section 7. DEDUCTIONS.

A. A licensee may deduct from the communications license fee required in the Communications License Law the amount of any fees or payments made or accrued to the City for the period upon which the communications license fee is computed, under any provision of franchise, privilege tax, or a ROW license granted by the City. A licensee shall not deduct amounts paid to the City for interest charges, late fee, fines, penalties, permits or other authorizations. This subsection shall not relieve any licensee from paying in accordance with the provisions of a franchise, ROW license, temporary permit, charter provision or ordinance when the amount to be paid thereunder exceeds the amount of the communications license required under the Communications License

1 Law.

2 B. A licensee may not deduct from the communications license fee the value
3 of any right given to the City to use any facilities, including but not limited to: poles,
4 conduits, or ducts or other facilities in common with the licensee. A licensee may not
5 deduct from the communications license fee any permit or inspection fee imposed under
6 any code provision or ordinance to the City.

7 Section 8. REPORTS AND REVIEW OF RECORDS.

8 A. Each person paying a communications license fee shall simultaneously file
9 a report to the City, on the form supplied by the City. The report shall be verified by the
10 licensee or an authorized agent to the effect that all statements made therein are true.

11 B. If a person asserts that any provision of federal, state or local law imposes
12 a limit upon the amount of communications license fees which the City may impose or
13 require from a licensee, the licensee claiming to be within such limitation shall identify
14 in its communications license fee report, or by separate attachment, the specific federal,
15 state or local law, and the service it provides that it claims is subject to the exception.

16 C. The City shall have the right and authority to conduct informal and formal
17 review of all amounts due or paid under this Ordinance. The licensee shall provide all
18 information requested by the City, at no cost to the City, within thirty (30) days of such
19 request. Should licensee fail to provide such information within thirty (30) days, the City
20 at its sole discretion may extend the time allowed for delivery or impose fines and

penalties as described in Section 9, or as otherwise allowed by law.

Section 9. PENALTIES AND INTEREST. Penalties and interest imposed by this section are in addition to any penalties that may be assessed under other ordinances, codes or regulations of the City.

A. Any person who has not submitted the required remittance forms or remitted the correct fees when due as provided under this Ordinance shall pay a penalty listed below in addition to the amount due:

a. First occurrence during any one calendar year; ten percent (10%) of the amount owed, or twenty-five dollars (\$25.00), whichever is greater.

b. Second occurrence during any one calendar year; fifteen percent (15%) of the amount owed, or fifty dollars (\$50.00), whichever is greater.

c. Third occurrence during any one calendar year; twenty percent (20%) or the amount owed, or seventy-five dollars (\$75.00), whichever is greater.

d. Fourth occurrence during any one calendar year; twenty-five percent (25%) of the amount owed, or one hundred dollars (\$100.00), whichever is greater.

B. If the City determines that the nonpayment of any fees due under this section is due to fraud or intent to evade the provisions hereof, an additional penalty of twenty-five percent (25%) of the amount owed, or five hundred dollars (\$500.00), whichever is greater, shall be added thereto in addition to other penalties stated in this

section.

C. In addition to the penalties imposed, any person who fails to remit any fees or information when due shall pay interest at the rate of one and one-half percent (1.5%) per month or fractions thereof, without proration for portions of a month, on the total amount due (including penalties), from the date on which the remittance first became delinquent, until received by the City. The City reserves the right to impose interest at the maximum amount allowed by law.

D. Every penalty imposed, and such interest as accrues under the provision of this section, shall be merged with, and become part of, the fee required to be paid.

The City or its designee, in their sole discretion, shall have the authority to reduce or waive the penalties and interest due under this section.

Section 10. VIOLATIONS AND PENALTIES.

A. In addition to any other remedy provided in this Ordinance, a violation of any provision of this Ordinance or any other City regulations, codes, ordinances, or standards, is a civil violation and shall be enforced under the provisions of this Ordinance. Each day that the violation exists or continues shall constitute a separate violation. Each civil violation shall be punishable by a fine of not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000).

B. Before issuing the first citation for a violation, the City shall mail written

notice of the violation(s) via United States Postal Service (USPS) to the licensee's address as listed on the application, providing a reasonable time (no less than twenty (20) and no more than forty (40) days from the date of the notice) for the licensee to remedy the violation to the City's satisfaction. The notice may also be delivered by other means in addition to USPS.

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C. The rights, remedies and penalties provided in this Ordinance are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the City under any other provision of law, including without limitation any judicial or other remedy at law or in equity for enforcement of this Ordinance.

Section 11. COMPLIANCE. Every licensee shall comply with all applicable 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 term of any license granted under this Ordinance.

Section 12. CONFIDENTIAL INFORMATION. If any person is required by this Ordinance to provide books, records, maps or information to the City that the person

1 reasonably believes to be confidential or proprietary, and such books, records, maps or
2 information are clearly marked as confidential at the time of disclosure to the City
3 (“confidential information”), the City shall take reasonable steps to protect the
4 confidential information to the extent permitted by Oregon Public Records Laws. In the
5 event the City receives a public records request to inspect any confidential information
6 and the City determines that it shall be necessary to reveal the confidential information,
7 to the extent reasonably possible the City shall notify the person that submitted the
8 confidential information of the records request prior to releasing the confidential
9 information. The City shall not be required to incur any costs to protect any confidential
10 information, other than the City’s routine internal procedures for complying with the
11 Oregon Public Records Law.

12 Section 13. SEVERABILITY AND PREEMPTION.

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

16 B. If any article, section, subsection, sentence, clause, phrase, term, provision,
17 condition, covenant or portion of this Ordinance is for any reason declared or held to be
18 invalid or unenforceable by any court of competent jurisdiction or superseded by state or
19 federal legislation, rules, regulations or decision, the remainder of this Ordinance shall
20 not be affected thereby but shall be deemed as a separate, distinct and independent

1 provision, and such holding shall not affect the validity of the remaining portions hereof,
2 and each remaining section, subsection, sentence, clause, phrase, term, provision,
3 condition, covenant or portion of this Ordinance shall be valid and enforceable to the
4 fullest extent permitted by law. In the event any provision is preempted by federal or
5 state laws, rules or regulations, the provision shall be preempted only to the extent
6 required by law and any portion not preempted shall survive. If any federal or state law
7 resulting in preemption is later repealed, rescinded, amended or otherwise changed to
8 end the preemption, such provision shall thereupon return to full force and effect and
9 shall thereafter be binding without further action by the City.

10
11 Section 14. APPLICATION TO EXISTING AGREEMENTS. To the extent
12 that this Ordinance is not in conflict with and can be implemented consistent with
13 existing agreements, this Ordinance shall apply to all existing agreements granted by the
14 City.

15 Section 15. EFFECTIVE DATE. This Ordinance shall take effect April 1, 2023

16 PASSED this _____ day of _____, 2023.

17
18 SIGNED this _____ day of _____, 2023.

19
20
21 _____
22 Mayor
23
24 _____

Stakeholder Com Draft 1-12-23

A BILL
FOR
AN ORDINANCE

ORDINANCE NO.
2023-_____

The City of Keizer ordains as follows:

Section 1. TITLE. This Ordinance shall be known and may be referenced as the "Utility Service Utilizing the Public Rights-of-Way Ordinance."

Section 2. PURPOSE AND INTENT. The purpose of this Ordinance is to:

A. Permit and manage reasonable access and utilization of the public rights-of-way of the City for utility services purposes and conserve the limited physical capacity, integrity, and longevity of those public rights-of-way held in trust by the City consistent with applicable state and federal law;

B. Secure fair and reasonable compensation to the City and its residents, who have invested substantial public funds to acquire, build, maintain the public rights-of-way, City-owned structures and improvements therein, for permitting utilization of the public rights-of-way by persons who generate revenue by provisioning utility services that utilize facilities within the City by placing, owning, controlling, ~~using~~, leasing capacity or operating utility facilities;

C. Assure that all persons owning, operating utility facilities in the right of

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1 ~~way or providing utility services within the City~~ shall register and comply with the
2 ordinances, rules, policies, and other regulations of the City, as well as with applicable
3 provisions of state and federal law;

4 D. Assure that the City can continue to fairly and responsibly protect the
5 public health, safety, and the welfare of its residents;

6 E. Encourage the provision of advanced and competitive utility services on
7 the widest possible basis to the residents, businesses and visitors within the City's
8 territorial and jurisdictional boundaries;

9 F. Allowing the City to enter into other or additional agreement with
10 Person(s), if the public's interest is served, and to amend the requirements of this
11 Ordinance and the City regulations, as new technology is developed and deployed;

12 G. Allow the City to be resilient and adaptive to changes in technology;

13 H. Comply with applicable provisions of state and federal law.

14 Section 3. JURISDICTION AND MANAGEMENT OF THE PUBLIC
15 RIGHTS-OF-WAY.

16 A. The City has jurisdiction and exercises regulatory management over all
17 public rights-of-way within the City under authority of the Oregon Constitution, the City
18 Charter, and state law.

19 ///

20 ///

Commented [KA1]: Isn't this already covered by the communication services license fee?

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Commented [KA2]: Why is this in the right of way use section?

1 ///

2

3 B. The City has jurisdiction and exercises regulatory management over each
4 public right-of-way, whether the City has a fee, easement, or any other legal interest in
5 such public right-of-way, and whether the legal interest in the public right-of-way was
6 obtained by grant, dedication, prescription, reservation, condemnation, annexation,
7 foreclosure, or any other means.

8 C. The exercise of jurisdiction and regulatory management over a public
9 right-of-way by the City is not official acceptance of such public right-of-way, and does
10 not obligate the City to maintain or repair any part of such right-of-way.

Commented [KA3]: If the city has no obligation to maintain the ROW, what is the purpose of the fees?

11 D. The provisions of this Ordinance are subject to and shall be applied
12 consistently with applicable state and federal laws, rules and regulations, and shall be
13 interpreted to be consistent with such laws, rules, and regulations. Nothing in this
14 Ordinance (a) is intended to preempt any state or federal law, rule, or regulation; and (b)
15 shall be not interpreted, deemed, or applied in a manner that authorizes or requires the
16 City, its Council, Commissions, Boards, officials, directors, managers, employees,
17 agents, contractors, or volunteers to preempt or violate applicable state or federal laws,
18 rules, or regulations.

19 Section 4. REGULATORY FEES AND COMPENSATION NOT A TAX.

20 A. The fees and costs provided for in this Ordinance, any compensation

1 charged and paid as prescribed in this Ordinance, are separate from, and in addition to,
2 any and all other federal, state, county or city charges, including without limitation, any
3 permit fee or any other generally applicable fee, tax, charge on the business, occupation,
4 property, or income, as may be levied, imposed, or due from any person, its customers or
5 subscribers, on account of the lease, sale, delivery, or transmission of utility services.

6 B. The City has determined that any fee, cost, or other charge provided for by
7 this Ordinance is not subject to the property tax limitations of Article XI, Sections 11 and
8 11b of the Oregon Constitution. These fees or taxes are not imposed on property or
9 property owners.

10 C. The fees, costs, and other charges provided for in this Ordinance are
11 subject to applicable federal and state laws.

12 Section 5. DEFINITIONS. For the purpose of this Ordinance, the following
13 words, terms, phrases, and their derivations shall have the meanings given below unless
14 the context indicates otherwise. When not inconsistent with the context, words used in
15 the present tense include the future tense. Words in the plural number include the
16 singular number, and words in the singular include the plural number. The word "shall"
17 is always mandatory and not merely directory.

18 A. "Cable service" is to be defined consistent with of 47 U.S.C. Section
19 522(6), as may be amended or superseded, and means the one-way transmission to
20 subscribers of (a) video programming, or (b) other programming service; and subscriber

1 interaction, if any, which is required for the selection or use of such video programming
2 or other programming service.

3 B. "Calendar year" means January 1 to December 31, unless otherwise noted.

4
5 C. "City" means the City of Keizer, Oregon, a municipal corporation, and its
6 governing authority, and/or its duly appointed and authorized agents. In addition, the
7 City may refer to all the territory within its corporate boundaries and as such may change
8 from time to time.

9 D. "City Council" means the City Council of the City of Keizer.

10 E. "City facilities" means City owned, publicly owned structures or
11 equipment located within the public rights-of-way or public easement used for
12 governmental purposes including, but not limited to, fiber-optic cable, streetlights, traffic
13 signals, sanitary sewer, storm sewer, or water infrastructure such as related pipes,
14 manholes, catch basins, wires, conduit, valves, vaults, and appurtenances.

15 F. "City Standards" means all the ordinances, codes, regulations, and rules of
16 the City of Keizer, heretofore or as may be subsequently amended.

17 G. "Communication services" means any service provided for the purpose of
18 transmission of information including, but not limited to, voice, video or data, without
19 regard to the transmission protocol employed, whether or not the transmission medium is
20 owned by the provider itself. Communications services includes all forms of telephone

1 services and voice, video, data, or information transport, but does not include: (a) cable
2 service; (b) open video system service, as defined in 47 CFR Section 76; (c) over-the-air
3
4
5
6 radio or television broadcasting to the public-at-large from facilities licensed by the
7 Federal Communications Commission or any successor thereto; (d) public
8 communications systems; and (e) direct-to-home satellite service within the meaning of
9 Section 602 of the Telecommunications Act.

10 H. "Construction" means any activity in the public right-of-way resulting in
11 physical change thereto, including excavation or placement of structures.

12 I. "Control" or "Use of Facilities" means actual working control over utility
13 facilities in whatever manner exercised, ~~whether or not the facility is owned. For~~
14 ~~example, but not limitation, Control means and includes leased capacity, transport, or~~
15 ~~any other use.~~

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Commented [KA4]: "Use" is not synonymous with "control". The examples given do not involve actual working control.

16 J. "Days" mean calendar days, unless otherwise noted.

17 K. "Emergency" means a circumstance, as determined by the City, in its sole
18 discretion, in which immediate work to repair damaged or malfunctioning facilities is
19 necessary to restore lost service or prevent immediate harm to persons or property.

20 L. "Federal Communications Commission" or "FCC" means the federal

administrative agency, or its lawful successor, authorized to regulate and oversee telecommunication carriers, services and provider on a national level.

M. "Gross Revenue" means any and all amounts, of any kind, nature or form, without deduction for expense, less net write-off of uncollectable accounts within the City, derived from the operation (including revenue derived from any leases or other agreements allowing use of facilities to other person(s)), or utilization of facilities in the City, operation of Communications Services system or the provision of utility service(s) in the City, subject to all applicable limitations in federal and state law.

a. Gross revenues shall include, by way of illustration and not limitation:

1. Fees for installation,
2. Disconnection,
3. Reconnection,
4. Maintenance and services calls,
5. Repair,
6. Charges for equipment sales, rental, or lease,
7. Late fees,
8. Non-sufficient funds (NSF) charges, and
9. Administrative fees.

b. Gross revenues shall not include:

Commented [KA5]: These items are not part of the usual gross revenue calculations and should be excluded.

1 1. Public purpose charges. Charges imposed by a utility
2 service provider selling electrical energy or gas for public purpose charges
3 (energy efficiency programs, market transformation programs, low-income
4 energy efficiency programs and carbon offset programs),

5 2. Residential exchange program (Bonneville Power
6 Administration credits),

7
8 3. Oregon and Federal Universal Service Funding. Revenues
9 associated with Universal Service funding requirements under 47 U.S.C. §
10 254, ORS 759.425,

11 4. Revenues associated with taxes for emergency
12 communications under ORS Chapter 403,

13 5. E9-1-1. Telecommunication revenues, tariffed or non-
14 tariffed charge or service applicable to any connection, circuit or
15 equipment which brings an E9-1-1 call to the appropriate responding
16 Public Safety Answering Point, regardless of where the E9-1-1 call is
17 originated, and

18 6. Sales of bonds, mortgages, or other evidence of
19 indebtedness, securities, or stocks.

20 7. RESERVED

Commented [RC6]: Reserved for PGE, NW and Salem. Don't share the document with this comment.

1 N. “License” or “ROW License” means the authorization granted by the City
2 to a person(s) pursuant to this Ordinance.

3 O. “Licensee” means any person that is subject to this Ordinance or has a
4 valid ROW License issued by the City.

5 P. “Person” means and includes any individual, firm, sole proprietorship,
6 corporation, company, partnership, co-partnership, joint-stock company, trust, limited
7 liability company, association, local service district, governmental entity, other
8 organization, including any natural person or any other legal entity.

9 Q. “Private communications system” means a system, including the
10 construction, maintenance, or operation of a system, for the provision of a utility service
11 or any portion of a service which is owned or operated exclusively by a person for their
12 sole use and not for sale or resale, including trade, barter, or other exchange of value,
13 directly or indirectly, to any person.

14 R. “Public communications system” means any system owned or operated by
15 a government entity or entities that are primarily for use for internal communications or
16 communications with other government entities, and includes services provided by the
17 state of Oregon pursuant to ORS Sections 190.240 and 283.140. A public
18 communications system does not include any system used for sale or resale, including
19 trade, barter, or other exchange of value, of communications services or capacity on the
20 system, directly or indirectly, to any person.

1 S. “Public rights-of-way”, or “Right-of-Way”, or “ROW”, or “PROW” means
2 and includes, but is not limited to, the space in, upon, above, along, across, over, or
3 under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges,
4 trails, paths, sidewalks, bicycle lanes, and all other public ways or areas, including the
5 subsurface under and air space over these areas, but does not include parks, parkland,
6 open space tracts, water quality tracts, or other City-owned property. This definition
7 applies only to the extent of the City’s right, title, interest and authority to grant a license
8 to occupy and use such areas for utility facilities or provision of utility services.

9 T. “Public utility easement” means the space in, upon, above, along, across,
10 over, or under an easement for the construction, reconstruction, operation, maintenance,
11 inspection and repair of utility facilities. A public utility easement does not include an
12 easement solely for the construction, reconstruction, operation, maintenance, inspection,
13 and/or repair of City facilities, or where the proposed use by the licensee is inconsistent
14 with the terms of any easement, right-of-way, or other legal right for use or occupancy
15 granted to the City.

16 U. “Small Cell Wireless Facility” or “SWF” ~~means facilities or equipment~~
17 ~~owned or operated for the provision of communications that are shorter ranged, wireless~~
18 ~~systems that may be affixed to a structure with generally smaller components than~~
19 ~~traditional Macro Wireless Facilities and are deployed where suitable in flexible~~
20 ~~configurations to provide capacity and coverage. Small Cell Wireless Facilities means a~~

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1 facility that meets each of the following conditions per 47 C.F.R § 1.6002(l), as may be
2 amended or superseded.

Deleted: :

3 ~~a. The facilities (i) are mounted on structures fifty (50) feet or less in~~
4 ~~height including the antennas, or (ii) are mounted on structures no more than ten~~
5 ~~percent (10%) taller than other adjacent structures, or (iii) do not extend existing~~
6 ~~structures on which they are located to a height of more than fifty (50) feet or by~~
7 ~~more than ten percent, (10%) whichever is greater; and,~~

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8 ~~b. Each antenna associated with the deployment, excluding associated~~
9 ~~antenna equipment, is no more than three (3) cubic feet in volume; and,~~

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10 ~~c. All other wireless equipment associated with the structure,~~
11 ~~including wireless equipment associated with the antenna and any pre-existing~~
12 ~~associated equipment on the structure, is no more than twenty-eight (28) cubic~~
13 ~~feet in volume; and,~~

14 ~~d. Small Cell Wireless Facility does not include fiber, coaxial cable or~~
15 ~~similar equipment located within the right-of-way, and,~~

16 ~~e. The facilities do not result in human exposure to radio frequency in~~
17 ~~excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).~~

Commented [KA7]: This is not part of the federal definition. It should be noted that a recent federal case found that both the SWF equipment and fiber fees must be cost based. Cellco v. City of Rochester (ROW Fee Challenge). On August 22, 2022, the U.S. District Court for the Western District of New York issued a decision finding in Verizon's favor on the issue of whether Rochester was limited to charging cost-based rates for both small wireless facilities and fiber in the public right-of-way.

18 V. "State" means the state of Oregon.

19 W. "Streets" or "City streets" means the entire width between the right-of-way

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20 lines of a local street, collector, or arterial capable of providing the principal means of

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1 access to abutting property.

2 X. "Structure" means any facility that is placed in the ROW, including but not
3 limited to poles, vaults or manholes, hand holds, junction boxes, conduit, direct bury
4 cable, wires, pedestals, aerial cables or wires and transformers.

5 Y. "Telecommunications Act" means the Communications Policy Act of
6 1934, as amended by subsequent enactments including the Telecommunications Act of
7 1996 (47 U.S.C., 151 et seq.) and as hereafter amended.

8
9 Z. "Utility facility" or "facility" means any physical component of a utility
10 service system, including but not limited to the poles, pipes, mainlines, conduits, ducts,
11 cables, wires, transmitters, plants, equipment, and other facilities, located within, on,
12 along, under, or above the public rights-of-way, any portion of which is used or designed
13 to be used to deliver, transmit, or otherwise provide utility service.

14 AA. "Utility service" means the provision by means of utility facilities located
15 in the public rights-of-way, whether or not such facilities are owned by the utility service
16 provider or utility service operator that provides, cable services, communication services,
17 electric energy, natural gas, wireless communications, to or from customers within the
18 corporate boundaries of the city, or the transmission of any of these services through the
19 City whether or not customers within the City are served by those transmissions. "Utility
20 service" shall not include the provision of such services owned or operated by the City of

1 Keizer.

2 BB. "Utility service operator" or "Operator" means any person who owns,
3 places, operates, or maintains a utility facility within the City, whether or not customers
4 are within the City or if no gross revenue is earned within the City.

5 ~~CC. "Utility service provider" or "Provider" means any person who provides~~
6 ~~utility service or communication services to customers within the City limits, whether or~~
7 ~~not any facilities in the ROW are owned by such provider.~~

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Commented [KA8]: Why would a person with no infrastructure in the right of way be assessed a row use fee? Utility service providers are already subject to the communication services fee. The ROW license fee would be double dipping.

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8 DD. "Wireless communication services" means any wireless service using
9 Federal Communications Commission-licensed or unlicensed spectrum including
10 without limitation any personal wireless services, as defined in 47 U.S.C. § 332(c)(7)(C).

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

15 Section 6. COMMUNICATIONS LICENSE LAW. Every person that
16 ~~provides~~ utility services, whether such person owns facilities or not, within the City shall
17 comply with all other applicable City codes, rules, or requirements including but not
18 limited to the "Communications License Law" Ordinance of the City of Keizer.

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19 Section 7. ADMINISTRATION.

20 A. This Ordinance shall be administered by the City, its staff or duly

1 appointed representative.

2 B. If a conflict exists between two City Ordinance provisions, one of them a
3 general requirement and the other a specific requirement, the more specific requirement
4 shall operate as an exception to the general requirement regardless of the priority of
5 enactment.

6 Section 8. ROW LICENSES.

7 A. Who Must Apply. ~~All utility operators~~, must have at all times a ROW
8 License from the City. Every person shall obtain a ROW license prior to conducting any
9 work in the public rights-of-way, placing any utility facilities in the public rights-of-way,

10 ~~using any utility facilities in the rights of way, or provisioning utility services within the~~

11 ~~City.~~ The ROW license requirement shall not apply to those persons with a valid
12 franchise agreement in effect and in good standing or those utility services provided by
13 the City of Keizer or other municipal jurisdiction.

14 B. When Must Apply. Every Utility Operator shall apply for a ROW license
15 from the City within forty-five (45) days of the later of (a) the effective date of this
16 Ordinance, or (b) the expiration of a valid franchise from the City, unless a new
17 agreement is granted by the City.

18 C. ROW License Application. The ROW license application shall be on a
19 form provided by the City, and shall be accompanied by any additional documents
20 required by the City, in the City's sole discretion and at no cost to the City, that allows

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1 the City to easily identify the applicant, its legal status, including its authorization to do
2 business in the state of Oregon, a description of the type of utility service provided or to
3 be provided by the applicant, the facilities over which the utility service will be provided,
4 and other information that the City determines, in its sole discretion at no cost to the
5 City, is necessary, to determine the applicant's ability to comply with the terms of this
6 Ordinance. Subject to any applicable restrictions in state or federal law, the City may
7 from time to time and without further authorization from the City Council publish or
8 otherwise make publicly available any additional or different application requirements as
9 the City finds necessary or appropriate for processing applications, which shall be
10 effective immediately upon publication.

11 D. ROW License Application Fee and Renewal Fee. The application and
12 renewal application shall be accompanied by a nonrefundable application fee set by
13 Resolution of the City Council.

14 E. Determination by City. The City shall issue, within a reasonable time after
15 having received a duly filed application, a written determination granting or denying the
16 license in whole or in part. If the license is denied, the written determination shall
17 include the reasons for denial. The license shall be evaluated based upon the provisions
18 of this Ordinance, the continuing capacity of the public rights-of-way to accommodate
19 the applicant's proposed utility services and the applicable federal, state and local laws,
20 rules, regulations and policies.

1 F. Changes to Information Contained on the ROW License Application.

2 Within thirty (30) days of a change to the information contained in the license
3 application, the licensee shall notify the City in writing of such change(s).

4 G. Rights Granted.

5 a. A ROW license granted under this Ordinance authorizes and
6 permits the licensee to construct, place, maintain, operate utility facilities in the
7 public rights-of-way, and provision services for the term of the license, subject to
8 the provisions of City code, rules, regulations, policies, and other applicable
9 provisions of state and federal law.

10
11 b. Each ROW license granted under this Ordinance authorizes only
12 those utility facilities or utility services applied for by the applicant and approved
13 by the City. The City may approve the provision of multiple services in one
14 license.

15 c. A ROW license granted under this Ordinance shall be personal to
16 the licensee and may not be assigned, sublicensed, or transferred, in whole or in
17 part, except as permitted by this Ordinance.

18 d. A ROW license granted under this Ordinance does not grant,
19 convey, create, or vest in a licensee any real property interest in land, including
20 any fee, leasehold interest, or easement, and does not convey equitable or legal

1 title in the public rights-of-way. The license is subject to all recorded deeds,
2 easements, dedications, conditions, covenants, restrictions, encumbrances and
3 claims of title of record that may affect the public rights-of-way. A ROW license
4 granted under this Ordinance is not a warranty of title. Licensee expressly
5 acknowledges and agrees to enter on to and use public rights-of-way in its "as-is
6 and with all faults" condition. The City makes no representations or warranties
7 whatsoever, whether express or implied, as to the public rights-of-way's
8 condition or suitability for the intended or proposed utilization. By its acceptance
9 of the ROW license, the licensee expressly acknowledges and agrees that neither
10 the City nor its agents have made, and the City expressly disclaims, any
11 representations or warranties whatsoever, whether express or implied, with
12 respect to the physical, structural or environmental condition of the public rights-
13 of-way, and the present or future suitability of the public rights-of-way.

14 e. The issuance of a ROW license does not constitute a waiver or bar
15 to the City's exercise of any governmental right or power, including without
16 limitation the City's police powers and regulatory powers, regardless of whether
17 such powers existed before or after the license is issued.

18 H. Term of ROW License. Subject to the termination provisions in Subsection
19 8.N of this Section, the ROW license granted pursuant to this Ordinance and issued shall
20 be effective as of the date it is issued by the City or the date services began, whichever

comes first, and shall have a term of five (5) calendar years beginning: (1) January 1st of the year in which the license took effect for licenses that took effect between January 1st and June 30th; or (2) January 1st of the year after the license took effect for licenses that become effective between July 1st and December 31st.

I. ROW License Nonexclusive. No ROW license granted pursuant to this section shall confer any exclusive right, privilege, license, or franchise to occupy or use the public 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 public rights-of-way, for similar or different purposes.

J. Reservation of City Rights. The City reserves all rights, title, and interest in its public rights-of-way. A license granted under this Ordinance does not prevent the City from exercising any of its rights, including without limitation grading, paving, repairing, or altering any public rights-of-way, constructing, laying down, repairing, relocating, removing city facilities or establishing any other public work, utility, or improvement of any kind, including repairs, replacement, or removal of any City facilities.

a. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any public rights-of-way, public work, City utility, City improvement, improvement that implements a City urban

1 renewal agency project, or City facility, except those providing utility services in
2 competition with a licensee, licensee's facilities shall be removed or relocated as
3 provided in this Ordinance, in a manner acceptable to the City and consistent with
4 industry standard engineering and safety codes.

5 K. Multiple Services.

6 a. A licensee that provides, transmits, or allows the provision or
7 transmission of utility services and other services over its facilities is subject to
8 the ROW license and fee requirements of this Ordinance for the portion of the
9 facilities and extent of utility services delivered over those facilities.

10 b. A licensee that provides or transmits more than one utility service
11 over its facilities is not required to obtain a separate ROW license or franchise for
12 each utility service; ~~provided, that it gives notice to the City of each utility service~~

13 ~~provided or transmitted and pays the applicable fee for each utility service.~~

14 c. A licensee is not required to pay the ROW license or fees owed to
15 the City by a third party.

16 L. Transfer or Assignment. A licensee shall obtain the written consent of the
17 City prior to the transfer, sublicense, or assignment of a license, which consent shall not
18 unreasonably be withheld, unless the licensee demonstrates to the City that state or
19 federal law specifically prohibits the City from requiring its prior written consent. A
20 transfer, sublicense, or assignment shall only be authorized if the proposed transferee or

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Commented [KA10]: Providing multiple services with the same infrastructure has no measurable physical impact to the ROW and should not generate additional fees.

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1 assignee is authorized under all applicable federal, state, and local laws to own or operate
2 the utility system and the transfer or assignment is approved by all agencies or
3 organizations required or authorized under federal, state, and local to approve such
4 transfer, sublicense, or assignment.

5 a. If a ROW license is transferred, sublicensed, or assigned, the
6 transferee, sublicensee, or assignee shall become responsible for fulfilling all the
7 obligations under the license with respect to obligations of the licensee at the time
8 of transfer, sublicensee, or assignment. A transfer or assignment of a license does
9 not extend the term of the license. Without limiting any other rights, the City may
10 have to condition its consent, the City may condition its consent on any such
11 transfer, sublicense, or assignment on the transferee, sublicensee, or assignee's
12 written agreement to assume all obligations under the license, this Ordinance and
13 other city codes and regulations.

14 b. Notwithstanding anything in this section to the contrary, a licensee
15 may, by written notice to the City, assign all its rights under a license to an entity
16 that acquires all or substantially all the licensee assets in the market in which the
17 City is located.

18 M. Renewal. At least thirty (30), but no more than one hundred twenty (120),
19 calendar days before the expiration of a license granted under this section, a licensee
20 seeking renewal of its license shall submit a license application to the City, including all

1 information and fees required in this Ordinance. The City shall review the application
2 and grant or deny the license within a reasonable time period after the application is duly
3 filed. If the City determines that the licensee is in violation of the terms of this Ordinance
4 or any other city codes, rules or regulations, at the time it submits its application, the City
5 may require, by a written notice, that the licensee cure the violation or submit a detailed
6 plan to cure the violation within a reasonable period of time, as determined by the City,
7 before the City will consider the application or grant the license.

8 N. Termination.

9 a. Revocation or Termination of a License. The City may terminate or
10 revoke the license granted pursuant to this Ordinance for any of the following
11 reasons:

- 12 1. Violation of any of the provisions of this Ordinance;
- 13 2. Violation of any provision of the license;
- 14 3. Misrepresentation in a license application;
- 15 4. Failure to pay taxes, compensation, fees, or costs due the City
16 after final determination by the City, of the taxes, compensation,
17 fees, or costs;
- 18 5. Failure to restore the public rights-of-way after construction as
19 required by this Ordinance or other applicable state and local laws,
20 ordinances, rules, and regulations;

1 6. Failure to comply with technical, safety, and engineering
2 standards related to work in the public rights-of-way;

3 7. Failure to obtain or maintain any and all licenses, permits,
4 certifications, and other authorizations required by state or federal
5 law for the placement, maintenance, or operation of the utility
6 facilities; or

7 8. Is in violation of any City code, rule, regulation or other City
8 requirements.

9 b. Standards for Revocation or Termination. In determining whether
10 termination, revocation, or some other sanction is appropriate, the following
11 factors shall be considered:

12 1. Whether the violation was intentional;

13 2. The egregiousness of the violation;

14 3. The harm that resulted;

15 4. The licensee history of compliance; and

16 5. The licensee cooperation in discovering, admitting, and curing
17 the violation.

18 c. If a license is terminated by the City, within thirty (30) days the
19 licensee shall file a final remittance form with the City stating, “final
20 remittance” and shall remit any funds due.

1 O. Notice and Cure. The City shall give the licensee written notice of any
2 apparent violations before revoking or terminating a license. The notice shall include a
3 statement of the nature and general facts of the violation or noncompliance and provide a
4 reasonable time period not to exceed thirty (30) days for the licensee to demonstrate that
5 the licensee has remained in compliance, that the licensee has cured or is in the process
6 of curing any violation or noncompliance, or that it would be in the public interest to
7 impose a penalty or sanction less than termination or revocation. If the licensee is in the
8 process of curing a violation or noncompliance, the licensee must demonstrate that it
9 acted promptly and continues to actively work toward compliance. If the licensee does
10 not respond within the reasonable time stated in the notice, the city shall determine
11 whether the license shall be terminated or revoked.

12 P. Termination by Licensee. If a licensee ceases to be required to have a
13 License, as defined under this Ordinance, the licensee may terminate or surrender its
14 license with a thirty (30) day notice to the City. Licensee may reapply for a License at
15 any time. No refunds or credits will be given for licenses terminated by the licensee or
16 the City.

17 a. Within thirty (30) days of surrendering a License, the licensee shall
18 file a final remittance form with the city stating, "final remittance" and shall remit
19 any funds due.

20 b. Upon surrendering a license, unless otherwise agreed to by the City,

1 the licensee shall file a written statement that it has removed, or will remove
2 within sixty (60) days, any and all facilities from the City, according to Section 10
3 and no longer is subject to the provisions of this Ordinance.

4 Q. Franchise Agreements.

5 a. If the public interest warrants, as determined by the City in its sole
6 and absolute discretion, the City and licensee may enter into a written franchise
7 agreement that includes terms that clarify, enhance, expand, waive, or vary the
8 provisions of this Ordinance, consistent with applicable state and federal law. The
9 franchise may conflict with the terms of this Ordinance, with the review and
10 approval of the City Council. The franchise shall be subject to the provisions of
11 this Ordinance to the extent such provisions are not in conflict with any such
12 franchise. In the event of a conflict between the express provisions of a franchise
13 and this Ordinance, the franchise shall control.

14
15
16 b. If approved by the City, the licensee requesting a franchise
17 agreement shall deposit a non-refundable fee, as set by Resolution of City
18 Council, before negotiations occur.

19 Section 9. CONSTRUCTION AND RESTORATION.

20 A. Public Works Director Policies, Standards, Specifications, and Other

Guidelines. The City Council authorizes the Public Works Director to develop, amend, and publish or otherwise make publicly available any policies, standards, specifications, and other guidelines for the location, design, and management and operation of facilities in public rights-of-way subject to this Ordinance. All such policies, standards, specifications, and other guidelines (a) must be consistent, and not in conflict with, the provisions of state, federal, and local law, which includes this Ordinance; and (b) shall be effective upon their publication; provided, however, that any applications submitted prior to publication shall be subject to the policies, standards, specifications, and other guidelines in effect when the submittal occurred.

B. Preconstruction Approval. Prior to the commencement of any construction, extension, or relocation of any facilities upon, over, under, or across any of the streets, highways, or other public rights-of-way within the jurisdiction of the city, the licensee shall advise the City in writing of the location and shall obtain written approval prior to commencement of such work. In evaluating such request, the City may consider whether the proposed facilities comply with any applicable law, which includes without limitation any policies, standards, specifications, or other guidelines adopted by the City. Not less than forty-eight (48) hours before commencement of any work that might affect City utilities, licensee shall contact the Oregon Utility Notification Center for the purpose of utility location. The location of all such facilities shall be at places approved by the City. All work done by or for licensee shall be in compliance with the applicable rules,

1 regulations, ordinances, policies, guidelines, standards, specifications, or orders of the
2 City in effect at the time.

3 C. Construction Permits. No person shall perform any work in the public
4 right-of-way, or on utility facilities within the public rights-of-way without first
5 obtaining all required permits. The City shall not issue a permit for the construction,
6 installation, maintenance or repair of utility facilities unless the licensee has the proper
7 authorizations required by this Ordinance, and all applicable fees have been paid.

8 D. Applications for Permits. Applications for permits to construct utility
9 facilities shall be submitted upon forms to be provided by the City and shall comply with
10 all City codes, regulations, including all public works regulations and standards at the
11 time the work is done. All permit applications shall be accompanied by drawings, plans,
12 and specifications in sufficient detail to demonstrate:

13 a. That the facilities shall be constructed in accordance with all
14 applicable laws, codes, rules, and regulations.

15 b. The location and route of all utility facilities to be installed above
16 ground or on existing utility poles and, if the licensee owns the existing utility
17 poles, a comprehensive summary, including ownership and structural condition,
18 of any and all infrastructure currently attached to the pole. Unless approved in
19 writing by the City, the construction of new utility poles is prohibited. An existing
20 utility pole that is damaged or failing may be repaired or replaced in accordance

1 with the current City standards.

2 c. The location and route of all utility facilities on or in the public
3 rights-of-way to be located under the surface of the ground, including the line and
4 grade proposed for the burial at all points along the route that are within the
5 public rights-of-way. Applicant's existing utility facilities shall be differentiated
6 on the plans from new construction. A cross section shall be provided showing
7 new or existing utility facilities in relation to the street, curb, sidewalk, or other
8 public rights-of-way.

9 d. The construction methods to be employed for protection of existing
10 structures, fixtures, and facilities within or adjacent to the public rights-of-way,
11 and description of any improvements that applicant proposes to temporarily or
12 permanently remove or relocate.

13 E. All permit applications shall be accompanied by the verification of a
14 qualified and duly authorized representative of the applicant that the drawings, plans and
15 specifications submitted with the application comply with applicable technical codes,
16 rules, and regulations. Permit applications shall be accompanied by a written
17 construction schedule, which shall include an estimated start date and a deadline for
18 completion of construction. The construction schedule is subject to approval by the city.
19 Subject to any restrictions in state or federal law, the City may from time to time publish
20 or otherwise make publicly available any additional or different application requirements

as the City finds necessary or appropriate for processing applications, which shall be effective immediately upon publication.

F. Prior to issuance of a street-opening permit, the applicant shall pay a permit fee in the amount determined by Resolution of the City Council.

G. If satisfied that the application, plans, and documents submitted comply with all requirements of this Ordinance, the City 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 the City may deem necessary or appropriate (but only to the extent permitted by applicable state and federal law).

H. Except in the case of an emergency that poses an imminent threat to public health or safety and/or injury to persons or property, the permittee shall notify the City not less than two business days in advance of any excavation or construction in the public rights-of-way.

I. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The City and its representatives shall be provided access to the work site and such further information as they may require, at their sole discretions and at no cost, ensuring compliance with such requirements.

J. All work that does not comply with the permit, the approved or corrected plans

1 and specifications for the work, or the requirements of this Ordinance (including any
2 policies, standards, specifications, or other guidelines adopted by the City), shall be
3 removed within thirty (30) days, or corrected at the sole expense of the permittee. The
4 City is authorized to issue stop work orders in order to assure compliance.

5 K. The permittee shall promptly complete all construction activities in
6 compliance with all applicable laws and in a manner designed to avoid unnecessary
7 disruption and minimize unavoidable disruption of the City public rights-of-way and
8 other public and private property. All construction work within the public rights-of-way,
9 including without limitation any restoration work, must be completed within one hundred
10 twenty (120) days of the date the construction permit is issued unless the City has
11 approved an extension or an alternate schedule.

12 L. Injury to Persons or Property. All licensees shall preserve and protect from
13 injury or damage other facilities in the public rights-of-way, the public using the public
14 rights-of-way and any adjoining property and take other necessary measures to protect
15 persons and property, including but not limited to buildings, walls, fences, trees, and
16 other facilities that may be subject to damage from the permitted work. A licensee shall
17 (a) use suitable barricades, flags, flagging attendants, lights, flares, and other measures as
18 required for the safety of all members of the general public; (b) comply with all
19 applicable Americans with Disabilities Act requirements; and (c) comply with all the
20 requirements of the Manual on Uniform Traffic Control Devices (MUTCD).

1 M. Restoration. A licensee shall be responsible for all injury to persons or
2 damage to public or private property resulting from its failure to properly protect people
3 and property and to carry out the work regardless of whether the work is performed by a
4 licensee or performed by an independent contractor performing the work on behalf of the
5 licensee.

6 a. When a licensee, or any person acting on its behalf, does any work
7 in or affecting any public rights-of-way, it shall, at its own expense, promptly
8 restore such ways or property to the current City standards, in accordance with
9 applicable federal, state and local laws, codes, ordinances, rules, and regulations,
10 unless otherwise directed by the City.

11 b. If weather or other conditions beyond the licensee control do not
12 permit the complete restoration required by the City, the licensee shall
13 temporarily restore the affected public rights-of-way or property. Such temporary
14 restoration shall be at the licensee's sole expense and the licensee shall promptly
15 undertake and complete the required permanent restoration when the weather or
16 other conditions no longer prevent such permanent restoration. Any
17 corresponding modification to the construction schedule shall be subject to
18 approval by the City.

19 c. If the licensee fails to restore public rights-of-way or property as
20 required in this Ordinance, the City shall give the licensee written notice and

1 provide a period of time not less than ten (10) days and not exceeding thirty (30)
2 days to restore the public rights-of-way or property. If, after said notice, the
3 licensee fails to restore the public rights-of-way or property as required in this
4 Ordinance, the City may cause such restoration to be made at the sole expense of
5 the licensee. In cases where the City believes that an emergency or threat to
6 public safety exists, it may act without notice to and at the sole expense of the
7 licensee. Upon receipt of an invoice from the city, the licensee shall reimburse the
8 City within thirty (30) days for all costs incurred by the City.

9 N. Inspection. Every facility shall be subject to the right of periodic inspection
10 by the City or its agents to determine compliance with the provisions of this Ordinance
11 and all other applicable state and city laws, codes, ordinances, rules, and regulations.
12 Every licensee shall cooperate with the City in permitting the inspection of utility
13 facilities in a timely manner after request by the City. The licensee shall perform all
14 testing or permit the City or its agents to perform any testing at the licensee expense,
15 required by the City to determine that the installation of the licensee facilities and the
16 restoration of the public rights-of-way comply with the terms of this Ordinance and
17 applicable state and City laws, codes, ordinances, rules, and regulations, in effect at the
18 time.

19 O. Coordination of Construction. All licensees shall make a good faith effort to
20 both cooperate with and coordinate their construction schedules with those of the city

and other users of the public rights-of-way.

a. Prior to January 1 of each year, licensees shall provide the City with a schedule of known proposed construction activities for that year, that are in, around, or that may affect the public rights-of-way and any City facilities.

b. At the City's request, licensee shall meet with the City annually, or as determined by the City, to schedule and coordinate construction in the public rights-of-way.

c. All construction locations, activities, and schedules within the public rights-of-way shall be coordinated as ordered by the City to minimize public inconvenience, disruption, and damages to persons and property.

Section 10. LOCATION OF FACILITIES.

A. Location of Facilities. Unless otherwise agreed to in writing by the City, whenever any existing electric utilities, cable facilities, or communications facilities are located underground within a public right-of-way of the City, a licensee with permission to occupy the same public right-of-way shall locate its facilities underground at its own expense.

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4 a. Whenever all new or existing electric utilities, cable facilities or
5 communication facilities are located or relocated underground within a public
6 right-of-way of the City, a licensee that currently occupies the same public right-
7 of-way must relocate its facilities underground concurrently with the other
8 affected facilities to minimize disruption of the public rights-of-way, absent
9 extraordinary circumstances or undue hardship as determined by the City and
10 consistent with applicable state and federal law.

11 b. The requirements in this section do not apply to antennas, pedestals,
12 cabinets, other above-ground equipment of any utility provider, or facilities used
13 for transmission of electric energy at nominal voltages in excess of thirty-five
14 thousand (35,000) volts ("high voltage lines"). The City reserves the right to
15 require written approval of the location of any such above-ground equipment of
16 any licensee.

17 B. Interference with the Public Rights-of-Way. No licensee or other person
18 may locate or maintain facilities so as to interfere with the use of the public rights-of-
19 way by the City, by the general public, or by other persons duly authorized to use or be
20 present in or on the public rights-of-way. Facilities shall not be located in areas of

1 restricted sight distance or interfere with the proper function of traffic control signs,
2 signals, lighting, or other devices that affect traffic operation. All use of the public
3 rights-of-way shall be consistent with City codes, ordinances, rules, and regulations, in
4 effect and as may be subsequently amended.

5 C. Relocation of Utility Facilities.

6 a. When requested to do so in writing by the City, a licensee shall, at
7 no cost to the City, temporarily or permanently remove, relocate, change, or alter
8 the position of any utility facility within a public right-of-way, including
9 relocation of aerial facilities underground, except as such facilities are not
10 required to be located underground pursuant to subsection 10.A.b of this section.

11 b. Nothing herein shall be deemed to preclude the licensee from
12 requesting reimbursement or compensation from a third party, pursuant to
13 applicable laws, regulations, tariffs, or agreements. However, the licensee shall
14 timely comply with the requirements of this section regardless of whether it has
15 requested or received such reimbursement or compensation.

16 c. The City shall coordinate the schedule for relocation of utility
17 facilities and based on such effort, shall provide written notice of the time by
18 which the licensee must remove, relocate, change, alter, or underground its
19 facilities. If a licensee fails to remove, relocate, change, alter or underground any
20 utility facility as requested by the City by the date established by the City, the

1 licensee shall pay all costs incurred by the City due to such failure, including but

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6 not limited to costs related to project delays, and the city may cause, using
7 qualified personnel or contractors consistent with applicable law and regulations,
8 the facilities to be remove, relocated, altered, or undergrounded, at the licensee's
9 sole expense. Upon receipt of an invoice from the City, the licensee shall
10 reimburse the City for all costs incurred within thirty (30) days.

11 d. The City shall cooperate with the licensee in securing alternate
12 locations. However, the City shall bear no responsibility to obtain, compensate or
13 otherwise assist the licensee in relocation of the facilities to a location not in
14 control of the City.

15 **D. Removal of Unauthorized Facilities.**

16 a. Unless otherwise agreed to in writing by the City, within thirty (30)
17 days following written notice from the City or such other time agreed to in
18 writing, a licensee and any other person that owns, controls or maintains any
19 abandoned or unauthorized utility facility within a public right-of-way shall, at its
20 own expense, remove the facility and restore the public right-of-way to City

standards in effect at the time the work is performed.

b. A utility system or facility is unauthorized under any of the following circumstances:

1. The utility facility is outside the scope of authority granted by the City. This includes facilities that were never authorized and facilities that were once authorized but for which the authorization has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place.

2. 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 shall be presumed abandoned if it is not used for a period of one (1) year. A licensee may attempt to overcome this presumption by presenting plans for future use of the facility to the City, which will determine application of the presumption in its sole discretion.

3. The utility facility is improperly constructed or installed or is in a location not permitted, licensed, franchised, or otherwise authorized by the City.

4. The licensee is in violation of a material provision of this

1 Ordinance and fails to cure such violation within thirty (30) days of
2 the City sending written notice of such violation, unless the City, at
3 its sole discretion, extends such time period in writing.

4 E. Removal by City.

5 a. The City retains the right and privilege to cut or move any facility
6 located within the public rights-of-way of the City, without notice, as the City
7 may determine, in its sole discretion, to be necessary, appropriate or useful in
8 response to a public health or safety emergency. The City shall use qualified
9 personnel or contractors consistent with applicable state and federal safety laws
10 and regulations to the extent reasonably practicable without impeding the City's
11 response to the emergency.

12 b. If the licensee fails to remove any facility when required to do so
13 under this Ordinance, the City may remove the facility using qualified personnel
14 or contractors consistent with applicable state and federal safety laws and
15 regulations, and the licensee shall be responsible for paying any and all costs
16 incurred by the City, including any administrative or collection costs. Upon
17 receipt of an invoice from the City, the licensee shall reimburse the City for all
18 the costs within thirty (30) days. The obligation to remove shall survive the
19 termination of any authorizations granted by the City.

20 c. The City is not liable to any person(s) for any damage to utility

1 facilities, or for any consequential losses resulting directly or indirectly from any
2 damage caused by the City's actions, or its contractor, in removing, relocating,
3 altering, or undergrounding the facilities, unless such damage arises directly from
4 the City's sole active negligence or willful misconduct.

5 F. Engineering Designs and Plans. The licensee shall provide the City with as-
6 built plans or system maps of their facilities, upon request, for the purpose of design of
7 other City infrastructure or to confirm existing conditions.

8 G. Licensee shall provide, at no cost to the City, a comprehensive map showing
9 the location of all facilities in the City. Such map shall be provided in a format
10 acceptable to the City, with accompanying data sufficient enough for the City to
11 determine the exact location of facilities, currently in Shapefile or Geodatabase format.
12 The licensee shall provide such map yearly by February 1, if any changes occurred
13 during the prior year. The City may also request and shall be provided the map, at no
14 cost to the City. The City may only request such map once per calendar year.

15 Section 11. LEASED CAPACITY. A licensee may lease or otherwise provide
16 capacity on or in its facilities to others ("lessees"); provided, that (1) the licensee
17 provides the City with the name and business address of any lessee; (2) the licensee
18 requires that all lessees have obtained proper authority, in the form of a permit, license,
19 or franchise from the City before leasing capacity on or in its facilities; (3) the use of the
20 licensee capacity does not require or involve any additional equipment owned or

1 operated by the lessee to be installed on the facility; and (4) the licensee maintains
2 control over and responsibility for the facility at all times. Nothing in this section relieves
3 or lessens the restrictions or requirements of this Ordinance.

4 Section 12. MAINTENANCE.

5 A. Every licensee shall install and maintain all facilities in a manner that
6 complies with applicable federal, state and local laws, rules, regulations, and policies.
7 The licensee shall, at its own expense, repair and maintain facilities from time to time as
8 may be necessary to accomplish this purpose.

9 B. If, after written notice from the City of the need for repair or maintenance,
10 the licensee fails to repair and maintain facilities as requested by the City and by the date
11 established by the City, the City may perform such repair or maintenance using qualified
12 personnel or contractors at the licensee's sole expense. Upon receipt of an invoice from
13 the City, the licensee shall reimburse the city for any and all the costs within thirty (30)
14 days.

15 Section 13. VACATION OF PUBLIC RIGHTS-OF-WAY.

16 A. If the City vacates any public rights-of-way, or portion thereof, that a
17 licensee uses, the licensee shall, at its own expense, remove its facilities from the public
18 rights-of-way unless: (a) the City reserves a public utility easement, which the City shall
19 make a reasonable effort to do; provided, that it is practicable to do so and there is no
20 expense to the City; or (b) the licensee obtains an easement for its facilities.

1 B. If the licensee fails to remove its facilities within thirty (30) days after a
2 public right-of-way is vacated, or as otherwise directed or agreed to in writing by the
3 City, the City may remove the facilities using qualified workers in accordance with state
4 and federal laws and regulations at the licensee's sole expense. Upon receipt of an
5 invoice from the City, the licensee shall reimburse the City for any and all the costs
6 within thirty (30) days.

7 Section 14. FEE.

8 A. Every utility operator will pay the fee to access the city's right-of-way for
9 every utility facility owned, placed and operated in the right-of-way, in the
10 amount determined by ordinance of the City Council. Relevant fees are
11 categorized as follows:
12 a. For wireless communication facilities, the fee imposed under this section
13 will be a per-facility fee only.
14 b. For "pass-through" facilities (serving areas outside of the city limits, the
15 fee imposed under this section will be based on the linear feet of the
16 facility located within the city limits.
17 For other facilities, the fee is calculated with reference to the operator's gross revenues,
18 as detailed in the fee ordinance and administrative rules.

19 B. A licensee whose only facilities in the ROW are facilities mounted on
20 above-ground structures within the ROW, which structures are owned by another person,

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Formatted: Justified, Line spacing: Double, Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.75", Tab stops: -1.3", Left + -0.8", Left + -0.3", Left + 0.5", Left + 1", Left + 1.5", Left + 2", Left + 2.5", Left + 3", Left + 3.5", Left + 4", Left + 4.2", Left + 4.7", Left + 5.2", Left + 5.7", Left + 6.2", Left

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Deleted: person that owns utility facilities in the City's rights-of-way

Deleted: and every person that utilizes or controls utility facilities in the City's rights-of-way to provide utility service, whether or not the person owns the utility facilities utilized to provision the service(s) and every person that provides utility services within the City, shall pay the fee for every utility service provided in the amount determined by Resolution of the City Council.

1 and with no facilities strung between such structures or otherwise within, under or above
2 the ROW (other than equipment necessary to operate the mounted facilities that has been
3 expressly approved by the City to be placed in the ROW), shall pay only the attachment
4 fee set by City Council Resolution for each attachment, or such other fee set forth in the
5 authorization(s) granted by the City. Unless otherwise agreed to in writing by the City,
6 the fee shall be paid quarterly, in arrears, within forty-five (45) days after the end of each
7 calendar quarter and shall be accompanied by information sufficient to illustrate the
8 calculation of the amount payable.

9 C. Electric and natural gas utility service operators, that utilize or own, a
10 private communication system, that is exclusively for the providers internal use and is
11 not used by any other entities, is excluded from paying any fees under this Ordinance for
12 those communication services.

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16 D. No acceptance of any payment shall be construed as accord that the amount
17 paid is in fact the correct amount, nor shall such acceptance of payment be construed as a
18 release of any claim the City may have for further or additional sums payable.

19 E. Fees required by this section shall be reduced by any franchise fees, but in
20 no case shall be less than zero dollars (\$0).

1 F. Unless otherwise agreed to in writing by the City, the fee set forth under
2 this Ordinance shall be paid quarterly, in arrears, within forty-five (45) days after the end
3 of each calendar quarter. Each payment shall be accompanied by an accounting of gross
4 revenues, if applicable, and a calculation of the amount payable (a remittance form shall
5 be provided by the City). The City may request and shall be provided, at no cost to the
6 City, any additional reports or information it deems necessary, in its sole discretion, to
7 ensure compliance by the licensee. Such information may include, but is not limited to:
8 chart of accounts, total revenues by categories and dates, list of products and services,
9 narrative documenting calculation, details on number of customers within the city limits,
10 or any other information needed for the City to easily verify compliance.

11 G. The calculation of the fee required by this section shall be subject to all
12 applicable limitations imposed by federal or state law in effect and as may be
13 subsequently amended.

14 H. The City reserves the right to enact other fees and taxes applicable to the
15 licensee subject to this Ordinance. Unless expressly permitted by the City in enacting
16 such fee or tax, or required by applicable state or federal law, no licensee may deduct,
17 offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or
18 taxes based on the payment of the fees required under this Ordinance.

19 Section 15. PENALTIES AND INTEREST ON FEES. Penalties and interest
20 imposed by this section are in addition to any penalties that may be assessed under other

ordinances or regulations of the City.

A. Any person who has not submitted the required remittance forms or remitted the correct fees when due as provided under this Ordinance shall pay a penalty listed below in addition to the amount due:

a. First occurrence during any one calendar year; ten percent (10%) of the amount owed, or twenty-five dollars (\$25.00), whichever is greater.

b. Second occurrence during any one calendar year; fifteen percent (15%) of the amount owed, or fifty dollars (\$50.00), whichever is greater.

c. Third occurrence during any one calendar year; twenty percent (20%) of the amount owed, or seventy-five dollars (\$75.00), whichever is greater.

d. Fourth occurrence during any one calendar year; twenty-five percent (25%) of the amount owed, or one hundred dollars (\$100.00), whichever is greater.

B. If the City determines that the nonpayment of any fee due required by this Ordinance is due to fraud of intent to evade the provisions hereof, an additional penalty of twenty-five percent (25%) of the amount owed, or five hundred dollars (\$500.00) whichever is greater, shall be added thereto in addition to other penalties stated in the Ordinance or as allowed by law.

C. In addition to the penalties imposed, any person who fails to remit any fees or information when due shall pay interest at the rate of one and one-half percent (1.5%)

1 per month or fractions thereof, without proration for portions of a month, on the total
2 amount due (including penalties), from the date on which the remittance first became
3 delinquent, until received by the City. The City reserves the right to impose interest at
4 the maximum amount allowed by law.

5 D. Every penalty imposed, and such interest as accrues under the provision of
6 this section, shall be merged with, and become part of, the fee required to be paid.

7 E. The City or its designee, in their sole discretion, shall have the authority to
8 reduce or waive the penalties and interest due under this section.

9 Section 16. AUDITS AND RECORDS REQUESTS.

10 A. The City may audit and/or request information from any licensee at any
11 time. The City shall make a written request for information and the licensee must comply
12 with the request within thirty (30) days of receipt of the City's written request, or such
13 other time as agreed to in writing. All information shall be provided to the City, at no
14 cost to the City.

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18 B. Every licensee shall furnish the City with information enough to demonstrate
19 that the licensee is in compliance with all the requirements of this Ordinance and its
20 franchise agreement, if any, including but not limited to payment of any applicable fees.

1 C. Every licensee shall make available for inspection by the City at reasonable
2 times and intervals all maps, records, books, diagrams, plans and other documents
3 maintained by the licensee with respect to its facilities within the public rights-of-way or
4 public utility easements. Access shall be provided within the City unless prior
5 arrangement for access elsewhere has been made with the City.

6 D. If the City's audit, or review of the books, records and other documents or
7 information of the licensee demonstrates that the licensee has underpaid any fees by two
8 percent (2%) or more in any one year, the licensee shall reimburse the City for all costs
9 incurred by the City, in addition to any interest owed or other fees imposed by this
10 Ordinance or as specified in a franchise agreement.

11 E. Any underpayment, including any and all costs incurred by the City, shall be
12 paid within thirty (30) days of the City's notice to the licensee of such underpayment.

13 ///

14 ///

15 ///

16 ///

17
18 Section 17. INSURANCE AND INDEMNIFICATION.

19 A. Insurance.

20 a. All Utility Service Operators shall maintain in full force and effect

1 the following liability insurance policies that protect the licensee and the City, as
2 well as the City's officers, agents, and employees, with limits not less than the
3 amounts established by City Council Resolution:

- 4 1. Comprehensive general liability insurance.
- 5 2. Motor vehicle liability insurance for owned, non-owned and
6 hired vehicles.
- 7 3. Worker's compensation insurance.

8 b. The limits of the insurance shall be set by the city manager but shall
9 not be less than the maximum limits of liability imposed on municipalities of the
10 state of Oregon. The insurance shall be without prejudice to coverage otherwise
11 existing and shall name, or the certificate of insurance shall name, as additional
12 insureds the City and its officers, agents and employees. The coverage must apply
13 as to claims between insureds on the policy. The licensee shall provide the City
14 thirty (30) days prior written notice of any cancellation or material alteration of
15 said insurance. If the insurance is canceled or materially altered, the licensee shall
16 maintain continuous uninterrupted coverage in the terms and amounts required.

17
18 c. The licensee shall at all times maintain on file with the City a
19 current certificate of insurance, or proof of self-insurance acceptable to the City,
20 certifying the coverage required above.

1 d. Self-Insurance. At the request of a licensee, the City shall
2 determine, in its sole discretion, whether a licensee may self-insure. A licensee
3 whose request has been granted shall provide the City proof of insurance through
4 a letter of self-insurance or insurance certificate, listing the City as an additional
5 insured.

6 e. Performance Bond

7 1. In addition to any other generally applicable bond or
8 security fund obligations required by local ordinance, upon the
9 Effective Date of this Ordinance, this issuance of a new license or
10 renewal of a license, the licensee shall furnish proof of the posting
11 of a faithful performance bond running to the Grantors collectively
12 with good and sufficient surety approved by the City, in the penal
13 sum of Three Hundred Fifty Thousand Dollars (\$350,000.00),
14 conditioned that Grantee shall well and truly observe, fulfill and
15 perform all provisions of this Ordinance. Such bond shall be
16 issued by a bonding company licensed to do business in the state of
17 Oregon and shall be maintained by the license for the time period it
18 owns facilities within the City's rights-of-way.

19 2. The bond shall contain a provision that it shall not be
20 terminated or otherwise allowed to expire without thirty (30) days

1 written notice first being given to the City. The bond shall be
2 subject to the approval of the City as to its adequacy under the
3 requirements of this Section. During the term of the bond, licensee
4 shall file with the City a duplicate copy of the bond along with
5 written evidence of payment of the required premiums unless the
6 bond otherwise provides that the bond shall not expire or be
7 terminated without thirty (30) days prior written notice to the City.

8 **B. Indemnification.**

9 a. To the fullest extent permitted by law, each licensee shall defend,
10 indemnify and hold harmless the City and its officers, employees, agents and
11 representatives from and against any and all liability, causes of action, claims,
12 damages, losses, judgments and other costs and expenses, including attorney fees
13 and costs of suit or defense (at both the trial and appeal level, whether or not a
14 trial or appeal ever takes place) that may be asserted by any person or entity in
15 any way arising out of, resulting from, during or in connection with, or alleged to
16 arise out of or result from the negligent, careless or wrongful acts, omissions,
17 failure to act or other misconduct of the licensee or its affiliates, officers,
18 employees, agents, contractors, subcontractors or lessees in the construction,
19 operation, maintenance, repair or removal of its facilities, and in providing or
20 offering utility services over the facilities, whether such acts or omissions are

1 authorized, allowed or prohibited by this Ordinance or by a franchise agreement.

2 The acceptance of a license under this Ordinance shall constitute such an
3 agreement by the applicant whether the same is expressed or not.

4 b. Every licensee shall also indemnify the City for any damages,
5 claims, additional costs or expenses assessed against or payable by the City
6 arising out of or resulting, directly or indirectly, from the licensee's failure to
7 remove or relocate any of its facilities in the public rights-of-way or easements in
8 a timely manner, except to the extent the licensee's failure arises directly from the
9 City's negligence or willful misconduct.

10 Section 18. COMPLIANCE. Every licensee shall comply with all applicable
11 federal and state laws and regulations, including regulations of any administrative agency
12 thereof, as well as all applicable ordinances, resolutions, rules and regulations of the
13 City, heretofore or hereafter adopted or established during the term of any license
14 granted under this Ordinance.

15 Section 19. CONFIDENTIAL/PROPRIETARY INFORMATION. If any
16 person is required by this Ordinance to provide books, records, maps or information to
17 the City that the person reasonably believes to be confidential or proprietary, and such
18 books, records, maps or information are clearly marked as confidential at the time of
19 disclosure to the City ("confidential information"), the City shall take reasonable steps to
20 protect the confidential information to the extent permitted by Oregon Public Records

1 Laws. In the event the City receives a public records request to inspect any confidential
2 information and the City determines that it shall be necessary to reveal the confidential
3 information, to the extent reasonably possible the City shall notify the person that
4 submitted the confidential information of the records request prior to releasing the
5 confidential information. The City shall not be required to incur any costs to protect any
6 confidential information, other than the City's routine internal procedures for complying
7 with the Oregon Public Records Law.

8 Section 20. CITY PERMISSION REQUIREMENT. No person may occupy or
9 encroach on a public right-of-way without the express written permission of the City.

10 Section 21. OBLIGATIONS OF THE CITY. The exercise of jurisdiction and
11 regulatory control over a public right-of-way by the City is not official acceptance of the
12 right-of-way and does not obligate the City to maintain or repair any part of the public
13 right-of-way.

14 Section 22. VIOLATIONS AND PENALTIES.

15 A. In addition to any other remedy provided in this Ordinance, a violation of
16 any provision of this Ordinance or any other City regulations, codes, ordinances, or
17 standards, is a civil violation and shall be enforced under the provisions of this
18 Ordinance. Each day that the violation exists or continues shall constitute a separate
19 violation. Each civil violation shall be punishable by a fine of not less than one hundred
20 dollars (\$100.00) and not more than one thousand dollars (\$1,000).

1
2 B. Before issuing the first citation for a violation, the City shall mail written
3 notice of the violation(s) via United States Postal Service (USPS) to the licensee's
4 address as listed on the ROW license application, providing a reasonable time (no less
5 than twenty (20) and no more than forty (40) days from the date of the notice) for the
6 licensee to remedy the violation to the City's satisfaction. The notice may also be
7 delivered by other means in addition to USPS.

8 C. The rights, remedies and penalties provided in this Ordinance are cumulative,
9 are not mutually exclusive, and are in addition to any other rights, remedies and penalties
10 available to the City under any other provision of law, including without limitation any
11 judicial or other remedy at law or in equity for enforcement of this Ordinance.

12 Section 23. SEVERABILITY AND PREEMPTION.

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

16 B. If any article, section, subsection, sentence, clause, phrase, term, provision,
17 condition, covenant or portion of this Ordinance is for any reason declared or held to be
18 invalid or unenforceable by any court of competent jurisdiction or superseded by state or
19 federal legislation, rules, regulations or decision, the remainder of this Ordinance shall
20 not be affected thereby but shall be deemed as a separate, distinct and independent

1 provision, and such holding shall not affect the validity of the remaining portions hereof,
2 and each remaining section, subsection, sentence, clause, phrase, term, provision,
3 condition, covenant or portion of this Ordinance shall be valid and enforceable to the
4 fullest extent permitted by law. In the event any provision is preempted by federal or
5 state laws, rules or regulations, the provision shall be preempted only to the extent
6 required by law and any portion not preempted shall survive. If any federal or state law
7 resulting in preemption is later repealed, rescinded, amended or otherwise changed to
8 end the preemption, such provision shall thereupon return to full force and effect and
9 shall thereafter be binding without further action by the City.

10 Section 24. APPLICATION TO EXISTING AGREEMENTS. To the extent
11 that this Ordinance is not in conflict with and can be implemented consistent with
12 existing agreements, this Ordinance shall apply to all existing agreements granted by the
13 City.

14 Section 25. EFFECTIVE DATE. This Ordinance shall take effect on April 1,
15 2023.

16 PASSED this _____ day of _____, 2023.

17
18 SIGNED this _____ day of _____, 2023.

19
20
21 _____
22 Mayor
23
24 _____

Stakeholder Draft 1-12-23

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2023-_____

ESTABLISHING FEES FOR ORDINANCE NO. 2023-_____

WHEREAS, the City has constitutional and charter authority to manage its rights-of-way and establish fees imposed;

WHEREAS, on _____, 2023, the Keizer City Council adopted Ordinance No. 2023-_____ which regulates utility services utilizing the public right-of-way;

WHEREAS, Ordinance No. 2023-_____ provides that the City Council shall by Resolution establish applicable fees;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that:

Section 1. The right-of-way license application fee shall be Three Hundred Dollars (\$300.00) (excluding Small Cell Wireless Facilities) and shall include an initial five-year license (if approved).

Section 2. The right-of-way license application fee for Small Cell Wireless Facilities shall be Five Hundred Dollars (\$500.00) for up to five sites and One Hundred Dollars (\$100.00) for each additional site, ~~plus any additional reasonable fees the City must incur for outside or additional expertise to evaluate such applications, including compliance with the Federal Communications Commission's "RF" standards.~~

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Section 3. The right-of-way license renewal fee (excluding Small Cell Wireless Facilities) shall be Two Hundred and Fifty Dollars (\$250.00) for a five-year license.

Section 4. The fee for franchise negotiations shall be Five Thousand Dollars (\$5,000.00).

Section 5. The fees established by Ordinance No. 2023-_____ shall be as follows, and effective as of April 1, 2023, to the extent permitted by applicable law:

Utility Service *Excluding Small Cell Wireless facilities*	Usage Fee
Electric Utility Service Operator	5% of gross revenue, or a minimum of \$5,000.00*, whichever is greater
Electric Utility Service Provider	5% of gross revenue.
Natural Gas Utility Service Operator	5% of gross revenue, or a minimum of \$5,000.00*, whichever is greater
Natural Gas Utility Service Provider	5% of gross revenue
Wireline Cable Operators (Franchise required)	5% of gross revenue
Communication Utility Service Operator	7% of gross revenue, or a minimum of \$5,000.00*, whichever is greater
Communication Utility Service Provider	7% of gross revenue
Utility Service Operator that owns facilities but does not provide services within the city or earn gross revenue within the city.	Based on total linear footage of facilities in the Right-of-Way; \$3.50* per linear foot, or a minimum of \$5,000.00*, whichever is greater.
Franchise Agreement Negotiation Fee	\$5,000.00

*Minimum fees and linear feet fees, shall increase three percent (3%) annually on January 1st of each year, beginning on January 1, 2024.

Gross Revenues shall have the meaning defined in Ordinance No. 2023-_____.

Section 6. The annual attachment fee (excluding small cell wireless facilities) shall be Five Thousand Dollars (\$5,000.00) per attachment. The fee shall be paid

Commented [KA2]: This charge is imposed in the communications service fee section. To collect it here too would be duplicative.

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1 quarterly in arrears. The attachment fee shall increase three percent (3%) annually on
2 July 1 of each year, beginning on July 1, 2024.

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3 Section 7. The annual attachment fee for Small Cell Wireless Facilities shall
4 be Two Hundred and Seventy Dollars (\$270.00) per attachment. The fee shall be paid
5 quarterly in arrears.

6 Section 8. The installation attachment fee shall be assessed as follows:

7 Installation before the 15th of the month will be assessed the full month.
8 Installations after the 15th of the month will be assessed beginning the next
9 month.

10 Section 9. The removal of installation fee will be assessed as follows:

11 If removed and the area is restored per Ordinance No. 2023-____, before
12 the 15th of the month, there will be no charge for that month. If removed and the
13 area is restored per Ordinance No. 2023-____ after the 15th of the month, the
14 entire monthly charge will be imposed.

15 Section 10. This Resolution shall take effect on April 1, 2023.

16 PASSED this _____ day of _____, 2023.

17
18 SIGNED this _____ day of _____, 2023.

19
20 _____
21 Mayor

22
23 _____
24 City Recorder

Lockhart, Debbie

From: Adam Deshon <deshon@salemelectric.com>
Sent: Monday, January 30, 2023 6:04 PM
To: Reba Crocker; Johnson, Shannon; Lawyer, Bill; Harms, Tammie; Brown, Adam
Cc: JB Phillips; Tony Eaquinto; Tony Schacher; Wendy Veliz; Carlson, Nina
Subject: RE: URGENT - Keizer, Oregon

CAUTION: This email originated from Outside Your Organization. Exercise caution when opening attachments or on clicking links from unknown senders. Please contact Information Technology for assistance.

Hello everyone,

After careful review of the proposed city ordinances and corresponding fee schedules, there are several concerns that Salem Electric has with this proposal. In section 9.D.b., the construction of new utility poles is prohibited unless approved in writing by the City. The concern is how would City resources, who are not subject matter experts in design and installation of electrical distribution systems, determine when a new pole is or is not required for proper operation of our distribution system. We believe this statement is too broad and would not be practical as the basis for construction.

In section 10.C.b., "...at no cost to the City..." "...can require the relocation of aerial facilities underground...". Oregon state law (ORS 758.210) determines the process for converting overhead electric facilities to underground and this section is likely in violation of that law, as well as unwillingly imposes a cost burden to our members. Salem Electric and PGE have outlined several points to the City of Keizer Manager, Adam Brown, but to reiterate, electrical utility providers have defined service territories and provide critical services that are unique from other utility providers.

Salem Electric believes that its relationship with the City of Keizer and its citizens has proven successful in part because of the stability of a franchise agreement. In summary, Salem Electric would like to propose a continuation of a bilateral franchise agreement with the City of Keizer. If there are any gaps in the cost or management of the right of way, Salem Electric welcomes an open and transparent dialog to address these concerns.

Best regards,

Adam Deshon, P.E.
Electrical Engineer
Salem Electric
Office: 503-316-2423
Cell: 503-877-7495
deshon@salemelectric.com

From: Reba Crocker <reba@rowmanagers.com>
Sent: Monday, January 30, 2023 5:06 PM
To: Adam Deshon <deshon@salemelectric.com>; Wendy Veliz <Wendy.Veliz@pgn.com>; Carlson, Nina <Nina.carlson@nwnatural.com>
Cc: JB Phillips <phillips@salemelectric.com>; Tony Eaquinto <Anthony.Eaquinto@pgn.com>; Tony Schacher <schacher@salemelectric.com>
Subject: URGENT - Keizer, Oregon

Hello,

I don't show any feedback from you folks on the draft Keizer codes. I know that additional provisions to address your unique needs are needed.

Feedback is due today - however, if you send feedback before 9 am tomorrow, I can consider it. Attached are the drafts for your use (please redline these).

Please consider sending feedback.

Stay safe and take care.

Thank you,
Reba Crocker
ROW Consultants LLC
OATOA President
NATOA Board member
503-724-0766

www.NATOA.org

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AT&T Comments - January 30, 2023

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2023-_____

ESTABLISHING FEES FOR ORDINANCE NO. 2023-_____

WHEREAS, the City has constitutional and charter authority to establish fees imposed;

WHEREAS, on _____, 2023, the Keizer City Council adopted Ordinance No. 2023-_____ which imposes a fee on communication services within the City;

WHEREAS, Ordinance No. 2023-_____ provides that the City Council shall by Resolution establish applicable fees;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that:

Section 1. The fees established by Ordinance No. 2023-_____ shall be as follows, and effective as of April 1, 2023, to the extent permitted by applicable law:

Communication services	7% of gross revenue
License Application Fee	\$100.00
License Renewal Fee	\$100.00

Gross Revenues shall have the meaning defined in Ordinance No. 2023-_____.

Commented [MP1]: Please see AT&T's comments on the proposed Communications License Law ordinance, showing that it is preempted by state law.

Deleted: (includes a one-year

Deleted: license)

AT&T Comments - January 30, 2023

Section 2. This Resolution shall take effect on April 1, 2023.

PASSED this _____ day of _____, 2023.

SIGNED this _____ day of _____, 2023.

Mayor

City Recorder

A BILL
ORDINANCE NO.
2023-_____
FOR
AN ORDINANCE

The City of Keizer ordains as follows:

Section 1. TITLE. This Ordinance shall be known and may be referenced as the "Communications License Law."

Section 2. LICENSE REQUIRED. Any person providing communication services within the City shall obtain a communications license covering the period of the calendar year, from January 1 through December 31, or if application is approved after January 1 of any year, then for the balance of the same calendar year.

Section 3. ADMINISTRATION.

A. The Communications License Law shall be administered by the City, its staff or duly appointed representative.

B. Specific Controls the General. If a conflict exists between two City Code provisions, one of them a general requirement and the other a specific requirement, the more specific requirement shall operate as an exception to the general requirement regardless of the priority of enactment.

Commented [MP1]: The City is barred from adopting a local tax on commercial activity/based on gross revenues by ORS 317A.158. (Preemption by the Corporate Activity Tax.) New privilege taxes and similar fees are **only** allowed **if they are not based on commercial activity.**

Under the CAT:

Commercial activity is the total amount realized by a taxpayer from the transactions and activity in the regular course of their business in Oregon, without deduction for expenses incurred by the business [ORS 317A.1 00(1)(a)]. Commercial activity is realized according to the method of accounting used for federal income tax purposes. Oregon Administrative Rules provides detailed information and examples regarding the definition of commercial activity (OAR 150-317-1000).

While said to be a "license fee," this ordinance is adopting a tax like Portland's ULF. See *Qwest Corporation v. City of Portland*, 275 Or 874 (2015).

Note also that the scope of work for this code change project described this "fee" as a "Utility Tax." See Exhibit A, page 10 of 11 of Personal Services Agreement and elsewhere in June 21, 2022 Keizer City Council packet.

Also note that Mr. Johnson, City Attorney, and Mr. Parsons of Beery Elsner wrote in December 2021 that the fee to be charged under the new ROW License code was to be a "privilege tax." See comments on other proposed ordinance.

Section 4. DEFINITIONS. For the purpose of this Ordinance, the following words, terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense. Words in the plural number include the singular number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.

A. "Cable Service" is to be defined consistent with of 47 U.S.C. Section 522(6), as may be amended or superseded, and means the one-way transmission to subscribers of (a) video programming, or (b) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

B. "Calendar year" means January 1 to December 31, unless otherwise noted.

C. "City" means the City of Keizer, Oregon, a municipal corporation, and its governing authority, and/or its duly appointed and authorized agents. In addition, the City may refer to all the territory within its corporate boundaries and as such may change from time to time.

D. "Communication services" means any service provided for the purpose of transmission of information including, but not limited to, voice, video or data, without

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regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. Communication services includes all forms of telephone services and voice, video, data, or information transport, but does not include: (a) cable service; (b) open video system service, as defined in 47 CFR Section 76; (c) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; (d) public communications systems; and (e) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

E. "Days" means calendar days, unless otherwise noted.

F. "Gross Revenue" means any revenue earned within the City, after adjustment for the net write-off of uncollectible accounts within the City, from the provision, furnishing or sale of communications or associated service by of from a communications or cable communications business, or any revenue earned by any person within the City from the use, rental or lease of operating facilities, or any revenue earned within the City for supplying communication services.

a. Gross revenues shall include, by way of illustration and not limitation:

1. Fees for installation;
2. Disconnection;

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Commented [RC2]: FYI-I am going to revise this after the provider feedback to be extremely clear.

Commented [MP3]: The proposed tax is clearly based on corporate activity.

Commented [MP4]: Not defined.

Commented [MP5]: What is this intended to capture?

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Commented [MP6]: Isn't cable excluded?

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Commented [MP7]: What are these intended to capture?

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AT&T Comments - January 30, 2023

3. Reconnection;
 4. Maintenance and services calls;
 5. Repair;
 6. Charges for equipment sales, rental, or lease;
 7. Late fees;
 8. Non-sufficient funds (NSF) charges; and
 9. Administrative fees.
- b. Gross revenues shall not include:
1. Oregon and Federal Universal Service Funding. Revenues associated with Universal Service funding requirements under 47 U.S.C. § 254, ORS 759.425;
 2. Revenues associated with taxes for emergency communications under ORS Chapter 403;
 3. E9-1-1. Communication revenues, tariffed or non-tariffed charge or service applicable to any connection, circuit or equipment which brings an E9-1-1 call to the appropriate responding Public Safety Answering Point, regardless of where the E9-1-1 call is originated; and
 4. Sales of bonds, mortgages, or other evidence of

Deleted: Telecommunication

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indebtedness, securities, or stocks.

G. "Internet Service" means a service that includes computer processing applications, provides the user with additional or restricted information, or permits the user to interact with stored information through the internet or a proprietary subscriber network. "Internet Service" includes the provision or internet electronic mail, access to the internet for information retrieval, and hosting of information or the retrieval over the internet of the graphical subnetwork called the world wide web. "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork call the world wide web.

H. "License" or "Communications License" means the authorization granted by the City to a person(s) subject to this Ordinance.

I. "Licensee" means any person that is subject to the provisions of this Ordinance or has a valid communications license issued by the City.

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

K. "Private communications system" means a system, including the construction, maintenance, or operation of the system, for the provision of a service or

Commented [MP8]: "Internet Service" is defined but never used. Why is the City including this term in this ordinance?

AT&T Comments - January 30, 2023

any portion of a service which is owned or operated exclusively by a person for their sole use and not for sale or resale, including trade, barter, or other exchange of value, directly or indirectly, to any person.

Section 5. APPLICATION AND ISSUANCE. Any person, providing

communication services within the City subject to the provisions of the Communications

License Law shall apply for a communications license within forty-five (45) days of the later of (a) the effective date of this Ordinance, or (b) the expiration of a valid franchise agreement. The application and renewal application shall be accompanied by a nonrefundable application fee set by Resolution of the City Council.

A. License Application. The communications license application shall be on a form provided by the City and shall be accompanied by applicable fees and additional documents required by the City, at the City's sole discretion, at no cost to the City, allowing the City to easily determine whether the license should be issued.

B. Term. A communications license is valid for five (5) years.

C. Communications License Renewal. A licensee that wishes to continue

operations within the City shall submit a renewal application, along with applicable fees,

to the City, not before September 15th and not later than December 31 of the year prior

to the expiration of its license. The renewal application shall include such information as

the City deems necessary, at its sole discretion and at no cost to the City, to easily

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Commented [MP9]: Annual renewals are overly burdensome, and both City and provider resources are better used elsewhere.

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AT&T Comments - January 30, 2023

determine whether the license should be renewed.

C. Upon receiving an application, together with any fees due, any additional information deemed necessary, the City will issue or renew a license to the applicant.

D. The City shall provide application forms. Failure to receive or obtain a form will not relieve any person from the obligation to obtain a license or pay fees under the Communications License Law.

E. Private communication systems and those communication systems owned or operated by the City of Keizer or other municipalities are exempt from this Ordinance.

Section 6. FEES AND PAYMENT. Except as provided in Section 7, the fee for a communications license shall be measured by a percentage of the gross revenue earned by the licensee for each quarter year of operation. The percentage of gross revenue shall be set by Resolution of the City Council.

A. The licensee will compute the license fee by multiplying the percentage, by the gross revenues received during the quarter. The licensee shall complete the forms provided by the City when reporting such revenues and remitting fees.

B. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable.

Deleted: A license shall be valid for no longer than the calendar year in which it was approved. Every license shall expire on December 31 of the year of issuance.

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C. Unless otherwise agreed to in writing by the City, the fee set forth in this section shall be paid quarterly, in arrears, within forty-five (45) days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable (a remittance form shall be provided by the City).

D. A licensee commencing operations as provided in Section 5, shall make the initial payment to the City on or before the payment date following the first quarter year after commencing operations. In the event a licensee terminates operations that come within the provisions of the Communications License Law, a final remittance shall be made on or before the forty-fifth (45) day following the date of such termination.

Section 7. DEDUCTIONS.

A. A licensee may deduct from the communications license fee required in the Communications License Law the amount of any fees or payments made or accrued to the City for the period upon which the communications license fee is computed, under any provision of franchise, privilege tax, or a ROW license granted by the City. A licensee shall not deduct amounts paid to the City for interest charges, late fee, fines, penalties, permits or other authorizations. This subsection shall not relieve any licensee from paying in accordance with the provisions of a franchise, ROW license, temporary permit, charter provision or ordinance when the amount to be paid thereunder exceeds

Deleted: The City may request and shall be provided at no cost to the City, any additional reports or information it deems necessary, in its sole discretion, to ensure compliance by the licensee. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative documenting calculation, details on number of customers within the city limits, or any other information needed for the City to easily verify compliance.

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Commented [MP10]: AT&T would like to confirm the City's intent for providing deductions for wireless facilities located in the ROW under the other proposed ordinance (ROW License). Note that a per-site fee for wireless facilities (attachment fee) that is charged under a ROW license is typically an **annual** fee.

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the amount of the communications license fee required under the Communications License Law.

B. A licensee may not deduct from the communications license fee the value of any right given to the City to use any facilities, including but not limited to: poles, conduits, or ducts or other facilities in common with the licensee. A licensee may not deduct from the communications license fee any permit or inspection fee imposed under any code provision or ordinance to the City.

Section 8. REPORTS AND REVIEW OF RECORDS.

A. Each person paying a communications license fee shall simultaneously file a report to the City, on the form supplied by the City. The report shall be verified by the licensee or an authorized agent to the effect that all statements made therein are true.

B. If a person asserts that any provision of federal, state or local law imposes a limit upon the amount of communications license fees which the City may impose or require from a licensee, the licensee claiming to be within such limitation shall identify in its communications license fee report, or by separate attachment, the specific federal, state or local law, and the service it provides that it claims is subject to the exception.

C. The City shall have the right and authority to conduct informal and formal review of all amounts due or paid under this Ordinance.

Section 9. PENALTIES AND INTEREST. Penalties and interest imposed by

Deleted: The licensee shall provide all information requested by the City, at no cost to the City, within thirty (30) days of such request. Should licensee fail to provide such information within thirty (30) days, the City at its sole discretion may extend the time allowed for delivery or impose fines and penalties as described in Section 9, or as otherwise allowed by law.

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this section are in addition to any penalties that may be assessed under other ordinances, codes or regulations of the City.

A. Any person who has not submitted the required remittance forms or remitted the correct fees when due as provided under this Ordinance shall pay a penalty listed below in addition to the amount due:

a. First occurrence during any one calendar year; ten percent (10%) of the amount owed, or twenty-five dollars (\$25.00), whichever is greater.

b. Second occurrence during any one calendar year; fifteen percent (15%) of the amount owed, or fifty dollars (\$50.00), whichever is greater.

c. Third occurrence during any one calendar year; twenty percent (20%) or the amount owed, or seventy-five dollars (\$75.00), whichever is greater.

d. Fourth occurrence during any one calendar year; twenty-five percent (25%) of the amount owed, or one hundred dollars (\$100.00), whichever is greater.

B. If the City determines that the nonpayment of any fees due under this section is due to fraud or intent to evade the provisions hereof, an additional penalty of twenty-five percent (25%) of the amount owed, or five hundred dollars (\$500.00), whichever is greater, shall be added thereto in addition to other penalties stated in this section.

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C. In addition to the penalties imposed, any person who fails to remit any fees or information when due shall pay interest at the rate of one and one-half percent (1.5%) per month or fractions thereof, without proration for portions of a month, on the total amount due (including penalties), from the date on which the remittance first became delinquent, until received by the City. The City reserves the right to impose interest at the maximum amount allowed by law.

D. Every penalty imposed, and such interest as accrues under the provision of this section, shall be merged with, and become part of, the fee required to be paid.

The City or its designee, in their sole discretion, shall have the authority to reduce or waive the penalties and interest due under this section.

Section 10. VIOLATIONS AND PENALTIES.

A. In addition to any other remedy provided in this Ordinance, a violation of any provision of this Ordinance or any other City regulations, codes, ordinances, or standards, is a civil violation and shall be enforced under the provisions of this Ordinance. Each day that the violation exists or continues shall constitute a separate violation. Each civil violation shall be punishable by a fine of not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000).

B. Before issuing the first citation for a violation, the City shall mail written

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notice of the violation(s) via United States Postal Service (USPS) to the licensee's address as listed on the application, providing a reasonable time (no less than twenty (20) and no more than forty (40) days from the date of the notice) for the licensee to remedy the violation to the City's satisfaction. The notice may also be delivered by other means in addition to USPS.

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C. The rights, remedies and penalties provided in this Ordinance are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the City under any other provision of law, including without limitation any judicial or other remedy at law or in equity for enforcement of this Ordinance.

Section 11. COMPLIANCE. Every licensee shall comply with all applicable 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 term of any license granted under this Ordinance.

Section 12. CONFIDENTIAL INFORMATION. If any person is required by

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this Ordinance to provide books, records, maps or information to the City that the person reasonably believes to be confidential or proprietary, and such books, records, maps or information are clearly marked as confidential at the time of disclosure to the City (“confidential information”), the City shall take reasonable steps to protect the confidential information to the extent permitted by Oregon Public Records Laws. In the event the City receives a public records request to inspect any confidential information and the City determines that it shall be necessary to reveal the confidential information, to the extent reasonably possible the City shall notify the person that submitted the confidential information of the records request prior to releasing the confidential information. The City shall not be required to incur any costs to protect any confidential information, other than the City’s routine internal procedures for complying with the Oregon Public Records Law.

Section 13. SEVERABILITY AND PREEMPTION.

A. The provisions of this Ordinance 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, covenant or portion of this Ordinance is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or

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federal legislation, rules, regulations or decision, the remainder of this Ordinance 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, term, provision, condition, covenant or portion of this Ordinance 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.

Section 14. APPLICATION TO EXISTING AGREEMENTS. To the extent that this Ordinance is not in conflict with and can be implemented consistent with existing agreements, this Ordinance shall apply to all existing agreements granted by the City.

Section 15. EFFECTIVE DATE. This Ordinance shall take effect April 1, 2023

PASSED this _____ day of _____, 2023.

SIGNED this _____ day of _____, 2023.

AT&T Comments - January 30, 2023

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Mayor

City Recorder

Stakeholder Input Draft 11-12-23

1 A BILL
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5 AN ORDINANCE
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ORDINANCE NO.
2023-_____

12 The City of Keizer ordains as follows:

13 Section 1. TITLE. This Ordinance shall be known and may be referenced as
14 the “Communications License Law.”

15 Section 2. LICENSE REQUIRED. Any person providing communication
16 services within the City shall obtain a communications license covering the period of the
17 calendar year, from January 1 through December 31, or if application is approved after
18 January 1 of any year, then for the balance of the same calendar year.

19 Section 3. ADMINISTRATION.

20 A. The Communications License Law shall be administered by the City, its
21 staff or duly appointed representative.

22 B. Specific Controls the General. If a conflict exists between two City Code
23 provisions, one of them a general requirement and the other a specific requirement, the
24 more specific requirement shall operate as an exception to the general requirement
25 regardless of the priority of enactment.

1
2 Section 4. DEFINITIONS. For the purpose of this Ordinance, the following
3 words, terms, phrases, and their derivations shall have the meanings given below unless
4 the context indicates otherwise. When not inconsistent with the context, words used in
5 the present tense include the future tense. Words in the plural number include the
6 singular number, and words in the singular include the plural number. The word "shall"
7 is always mandatory and not merely directory.

8 A. "Cable Service" is to be defined consistent with of 47 U.S.C. Section
9 522(6), as may be amended or superseded, and means the one-way transmission to
10 subscribers of (a) video programming, or (b) other programming service; and subscriber
11 interaction, if any, which is required for the selection or use of such video programming
12 or other programming service.

13 B. "Calendar year" means January 1 to December 31, unless otherwise noted.

14 C. "City" means the City of Keizer, Oregon, a municipal corporation, and its
15 governing authority, and/or its duly appointed and authorized agents. In addition, the
16 City may refer to all the territory within its corporate boundaries and as such may change
17 from time to time.

18 D. "Communication services" means any service provided for the purpose of
19 transmission of information including, but not limited to, voice, video or data, without
20 regard to the transmission protocol employed, whether or not the transmission medium is

owned by the provider itself. Communications services includes all forms of telephone services and voice, video, data, or information transport, but does not include: (a) cable service; (b) open video system service, as defined in 47 CFR Section 76; (c) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; (d) public communications systems; and (e) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

E. "Days" means calendar days, unless otherwise noted.

F. "Gross Revenue" means any revenue earned within the City, after adjustment for the net write-off of uncollectible accounts within the City, from the provision, furnishing or sale of Telecommunications or associated service by of from a telecommunications or cable communications business, or any revenue earned by any person within the City from the use, rental or lease of operating facilities, or any revenue earned within the City for supplying Communication services.

a. Gross revenues shall include, by way of illustration and not limitation:

1. Fees for installation;
2. Disconnection;
3. Reconnection;
4. Maintenance and services calls;

Commented [RC1]: FYI-I am going to revise this after the provider feedback to be extremely clear.

5. Repair;
6. Charges for equipment sales, rental, or lease;
7. Late fees;
8. Non-sufficient funds (NSF) charges; and
9. Administrative fees.

b. Gross revenues shall not include:

1. Oregon and Federal Universal Service Funding. Revenues associated with Universal Service funding requirements under 47 U.S.C. § 254, ORS 759.425;
2. Revenues associated with taxes for emergency communications under ORS Chapter 403;
3. E9-1-1. Telecommunication revenues, tariffed or non-tariffed charge or service applicable to any connection, circuit or equipment which brings an E9-1-1 call to the appropriate responding Public Safety Answering Point, regardless of where the E9-1-1 call is originated; and
4. Sales of bonds, mortgages, or other evidence of indebtedness, securities, or stocks.

Commented [PB2]: Need to revise to be clear that internet access revenues are to be excluded pursuant to the Internet Tax Freedom Act.

G. "Internet Service" means a service that includes computer processing applications, provides the user with additional or restricted information, or permits the

1 user to interact with stored information through the internet or a proprietary subscriber
2 network. "Internet Service" includes the provision or internet electronic mail, access to
3 the internet for information retrieval, and hosting of information or the retrieval over the
4 internet of the graphical subnetwork called the world wide web. "Internet" means the
5 international computer network of both federal and nonfederal interoperable packet
6 switched data networks, including the graphical subnetwork call the world wide web.

7 H. "License" or "Communications License" means the authorization granted
8 by the City to a person(s) subject to this Ordinance.

9 I. "Licensee" means any person that is subject to the provisions of this
10 Ordinance or has a valid communications license issued by the City.

11 J. "Person" means and includes any individual, firm, sole proprietorship,
12 corporation, company, partnership, co-partnership, joint-stock company, trust, limited
13 liability company, association, local service district, government entity, or other
14 organization, including any natural person or any other legal entity.

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

20 Section 5. APPLICATION AND ISSUANCE. Any person, providing

1 Communication Services, subject to the provisions of the Communications License Law
2 shall apply for a communications license within forty-five (45) days of the later of (a) the
3 effective date of this Ordinance, or (b) the expiration of a valid franchise agreement. The
4 application and renewal application shall be accompanied by a nonrefundable application
5 fee set by Resolution of the City Council.

6 A. License Application. The communications license application shall be on a
7 form provided by the City and shall be accompanied by applicable fees and additional
8 documents required by the City, at the City's sole discretion, at no cost to the City,
9 allowing the City to easily determine whether the license should be issued.

10 B. Communication License Renewal. Every year the licensee that wishes to
11 continue operations within the City shall submit a renewal application, along with
12 applicable fees, to the City, not before September 15th and not later than December 31
13 for each subsequent calendar year. The application shall include such information as the
14 City deems necessary, at its sole discretion and at no cost to the City, to easily determine
15 whether the license should be renewed.

16 C. Upon receiving an application, together with any fees due, any additional
17 information deemed necessary, the City will issue or renew a license to the applicant. A
18 license shall be valid for no longer than the calendar year in which it was approved.
19 Every license shall expire on December 31 of the year of issuance.

20 D. The City shall provide application forms. Failure to receive or obtain a

1 form will not relieve any person from the obligation to obtain a license or pay fees under
2 the Communication License Law.

3 E. Private communication systems and those communication systems owned
4 or operated by the City of Keizer or other municipalities are exempt from this Ordinance.

5
6 Section 6. FEES AND PAYMENT. Except as provided in Section 7, the fee
7 for a communications license shall be measured by a percentage of the gross revenue
8 earned by the licensee for each quarter year of operation. The percentage of gross
9 revenue shall be set by Resolution of the City Council.

10 A. The licensee will compute the license fee by multiplying the percentage, by
11 the gross revenues received during the quarter. The licensee shall complete the forms
12 provided by the City when reporting such revenues and remitting fees.

13 B. No acceptance of any payment shall be construed as accord that the amount
14 paid is in fact the correct amount, nor shall such acceptance of payment be construed as a
15 release of any claim the City may have for further or additional sums payable.

16 C. Unless otherwise agreed to in writing by the City, the fee set forth in this
17 section shall be paid quarterly, in arrears, within forty-five (45) days after the end of each
18 calendar quarter. Each payment shall be accompanied by an accounting of gross
19 revenues, if applicable, and a calculation of the amount payable (a remittance form shall
20 be provided by the City). The City may request and shall be provided at no cost to the

City, any additional reports or information it deems necessary, in its sole discretion, to ensure compliance by the licensee. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative documenting calculation, details on number of customers within the city limits, or any other information needed for the City to easily verify compliance.

D. A licensee commencing operations as provided in Section 5, shall make the initial payment to the City on or before the payment date following the first quarter year after commencing operations. In the event a licensee terminates operations which come within the provisions of the Communications License Law, a final remittance shall be made on or before the forty-fifth (45) day following the date of such termination.

Section 7. DEDUCTIONS.

A. A licensee may deduct from the communications license fee required in the Communications License Law the amount of any fees or payments made or accrued to the City for the period upon which the communications license fee is computed, under any provision of franchise, privilege tax, or a ROW license granted by the City. A licensee shall not deduct amounts paid to the City for interest charges, late fee, fines, penalties, permits or other authorizations. This subsection shall not relieve any licensee from paying in accordance with the provisions of a franchise, ROW license, temporary permit, charter provision or ordinance when the amount to be paid thereunder exceeds the amount of the communications license required under the Communications License

1 Law.

2 B.

3 Section 8. REPORTS AND REVIEW OF RECORDS.

4 A. Each person paying a communications license fee shall simultaneously file
5 a report to the City, on the form supplied by the City. The report shall be verified by the
6 licensee or an authorized agent to the effect that all statements made therein are true.

7 B. If a person asserts that any provision of federal, state or local law imposes
8 a limit upon the amount of communications license fees which the City may impose or
9 require from a licensee, the licensee claiming to be within such limitation shall identify
10 in its communications license fee report, or by separate attachment, the specific federal,
11 state or local law, and the service it provides that it claims is subject to the exception.

12 C. The City shall have the right and authority to conduct informal and formal
13 review of all amounts due or paid under this Ordinance. The licensee shall provide all
14 information requested by the City, at no cost to the City, within thirty (30) days of such
15 request. Should licensee fail to provide such information within thirty (30) days, the City
16 at its sole discretion may extend the time allowed for delivery or impose fines and
17 penalties as described in Section 9, or as otherwise allowed by law.

18 Section 9. PENALTIES AND INTEREST. Penalties and interest imposed by
19 this section are in addition to any penalties that may be assessed under other ordinances,
20 codes or regulations of the City.

Deleted: A licensee may not deduct from the communications license fee the value of any right given to the City to use any facilities, including but not limited to: poles, conduits, or ducts or other facilities in common with the licensee. A licensee may not deduct from the communications license fee any permit or inspection fee imposed under any code provision or ordinance to the City.

1 A. Any person who has not submitted the required remittance forms or
2 remitted the correct fees when due as provided under this Ordinance shall pay a penalty
3 listed below in addition to the amount due:

4 a. First occurrence during any one calendar year; one percent (1%) of
5 the amount owed, or twenty-five dollars (\$25.00), whichever is greater.

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6 b. Second occurrence during any one calendar year; two percent (2%)
7 of the amount owed, or fifty dollars (\$50.00), whichever is greater.

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8 c. Third occurrence during any one calendar year; three percent (3%)
9 or the amount owed, or seventy-five dollars (\$75.00), whichever is greater.

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10 d. Fourth occurrence during any one calendar year; five percent (5%)
11 of the amount owed, or one hundred dollars (\$100.00), whichever is greater.

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12 B. If nonpayment of any fees due under this section is due to fraudulent intent
13 to evade the provisions hereof, an additional penalty of twenty-five percent (25%) of the
14 amount owed, or five hundred dollars (\$500.00), whichever is greater, shall be added
15 thereto in addition to other penalties stated in this section.

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16 C. In addition to the penalties imposed, any person who fails to remit any
17 undisputed fees when due may be required to pay interest at the rate of one and one-half
18 percent (1.5%) per month or fractions thereof, without proration for portions of a month,
19 on the total amount due (including penalties), from the date on which the remittance first
20 became delinquent, until received by the City. The City reserves the right to impose

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1 interest at the maximum amount allowed by law.

2
3 D. Every penalty imposed, and such interest as accrues under the provision of
4 this section, shall be merged with, and become part of, the fee required to be paid.

5 The City or its designee, in their sole discretion, shall have the authority to reduce
6 or waive the penalties and interest due under this section.

7 Section 10. VIOLATIONS AND PENALTIES.

8 A. In addition to any other remedy provided in this Ordinance, but excepting
9 the penalty circumstances already contemplated in Section 9, and subject to the notice
10 and cure provisions in Section 10.B, below, a material violation of any provision of this
11 Ordinance or any other City regulations, codes, ordinances, or standards, is a civil
12 violation and shall be enforced under the provisions of this Ordinance. Each civil
13 violation shall be punishable by a fine of not less than one hundred dollars (\$100.00) and
14 not more than one thousand dollars (\$1,000).

Deleted: Each day that the violation exists or continues shall constitute a separate violation.

15 B. Before issuing the first citation for a violation, the City shall mail written
16 notice of the violation(s) via United States Postal Service (USPS) to the licensee's
17 address as listed on the application, providing a reasonable time (no less than twenty (20)
18 and no more than forty (40) days from the date of the notice) for the licensee to remedy
19 the violation to the City's satisfaction. The notice may also be delivered by other means
20 in addition to USPS.

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5 C. The rights, remedies and penalties provided in this Ordinance are cumulative,
6 are not mutually exclusive, and are in addition to any other rights, remedies and penalties
7 available to the City under any other provision of law, including without limitation any
8 judicial or other remedy at law or in equity for enforcement of this Ordinance.

9 Section 11. COMPLIANCE. Every licensee shall comply with all applicable
10 federal and state laws and regulations, including regulations of any administrative agency
11 thereof, as well as all applicable ordinances, resolutions, rules and regulations of the
12 City, heretofore or hereafter adopted or established during the term of any license
13 granted under this Ordinance.

14 Section 12. CONFIDENTIAL INFORMATION. If any person is required by
15 this Ordinance to provide books, records, maps or information to the City that the person
16 reasonably believes to be confidential or proprietary, and such books, records, maps or
17 information are clearly marked as or otherwise known to be confidential at the time of
18 disclosure to the City (“confidential information”), the City shall take reasonable steps to
19 protect the confidential information to the extent permitted by Oregon Public Records
20 Laws. In the event the City receives a public records request to inspect any confidential

1 information and the City determines that it shall be necessary to reveal the confidential
2 information, ~~the City shall provide reasonable advance notice to~~ the person that
3 submitted the confidential information of the records request prior to releasing the
4 confidential information ~~in order to give such person a reasonable opportunity to discuss~~
5 ~~with the City and/or contest disclosure in a court of law~~. The City shall not be required
6 to incur any costs to protect any confidential information, other than the City's routine
7 internal procedures for complying with the Oregon Public Records Law.

8 Section 13. SEVERABILITY AND PREEMPTION.

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

12 B. If any article, section, subsection, sentence, clause, phrase, term, provision,
13 condition, covenant or portion of this Ordinance is for any reason declared or held to be
14 invalid or unenforceable by any court of competent jurisdiction or superseded by state or
15 federal legislation, rules, regulations or decision, the remainder of this Ordinance shall
16 not be affected thereby but shall be deemed as a separate, distinct and independent
17 provision, and such holding shall not affect the validity of the remaining portions hereof,
18 and each remaining section, subsection, sentence, clause, phrase, term, provision,
19 condition, covenant or portion of this Ordinance shall be valid and enforceable to the
20 fullest extent permitted by law. In the event any provision is preempted by federal or

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1 state laws, rules or regulations, the provision shall be preempted only to the extent
2 required by law and any portion not preempted shall survive. If any federal or state law
3 resulting in preemption is later repealed, rescinded, amended or otherwise changed to
4 end the preemption, such provision shall thereupon return to full force and effect and
5 shall thereafter be binding without further action by the City.

6
7 Section 14. APPLICATION TO EXISTING AGREEMENTS. To the extent
8 that this Ordinance is not in conflict with and can be implemented consistent with
9 existing agreements, this Ordinance shall apply to all existing agreements granted by the
10 City.

11 Section 15. EFFECTIVE DATE. This Ordinance shall take effect April 1, 2023

12 PASSED this _____ day of _____, 2023.

13
14 SIGNED this _____ day of _____, 2023.

15
16
17 _____
18 Mayor

19
20 _____
21 City Recorder

1 A BILL
2
3 FOR
4
5 AN ORDINANCE
6
7
8
9
10
11

ORDINANCE NO.
2023-_____

The City of Keizer ordains as follows:

12 Section 1. TITLE. This Ordinance shall be known and may be referenced
13 as the "Utility Service Utilizing the Public Rights-of-Way Ordinance."

14 Section 2. PURPOSE AND INTENT. The purpose of this Ordinance is to:

15 A. Permit and manage reasonable access and utilization of the public rights-
16 of-way of the City for utility services purposes and conserve the limited physical
17 capacity, integrity, and longevity of those public rights-of-way held in trust by the City
18 consistent with applicable state and federal law;

19 B. Secure fair and reasonable compensation to the City and its residents,
20 who have invested substantial public funds to acquire, build, maintain the public rights-
21 of-way, City-owned structures and improvements therein, for permitting utilization of
22 the public rights-of-way by persons who generate revenue by provisioning utility
23 services that utilize facilities within the City by placing, owning, controlling, using,
24 leasing capacity or operating utility facilities;

25 C. Assure that all persons owning, operating utility facilities or providing

1 utility services within the City shall register and comply with the ordinances, rules,
2 policies, and other regulations of the City, as well as with applicable provisions of state
3 and federal law;

4 D. Assure that the City can continue to fairly and responsibly protect the
5 public health, safety, and the welfare of its residents;

6 E. Encourage the provision of advanced and competitive utility services on
7 the widest possible basis to the residents, businesses and visitors within the City's
8 territorial and jurisdictional boundaries;

9 F. Allowing the City to enter into other or additional agreement with
10 Person(s), if the public's interest is served, and to amend the requirements of this
11 Ordinance and the City regulations, as new technology is developed and deployed;

12 G. Allow the City to be resilient and adaptive to changes in technology;

13 H. Comply with applicable provisions of state and federal law.

14 Section 3. JURISDICTION AND MANAGEMENT OF THE PUBLIC
15 RIGHTS-OF-WAY.

16 A. The City has jurisdiction and exercises regulatory management over all
17 public rights-of-way within the City under authority of the Oregon Constitution, the
18 City Charter, and state law.

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3 B. The City has jurisdiction and exercises regulatory management over each
4 public right-of-way, whether the City has a fee, easement, or any other legal interest in
5 such public right-of-way, and whether the legal interest in the public right-of-way was
6 obtained by grant, dedication, prescription, reservation, condemnation, annexation,
7 foreclosure, or any other means.

8 C. The exercise of jurisdiction and regulatory management over a public
9 right-of-way by the City is not official acceptance of such public right-of-way, and
10 does not obligate the City to maintain or repair any part of such right-of-way.

11 D. The provisions of this Ordinance are subject to and shall be applied
12 consistently with applicable state and federal laws, rules and regulations, and shall be
13 interpreted to be consistent with such laws, rules, and regulations. Nothing in this
14 Ordinance (a) is intended to preempt any state or federal law, rule, or regulation; and
15 (b) shall be not interpreted, deemed, or applied in a manner that authorizes or requires
16 the City, its Council, Commissions, Boards, officials, directors, managers, employees,
17 agents, contractors, or volunteers to preempt or violate applicable state or federal laws,
18 rules, or regulations.

19 Section 4. REGULATORY FEES AND COMPENSATION NOT A TAX.

20 A. The fees and costs provided for in this Ordinance, any compensation

1 charged and paid as prescribed in this Ordinance, are separate from, and in addition to,
2 any and all other federal, state, county or city charges, including without limitation,
3 any permit fee or any other generally applicable fee, tax, charge on the business,
4 occupation, property, or income, as may be levied, imposed, or due from any person,
5 its customers or subscribers, on account of the lease, sale, delivery, or transmission of
6 utility services.

7 B. The City has determined that any fee, cost, or other charge provided for
8 by this Ordinance is not subject to the property tax limitations of Article XI, Sections
9 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property
10 or property owners.

11 C. The fees, costs, and other charges provided for in this Ordinance are
12 subject to applicable federal and state laws.

13 Section 5. DEFINITIONS. For the purpose of this Ordinance, the following
14 words, terms, phrases, and their derivations shall have the meanings given below
15 unless the context indicates otherwise. When not inconsistent with the context, words
16 used in the present tense include the future tense. Words in the plural number include
17 the singular number, and words in the singular include the plural number. The word
18 "shall" is always mandatory and not merely directory.

19 A. "Cable service" is to be defined consistent with of 47 U.S.C. Section
20 522(6), as may be amended or superseded, and means the one-way transmission to

1 subscribers of (a) video programming, or (b) other programming service; and
2 subscriber interaction, if any, which is required for the selection or use of such video
3 programming or other programming service.

4 B. "Calendar year" means January 1 to December 31, unless otherwise
5 noted.

6
7 C. "City" means the City of Keizer, Oregon, a municipal corporation, and
8 its governing authority, and/or its duly appointed and authorized agents. In addition,
9 the City may refer to all the territory within its corporate boundaries and as such may
10 change from time to time.

11 D. "City Council" means the City Council of the City of Keizer.

12 E. "City facilities" means City owned structures or equipment located
13 within the public rights-of-way or public easement including, but not limited to, fiber-
14 optic cable, streetlights, traffic signals, sanitary sewer, storm sewer, or water
15 infrastructure such as related pipes, manholes, catch basins, wires, conduit, valves,
16 vaults, and appurtenances.

17 F. "City Standards" means all the ordinances, codes, regulations, and rules
18 of the City of Keizer, heretofore or as may be subsequently amended.

19 G. "Communication services" means any service provided for the purpose
20 of transmission of information including, but not limited to, voice, video or data,

Deleted: , publicly owned

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1 without regard to the transmission protocol employed, whether or not the transmission
2 medium is owned by the provider itself. Communications services includes all forms
3 of telephone services and voice, video, data, or information transport, but does not
4 include: (a) cable
5 service; (b) open video system service, as defined in 47 CFR Section 76; (c) over-the-
6 air
7
8
9
10 radio or television broadcasting to the public-at-large from facilities licensed by the
11 Federal Communications Commission or any successor thereto; (d) public
12 communications systems; and (e) direct-to-home satellite service within the meaning
13 of Section 602 of the Telecommunications Act.

14 H. "Construction" means any activity in the public right-of-way resulting in
15 physical change thereto, including excavation or placement of structures.

16 I. "Control" or "Use of Facilities" means actual working control over
17 utility facilities in whatever manner exercised, whether or not the facility is owned.

Deleted: For example, but not limitation, Control means and includes leased capacity, transport, or any other use.

18 J. "Days" mean calendar days, unless otherwise noted.

19 K. "Emergency" means a circumstance, as determined by the City, in its
20 sole discretion, in which immediate work to repair damaged or malfunctioning

1 facilities is necessary to restore lost service or prevent immediate harm to persons or
2 property.

3 L. "Federal Communications Commission" or "FCC" means the federal
4 administrative agency, or its lawful successor, authorized to regulate and oversee
5 telecommunication carriers, services and provider on a national level.

6 M. "Gross Revenue" means any and all amounts, of any kind, nature or
7 form, without deduction for expense, less net write-off of uncollectable accounts
8 within the City, derived from the operation (including revenue derived from any leases
9 or other agreements allowing use of facilities to other person(s)), or utilization of
10 facilities in the City, operation of Communications Services system or the provision of
11 utility service(s) in the City, subject to all applicable limitations in federal and state
12 law.

13 a. Gross revenues shall include, by way of illustration and not
14 limitation:

- 15 1. Fees for installation,
- 16 2. Disconnection,
- 17 3. Reconnection,
- 18 4. Maintenance and services calls,
- 19 5. Repair,
- 20 6. Charges for equipment sales, rental, or lease,

Commented [PB1]: Recommend including a separate Gross Revenue definition for those falling under the purview of ORS 221.515. Otherwise, this Ordinance will be immediately inconsistent with and preempted by that statute.

- 1 7. Late fees,
- 2 8. Non-sufficient funds (NSF) charges, and
- 3 9. Administrative fees.
- 4 b. Gross revenues shall not include:
- 5 1. Public purpose charges. Charges imposed by a utility
- 6 service provider selling electrical energy or gas for public purpose
- 7 charges (energy efficiency programs, market transformation programs,
- 8 low-income energy efficiency programs and carbon offset programs),
- 9 2. Residential exchange program (Bonneville Power
- 10 Administration credits),
- 11
- 12 3. Oregon and Federal Universal Service Funding. Revenues
- 13 associated with Universal Service funding requirements under 47 U.S.C.
- 14 § 254, ORS 759.425,
- 15 4. Revenues associated with taxes for emergency
- 16 communications under ORS Chapter 403,
- 17 5. E9-1-1. Telecommunication revenues, tariffed or non-
- 18 tariffed charge or service applicable to any connection, circuit or
- 19 equipment which brings an E9-1-1 call to the appropriate responding
- 20 Public Safety Answering Point, regardless of where the E9-1-1 call is

1 originated, and

2 6. Sales of bonds, mortgages, or other evidence of
3 indebtedness, securities, or stocks. 7.

4 N. “License” or “ROW License” means the authorization granted by the
5 City to a person(s) pursuant to this Ordinance.

6 O. “Licensee” means any person that is subject to this Ordinance or has a
7 valid ROW License issued by the City.

8 P. “Person” means and includes any individual, firm, sole proprietorship,
9 corporation, company, partnership, co-partnership, joint-stock company, trust, limited
10 liability company, association, local service district, governmental entity, other
11 organization, including any natural person or any other legal entity.

12 Q. “Private communications system” means a system, including the
13 construction, maintenance, or operation of a system, for the provision of a utility
14 service or any portion of a service which is owned or operated exclusively by a person
15 for their sole use and not for sale or resale, including trade, barter, or other exchange
16 of value, directly or indirectly, to any person.

17 R. “Public communications system” means any system owned or operated
18 by a government entity or entities that are primarily for use for internal
19 communications or communications with other government entities, and includes
20 services provided by the state of Oregon pursuant to ORS Sections 190.240 and

1 283.140. A public communications system does not include any system used for sale
2 or resale, including trade, barter, or other exchange of value, of communications
3 services or capacity on the system, directly or indirectly, to any person.

4 S. "Public rights-of-way", or "Right-of-Way", or "ROW", or "PROW"
5 means and includes, but is not limited to, the space in, upon, above, along, across, over,
6 or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards,
7 bridges, trails, paths, sidewalks, bicycle lanes, and all other public ways or areas,
8 including the subsurface under and air space over these areas, but does not include
9 parks, parkland, open space tracts, water quality tracts, or other City-owned property.
10 This definition applies only to the extent of the City's right, title, interest and authority
11 to grant a license to occupy and use such areas for utility facilities or provision of utility
12 services.

13 T. "Public utility easement" means the space in, upon, above, along, across,
14 over, or under an easement for the construction, reconstruction, operation,
15 maintenance, inspection and repair of utility facilities. A public utility easement does
16 not include an easement solely for the construction, reconstruction, operation,
17 maintenance, inspection, and/or repair of City facilities, or where the proposed use by
18 the licensee is inconsistent with the terms of any easement, right-of-way, or other legal
19 right for use or occupancy granted to the City.

20 U. "Small Cell Wireless Facility" or "SWF" means facilities or equipment

1 owned or operated for the provision of communications that are shorter ranged,
2 wireless systems that may be affixed to a structure with generally smaller components
3 than traditional Macro Wireless Facilities and are deployed where suitable in flexible
4 configurations to provide capacity and coverage. Small Cell Wireless Facilities means
5 a facility that meets each of the following conditions per 47 C.F.R § 1.6002(l), as may
6 be amended or superseded:

7 a. The facilities (i) are mounted on structures fifty (50) feet or less
8 in height including the antennas, or (ii) are mounted on structures no more than
9 ten percent (10%) taller than other adjacent structures, or (iii) do not extend
10 existing structures on which they are located to a height of more than fifty (50)
11 feet or by more than ten percent, (10%) whichever is greater; and,

12 b. Each antenna associated with the deployment, excluding
13 associated antenna equipment, is no more than three (3) cubic feet in volume;
14 and,

15 c. All other wireless equipment associated with the structure,
16 including wireless equipment associated with the antenna and any pre-existing
17 associated equipment on the structure, is no more than twenty-eight (28) cubic
18 feet in volume; and,

19 d. Small Cell Wireless Facility does not include fiber, coaxial cable
20 or similar equipment located within the right-of-way, and,

1 e. The facilities do not result in human exposure to radio frequency
2 in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

3 V. "State" means the state of Oregon.

4 W. "Streets" or "City streets" means the entire width between the right-of-
5 way lines of a local street, collector, or arterial capable of providing the principal means
6 of access to abutting property.

7 X. "Structure" means any facility that is placed in the ROW, including but
8 not limited to poles, vaults or manholes, hand holds, junction boxes, conduit, direct
9 bury cable, wires, pedestals, aerial cables or wires and transformers.

10 Y. "Telecommunications Act" means the Communications Policy Act of
11 1934, as amended by subsequent enactments including the Telecommunications Act
12 of 1996 (47 U.S.C., 151 et seq.) and as hereafter amended.

13
14 Z. "Utility facility" or "facility" means any physical component of a utility
15 service system, including but not limited to the poles, pipes, mainlines, conduits, ducts,
16 cables, wires, transmitters, plants, equipment, and other facilities, located within, on,
17 along, under, or above the public rights-of-way, any portion of which is used or
18 designed to be used to deliver, transmit, or otherwise provide utility service.

19 AA. "Utility service" means the provision by means of utility facilities
20 located in the public rights-of-way, whether or not such facilities are owned by the

1 utility service provider or utility service operator that provides, cable services,
2 communication services, electric energy, natural gas, wireless communications, to or
3 from customers within the corporate boundaries of the city, or the transmission of any
4 of these services through the City whether or not customers within the City are served
5 by those transmissions. "Utility service" shall not include the provision of such services
6 owned or operated by the City of Keizer, unless and except to the extent such services
7 are competitive to those offered by utility service operators or providers.

8 BB. "Utility service operator" or "Operator" means any person who owns,
9 places, operates, or maintains a utility facility within the City, whether or not customers
10 are within the City or if no gross revenue is earned within the City.

11 CC. "Utility service provider" or "Provider" means any person who provides
12 utility service or communication services to customers within the City limits, whether
13 or not any facilities in the ROW are owned by such provider.

14 DD. "Wireless communication services" means any wireless service using
15 Federal Communications Commission-licensed or unlicensed spectrum including
16 without limitation any personal wireless services, as defined in 47 U.S.C. §
17 332(c)(7)(C).

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

Commented [PB2]: At least in the telecommunications context, language along these lines seems necessary in order to not run afoul of the anti-discrimination provisions of 47 USC 253.

demolition, installation, replacement, repair, maintenance, or relocation.

Section 6. COMMUNICATIONS LICENSE LAW. Every person that provisions utility services, whether such person owns facilities or not, within the City shall comply with all other City codes, rules, or requirements including but not limited to the "Communications License Law" Ordinance of the City of Keizer.

Section 7. ADMINISTRATION.

A. This Ordinance shall be administered by the City, its staff or duly appointed representative.

B. If a conflict exists between two City Ordinance provisions, one of them a general requirement and the other a specific requirement, the more specific requirement shall operate as an exception to the general requirement regardless of the priority of enactment.

Section 8. ROW LICENSES.

A. Who Must Apply. Every person who owns, controls, or utilizes utility facilities in the public rights-of-way, or provisions services within the City, must have at all times a ROW License from the City. Every person shall obtain a ROW license prior to conducting any work in the public rights-of-way, placing any utility facilities in the public rights-of-way, using any utility facilities in the rights-of-way, or provisioning utility services within the City. The ROW license requirement shall not apply to those persons with a valid franchise agreement in effect and in good standing

1 or those utility services provided by the City of Keizer or other municipal jurisdiction.

2 B. When Must Apply. Every person that owns, controls, or uses utility
3 facilities in the public rights-of-way, or provisions services as of the effective date of
4 this Ordinance shall apply for a ROW license from the City within forty-five (45) days
5 of the later of (a) the effective date of this Ordinance, or (b) the expiration of a valid
6 franchise from the City, unless a new agreement is granted by the City.

7 C. ROW License Application. The ROW license application shall be on a
8 form provided by the City, and shall be accompanied by any additional documents
9 required by the City, in the City's sole discretion and at no cost to the City, that allows
10 the City to easily identify the applicant, its legal status, including its authorization to
11 do business in the state of Oregon, a description of the type of utility service provided
12 or to be provided by the applicant, the facilities over which the utility service will be
13 provided, and other information that the City determines, in its sole discretion at no
14 cost to the City, is necessary, to determine the applicant's ability to comply with the
15 terms of this Ordinance. Subject to any applicable restrictions in state or federal law,
16 the City may from time to time and without further authorization from the City Council
17 publish or otherwise make publicly available any additional or different application
18 requirements as the City finds necessary or appropriate for processing applications,
19 which shall be effective immediately upon publication.

20 D. ROW License Application Fee and Renewal Fee. The application and

1 renewal application shall be accompanied by a nonrefundable application fee set by
2 Resolution of the City Council.

3 E. Determination by City. The City shall issue, within a reasonable time
4 after having received a duly filed application, a written determination granting or
5 denying the license in whole or in part. If the license is denied, the written
6 determination shall include the reasons for denial. The license shall be evaluated based
7 upon the provisions of this Ordinance, the continuing capacity of the public rights-of-
8 way to accommodate the applicant's proposed utility services and the applicable
9 federal, state and local laws, rules, regulations and policies.

10 F. Changes to Information Contained on the ROW License Application.
11 Within thirty (30) days of a change to the information contained in the license
12 application, the licensee shall notify the City in writing of such change(s).

13 G. Rights Granted.

14 a. A ROW license granted under this Ordinance authorizes and
15 permits the licensee to construct, place, maintain, operate utility facilities in the
16 public rights-of-way, and provision services for the term of the license, subject
17 to the provisions of City code, rules, regulations, polices, and other applicable
18 provisions of state and federal law.

19
20 b. Each ROW license granted under this Ordinance authorizes only

1 those utility facilities or utility services applied for by the applicant and
2 approved by the City. The City may approve the provision of multiple services
3 in one license.

4 c. A ROW license granted under this Ordinance shall be personal to
5 the licensee and may not be assigned, sublicensed, or transferred, in whole or
6 in part, except as permitted by this Ordinance.

7 d. A ROW license granted under this Ordinance does not grant,
8 convey, create, or vest in a licensee any real property interest in land, including
9 any fee, leasehold interest, or easement, and does not convey equitable or legal
10 title in the public rights-of-way. The license is subject to all recorded deeds,
11 easements, dedications, conditions, covenants, restrictions, encumbrances and
12 claims of title of record that may affect the public rights-of-way. A ROW license
13 granted under this Ordinance is not a warranty of title. Licensee expressly
14 acknowledges and agrees to enter on to and use public rights-of-way in its "as-
15 is and with all faults" condition. The City makes no representations or
16 warranties whatsoever, whether express or implied, as to the public rights-of-
17 way's condition or suitability for the intended or proposed utilization. By its
18 acceptance of the ROW license, the licensee expressly acknowledges and agrees
19 that neither the City nor its agents have made, and the City expressly disclaims,
20 any representations or warranties whatsoever, whether express or implied, with

1 respect to the physical, structural or environmental condition of the public
2 rights-of-way, and the present or future suitability of the public rights-of-way.

3 e. The issuance of a ROW license does not constitute a waiver or
4 bar to the City's exercise of any governmental right or power, including without
5 limitation the City's police powers and regulatory powers, regardless of whether
6 such powers existed before or after the license is issued.

7 H. Term of ROW License. Subject to the termination provisions in
8 Subsection 8.N of this Section, the ROW license granted pursuant to this Ordinance
9 and issued shall be effective as of the date it is issued by the City or the date services
10 began, whichever comes first, and shall have a term of five (5) calendar years
11 beginning: (1) January 1st of the year in which the license took effect for licenses that
12 took effect between January 1st and June 30th; or (2) January 1st of the year after the
13 license took effect for licenses that become effective between July 1st and December
14 31st.

15 I. ROW License Nonexclusive. No ROW license granted pursuant to this
16 section shall confer any exclusive right, privilege, license, or franchise to occupy or
17 use the public rights-of-way for delivery of utility services or any other purpose. The
18 City expressly reserves the right to grant licenses, franchises, or other rights to other
19 persons, as well as the City's right to use the public rights-of-way, for similar or
20 different purposes.

1
2 J. Reservation of City Rights. The City reserves all rights, title, and interest
3 in its public rights-of-way. A license granted under this Ordinance does not prevent
4 the City from exercising any of its rights, including without limitation grading, paving,
5 repairing, or altering any public rights-of-way, constructing, laying down, repairing,
6 relocating, removing city facilities or establishing any other public work, utility, or
7 improvement of any kind, including repairs, replacement, or removal of any City
8 facilities.

9 a.
10 K. Multiple Services.

11 a. A licensee that provides, transmits, or allows the provision or
12 transmission of utility services and other services over its facilities is subject to
13 the ROW license and fee requirements of this Ordinance for the portion of the
14 facilities and extent of utility services delivered over those facilities.

15 b. A licensee that provides or transmits more than one utility service
16 over its facilities is not required to obtain a separate ROW license or franchise
17 for each utility service.

18 c. A licensee is not required to pay the ROW license or fees owed
19 to the City by a third party.

20 L. Transfer or Assignment. A licensee shall obtain the written consent of

Deleted: If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any public rights-of-way, public work, City utility, City improvement, improvement that implements a City urban renewal agency project, or City facility, except those providing utility services in competition with a licensee, licensee's facilities shall be removed or relocated as provided in this Ordinance, in a manner acceptable to the City and consistent with industry standard engineering and safety codes.

Deleted: ; provided, that it gives notice to the City of each utility service provided or transmitted and pays the applicable fee for each utility service

1 the City prior to the transfer, sublicense, or assignment of a license, which consent
2 shall not unreasonably be withheld, unless the licensee demonstrates to the City that
3 state or federal law specifically prohibits the City from requiring its prior written
4 consent. A transfer, sublicense, or assignment shall only be authorized if the proposed
5 transferee or assignee is authorized under all applicable federal, state, and local laws
6 to own or operate the utility system and the transfer or assignment is approved by all
7 agencies or organizations required or authorized under federal, state, and local to
8 approve such transfer, sublicense, or assignment.

9 a. If a ROW license is transferred, sublicensed, or assigned, the
10 transferee, sublicensee, or assignee shall become responsible for fulfilling all
11 the obligations under the license with respect to obligations of the licensee at
12 the time of transfer, sublicensee, or assignment. A transfer or assignment of a
13 license does not extend the term of the license. Without limiting any other
14 rights, the City may have to condition its consent, the City may condition its
15 consent on any such transfer, sublicense, or assignment on the transferee,
16 sublicensee, or assignee's written agreement to assume all obligations under the
17 license, this Ordinance and other city codes and regulations.

18 b. Notwithstanding anything in this section to the contrary, a
19 licensee may, by written notice to the City, assign all its rights under a license
20 to an entity that acquires all or substantially all the licensee assets in the market

1 in which the City is located, or to an entity that it controls, is controlled by, or
2 is under common control with.

3 M. Renewal. At least thirty (30), but no more than one hundred twenty
4 (120), calendar days before the expiration of a license granted under this section, a
5 licensee seeking renewal of its license shall submit a license application to the City,
6 including all information and fees required in this Ordinance. The City shall review
7 the application and grant or deny the license within a reasonable time period after the
8 application is duly filed. If the City determines that the licensee is in violation of the
9 terms of this Ordinance or any other city codes, rules or regulations, at the time it
10 submits its application, the City may require, by a written notice, that the licensee cure
11 the violation or submit a detailed plan to cure the violation within a reasonable period
12 of time, as determined by the City, before the City will consider the application or grant
13 the license.

14 N. Termination.

15 a. Revocation or Termination of a License. The City may terminate
16 or revoke the license granted pursuant to this Ordinance for any of the following
17 reasons:

- 18 1. Violation of any of the provisions of this Ordinance;
- 19 2. Violation of any provision of the license;
- 20 3. Misrepresentation in a license application;

1 4. Failure to pay taxes, compensation, fees, or costs due the City
2 after final determination by the City, of the taxes, compensation,
3 fees, or costs;

4 5. Failure to restore the public rights-of-way after construction
5 as required by this Ordinance or other applicable state and local
6 laws, ordinances, rules, and regulations;

7 6. Failure to comply with technical, safety, and engineering
8 standards related to work in the public rights-of-way;

9 7. Failure to obtain or maintain any and all licenses, permits,
10 certifications, and other authorizations required by state or federal
11 law for the placement, maintenance, or operation of the utility
12 facilities; or

13 8. Is in violation of any City code, rule, regulation or other
14 City requirements.

15 b. Standards for Revocation or Termination. In determining whether
16 termination, revocation, or some other sanction is appropriate, the following
17 factors shall be considered:

18 1. Whether the violation was intentional;

19 2. The egregiousness of the violation;

20 3. The harm that resulted;

1 4. The licensee history of compliance; and

2 5. The licensee cooperation in discovering, admitting, and
3 curing the violation.

4 c. If a license is terminated by the City, within thirty (30) days the
5 licensee shall file a final remittance form with the City stating, “final
6 remittance” and shall remit any funds due.

7 O. Notice and Cure. The City shall give the licensee written notice of any
8 apparent violations before revoking or terminating a license. The notice shall include
9 a statement of the nature and general facts of the violation or noncompliance and
10 provide a reasonable time period not to exceed thirty (30) days for the licensee to
11 demonstrate that the licensee has remained in compliance, that the licensee has cured
12 or is in the process of curing any violation or noncompliance, or that it would be in the
13 public interest to impose a penalty or sanction less than termination or revocation. If
14 the licensee is in the process of curing a violation or noncompliance, the licensee must
15 demonstrate that it acted promptly and continues to actively work toward compliance.
16 If the licensee does not respond within the reasonable time stated in the notice, the city
17 shall determine whether the license shall be terminated or revoked.

18 P. Termination by Licensee. If a licensee ceases to be required to have a
19 License, as defined under this Ordinance, the licensee may terminate or surrender its
20 license with a thirty (30) day notice to the City. Licensee may reapply for a License at

any time. No refunds or credits will be given for licenses terminated by the licensee or the City.

a. Within thirty (30) days of surrendering a License, the licensee shall file a final remittance form with the city stating, “final remittance” and shall remit any funds due.

b. Upon surrendering a license, unless otherwise agreed to by the City, the licensee shall file a written statement that it has removed, or will remove within sixty (60) days, any and all facilities from the City, according to Section 10 and no longer is subject to the provisions of this Ordinance.

Q. Franchise Agreements.

a. If the public interest warrants, as determined by the City in its sole and absolute discretion, the City and licensee may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive, or vary the provisions of this Ordinance, consistent with applicable state and federal law. The franchise may conflict with the terms of this Ordinance, with the review and approval of the City Council. The franchise shall be subject to the provisions of this Ordinance to the extent such provisions are not in conflict with any such franchise. In the event of a conflict between the express provisions of a franchise and this Ordinance, the franchise shall control.

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3 b. If approved by the City, the licensee requesting a franchise
4 agreement shall deposit a non-refundable fee, as set by Resolution of City
5 Council, before negotiations occur.

6 Section 9. CONSTRUCTION AND RESTORATION.

7 A. Public Works Director Policies, Standards, Specifications, and Other
8 Guidelines. The City Council authorizes the Public Works Director to develop, amend,
9 and publish or otherwise make publicly available any policies, standards,
10 specifications, and other guidelines for the location, design, and management and
11 operation of facilities in public rights-of-way subject to this Ordinance. All such
12 policies, standards, specifications, and other guidelines (a) must be consistent, and not
13 in conflict with, the provisions of state, federal, and local law, which includes this
14 Ordinance; and (b) shall be effective upon their publication; provided, however, that
15 any applications submitted prior to publication shall be subject to the policies,
16 standards, specifications, and other guidelines in effect when the submittal occurred.

17 B. Preconstruction Approval. Prior to the commencement of any construction,
18 extension, or relocation of any facilities upon, over, under, or across any of the streets,
19 highways, or other public rights-of-way within the jurisdiction of the city, the licensee
20 shall advise the City in writing of the location and shall obtain written approval prior

1 to commencement of such work. In evaluating such request, the City may consider
2 whether the proposed facilities comply with any applicable law, which includes
3 without limitation any policies, standards, specifications, or other guidelines adopted
4 by the City. Not less than forty-eight (48) hours before commencement of any work
5 that might affect City utilities, licensee shall contact the Oregon Utility Notification
6 Center for the purpose of utility location. The location of all such facilities shall be at
7 places approved by the City. All work done by or for licensee shall be in compliance
8 with the applicable rules, regulations, ordinances, policies, guidelines, standards,
9 specifications, or orders of the City in effect at the time.

10 C. Construction Permits. No person shall perform any work in the public
11 right-of-way, or on utility facilities within the public rights-of-way without first
12 obtaining all required permits. The City shall not issue a permit for the construction,
13 installation, maintenance or repair of utility facilities unless the licensee has the proper
14 authorizations required by this Ordinance, and all applicable fees have been paid.

15 D. Applications for Permits. Applications for permits to construct utility
16 facilities shall be submitted upon forms to be provided by the City and shall comply
17 with all City codes, regulations, including all public works regulations and standards
18 at the time the work is done. All permit applications shall be accompanied by
19 drawings, plans, and specifications in sufficient detail to demonstrate:

20 a. That the facilities shall be constructed in accordance with all

1 applicable laws, codes, rules, and regulations.

2 b. The location and route of all utility facilities to be installed above
3 ground or on existing utility poles. An existing utility pole that is damaged or
4 failing may be repaired or replaced in accordance with the current City
5 standards.

6 c. The location and route of all utility facilities on or in the public
7 rights-of-way to be located under the surface of the ground, including the line
8 and grade proposed for the burial at all points along the route that are within the
9 public rights-of-way. Applicant's existing utility facilities shall be
10 differentiated on the plans from new construction. A cross section shall be
11 provided showing new or existing utility facilities in relation to the street, curb,
12 sidewalk, or other public rights-of-way.

13 d. The construction methods to be employed for protection of
14 existing structures, fixtures, and facilities within or adjacent to the public rights-
15 of-way, and description of any improvements that applicant proposes to
16 temporarily or permanently remove or relocate.

17 E. All permit applications shall be accompanied by the verification of a
18 qualified and duly authorized representative of the applicant that the drawings, plans
19 and specifications submitted with the application comply with applicable technical
20 codes, rules, and regulations. Permit applications shall be accompanied by a written

Deleted: and, if the licensee owns the existing utility poles, a comprehensive summary, including ownership and structural condition, of any and all infrastructure currently attached to the pole. Unless approved in writing by the City, the construction of new utility poles is prohibited

1 construction schedule, which shall include an estimated start date and a deadline for
2 completion of construction. The construction schedule is subject to approval by the
3 city. Subject to any restrictions in state or federal law, the City may from time to time
4 publish or otherwise make publicly available any additional or different application
5 requirements as the City finds necessary or appropriate for processing applications,
6 which shall be effective immediately upon publication.

7 F. Prior to issuance of a street-opening permit, the applicant shall pay a permit
8 fee in the amount determined by Resolution of the City Council.

9 G. If satisfied that the application, plans, and documents submitted comply
10 with all requirements of this Ordinance, the City shall issue a permit authorizing
11 construction of the utility facilities, subject to such further conditions, restrictions or
12 regulations affecting the time, place and manner of performing the work as the City
13 may deem necessary or appropriate (but only to the extent permitted by applicable state
14 and federal law).

15 H. Except in the case of an emergency that poses an imminent threat to public
16 health or safety and/or injury to persons or property, the permittee shall notify the City
17 not less than two business days in advance of any excavation or construction in the
18 public rights-of-way.

19 I. All construction practices and activities shall be in accordance with the
20 permit and approved final plans and specifications for the facilities. The City and its

1 representatives shall be provided access to the work site and such further information
2 as they may require, at their sole discretions and at no cost, ensuring compliance with
3 such requirements.

4 J. All work that does not comply with the permit, the approved or corrected
5 plans and specifications for the work, or the requirements of this Ordinance (including
6 any policies, standards, specifications, or other guidelines adopted by the City), shall
7 be removed within thirty (30) days, or corrected at the sole expense of the permittee.
8 The City is authorized to issue stop work orders in order to assure compliance.

9 K. The permittee shall promptly complete all construction activities in
10 compliance with all applicable laws and in a manner designed to avoid unnecessary
11 disruption and minimize unavoidable disruption of the City public rights-of-way and
12 other public and private property. All construction work within the public rights-of-
13 way, including without limitation any restoration work, must be completed within one
14 hundred twenty (120) days of the date the construction permit is issued unless the City
15 has approved an extension or an alternate schedule.

16 L. Injury to Persons or Property. All licensees shall preserve and protect from
17 injury or damage other facilities in the public rights-of-way, the public using the public
18 rights-of-way and any adjoining property and take other necessary measures to protect
19 persons and property, including but not limited to buildings, walls, fences, trees, and
20 other facilities that may be subject to damage from the permitted work. A licensee shall

1 (a) use suitable barricades, flags, flagging attendants, lights, flares, and other measures
2 as required for the safety of all members of the general public; (b) comply with all
3 applicable Americans with Disabilities Act requirements; and (c) comply with all the
4 requirements of the Manual on Uniform Traffic Control Devices (MUTCD).

5 M. Restoration. A licensee shall be responsible for all injury to persons or
6 damage to public or private property resulting from its failure to properly protect
7 people and property and to carry out the work regardless of whether the work is
8 performed by a licensee or performed by an independent contractor performing the
9 work on behalf of the licensee.

10 a. When a licensee, or any person acting on its behalf, does any work
11 in or affecting any public rights-of-way, it shall, at its own expense, promptly
12 restore such ways or property to the current City standards, in accordance with
13 applicable federal, state and local laws, codes, ordinances, rules, and
14 regulations, unless otherwise directed by the City.

15 b. If weather or other conditions beyond the licensee control do not
16 permit the complete restoration required by the City, the licensee shall
17 temporarily restore the affected public rights-of-way or property. Such
18 temporary restoration shall be at the licensee's sole expense and the licensee
19 shall promptly undertake and complete the required permanent restoration when
20 the weather or other conditions no longer prevent such permanent restoration.

1 Any corresponding modification to the construction schedule shall be subject
2 to approval by the City.

3 c. If the licensee fails to restore public rights-of-way or property as
4 required in this Ordinance, the City shall give the licensee written notice and
5 provide a period of time not less than ten (10) days and not exceeding thirty
6 (30) days to restore the public rights-of-way or property. If, after said notice,
7 the licensee fails to restore the public rights-of-way or property as required in
8 this Ordinance, the City may cause such restoration to be made at the sole
9 expense of the licensee. In cases where the City believes that an emergency or
10 threat to public safety exists, it may act without notice to and at the sole expense
11 of the licensee. Upon receipt of an invoice from the city, the licensee shall
12 reimburse the City within thirty (30) days for all costs incurred by the City.

13 N. Inspection. Every facility shall be subject to the right of periodic inspection
14 by the City or its agents to determine compliance with the provisions of this Ordinance
15 and all other applicable state and city laws, codes, ordinances, rules, and regulations.
16 Every licensee shall cooperate with the City in permitting the inspection of utility
17 facilities in a timely manner after request by the City. The licensee shall perform all
18 testing or permit the City or its agents to perform any testing at the licensee expense,
19 required by the City to determine that the installation of the licensee facilities and the
20 restoration of the public rights-of-way comply with the terms of this Ordinance and

1 applicable state and City laws, codes, ordinances, rules, and regulations, in effect at
2 the time.

3 O. Coordination of Construction. All licensees shall make a good faith effort
4 to both cooperate with and coordinate their construction schedules with those of the
5 city and other users of the public rights-of-way.

6
7 a. Prior to January 1 of each year, licensees shall provide the City
8 with a schedule of known proposed construction activities for that year, that are
9 in, around, or that may affect the public rights-of-way and any City facilities.

10 b. At the City's request, licensee shall meet with the City annually,
11 or as determined by the City, to schedule and coordinate construction in the
12 public rights-of-way.

13 c. All construction locations, activities, and schedules within the
14 public rights-of-way shall be coordinated as ordered by the City to minimize
15 public inconvenience, disruption, and damages to persons and property.

16 Section 10. LOCATION OF FACILITIES.

17 A. Location of Facilities. Unless otherwise agreed to in writing by the City,
18 whenever all existing electric utilities, cable facilities, and communications facilities
19 are located underground within a public right-of-way of the City, a licensee with
20 permission to occupy the same public right-of-way shall locate its new facilities

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underground at its own expense.

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a. Whenever all existing electric utilities, cable facilities ~~and~~ communication facilities are required to be relocated underground within a public right-of-way of the City, a licensee that currently occupies the same public right-of-way must relocate its facilities underground concurrently with the other affected facilities to minimize disruption of the public rights-of-way, absent extraordinary circumstances or undue hardship as determined by the City and consistent with applicable state and federal law. Licensees may be entitled to reimbursement from the City and/or third parties for the expenses they incur when relocating their facilities underground in accordance with applicable law.

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b. The requirements in this section do not apply to antennas, pedestals, cabinets, other above-ground equipment of any utility provider, or facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts ("high voltage lines"). The City reserves

1 the right to require written approval of the location of any such above-ground
2 equipment of any licensee.

3 B. Interference with the Public Rights-of-Way. No licensee or other person
4 may locate or maintain facilities so as to interfere with the use of the public rights-of-
5 way by the City, by the general public, or by other persons duly authorized to use or
6 be present in or on the public rights-of-way. Facilities shall not be located in areas of
7 restricted sight distance or interfere with the proper function of traffic control signs,
8 signals, lighting, or other devices that affect traffic operation. All use of the public
9 rights-of-way shall be consistent with City codes, ordinances, rules, and regulations,
10 in effect and as may be subsequently amended.

11 C. Relocation of Utility Facilities.

12 a. When requested to do so in writing by the City pursuant to a
13 lawful exercise of the City's police power, a licensee shall temporarily or
14 permanently remove, relocate, change, or alter the position of any utility facility
15 within a public right-of-way, including relocation of aerial facilities
16 underground, except as such facilities are not required to be located
17 underground pursuant to subsection 10.A.b of this section.

18 b. Nothing herein shall be deemed to preclude the licensee from
19 requesting reimbursement or compensation from the City or a third party,
20 pursuant to applicable laws, regulations, tariffs, or agreements.

Deleted: , at no cost to the City,

Deleted: However, the licensee shall timely comply with the requirements of this section regardless of whether it has requested or received such reimbursement or compensation.

1 c. The City shall coordinate the schedule for relocation of utility
2 facilities and based on such effort, shall provide written notice of the time by
3 which the licensee must remove, relocate, change, alter, or underground its
4 facilities. If a licensee fails to remove, relocate, change, alter or underground
5 any utility facility as lawfully requested by the City by the date reasonably
6 established by the City, and the same is not due to a valid assertion by licensee
7 of its rights to reimbursed for the same, the licensee shall pay all costs incurred
8 by the City due to such failure, including but

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12
13 not limited to costs related to project delays. Upon receipt of an invoice from
14 the City, and subject to the licensee's right to dispute the validity of such
15 invoice, the licensee shall reimburse the City for all reasonable, documented
16 costs incurred within thirty (30) days.

17 d. The City shall cooperate with the licensee in securing alternate
18 locations. However, the City shall bear no responsibility to obtain, compensate
19 or otherwise assist the licensee in relocation of the facilities to a location not in
20 control of the City, unless required by applicable law.

Deleted: , and the city may cause, using qualified personnel or contractors consistent with applicable law and regulations, the facilities to be remove, relocated, altered, or undergrounded, at the licensee sole expense

1 D. Removal of Unauthorized Facilities.

2 a. Unless otherwise agreed to in writing by the City (which
3 agreement shall not be unreasonably withheld or conditioned), within thirty (30)
4 days following written notice from the City or such other time agreed to in
5 writing, a licensee and any other person that owns, controls or maintains any
6 abandoned or unauthorized utility facility within a public right-of-way shall, at
7 its own expense, remove the facility and restore the public right-of-way to City
8 standards in effect at the time the work is performed.

9 b. A utility system or facility is unauthorized under any of the
10 following circumstances:

11 1. The utility facility is outside the scope of authority granted by
12 the City. This includes facilities that were never authorized and
13 facilities that were once authorized but for which the
14 authorization has expired or been terminated. This does not
15 include any facility for which the City has provided written
16 authorization for abandonment in place.

17 2. The facility has been abandoned and the City has not provided
18 written authorization for abandonment in place. A facility is
19 abandoned if it is not in use and is not planned for further use. A
20 facility shall be presumed abandoned if it is not used for a period

1 of one (1) year. A licensee may attempt to overcome this
2 presumption by presenting plans for future use of the facility to
3 the City, which will determine application of the presumption in
4 its sole discretion.

5 3. The utility facility is improperly constructed or installed or is
6 in a location not permitted, licensed, franchised, or otherwise
7 authorized by the City.

8 4. The licensee is in violation of a material provision of this
9 Ordinance and fails to cure such violation within the timeframe
10 specified in section 8.O, above,

11 F. Engineering Designs and Plans. The licensee shall provide the City with
12 as-built plans or system maps of their facilities, upon request, for the purpose of design
13 of other City infrastructure or to confirm existing conditions.

14 G. Licensee shall provide, at no cost to the City, a comprehensive map
15 showing the location of all facilities in the City. Such map shall be provided in a format
16 reasonably acceptable to the City that balances the City's needs with those of the
17 licensee in protecting sensitive information. The licensee shall provide such map
18 yearly by February 1, if any changes occurred during the prior year. The City may
19 also request and shall be provided the map, at no cost to the City. The City may only
20 request such map once per calendar year.

Deleted: thirty (30) days of the City sending written notice of such violation, unless the City, at its sole discretion, extends such time period in writing

Deleted: . E. Removal by City.¶

. a. . The City retains the right and privilege to cut or move any facility located within the public rights-of-way of the City, without notice, as the City may determine, in its sole discretion, to be necessary, appropriate or useful in response to a public health or safety emergency. The City shall 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.¶

. b. . If the licensee fails to remove any facility when required to do so under this Ordinance, the City may remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, and the licensee shall be responsible for paying any and all costs incurred by the City, including any administrative or collection costs. Upon receipt of an invoice from the City, the licensee shall reimburse the City for all the costs within thirty (30) days. The obligation to remove shall survive the termination of any authorizations granted by the City.¶

. c. . The City is not liable to any person(s) for any damage to utility facilities, or for any consequential losses resulting directly or indirectly from any damage caused by the City's actions, or its contractor, in removing, relocating, altering, or undergrounding the facilities, unless such damage arises directly from the City's sole active negligence or willful misconduct.¶

Deleted: , with accompanying data sufficient enough for the City to determine the exact location of facilities, currently in Shapefile or Geodatabase format

1 Section 11. LEASED CAPACITY. A licensee may lease or otherwise

2 provide capacity on or in its facilities to others ("lessees"); provided, that (1) ~~(2)~~ the

3 licensee requires that all lessees ~~obtain~~ proper authority, in the form of a permit,

4 license, or franchise from the City ~~when~~ leasing capacity on or in its facilities ~~to the~~

5 ~~extent required by applicable laws~~; (3) the use of the licensee capacity does not require

6 or involve any additional equipment owned or operated by the lessee to be installed on

7 the facility; and (4) the licensee maintains control over and responsibility for the

8 facility at all times. Nothing in this section relieves or lessens the restrictions or

9 requirements of this Ordinance.

10 Section 12. MAINTENANCE.

11 A. Every licensee shall install and maintain all facilities in a manner that
12 complies with applicable federal, state and local laws, rules, regulations, and policies.

13 The licensee shall, at its own expense, repair and maintain facilities from time to time
14 as may be necessary to accomplish this purpose.

15 B. If, after written notice from the City of the need for repair or maintenance,
16 the licensee fails to repair and maintain facilities as requested by the City and by the
17 date established by the City, the City may perform such repair or maintenance using
18 qualified personnel or contractors at the licensee's sole expense. Upon receipt of an
19 invoice from the City, the licensee shall reimburse the city for any and all the costs
20 within thirty (30) days.

Deleted: the licensee provides the City with the name and business address of any lessee;

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1 Section 13. VACATION OF PUBLIC RIGHTS-OF-WAY.

2 A. If the City vacates any public rights-of-way, or portion thereof, that a
3 licensee uses, the licensee shall, at its own expense, remove its facilities from the public
4 rights-of-way unless: (a) the City reserves a public utility easement, which the City
5 shall make a reasonable effort to do; provided, that it is practicable to do so and there
6 is no expense to the City; or (b) the licensee obtains an easement for its facilities.

7 Before vacating any public right-of-way at the request or otherwise for the benefit of
8 a third party, the City shall require that such third party reimburse licensee for all
9 reasonable expenses it incurs as a result of such vacation.

10 B.

11 Section 14. FEE.

12 A. Except as set forth in subsection B and C of this section, every person
13 that owns utility facilities in the City's rights-of-way and every person that utilizes or
14 controls utility facilities in the City's rights-of-way to provide utility service, whether
15 or not the person owns the utility facilities utilized to provision the service(s) and every
16 person that provides utility services within the City, shall pay a fee for use of the ROW
17 in the amount determined by Resolution of the City Council, subject to applicable state
18 and federal law.

19 B. A licensee whose only facilities in the ROW are facilities mounted on
20 above-ground structures within the ROW, which structures are owned by another

Deleted: If the licensee fails to remove its facilities within thirty (30) days after a public right-of-way is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities using qualified workers in accordance with state and federal laws and regulations at the licensee's sole expense. Upon receipt of an invoice from the City, the licensee shall reimburse the City for any and all the costs within thirty (30) days.

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1 person, and with no facilities strung between such structures or otherwise within, under
2 or above the ROW (other than equipment necessary to operate the mounted facilities
3 that has been expressly approved by the City to be placed in the ROW), shall pay the
4 attachment fee set by City Council Resolution for each attachment, or such other fee
5 set forth in the authorization(s) granted by the City. Unless otherwise agreed to in
6 writing by the City, the fee shall be paid quarterly, in arrears, within forty-five (45)
7 days after the end of each calendar quarter and shall be accompanied by information
8 sufficient to illustrate the calculation of the amount payable.

9 C. Electric and natural gas utility service operators, that utilize or own, a
10 private communication system, that is exclusively for the providers internal use and is
11 not used by any other entities, is excluded from paying any fees under this Ordinance
12 for those communication services.

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16 D. No acceptance of any payment shall be construed as accord that the
17 amount paid is in fact the correct amount, nor shall such acceptance of payment be
18 construed as a release of any claim the City may have for further or additional sums
19 payable.

20 E. Fees required by this section shall be reduced by any franchise fees, but

1 in no case shall be less than zero dollars (\$0).

2 F. Unless otherwise agreed to in writing by the City, the fee set forth under
3 this Ordinance shall be paid quarterly, in arrears, within forty-five (45) days after the
4 end of each calendar quarter. Each payment shall be accompanied by an accounting
5 of gross revenues, if applicable, and a calculation of the amount payable (a remittance
6 form shall be provided by the City). The City may request and shall be provided, at no
7 cost to the City, additional reports or information reasonable to ensure compliance by
8 the licensee. Such information may include, but is not limited to: chart of accounts,
9 total revenues by categories and dates, list of products and services, narrative
10 documenting calculation, details on number of customers within the city limits, or any
11 other information needed for the City to easily verify compliance.

12 G. The calculation of the fee required by this section shall be subject to all
13 applicable limitations imposed by federal or state law in effect and as may be
14 subsequently amended.

15 H. The City reserves the right to enact other fees and taxes applicable to the
16 licensee subject to this Ordinance. Unless expressly permitted by the City in enacting
17 such fee or tax, or required by applicable state or federal law, no licensee may deduct,
18 offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or
19 taxes based on the payment of the fees required under this Ordinance.

20 Section 15. PENALTIES AND INTEREST ON FEES. Penalties and interest

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1 imposed by this section are in addition to any penalties that may be assessed under
2 other ordinances or regulations of the City.

3 A. Subject to the notice and cure provisions of this Ordinance, any person
4 who has not submitted the required remittance forms or remitted the correct fees when
5 due as provided under this Ordinance shall pay a penalty listed below in addition to
6 the amount due:

7 a. First occurrence during any one calendar year; one percent (1%)
8 of the amount owed, or twenty-five dollars (\$25.00), whichever is greater.

9 b. Second occurrence during any one calendar year; two percent
10 (2%) of the amount owed, or fifty dollars (\$50.00), whichever is greater.

11 c. Third occurrence during any one calendar year; three percent (3%)
12 of the amount owed, or seventy-five dollars (\$75.00), whichever is greater.

13 d. Fourth occurrence during any one calendar year; five percent
14 (5%) of the amount owed, or one hundred dollars (\$100.00), whichever is
15 greater.

16 B. If nonpayment of any fee due required by this Ordinance is due to
17 fraudulent intent to evade the provisions hereof, an additional penalty of twenty-five
18 percent (25%) of the amount owed, or five hundred dollars (\$500.00) whichever is
19 greater, shall be added thereto in addition to other penalties stated in the Ordinance or
20 as allowed by law.

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1 C. In addition to the penalties imposed, any person who fails to remit any
2 undisputed fees ~~when due~~ may be required to pay interest at the rate of one and one-
3 half percent (1.5%) per month or fractions thereof, without proration for portions of a
4 month, on the total amount due (including penalties), from the date on which the
5 remittance first became delinquent, until received by the City. The City reserves the
6 right to impose interest at the maximum amount allowed by law.

7 D. Every penalty imposed, and such interest as accrues under the provision
8 of this section, shall be merged with, and become part of, the fee required to be paid.

9 E. The City or its designee, in their sole discretion, shall have the authority
10 to reduce or waive the penalties and interest due under this section.

11 Section 16. AUDITS AND RECORDS REQUESTS.

12 A. The City may audit and/or request information from any licensee at any
13 time. The City shall make a written request for information and the licensee must
14 comply with the request within thirty (30) days of receipt of the City's written request,
15 or such other time as agreed to in writing. All information shall be provided to the
16 City, at no cost to the City.

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20 B. Every licensee shall furnish the City with information enough to

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1 demonstrate that the licensee is in compliance with all the requirements of this
2 Ordinance and its franchise agreement, if any, including but not limited to payment of
3 any applicable fees.

4 C. Every licensee shall make available for inspection by the City at
5 reasonable times and intervals maps, records, books, diagrams, plans and other
6 documents maintained by the licensee with respect to its facilities within the public
7 rights-of-way or public utility easements. Access shall be provided within the City
8 unless prior arrangement for access elsewhere has been made with the City.

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9 D. If the City's audit, or review of the books, records and other documents or
10 information of the licensee demonstrates that the licensee has underpaid any fees by
11 five percent (5%) or more in any one year, the licensee shall reimburse the City for all
12 reasonable, documented costs incurred by the City, in addition to any interest owed or
13 other fees imposed by this Ordinance or as specified in a franchise agreement.
14 Notwithstanding the foregoing, any underpayments revealed pursuant to an audit shall
15 not be treated as late payments unless such underpayments resulted from licensee's
16 willful noncompliance with this Ordinance.

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17 E. Any underpayment, including any audit costs, if applicable, shall be paid
18 within thirty (30) days of the City's notice to the licensee of such underpayment.

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4 Section 17. INSURANCE AND INDEMNIFICATION.

5 A. Insurance.

6 a. All Utility Service Operators shall maintain in full force and
7 effect the following liability insurance policies that protect the licensee and the
8 City, as well as the City's officers, agents, and employees, with limits not less
9 than the amounts established by City Council Resolution:

- 10 1. Comprehensive general liability insurance.
- 11 2. Motor vehicle liability insurance for owned, non-owned
12 and hired vehicles.
- 13 3. Worker's compensation insurance.

14 b. The limits of the insurance shall be set by the city manager but
15 shall not be less than the maximum limits of liability imposed on municipalities
16 of the state of Oregon. The insurance shall be without prejudice to coverage
17 otherwise existing and shall name, or the certificate of insurance shall name, as
18 additional insureds the City and its officers, agents and employees. The
19 coverage must apply as to claims between insureds on the policy. The licensee
20 shall provide the City thirty (30) days prior written notice of any cancellation

1 or material alteration of said insurance. If the insurance is canceled or materially
2 altered, the licensee shall maintain continuous uninterrupted coverage in the
3 terms and amounts required.

4
5 c. The licensee shall at all times maintain on file with the City a
6 current certificate or memorandum of insurance, or proof of self-insurance
7 acceptable to the City, certifying the coverage required above.

8 d. Self-Insurance. At the request of a licensee, the City shall
9 determine, in its sole discretion, whether a licensee may self-insure. A licensee
10 whose request has been granted shall provide the City proof of insurance
11 through a letter of self-insurance or insurance certificate, listing the City as an
12 additional insured.

13 e.

14 B. Indemnification.

15 a. To the fullest extent permitted by law, each licensee shall defend,
16 indemnify and hold harmless the City and its officers, employees, agents and
17 representatives from and against any and all liability, causes of action, claims,
18 damages, losses, judgments and other costs and expenses, including attorney
19 fees and costs of suit or defense (at both the trial and appeal level, whether or
20 not a trial or appeal ever takes place) that may be asserted by any third person

Deleted: Performance Bond¶

1. . In addition to any other generally applicable bond or security fund obligations required by local ordinance, upon the Effective Date of this Ordinance, this issuance of a new license or renewal of a license, the licensee shall furnish proof of the posting of a faithful performance bond running to the Grantors collectively with good and sufficient surety approved by the City, in the penal sum of Three Hundred Fifty Thousand Dollars (\$350,000.00), conditioned that Grantee shall well and truly observe, fulfill and perform all provisions of this Ordinance. Such bond shall be issued by a bonding company licensed to do business in the state of Oregon and shall be maintained by the license for the time period it owns facilities within the City's rights-of-way.¶

2. . The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first being given to the City. The bond shall be subject to the approval of the City as to its adequacy under the requirements of this Section. During the term of the bond, licensee shall file with the City a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without thirty (30) days prior written notice to the City.

1 or entity to the extent arising out of, resulting from, during or in connection with
2 the negligent, careless or wrongful acts, omissions, failure to act or other
3 misconduct of the licensee or its affiliates, officers, employees, agents,
4 contractors, or subcontractors in the construction, operation, maintenance,
5 repair or removal of its facilities, and in providing or offering utility services
6 over the facilities, whether such acts or omissions are authorized, allowed or
7 prohibited by this Ordinance or by a franchise agreement. The acceptance of a
8 license under this Ordinance shall constitute such an agreement by the applicant
9 whether the same is expressed or not.

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10 b. Every licensee shall also indemnify the City for any damages,
11 claims, additional costs or expenses assessed against or payable by the City to
12 the extent arising out of or resulting, directly or indirectly, from the licensee's
13 failure to remove or relocate any of its facilities in the public rights-of-way or
14 easements when lawfully required in a timely manner, except to the extent the
15 licensee's failure arises from the City's or its agent's or contractor's acts,
16 omissions, negligence or willful misconduct, and subject to force majeure
17 events.

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18 Section 18. COMPLIANCE. Every licensee shall comply with all applicable
19 federal and state laws and regulations, including regulations of any administrative
20 agency thereof, as well as all applicable ordinances, resolutions, rules and regulations

1 of the City, heretofore or hereafter adopted or established during the term of any license
2 granted under this Ordinance.

3 Section 19. CONFIDENTIAL/PROPRIETARY INFORMATION. If any
4 person is required by this Ordinance to provide books, records, maps or information to
5 the City that the person reasonably believes to be confidential or proprietary, and such
6 books, records, maps or information are clearly marked as or otherwise known to be
7 confidential at the time of disclosure to the City (“confidential information”), the City
8 shall take reasonable steps to protect the confidential information to the extent
9 permitted by Oregon Public Records Laws. In the event the City receives a public
10 records request to inspect any confidential information and the City determines that it
11 may be necessary to reveal the confidential information, the City shall provide
12 reasonable advance notice to the person that submitted the confidential information of
13 the records request prior to releasing the confidential information in order to give such
14 person a reasonable opportunity to discuss with the City and/or contest disclosure in a
15 court of law. The City shall not be required to incur any costs to protect any
16 confidential information, other than the City’s routine internal procedures for
17 complying with the Oregon Public Records Law.

18 Section 20. CITY PERMISSION REQUIREMENT. No person may occupy
19 or encroach on a public right-of-way without the express written permission of the
20 City.

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1 Section 21. OBLIGATIONS OF THE CITY. The exercise of jurisdiction and
2 regulatory control over a public right-of-way by the City is not official acceptance of
3 the right-of-way and does not obligate the City to maintain or repair any part of the
4 public right-of-way.

5 Section 22. VIOLATIONS AND PENALTIES.

6 A. In addition to any other remedy provided in this Ordinance, but
7 excepting the penalty circumstances already contemplated in Section 15, and subject
8 to the notice and cure provisions in Section 22.B, below, a material violation of any
9 provision of this Ordinance or any other City regulations, codes, ordinances, or
10 standards, is a civil violation and may be enforced under the provisions of this
11 Ordinance. Each civil violation shall be punishable by a fine of not less than one
12 hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000).

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Deleted: Each day that the violation exists or continues shall constitute a separate violation.

13
14 B. Before issuing the first citation for a violation, the City shall mail written
15 notice of the violation(s) via United States Postal Service (USPS) to the licensee's
16 address as listed on the ROW license application, providing a reasonable time (no less
17 than twenty (20) and no more than forty (40) days from the date of the notice) for the
18 licensee to remedy the violation to the City's satisfaction. The notice may also be
19 delivered by other means in addition to USPS.

20 C. The rights, remedies and penalties provided in this Ordinance are

1 cumulative, are not mutually exclusive, and are in addition to any other rights,
2 remedies and penalties available to the City under any other provision of law, including
3 without limitation any judicial or other remedy at law or in equity for enforcement of
4 this Ordinance.

5 Section 23. SEVERABILITY AND PREEMPTION.

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

9 B. If any article, section, subsection, sentence, clause, phrase, term, provision,
10 condition, covenant or portion of this Ordinance is for any reason declared or held to
11 be invalid or unenforceable by any court of competent jurisdiction or superseded by
12 state or federal legislation, rules, regulations or decision, the remainder of this
13 Ordinance shall not be affected thereby but shall be deemed as a separate, distinct and
14 independent provision, and such holding shall not affect the validity of the remaining
15 portions hereof, and each remaining section, subsection, sentence, clause, phrase, term,
16 provision, condition, covenant or portion of this Ordinance shall be valid and
17 enforceable to the fullest extent permitted by law. In the event any provision is
18 preempted by federal or state laws, rules or regulations, the provision shall be
19 preempted only to the extent required by law and any portion not preempted shall
20 survive. If any federal or state law resulting in preemption is later repealed, rescinded,

1 amended or otherwise changed to end the preemption, such provision shall thereupon
2 return to full force and effect and shall thereafter be binding without further action by
3 the City.

4 Section 24. APPLICATION TO EXISTING AGREEMENTS. To the extent
5 that this Ordinance is not in conflict with and can be implemented consistent with
6 existing agreements, this Ordinance shall apply to all existing agreements granted by
7 the City.

8 Section 25. EFFECTIVE DATE. This Ordinance shall take effect on April 1,
9 2023.

10 PASSED this _____ day of _____, 2023.

11
12 SIGNED this _____ day of _____, 2023.

13
14
15 _____
16 Mayor

17
18 _____
19 City Recorder

A BILL
ORDINANCE NO.
2023-_____
FOR
AN ORDINANCE

The City of Keizer ordains as follows:

Section 1. TITLE. This Ordinance shall be known and may be referenced as the "Utility Facilities in Public Rights-of-Way Ordinance."

Deleted: Service Utilizing the Public

Section 2. PURPOSE AND INTENT. The purpose of this Ordinance is to:

A. Permit and manage reasonable access to the public rights-of-way of the City for installation of facilities for utility services purposes and conserve the limited physical capacity, integrity, and longevity of those public rights-of-way held in trust by the City consistent with applicable state and federal law;

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B. Secure fair and reasonable compensation to the City and its residents, who have invested substantial public funds to acquire, build, maintain the public rights-of-way, City-owned structures and improvements therein;

Commented [MP2]: The proposed "ROW fee" is really a tax and preempted by the Corporate Activities Tax.

The City is barred from adopting a local tax on commercial activity/based on gross revenues by ORS 317A.158. New privilege taxes and similar fees are **only** allowed **if they are not based on commercial activity**.

Note that Mr. Johnson, City Attorney, and Mr. Parsons of Beery Elsner wrote in December 2021 that the fee to be charged under the new ROW License code was to be a "**privilege tax**." See comments on other proposed ordinance.

See additional comments on the proposed Communications License Law.

C. Assure that all persons owning, operating utility facilities or providing utility services within the City shall register and comply with the ordinances, rules, policies, and other regulations of the City, as well as with applicable provisions of state

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and federal law;

D. Assure that the City can continue to fairly and responsibly protect the public health, safety, and the welfare of its residents;

E. Encourage the provision of advanced and competitive utility services on the widest possible basis to the residents, businesses and visitors within the City's territorial and jurisdictional boundaries;

F. Allowing the City to enter into other or additional agreement with person(s), if the public's interest is served, and to amend the requirements of this Ordinance, as new technology is developed and deployed;

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G. Allow the City to be resilient and adaptive to changes in technology;

H. Comply with applicable provisions of state and federal law.

Section 3. JURISDICTION AND MANAGEMENT OF THE PUBLIC RIGHTS-OF-WAY.

A. The City has jurisdiction and exercises regulatory management over all public rights-of-way within the City under authority of the Oregon Constitution, the City Charter, and state law.

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B. The City has jurisdiction and exercises regulatory management over each public right-of-way, whether the City has a fee, easement, or any other legal interest in such public right-of-way, and whether the legal interest in the public right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure, or any other means.

C. The provisions of this Ordinance are subject to and shall be applied consistently with applicable state and federal laws, rules and regulations, and shall be interpreted to be consistent with such laws, rules, and regulations. Nothing in this Ordinance (a) is intended to preempt any state or federal law, rule, or regulation; and (b) shall be not interpreted, deemed, or applied in a manner that authorizes or requires the City, its Council, Commissions, Boards, officials, directors, managers, employees, agents, contractors, or volunteers to preempt or violate applicable state or federal laws, rules, or regulations.

Deleted: <#>The exercise of jurisdiction and regulatory management over a public right-of-way by the City is not official acceptance of such public right-of-way, and does not obligate the City to maintain or repair any part of such right-of

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Section 4. REGULATORY FEES AND COMPENSATION NOT A TAX.

A. The fees and costs provided for in this Ordinance, any compensation charged and paid as prescribed in this Ordinance, are separate from, and in addition to, any and all other federal, state, county or city charges, including without limitation, any permit fee or any other generally applicable fee, tax, charge on the business, occupation,

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property, or income, as may be levied, imposed, or due from any person, its customers or subscribers, on account of the lease, sale, delivery, or transmission of utility services.

B. The City has determined that any fee, cost, or other charge provided for by this Ordinance 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, costs, and other charges provided for in this Ordinance are subject to applicable federal and state laws.

Section 5. DEFINITIONS. For the purpose of this Ordinance, the following words, terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense. Words in the plural number include the singular number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.

A. "Cable service" is to be defined consistent with of 47 U.S.C. Section 522(6), as may be amended or superseded, and means the one-way transmission to subscribers of (a) video programming, or (b) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

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B. "Calendar year" means January 1 to December 31, unless otherwise noted.

C. "City" means the City of Keizer, Oregon, a municipal corporation, and its governing authority, and/or its duly appointed and authorized agents. In addition, the City may refer to all the territory within its corporate boundaries and as such may change from time to time.

D. "City Council" means the City Council of the City of Keizer.

E. "City facilities" means City owned, publicly owned structures or equipment located within the public rights-of-way or public easement used for governmental purposes including, but not limited to, fiber-optic cable, streetlights, traffic signals, sanitary sewer, storm sewer, or water infrastructure such as related pipes, manholes, catch basins, wires, conduit, valves, vaults, and appurtenances.

F. "City Standards" means all the ordinances, codes, regulations, and rules of the City of Keizer, heretofore or as may be subsequently amended.

G. "Communication 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 services includes all forms of telephone services and voice, video, data, or information transport, but does not include: (a) cable

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service; (b) open video system service, as defined in 47 CFR Section 76; (c) over-the-air
radio or television broadcasting to the public-at-large from facilities licensed by the
Federal Communications Commission or any successor thereto; (d) public
communications systems; and (e) direct-to-home satellite service within the meaning of
Section 602 of the Telecommunications Act.

H. "Construction" means any activity in the public right-of-way resulting in
physical change thereto, including excavation or placement of structures.

I. "Control" or "Use of Facilities" means actual working control over utility
facilities in whatever manner exercised, whether or not the facility is owned. For
example, but not limitation, Control means and includes leased capacity, transport, or
any other use.

J. "Days" mean calendar days, unless otherwise noted.

K. "Emergency" means a circumstance, as determined by the City, in its sole
discretion, in which immediate work to repair damaged or malfunctioning facilities is
necessary to restore lost service or prevent immediate harm to persons or property.

L. "Federal Communications Commission" or "FCC" means the federal

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administrative agency, or its lawful successor, authorized to regulate and oversee telecommunication carriers, services and provider on a national level.

M. "Gross Revenue" means any and all amounts, of any kind, nature or form, without deduction for expense, less net write-off of uncollectable accounts within the City, derived from the placement, ownership and operation of utility facilities in the city's rights-of-way, subject to all applicable limitations in federal and state law.

Deleted: operation (including revenue derived from any leases or other agreements allowing use of facilities to other person(s)).

a. Gross revenues shall include, by way of illustration and not limitation:

1. Fees for installation,
2. Disconnection,
3. Reconnection,
4. Maintenance and services calls,
5. Repair,
6. Charges for equipment sales, rental, or lease,
7. Late fees,
8. Non-sufficient funds (NSF) charges, and
9. Administrative fees.

b. Gross revenues shall not include:

1. Public purpose charges. Charges imposed by a utility

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service provider selling electrical energy or gas for public purpose charges (energy efficiency programs, market transformation programs, low-income energy efficiency programs and carbon offset programs),

2. Residential exchange program (Bonneville Power Administration credits),

3. Oregon and Federal Universal Service Funding. Revenues associated with Universal Service funding requirements under 47 U.S.C. § 254, ORS 759.425,

4. Revenues associated with taxes for emergency communications under ORS Chapter 403,

5. E9-1-1. Telecommunication revenues, tariffed or non-tariffed charge or service applicable to any connection, circuit or equipment which brings an E9-1-1 call to the appropriate responding Public Safety Answering Point, regardless of where the E9-1-1 call is originated, and

6. Sales of bonds, mortgages, or other evidence of indebtedness, securities, or stocks.

7. RESERVED

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N. "License" or "ROW License" means the authorization granted by the City to a person(s) pursuant to this Ordinance.

O. "Licensee" means any person that has a valid ROW License issued by the City.

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

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

R. "Public communications system" means any system owned or operated by a government entity or entities that are primarily for use for internal communications or communications with other government entities, and includes services provided by the state of Oregon pursuant to ORS Sections 190.240 and 283.140. A 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

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system, directly or indirectly, to any person.

S. “Public rights-of-way”, or “Right-of-Way”, or “ROW”, or “PROW” 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, and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, open space tracts, water quality tracts, or other City-owned property. 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 or provision of utility services.

T. “Public utility easement” means the space in, upon, above, along, across, over, or under an easement for the construction, reconstruction, operation, maintenance, inspection and repair of utility facilities. A public utility easement does not include an easement solely for the construction, reconstruction, operation, maintenance, inspection, and/or repair of City facilities, or where the proposed use by the licensee is inconsistent with the terms of any easement, right-of-way, or other legal right for use or occupancy granted to the City.

U. “Small Wireless Facility” or “SWF” means facilities or equipment owned or operated for the provision of communications that are shorter ranged, wireless systems that may be affixed to a structure with generally smaller components than traditional

Commented [MP6]: This term is used in the Fee Resolution, but not in this ordinance.

Deleted: Cell

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macro wireless facilities and are deployed where suitable in flexible configurations to provide capacity and coverage. Small Wireless Facilities means a facility that meets each of the following conditions per 47 C.F.R § 1.6002(l), as may be amended or superseded:

a. The facilities (i) are mounted on structures fifty (50) feet or less in height including the antennas, or (ii) are mounted on structures no more than ten percent (10%) taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten percent, (10%) whichever is greater; and,

b. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume; and,

c. All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than twenty-eight (28) cubic feet in volume; and,

d.
e. The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

V. "State" means the state of Oregon.

Commented [MP7]: Not a defined term.

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W. “Streets” or “City streets” means the entire width between the right-of-way lines of a local street, collector, or arterial capable of providing the principal means of access to abutting property.

X. “Structure” means any facility that is placed in the ROW, including but not limited to poles, vaults or manholes, hand holds, junction boxes, conduit, direct bury cable, wires, pedestals, aerial cables or wires and transformers.

Y. “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.

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

AA. “Utility service” means the provision by means of utility facilities located in the public rights-of-way, whether or not such facilities are owned by the utility service provider or utility service operator that provides, cable services, communication services, electric energy, natural gas, wireless communications, to or from customers within the

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corporate boundaries of the city, or the transmission of any of these services through the City whether or not customers within the City are served by those transmissions. "Utility service" shall not include the provision of such services owned or operated by the City of Keizer.

BB. "Utility service operator" or "Operator" means any person who owns, places, operates, or maintains a utility facility within the City's rights-of-way, whether or not customers are within the City or if no gross revenue is earned within the City.

CC. "Utility service provider" or "Provider" means any person who provides utility service or communication services to customers within the City limits, whether or not any facilities in the ROW are owned by such provider.

DD. "Wireless communication services" means any wireless service using Federal Communications Commission-licensed or unlicensed spectrum including without limitation any personal wireless services, as defined in 47 U.S.C. § 332(c)(7)(C).

EE. "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.

Section 6. COMMUNICATIONS LICENSE LAW. Every person that provisions utility services, whether such person owns facilities or not, within the City

Commented [MP9]: The proposed Communications License Fee is preempted by state law. See comments in other proposed ordinance.

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shall comply with all other City codes, rules, or requirements including but not limited to the “Communications License Law” Ordinance of the City of Keizer.

Section 7. ADMINISTRATION.

A. This Ordinance shall be administered by the City, its staff or duly appointed representative.

B. If a conflict exists between two City Ordinance provisions, one of them a general requirement and the other a specific requirement, the more specific requirement shall operate as an exception to the general requirement regardless of the priority of enactment.

Section 8. ROW LICENSES.

A. Who Must Apply. Every utility operator must have at all times a ROW License from the City. Every utility operator shall obtain a ROW license prior to conducting any work in the public rights-of-way, placing any utility facilities in the public rights-of-way, using any utility facilities in the rights-of-way, or provisioning utility services within the City. The ROW license requirement shall not apply to those persons with a valid franchise agreement in effect and in good standing or those utility services provided by the City of Keizer or other municipal jurisdiction.

Deleted: person who owns, controls, or utilizes utility facilities in the public rights-of-way, or provisions services within the City,

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B. When Must Apply. Every utility operator, as of the effective date of this Ordinance shall apply for a ROW license from the City within forty-five (45) days of the

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later of (a) the effective date of this Ordinance, or (b) the expiration of a valid franchise from the City, unless a new agreement is granted by the City.

C. ROW License Application. The ROW license application shall be on a form provided by the City, and shall be accompanied by any additional documents required by the City, in the City's sole discretion and at no cost to the City, that allows the City to easily identify the applicant, its legal status, including its authorization to do business in the state of Oregon, a description of the type of utility service provided or to be provided by the applicant, the facilities over which the utility service will be provided, and other information that the City determines, in its sole discretion at no cost to the City, is necessary, to determine the applicant's ability to comply with the terms of this Ordinance. Subject to any applicable restrictions in state or federal law, the City may from time to time and without further authorization from the City Council publish or otherwise make publicly available any additional or different application requirements as the City finds necessary or appropriate for processing applications, which shall be effective immediately upon publication.

D. ROW License Application Fee and Renewal Fee. The application and renewal application shall be accompanied by a nonrefundable application fee set by Resolution of the City Council.

E. Determination by City. The City shall issue, within a reasonable time after

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having received a duly filed application, 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 Ordinance, the continuing capacity of the public rights-of-way to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.

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F. Changes to Information Contained on the ROW License Application.

Within thirty (30) days of a change to the information contained in the license application, the licensee shall notify the City in writing of such change(s).

G. Rights Granted.

a. A ROW license granted under this Ordinance authorizes and permits the licensee to construct, place, maintain, operate utility facilities in the public rights-of-way, and provision services for the term of the license, subject to the provisions of City code, rules, regulations, policies, and other applicable provisions of state and federal law.

b. Each ROW license granted under this Ordinance authorizes only those utility facilities or utility services applied for by the applicant and approved by the City. The City may approve the provision of multiple services in one

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license.

c. A ROW license granted under this Ordinance shall be personal to the licensee and may not be assigned, sublicensed, or transferred, in whole or in part, except as permitted by this Ordinance.

d. A ROW license granted under this Ordinance does not grant, convey, create, or vest in a licensee any real property interest in land, including any fee, leasehold interest, or easement, and does not convey equitable or legal title in the public rights-of-way. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title of record that may affect the public rights-of-way. A ROW license granted under this Ordinance is not a warranty of title. Licensee expressly acknowledges and agrees to enter on to and use public rights-of-way in its "as-is and with all faults" condition. The City makes no representations or warranties whatsoever, whether express or implied, as to the public rights-of-way's condition or suitability for the intended or proposed utilization. By its acceptance of the ROW license, the licensee expressly acknowledges and agrees that neither the City nor its agents have made, and the City expressly disclaims, any representations or warranties whatsoever, whether express or implied, with respect to the physical, structural or environmental condition of the public rights-

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of-way, and the present or future suitability of the public rights-of-way.

e. The issuance of a ROW license does not constitute a waiver or bar to the City's exercise of any governmental right or power, including without limitation the City's police powers and regulatory powers, regardless of whether such powers existed before or after the license is issued.

H. Term of ROW License. Subject to the termination provisions in Subsection 8.N of this Section, the ROW license granted pursuant to this Ordinance and issued shall be effective as of the date it is issued by the City or the date services began, whichever comes first, and shall have a term of five (5) calendar years beginning: (1) January 1st of the year in which the license took effect for licenses that took effect between January 1st and June 30th; or (2) January 1st of the year after the license took effect for licenses that become effective between July 1st and December 31st.

I. ROW License Nonexclusive. No ROW license granted pursuant to this section shall confer any exclusive right, privilege, license, or franchise to occupy or use the public 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 public rights-of-way, for similar or different purposes.

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J. Reservation of City Rights. The City reserves all rights, title, and interest in its public rights-of-way. A license granted under this Ordinance does not prevent the City from exercising any of its rights, including without limitation grading, paving, repairing, or altering any public rights-of-way, constructing, laying down, repairing, relocating, removing city facilities or establishing any other public work, utility, or improvement of any kind, including repairs, replacement, or removal of any City facilities.

a. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any public rights-of-way, public work, City utility, City improvement, improvement that implements a City urban renewal agency project, or City facility, except those providing utility services in competition with a licensee, licensee's facilities shall be removed or relocated as provided in this Ordinance, in a manner acceptable to the City and consistent with industry standard engineering and safety codes.

K. Multiple Services.

a. A licensee that provides, transmits, or allows the provision or transmission of utility services and other services over its facilities is subject to the ROW fee requirements of this Ordinance for the portion of the facilities and extent of utility services delivered over those facilities.

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b. A licensee that provides or transmits more than one utility service

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over its facilities is not required to obtain a separate ROW 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 fee for each utility service.

Commented [MP11]: What is the City trying to capture here?

c. A licensee is not required to pay the ROW license or fees owed to the City by a third party.

L. Transfer or Assignment. A licensee shall obtain the written consent of the City prior to the transfer, sublicense, or assignment of a license, which consent shall not unreasonably be withheld, unless the licensee demonstrates to the City that state or federal law specifically prohibits the City from requiring its prior written consent. A transfer, sublicense, or assignment shall only be authorized if the proposed transferee or assignee is authorized under all applicable federal, state, and local 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, state, and local to approve such transfer, sublicense, or assignment.

a. If a ROW license is transferred, sublicensed, or assigned, the transferee, sublicensee, or assignee shall become responsible for fulfilling all the obligations under the license with respect to obligations of the licensee at the time of transfer, sublicensee, or assignment. A transfer or assignment of a license does not extend the term of the license. Without limiting any other rights, the City may

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1 have to condition its consent, the City may condition its consent on any such
2 transfer, sublicense, or assignment on the transferee, sublicensee, or assignee's
3 written agreement to assume all obligations under the license, this Ordinance and
4 other city codes and regulations.

5 b. Notwithstanding anything in this section to the contrary, a licensee
6 may, by written notice to the City, assign all its rights under a license to an entity
7 that acquires all or substantially all the licensee assets in the market in which the
8 City is located.

9 M. Renewal. At least thirty (30), but no more than one hundred twenty (120),
10 calendar days before the expiration of a license granted under this section, a licensee
11 seeking renewal of its license shall submit a license application to the City, including all
12 information and fees required in this Ordinance. The City shall review the application
13 and grant or deny the license within a reasonable time period after the application is duly
14 filed. If the City determines that the licensee is in violation of the terms of this Ordinance
15 or any other city codes, rules or regulations, at the time it submits its application, the City
16 may require, by a written notice, that the licensee cure the violation or submit a detailed
17 plan to cure the violation within a reasonable period of time, as determined by the City,
18 before the City will consider the application or grant the license.

19 N. Termination.

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a. Revocation or Termination of a License. The City may terminate or revoke the license granted pursuant to this Ordinance for any of the following reasons:

1. Violation of any of the provisions of this Ordinance;
2. Violation of any provision of the license;
3. Misrepresentation in a license application;
4. Failure to pay taxes, compensation, fees, or costs due the City after final determination by the City, of the taxes, compensation, fees, or costs;
5. Failure to restore the public rights-of-way after construction as required by this Ordinance or other applicable state and local laws, ordinances, rules, and regulations;
6. Failure to comply with technical, safety, and engineering standards related to work in the public rights-of-way;
7. Failure to obtain or maintain any and all licenses, permits, certifications, and other authorizations required by state or federal law for the placement, maintenance, or operation of the utility facilities; or
8. Is in violation of any City code, rule, regulation or other City

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requirements.

b. Standards for Revocation or Termination. In determining whether termination, revocation, or some other sanction is appropriate, the following factors shall be considered:

1. Whether the violation was intentional;
2. The egregiousness of the violation;
3. The harm that resulted;
4. The licensee history of compliance; and
5. The licensee cooperation in discovering, admitting, and curing the violation.

c. If a license is terminated by the City, within thirty (30) days the licensee shall file a final remittance form with the City stating, "final remittance" and shall remit any funds due.

O. Notice and Cure. The City shall give the licensee written notice of any apparent violations before revoking or terminating a license. The notice shall include a statement of the nature and general facts of the violation or noncompliance and provide a reasonable time period not to exceed thirty (30) days for the licensee to demonstrate that the licensee has remained in compliance, that the licensee has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to

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1 impose a penalty or sanction less than termination or revocation. If the licensee is in the
2 process of curing a violation or noncompliance, the licensee must demonstrate that it
3 acted promptly and continues to actively work toward compliance. If the licensee does
4 not respond within the reasonable time stated in the notice, the city shall determine
5 whether the license shall be terminated or revoked.

6 P. Termination by Licensee. If a licensee ceases to be required to have a
7 License, as defined under this Ordinance, the licensee may terminate or surrender its
8 license with a thirty (30) day notice to the City. Licensee may reapply for a License at
9 any time. No refunds or credits will be given for licenses terminated by the licensee or
10 the City.

11 a. Within thirty (30) days of surrendering a License, the licensee shall
12 file a final remittance form with the city stating, "final remittance" and shall remit
13 any funds due.

14 b. Upon surrendering a license, unless otherwise agreed to by the City,
15 the licensee shall file a written statement that it has removed, or will remove
16 within sixty (60) days, any and all facilities from the City, according to Section 10
17 and no longer is subject to the provisions of this Ordinance.

18 Q. Franchise Agreements.

19 a. If the public interest warrants, as determined by the City in its sole

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and absolute discretion, the City and licensee may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive, or vary the provisions of this Ordinance, consistent with applicable state and federal law. The franchise may conflict with the terms of this Ordinance, with the review and approval of the City Council. The franchise shall be subject to the provisions of this Ordinance to the extent such provisions are not in conflict with any such franchise. In the event of a conflict between the express provisions of a franchise and this Ordinance, the franchise shall control.

b. If approved by the City, the licensee requesting a franchise agreement shall deposit a non-refundable fee, as set by Resolution of City Council, before negotiations occur.

Section 9. CONSTRUCTION AND RESTORATION.

A. Public Works Director Policies, Standards, Specifications, and Other Guidelines. The City Council authorizes the Public Works Director to develop, amend, and publish or otherwise make publicly available any policies, standards, specifications, and other guidelines for the location, design, and management and operation of facilities in public rights-of-way subject to this Ordinance. All such policies, standards,

Commented [MP12]: Doesn't the City already have an ordinance and/or regulations for construction and restoration of the ROW? If so, we would like to review and compare these to determine what may be new.

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specifications, and other guidelines (a) must be consistent, and not in conflict with, the provisions of state, federal, and local law, which includes this Ordinance; and (b) shall be effective upon their publication; provided, however, that any applications submitted prior to publication shall be subject to the policies, standards, specifications, and other guidelines in effect when the submittal occurred.

B. Preconstruction Approval. Prior to the commencement of any construction, extension, or relocation of any facilities upon, over, under, or across any of the streets, highways, or other public rights-of-way within the jurisdiction of the city, the licensee shall advise the City in writing of the location and shall obtain written approval prior to commencement of such work. In evaluating such request, the City may consider whether the proposed facilities comply with any applicable law, which includes without limitation any policies, standards, specifications, or other guidelines adopted by the City. Not less than forty-eight (48) hours before commencement of any work that might affect City utilities, licensee shall contact the Oregon Utility Notification Center for the purpose of utility location. The location of all such facilities shall be at places approved by the City. All work done by or for licensee shall be in compliance with the applicable rules, regulations, ordinances, policies, guidelines, standards, specifications, or orders of the City in effect at the time.

C. Construction Permits. No person shall perform any work in the public

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right-of-way, or on utility facilities within the public 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 licensee has the proper authorizations required by this Ordinance, and all applicable fees have been paid.

D. Applications for Permits. Applications for permits to construct utility facilities shall be submitted upon forms to be provided by the City and shall comply with all City codes, regulations, including all public works regulations and standards at the time the work is done. All permit applications shall be accompanied by drawings, plans, and specifications in sufficient detail to demonstrate:

a. That the facilities shall be constructed in accordance with all applicable laws, codes, rules, and regulations.

b. The location and route of all utility facilities to be installed above ground or on existing utility poles and, if the licensee owns the existing utility poles, a comprehensive summary, including ownership and structural condition, of any and all infrastructure currently attached to the pole. Unless approved in writing by the City, the construction of new utility poles is prohibited. An existing utility pole that is damaged or failing may be repaired or replaced in accordance with the current City standards.

c. The location and route of all utility facilities on or in the public

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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 public rights-of-way. Applicant's existing utility facilities shall be differentiated on the plans from new construction. A cross section shall be provided showing new or existing utility facilities in relation to the street, curb, sidewalk, or other public rights-of-way.

d. The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public rights-of-way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.

E. All permit applications shall be accompanied by the verification of a 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. Permit applications shall be accompanied by a written construction schedule, which shall include an estimated start date and a deadline for completion of construction. The construction schedule is subject to approval by the city. Subject to any restrictions in state or federal law, the City may from time to time publish or otherwise make publicly available any additional or different application requirements as the City finds necessary or appropriate for processing applications, which shall be

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effective immediately upon publication.

F. Prior to issuance of a street-opening permit, the applicant shall pay a permit fee in the amount determined by Resolution of the City Council.

G. If satisfied that the application, plans, and documents submitted comply with all requirements of this Ordinance, the City 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 the City may deem necessary or appropriate (but only to the extent permitted by applicable state and federal law).

H. Except in the case of an emergency that poses an imminent threat to public health or safety and/or injury to persons or property, the permittee shall notify the City not less than two business days in advance of any excavation or construction in the public rights-of-way.

I. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The City and its representatives shall be provided access to the work site and such further information as they may require, at their sole discretions and at no cost, ensuring compliance with such requirements.

J. All work that does not comply with the permit, the approved or corrected plans

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and specifications for the work, or the requirements of this Ordinance (including any policies, standards, specifications, or other guidelines adopted by the City), shall be removed within thirty (30) days, or corrected at the sole expense of the permittee. The City is authorized to issue stop work orders in order to assure compliance.

K. The permittee shall promptly complete all construction activities in compliance with all applicable laws and in a manner designed to avoid unnecessary disruption and minimize unavoidable disruption of the City public rights-of-way and other public and private property. All construction work within the public rights-of-way, including without limitation any restoration work, must be completed within one hundred twenty (120) days of the date the construction permit is issued unless the City has approved an extension or an alternate schedule.

L. Injury to Persons or Property. All licensees shall preserve and protect from injury or damage other facilities in the public rights-of-way, the public using the public rights-of-way and any adjoining property and take other necessary measures to protect persons and property, including but not limited to buildings, walls, fences, trees, and other facilities that may be subject to damage from the permitted work. A licensee shall (a) use suitable barricades, flags, flagging attendants, lights, flares, and other measures as required for the safety of all members of the general public; (b) comply with all applicable Americans with Disabilities Act requirements; and (c) comply with all the

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requirements of the Manual on Uniform Traffic Control Devices (MUTCD).

M. Restoration. A licensee 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 regardless of whether the work is performed by a licensee or performed by an independent contractor performing the work on behalf of the licensee.

a. When a licensee, or any person acting on its behalf, does any work in or affecting any public rights-of-way, it shall, at its own expense, promptly restore such ways or property to the current City standards, in accordance with applicable federal, state and local laws, codes, ordinances, rules, and regulations, unless otherwise directed by the City.

b. If weather or other conditions beyond the licensee control do not permit the complete restoration required by the City, the licensee shall temporarily restore the affected public rights-of-way or property. Such temporary restoration shall be at the licensee's sole expense and the licensee 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.

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c. If the licensee fails to restore public rights-of-way or property as required in this Ordinance, the City shall give the licensee written notice and provide a period of time not less than ten (10) days and not exceeding thirty (30) days to restore the public rights-of-way or property. If, after said notice, the licensee fails to restore the public rights-of-way or property as required in this Ordinance, the City may cause such restoration to be made at the sole expense of the licensee. In cases where the City believes that an emergency or threat to public safety exists, it may act without notice to and at the sole expense of the licensee. Upon receipt of an invoice from the city, the licensee shall reimburse the City within thirty (30) days for all costs incurred by the City.

N. Inspection. Every facility shall be subject to the right of periodic inspection by the City or its agents to determine compliance with the provisions of this Ordinance and all other applicable state and city laws, codes, ordinances, rules, and regulations. Every licensee shall cooperate with the City in permitting the inspection of utility facilities in a timely manner after request by the City. The licensee shall perform all testing or permit the City or its agents to perform any testing at the licensee expense, required by the City to determine that the installation of the licensee facilities and the restoration of the public rights-of-way comply with the terms of this Ordinance and applicable state and City laws, codes, ordinances, rules, and regulations, in effect at the

time.

O. Coordination of Construction. All licensees shall make a good faith effort to both cooperate with and coordinate their construction schedules with those of the city and other users of the public rights-of-way.

a. Prior to January 1 of each year, licensees shall provide the City with a schedule of known proposed construction activities for that year, that are in, around, or that may affect the public rights-of-way and any City facilities.

b. At the City's request, licensee shall meet with the City annually, or as determined by the City, to schedule and coordinate construction in the public rights-of-way.

c. All construction locations, activities, and schedules within the public rights-of-way shall be coordinated as ordered by the City to minimize public inconvenience, disruption, and damages to persons and property.

Section 10. LOCATION OF FACILITIES.

A. Location of Facilities. Unless otherwise agreed to in writing by the City, ~~and except for wireless facilities,~~ whenever any existing electric utilities, cable facilities, or communications facilities are located underground within a public right-of-way of the City, a licensee with permission to occupy the same public right-of-way shall locate its

Commented [MP13]: Wireless facilities cannot be undergrounded.

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facilities underground at its own expense.

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a. Whenever all new or existing electric utilities, cable facilities or communication facilities are located or relocated underground within a public right-of-way of the City, a licensee that currently occupies the same public right-of-way must relocate its facilities underground concurrently with the other affected facilities to minimize disruption of the public rights-of-way, absent extraordinary circumstances or undue hardship as determined by the City and consistent with applicable state and federal law.

b. The requirements in this section do not apply to wireless facilities, antennas, pedestals, cabinets, other above-ground equipment of any utility operator or provider, or facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts ("high voltage lines"). The City reserves the right to require written approval of the location of

any such above-ground equipment of any licensee.

B. Interference with the Public Rights-of-Way. No licensee or other person may locate or maintain facilities so as to interfere with the use of the public rights-of-way by the City, by the general public, or by other persons duly authorized to use or be present in or on the public rights-of-way. Facilities shall not be located in areas of restricted sight distance or interfere with the proper function of traffic control signs, signals, lighting, or other devices that affect traffic operation. All use of the public rights-of-way shall be consistent with City codes, ordinances, rules, and regulations, in effect and as may be subsequently amended.

C. Relocation of Utility Facilities.

a. When requested to do so in writing by the City, a licensee shall, at no cost to the City, temporarily or permanently remove, relocate, change, or alter the position of any utility facility within a public right-of-way, including relocation of aerial facilities underground, except as such facilities are not required to be located underground pursuant to subsection 10.A.b of this section.

b. Nothing herein shall be deemed to preclude the licensee from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs, or agreements. However, the licensee shall timely comply with the requirements of this section regardless of whether it has

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requested or received such reimbursement or compensation.

c. The City shall coordinate the schedule for relocation of utility facilities and based on such effort, shall provide written notice of the time by which the licensee must remove, relocate, change, alter, or underground its facilities. If a licensee fails to remove, relocate, change, alter or underground any utility facility as requested by the City by the date established by the City, the licensee 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, using qualified personnel or contractors consistent with applicable law and regulations, the facilities to be remove, relocated, altered, or undergrounded, at the licensee's sole expense. Upon receipt of an invoice from the City, the licensee shall reimburse the City for all costs incurred within thirty (30) days.

d. The City shall cooperate with the licensee in securing alternate locations. However, the City shall bear no responsibility to obtain, compensate or otherwise assist the licensee in relocation of the facilities to a location not in

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control of the City.

D. Removal of Unauthorized Facilities.

a. Unless otherwise agreed to in writing by the City, within thirty (30) days following written notice from the City or such other time agreed to in writing, a licensee and any other person that owns, controls or maintains any abandoned or unauthorized utility facility within a public right-of-way shall, at its own expense, remove the facility and restore the public right-of-way to City standards in effect at the time the work is performed.

b. A utility system or facility is unauthorized under any of the following circumstances:

1. The utility facility is outside the scope of authority granted by the City. This includes facilities that were never authorized and facilities that were once authorized but for which the authorization has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place.

2. 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

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facility shall be presumed abandoned if it is not used for a period of one (1) year. A licensee may attempt to overcome this presumption by presenting plans for future use of the facility to the City, which will determine application of the presumption in its sole discretion.

3. The utility facility is improperly constructed or installed or is in a location not permitted, licensed, franchised, or otherwise authorized by the City.

4. The licensee is in violation of a material provision of this Ordinance and fails to cure such violation within thirty (30) days of the City sending written notice of such violation, unless the City, at its sole discretion, extends such time period in writing.

E. Removal by City.

a. The City retains the right and privilege to cut or move any facility located within the public rights-of-way of the City, without notice, as the City may determine, in its sole discretion, to be necessary, appropriate or useful in response to a public health or safety emergency. The City shall 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.

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b. If the licensee fails to remove any facility when required to do so under this Ordinance, the City may remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, and the licensee shall be responsible for paying any and all costs incurred by the City, including any administrative or collection costs. Upon receipt of an invoice from the City, the licensee shall reimburse the City for all the costs within thirty (30) days. The obligation to remove shall survive the termination of any authorizations granted by the City.

c. The City is not liable to any person(s) for any damage to utility facilities, or for any consequential losses resulting directly or indirectly from any damage caused by the City's actions, or its contractor, in removing, relocating, altering, or undergrounding the facilities, unless such damage arises directly from the City's sole active negligence or willful misconduct.

F. Engineering Designs and Plans. The licensee shall provide the City with as-built plans or system maps of their facilities, upon request, for the purpose of design of other City infrastructure or to confirm existing conditions.

G. Licensee shall provide, at no cost to the City, a comprehensive map showing the location of all facilities in the City. Such map shall be provided in a format acceptable to the City, with accompanying data sufficient enough for the City to

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determine the exact location of facilities, currently in Shapefile or Geodatabase format. The licensee shall provide such map yearly by February 1, if any changes occurred during the prior year. The City may also request and shall be provided the map, at no cost to the City. The City may only request such map once per calendar year.

Section 11.

Section 12. MAINTENANCE.

A. Every licensee shall install and maintain all facilities in a manner that complies with applicable federal, state and local laws, rules, regulations, and policies. The licensee 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, the licensee fails to repair and maintain facilities as requested by the City and by the date established by the City, the City may perform such repair or maintenance using qualified personnel or contractors at the licensee's sole expense. Upon receipt of an invoice from the City, the licensee shall reimburse the city for any and all the costs within thirty (30) days.

Section 13. VACATION OF PUBLIC RIGHTS-OF-WAY.

A. If the City vacates any public rights-of-way, or portion thereof, that a licensee uses, the licensee shall, at its own expense, remove its facilities from the public

Deleted: LEASED CAPACITY. A licensee may lease or otherwise provide capacity on or in its facilities to others ("lessees"); provided, that (1) the licensee provides the City with the name and business address of any lessee; (2) the licensee requires that all lessees have obtained proper authority, in the form of a permit, license, or franchise from the City before leasing capacity on or in its facilities; (3) the use of the licensee capacity does not require or involve any additional equipment owned or operated by the lessee to be installed on the facility; and (4) the licensee maintains control over and responsibility for the facility at all times. Nothing in this section relieves or lessens the restrictions or requirements of this Ordinance.

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rights-of-way unless: (a) the City reserves a public utility easement, which the City shall make a reasonable effort to do; provided, that it is practicable to do so and there is no expense to the City; or (b) the licensee obtains an easement for its facilities.

B. If the licensee fails to remove its facilities within thirty (30) days after a public right-of-way is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities using qualified workers in accordance with state and federal laws and regulations at the licensee's sole expense. Upon receipt of an invoice from the City, the licensee shall reimburse the City for any and all the costs within thirty (30) days.

Section 14. FEE.

A. Except as set forth in subsection B and C of this section, every person that places, owns, and operates utility facilities in the City's rights-of-way (every utility operator), shall pay the fee for every utility service provided in the amount determined by Resolution of the City Council.

Deleted: and every person that utilizes or controls utility facilities in the City's rights-of-way to provide utility service, whether or not the person owns the utility facilities utilized to provision the service(s) and every person that provides utility services within the City

B. A licensee whose only facilities in the ROW are facilities mounted on above-ground structures within the ROW, which structures are owned by another person, and with no facilities strung between such structures or otherwise within, under or above the ROW (other than equipment necessary to operate the mounted facilities that has been expressly approved by the City to be placed in the ROW), such as facilities providing

Commented [MP14]: In the past, other OR jurisdictions consistently interpreted Subsection B to assess ONLY per-site fees for wireless facilities in the ROW (no % revenue fees). Please confirm that this is the City's intent.

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1 wireless communication services attached to a pole owned by another person, shall pay
2 the annual attachment fee set by City Council Resolution for each attachment, or such
3 other fee set forth in the authorization(s) granted by the City. Unless otherwise agreed to
4 in writing by the City, the fee shall be paid annually, in arrears, within forty-five (45)
5 days after the end of each year and shall be accompanied by information sufficient to
6 illustrate the calculation of the amount payable.

Commented [MP15]: Quarterly payments are overly burdensome to both City staff and wireless providers, especially where a wireless provider may have only a handful of SWFs.

Historically these fees have been collected annually in Oregon.

Deleted: quarterly

Deleted: calendar quarter

7 C. Electric and natural gas utility service operators, that utilize or own, a
8 private communication system, that is exclusively for the providers internal use and is
9 not used by any other entities, is excluded from paying any fees under this Ordinance for
10 those communication services.

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14 D. No acceptance of any payment shall be construed as accord that the amount
15 paid is in fact the correct amount, nor shall such acceptance of payment be construed as a
16 release of any claim the City may have for further or additional sums payable.

17 E. Fees required by this section shall be reduced by any franchise fees, but in
18 no case shall be less than zero dollars (\$0).

19 F. Unless otherwise agreed to in writing by the City or provided otherwise in

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this Ordinance, the fee set forth under this Ordinance shall be paid quarterly, in arrears, within forty-five (45) days after the end of each calendar quarter. Except for per-attachment fees paid under Subsection B, each payment shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable (a remittance form shall be provided by the City). The City may request and shall be provided, at no cost to the City, any additional reports or information it deems necessary, in its sole discretion, to ensure compliance by the licensee. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative documenting calculation, details on number of customers within the city limits, or any other information needed for the City to easily verify compliance.

Deleted: E

G. The calculation of the fee required by this section shall be subject to all applicable limitations imposed by federal or state law in effect and as may be subsequently amended.

H. The City reserves the right to enact other fees and taxes applicable to the licensee subject to this Ordinance. Unless expressly permitted by the City in enacting such fee or tax, or required by applicable state or federal law, no licensee may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the fees required under this Ordinance.

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Section 15. PENALTIES AND INTEREST ON FEES. Penalties and interest imposed by this section are in addition to any penalties that may be assessed under other ordinances or regulations of the City.

A. Any person who has not submitted the required remittance forms or remitted the correct fees when due as provided under this Ordinance shall pay a penalty listed below in addition to the amount due:

a. First occurrence during any one calendar year; ten percent (10%) of the amount owed, or twenty-five dollars (\$25.00), whichever is greater.

b. Second occurrence during any one calendar year; fifteen percent (15%) of the amount owed, or fifty dollars (\$50.00), whichever is greater.

c. Third occurrence during any one calendar year; twenty percent (20%) of the amount owed, or seventy-five dollars (\$75.00), whichever is greater.

d. Fourth occurrence during any one calendar year; twenty-five percent (25%) of the amount owed, or one hundred dollars (\$100.00), whichever is greater.

B. If the City determines that the nonpayment of any fee due required by this Ordinance is due to fraud of intent to evade the provisions hereof, an additional penalty of twenty-five percent (25%) of the amount owed, or five hundred dollars (\$500.00) whichever is greater, shall be added thereto in addition to other penalties stated in the

Ordinance or as allowed by law.

C. In addition to the penalties imposed, any person who fails to remit any fees or information when due shall pay interest at the rate of one and one-half percent (1.5%) per month or fractions thereof, without proration for portions of a month, on the total amount due (including penalties), from the date on which the remittance first became delinquent, until received by the City. The City reserves the right to impose interest at the maximum amount allowed by law.

D. Every penalty imposed, and such interest as accrues under the provision of this section, shall be merged with, and become part of, the fee required to be paid.

E. The City or its designee, in their sole discretion, shall have the authority to reduce or waive the penalties and interest due under this section.

Section 16. AUDITS AND RECORDS REQUESTS.

A. The City may audit and/or request information from any licensee at any time. The City shall make a written request for information and the licensee must comply with the request within thirty (30) days of receipt of the City's written request, or such other time as agreed to in writing. All information shall be provided to the City, at no cost to the City.

B. Every licensee shall furnish the City with information enough to demonstrate that the licensee is in compliance with all the requirements of this Ordinance and its franchise agreement, if any, including but not limited to payment of any applicable fees.

C. Every licensee 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 licensee with respect to its facilities within the public 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.

D. If the City's audit, or review of the books, records and other documents or information of the licensee demonstrates that the licensee has underpaid any fees by two percent (2%) or more in any one year, the licensee shall reimburse the City for all costs incurred by the City, in addition to any interest owed or other fees imposed by this Ordinance or as specified in a franchise agreement.

E. Any underpayment, including any and all costs incurred by the City, shall be paid within thirty (30) days of the City's notice to the licensee of such underpayment.

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Section 17. INSURANCE AND INDEMNIFICATION.

A. Insurance.

a. All Utility Service Operators shall maintain in full force and effect the following liability insurance policies that protect the licensee and the City, as well as the City's officers, agents, and employees, with limits not less than the amounts established by City Council Resolution:

1. Comprehensive general liability insurance.
2. Motor vehicle liability insurance for owned, non-owned and hired vehicles.
3. Worker's compensation insurance.

b. The limits of the insurance shall be set by the city manager but shall not be less than the 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, as additional insureds the City and its officers, agents and employees. The coverage must apply as to claims between insureds on the policy. The licensee shall provide the City thirty (30) days prior written notice of any cancellation or material alteration of

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1 said insurance. If the insurance is canceled or materially altered, the licensee shall
2 maintain continuous uninterrupted coverage in the terms and amounts required.

3
4 c. The licensee shall at all times maintain on file with the City a
5 current certificate of insurance, or proof of self-insurance acceptable to the City,
6 certifying the coverage required above.

7 d. Self-Insurance. At the request of a licensee, the City shall
8 determine, in its sole discretion, whether a licensee may self-insure. A licensee
9 whose request has been granted shall provide the City proof of insurance through
10 a letter of self-insurance or insurance certificate, listing the City as an additional
11 insured.

12 e. Performance Bond

13 1. In addition to any other generally applicable bond or
14 security fund obligations required by local ordinance, upon the
15 Effective Date of this Ordinance, this issuance of a new license or
16 renewal of a license, the licensee shall furnish proof of the posting
17 of a faithful performance bond running to the Grantors collectively
18 with good and sufficient surety approved by the City, in the penal
19 sum of Three Hundred Fifty Thousand Dollars (\$350,000.00),

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conditioned that Grantee shall well and truly observe, fulfill and perform all provisions of this Ordinance. Such bond shall be issued by a bonding company licensed to do business in the state of Oregon and shall be maintained by the license for the time period it owns facilities within the City's rights-of-way.

2. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first being given to the City. The bond shall be subject to the approval of the City as to its adequacy under the requirements of this Section. During the term of the bond, licensee shall file with the City a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without thirty (30) days prior written notice to the City.

B. Indemnification.

a. To the fullest extent permitted by law, each licensee shall defend, indemnify and hold harmless the City and its officers, employees, agents and representatives from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees

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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 licensee 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 Ordinance or by a franchise agreement.

Licensee's indemnification obligation shall not extend to liability to the extent caused by the negligence or willful misconduct of the city or its officers, agents, boards or employees or any other third party. The acceptance of a license under this Ordinance shall constitute such an agreement by the applicant whether the same is expressed or not.

b. Every licensee 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 licensee's failure to remove or relocate any of its facilities in the public rights-of-way or easements in a timely manner, except to the extent the licensee's failure arises directly from the City's negligence or willful misconduct.

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Section 18. COMPLIANCE. Every licensee shall comply with all applicable 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 term of any license granted under this Ordinance.

Section 19. CONFIDENTIAL/PROPRIETARY INFORMATION. If any person is required by this Ordinance to provide books, records, maps or information to the City that the person reasonably believes to be confidential or proprietary, and such books, records, maps or information are clearly marked as confidential at the time of disclosure to the City ("confidential information"), the City shall take reasonable steps to protect the confidential information to the extent permitted by Oregon Public Records Laws. In the event the City receives a public records request to inspect any confidential information and the City determines that it shall be necessary to reveal the confidential information, to the extent reasonably possible the City shall notify the person that submitted the confidential information of the records request prior to releasing the confidential information. The City shall not be required to incur any costs to protect any confidential information, other than the City's routine internal procedures for complying with the Oregon Public Records Law.

Section 20. CITY PERMISSION REQUIREMENT. No person may occupy or

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encroach on a public right-of-way without the express written permission of the City.

Section 22. VIOLATIONS AND PENALTIES.

A. In addition to any other remedy provided in this Ordinance, a violation of any provision of this Ordinance or any other City regulations, codes, ordinances, or standards, is a civil violation and shall be enforced under the provisions of this Ordinance. Each day that the violation exists or continues shall constitute a separate violation. Each civil violation shall be punishable by a fine of not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000).

B. Before issuing the first citation for a violation, the City shall mail written notice of the violation(s) via United States Postal Service (USPS) to the licensee's address as listed on the ROW license application, providing a reasonable time (no less than twenty (20) and no more than forty (40) days from the date of the notice) for the licensee to remedy the violation to the City's satisfaction. The notice may also be delivered by other means in addition to USPS.

C. The rights, remedies and penalties provided in this Ordinance are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the City under any other provision of law, including without limitation any

Deleted: Section 21. - OBLIGATIONS OF THE CITY.
The exercise of jurisdiction and regulatory control over a public right-of-way by the City is not official acceptance

Deleted: of the right-of-way and does not obligate the City to maintain or repair any part of the public right-of-way.

judicial or other remedy at law or in equity for enforcement of this Ordinance.

Section 23. SEVERABILITY AND PREEMPTION.

A. The provisions of this Ordinance 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, covenant or portion of this Ordinance 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 Ordinance 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, term, provision, condition, covenant or portion of this Ordinance 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.

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Section 24. APPLICATION TO EXISTING AGREEMENTS. To the extent that this Ordinance is not in conflict with and can be implemented consistent with existing agreements, this Ordinance shall apply to all existing agreements granted by the City.

Section 25. EFFECTIVE DATE. This Ordinance shall take effect on April 1, 2023.

PASSED this _____ day of _____, 2023.

SIGNED this _____ day of _____, 2023.

Mayor

City Recorder

A BILL
FOR
AN ORDINANCE

ORDINANCE NO.
2023-_____

The City of Keizer ordains as follows:

Section 1. TITLE. This Ordinance shall be known and may be referenced as the "Utility Service Utilizing the Public Rights-of-Way Ordinance."

Section 2. PURPOSE AND INTENT. The purpose of this Ordinance is to:

A. Permit and manage reasonable access and utilization of the public rights-of-way of the City for utility services purposes and conserve the limited physical capacity, integrity, and longevity of those public rights-of-way held in trust by the City consistent with applicable state and federal law;

B. Secure fair and reasonable compensation to the City and its residents, who have invested substantial public funds to acquire, build, maintain the public rights-of-way, City-owned structures and improvements therein, for permitting utilization of the public rights-of-way by persons who generate revenue by provisioning utility services that utilize facilities within the City by placing, owning, controlling, using, leasing capacity or operating utility facilities;

C. Assure that all persons owning, operating utility facilities or providing

Commented [TS1]: Salem Electric is a not for profit electric cooperative that is owned by our members, the residents of the City of Keizer. Our mission is to provide reliable electric service at a reasonable rate. Any additional cost burden that is placed on our system is ultimately paid by our members in additional rate pressure. We don't have share holders, and don't have any acceptable rate of return. All of our revenue and effort is put back into the system for the benefit of our member-owners, your constituents as residents of Keizer. We are different than a for-profit investor owned utility.

utility services within the City shall register and comply with the ordinances, rules, policies, and other regulations of the City, as well as with applicable provisions of state and federal law;

D. Assure that the City can continue to fairly and responsibly protect the public health, safety, and the welfare of its residents;

E. Encourage the provision of advanced and competitive utility services on the widest possible basis to the residents, businesses and visitors within the City's territorial and jurisdictional boundaries;

F. Allowing the City to enter into other or additional agreement with Person(s), if the public's interest is served, and to amend the requirements of this Ordinance and the City regulations, as new technology is developed and deployed;

G. Allow the City to be resilient and adaptive to changes in technology;

H. Comply with applicable provisions of state and federal law.

Section 3. JURISDICTION AND MANAGEMENT OF THE PUBLIC RIGHTS-OF-WAY.

A. The City has jurisdiction and exercises regulatory management over all public rights-of-way within the City under authority of the Oregon Constitution, the City Charter, and state law.

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3 B. The City has jurisdiction and exercises regulatory management over each
4 public right-of-way, whether the City has a fee, easement, or any other legal interest in
5 such public right-of-way, and whether the legal interest in the public right-of-way was
6 obtained by grant, dedication, prescription, reservation, condemnation, annexation,
7 foreclosure, or any other means.

8 C. The exercise of jurisdiction and regulatory management over a public
9 right-of-way by the City is not official acceptance of such public right-of-way, and does
10 not obligate the City to maintain or repair any part of such right-of-way.

11 D. The provisions of this Ordinance are subject to and shall be applied
12 consistently with applicable state and federal laws, rules and regulations, and shall be
13 interpreted to be consistent with such laws, rules, and regulations. Nothing in this
14 Ordinance (a) is intended to preempt any state or federal law, rule, or regulation; and (b)
15 shall be not interpreted, deemed, or applied in a manner that authorizes or requires the
16 City, its Council, Commissions, Boards, officials, directors, managers, employees,
17 agents, contractors, or volunteers to preempt or violate applicable state or federal laws,
18 rules, or regulations.

19 Section 4. REGULATORY FEES AND COMPENSATION NOT A TAX.

20 A. The fees and costs provided for in this Ordinance, any compensation

1 charged and paid as prescribed in this Ordinance, are separate from, and in addition to,
2 any and all other federal, state, county or city charges, including without limitation, any
3 permit fee or any other generally applicable fee, tax, charge on the business, occupation,
4 property, or income, as may be levied, imposed, or due from any person, its customers or
5 subscribers, on account of the lease, sale, delivery, or transmission of utility services.

6 B. The City has determined that any fee, cost, or other charge provided for by
7 this Ordinance is not subject to the property tax limitations of Article XI, Sections 11 and
8 11b of the Oregon Constitution. These fees or taxes are not imposed on property or
9 property owners.

10 C. The fees, costs, and other charges provided for in this Ordinance are
11 subject to applicable federal and state laws.

12 Section 5. DEFINITIONS. For the purpose of this Ordinance, the following
13 words, terms, phrases, and their derivations shall have the meanings given below unless
14 the context indicates otherwise. When not inconsistent with the context, words used in
15 the present tense include the future tense. Words in the plural number include the
16 singular number, and words in the singular include the plural number. The word "shall"
17 is always mandatory and not merely directory.

18 A. "Cable service" is to be defined consistent with of 47 U.S.C. Section
19 522(6), as may be amended or superseded, and means the one-way transmission to
20 subscribers of (a) video programming, or (b) other programming service; and subscriber

1 interaction, if any, which is required for the selection or use of such video programming
2 or other programming service.

3 B. "Calendar year" means January 1 to December 31, unless otherwise noted.
4

5 C. "City" means the City of Keizer, Oregon, a municipal corporation, and its
6 governing authority, and/or its duly appointed and authorized agents. In addition, the
7 City may refer to all the territory within its corporate boundaries and as such may change
8 from time to time.

9 D. "City Council" means the City Council of the City of Keizer.

10 E. "City facilities" means City owned, publicly owned structures or
11 equipment located within the public rights-of-way or public easement used for
12 governmental purposes including, but not limited to, fiber-optic cable, streetlights, traffic
13 signals, sanitary sewer, storm sewer, or water infrastructure such as related pipes,
14 manholes, catch basins, wires, conduit, valves, vaults, and appurtenances.

15 F. "City Standards" means all the ordinances, codes, regulations, and rules of
16 the City of Keizer, heretofore or as may be subsequently amended.

17 G. "Communication services" means any service provided for the purpose of
18 transmission of information including, but not limited to, voice, video or data, without
19 regard to the transmission protocol employed, whether or not the transmission medium is
20 owned by the provider itself. Communications services includes all forms of telephone

1 services and voice, video, data, or information transport, but does not include: (a) cable
2 service; (b) open video system service, as defined in 47 CFR Section 76; (c) over-the-air
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6 radio or television broadcasting to the public-at-large from facilities licensed by the
7 Federal Communications Commission or any successor thereto; (d) public
8 communications systems; and (e) direct-to-home satellite service within the meaning of
9 Section 602 of the Telecommunications Act.

10 H. "Construction" means any activity in the public right-of-way resulting in
11 physical change thereto, including excavation or placement of structures.

12 I. "Control" or "Use of Facilities" means actual working control over utility
13 facilities in whatever manner exercised, whether or not the facility is owned. For
14 example, but not limitation, Control means and includes leased capacity, transport, or
15 any other use.

16 J. "Days" mean calendar days, unless otherwise noted.

17 K. "Emergency" means a circumstance, as determined by the City, in its sole
18 discretion, in which immediate work to repair damaged or malfunctioning facilities is
19 necessary to restore lost service or prevent immediate harm to persons or property.

20 L. "Federal Communications Commission" or "FCC" means the federal

administrative agency, or its lawful successor, authorized to regulate and oversee telecommunication carriers, services and provider on a national level.

M. “Gross Revenue” shall be deemed to include any and all revenues derived by Licensee within the city from the Licensee’s Electric Light and Power system for the sale of and use of electricity and electric service, and the use, rental, or lease of Licensee facilities. Grass Revenues do not include proceeds from the sale of bonds, mortgages, or other evidence of indebtedness, securities or stocks, or sales at wholesale by one public utility to another of electrical energy when the utility purchasing such electrical energy is not the ultimate consumer. Gross Revenues also do not include revenue from joint pole use. For purposes of this Ordinance, revenue from joint pole use includes any revenue collected by Licensee from other Licensees, Permittees, or Licensees of the City for the right to attach wires, cable, or other facilities or equipment to Licensee’s poles or place them in licensee’s conduits. Gross Revenues also do not include net-metering offsets or proceeds from the sale of real or personal property.

N. “License” or “ROW License” means the authorization granted by the City to a person(s) pursuant to this Ordinance.

O. “Licensee” means any person that is subject to this Ordinance or has a valid ROW License issued by the City.

P. “Person” means and includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint-stock company, trust, limited liability company, association, local service district, governmental entity, other

Deleted: “Gross Revenue” means any and all amounts, of any kind, nature or form, without deduction for expense, less net write-off of uncollectable accounts within the City, derived from the operation (including revenue derived from any leases or other agreements allowing use of facilities to other person(s)), or utilization of facilities in the City, operation of Communications Services system or the provision of utility service(s) in the City, subject to all applicable limitations in federal and state law. ¶

- a. Gross revenues shall include, by way of illustration and not limitation: ¶
 - 1. Fees for installation, ¶
 - 2. Disconnection, ¶
 - 3. Reconnection, ¶
 - 4. Maintenance and services calls, ¶
 - 5. Repair, ¶
 - 6. Charges for equipment sales, rental, or lease, ¶
 - 7. Late fees, ¶
 - 8. Non-sufficient funds (NSF) charges, and ¶
 - 9. Administrative fees. ¶
- b. Gross revenues shall not include: ¶
 - 1. Public purpose charges. Charges imposed by a utility service provider selling electrical energy or gas for public purpose charges (energy efficiency programs, market transformation programs, low-income energy efficiency programs and carbon offset programs). ¶
 - 2. Residential exchange program (Bonneville Power Administration credits), ¶
 - 3. Oregon and Federal Universal Service Funding. Revenues associated with Universal Service funding requirements under 47 U.S.C. § 254, ORS 759.425. ¶
 - 4. Revenues associated with taxes for emergency communications under ORS Chapter 403. ¶
 - 5. E9-1-1. Telecommunication revenues, tariffed or non-tariffed charge or service applicable to any connection, circuit or equipment which brings an E9-1-1 call to the appropriate responding Public Safety Answering Point, regardless of where the E9-1-1 call is originated, and ¶
 - 6. Sales of bonds, mortgages, or other evidence of indebtedness, securities, or stocks. ¶
 - 7. RESERVED ¶

organization, including any natural person or any other legal entity.

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

R. “Public communications system” means any system owned or operated by a government entity or entities that are primarily for use for internal communications or communications with other government entities, and includes services provided by the state of Oregon pursuant to ORS Sections 190.240 and 283.140. A 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.

S. “Public rights-of-way”, or “Right-of-Way”, or “ROW”, or “PROW” 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, and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, open space tracts, water quality tracts, or other City-owned property. This definition applies only to the extent of the City’s right, title, interest and authority to grant a license

1 to occupy and use such areas for utility facilities or provision of utility services.

2 T. "Public utility easement" means the space in, upon, above, along, across,
3 over, or under an easement for the construction, reconstruction, operation, maintenance,
4 inspection and repair of utility facilities. A public utility easement does not include an
5 easement solely for the construction, reconstruction, operation, maintenance, inspection,
6 and/or repair of City facilities, or where the proposed use by the licensee is inconsistent
7 with the terms of any easement, right-of-way, or other legal right for use or occupancy
8 granted to the City.

9 U. "Small Cell Wireless Facility" or "SWF" means facilities or equipment
10 owned or operated for the provision of communications that are shorter ranged, wireless
11 systems that may be affixed to a structure with generally smaller components than
12 traditional Macro Wireless Facilities and are deployed where suitable in flexible
13 configurations to provide capacity and coverage. Small Cell Wireless Facilities means a
14 facility that meets each of the following conditions per 47 C.F.R § 1.6002(l), as may be
15 amended or superseded:

16 a. The facilities (i) are mounted on structures fifty (50) feet or less in
17 height including the antennas, or (ii) are mounted on structures no more than ten
18 percent (10%) taller than other adjacent structures, or (iii) do not extend existing
19 structures on which they are located to a height of more than fifty (50) feet or by
20 more than ten percent, (10%) whichever is greater; and,

Commented [AD3]: This is a conflict with our current collocation standard for pole top antennas on Salem Electric Poles. This would limit wireless facilities to comm space on our poles.

1 b. Each antenna associated with the deployment, excluding associated
2 antenna equipment, is no more than three (3) cubic feet in volume; and,

3 c. All other wireless equipment associated with the structure,
4 including wireless equipment associated with the antenna and any pre-existing
5 associated equipment on the structure, is no more than twenty-eight (28) cubic
6 feet in volume; and,

7 d. Small Cell Wireless Facility does not include fiber, coaxial cable or
8 similar equipment located within the right-of-way, and,

9 e. The facilities do not result in human exposure to radio frequency in
10 excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

11 V. “State” means the state of Oregon.

12 W. “Streets” or “City streets” means the entire width between the right-of-way
13 lines of a local street, collector, or arterial capable of providing the principal means of
14 access to abutting property.

15 X. “Structure” means any facility that is placed in the ROW, including but not
16 limited to poles, vaults or manholes, hand holds, junction boxes, conduit, direct bury
17 cable, wires, pedestals, aerial cables or wires and transformers.

18 Y. “Telecommunications Act” means the Communications Policy Act of
19 1934, as amended by subsequent enactments including the Telecommunications Act of
20 1996 (47 U.S.C., 151 et seq.) and as hereafter amended.

1
2 Z. “Utility facility” or “facility” means any physical component of a utility
3 service system, including but not limited to the poles, pipes, mainlines, conduits, ducts,
4 cables, wires, transmitters, plants, equipment, and other facilities, located within, on,
5 along, under, or above the public rights-of-way, any portion of which is used or designed
6 to be used to deliver, transmit, or otherwise provide utility service.

7 AA. “Utility service” means the provision by means of utility facilities located
8 in the public rights-of-way, whether or not such facilities are owned by the utility service
9 provider or utility service operator that provides, cable services, communication services,
10 electric energy, natural gas, wireless communications, to or from customers within the
11 corporate boundaries of the city, or the transmission of any of these services through the
12 City whether or not customers within the City are served by those transmissions. "Utility
13 service" shall not include the provision of such services owned or operated by the City of
14 Keizer.

15 BB. “Utility service operator” or “Operator” means any person who owns,
16 places, operates, or maintains a utility facility within the City, whether or not customers
17 are within the City or if no gross revenue is earned within the City.

18 CC. “Utility service provider” or “Provider” means any person who provides
19 utility service or communication services to customers within the City limits, whether or
20 not any facilities in the ROW are owned by such provider.

1 DD. "Wireless communication services" means any wireless service using
2 Federal Communications Commission-licensed or unlicensed spectrum including
3 without limitation any personal wireless services, as defined in 47 U.S.C. § 332(c)(7)(C).

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

8 Section 6. COMMUNICATIONS LICENSE LAW. Every person that
9 provisions utility services, whether such person owns facilities or not, within the City
10 shall comply with all other City codes, rules, or requirements including but not limited to
11 the "Communications License Law" Ordinance of the City of Keizer.

12 Section 7. ADMINISTRATION.

13 A. This Ordinance shall be administered by the City, its staff or duly
14 appointed representative.

15 B. If a conflict exists between two City Ordinance provisions, one of them a
16 general requirement and the other a specific requirement, the more specific requirement
17 shall operate as an exception to the general requirement regardless of the priority of
18 enactment.

19 Section 8. ROW LICENSES.

20 A. Who Must Apply. Every person who owns, controls, or utilizes utility

1 facilities in the public rights-of-way, or provisions services within the City, must have at
2 all times a ROW License from the City. Every person shall obtain a ROW license prior
3 to conducting any work in the public rights-of-way, placing any utility facilities in the
4 public rights-of-way, using any utility facilities in the rights-of-way, or provisioning
5 utility services within the City. The ROW license requirement shall not apply to those
6 persons with a valid franchise agreement in effect and in good standing or those utility
7 services provided by the City of Keizer or other municipal jurisdiction.

8 B. When Must Apply. Every person that owns, controls, or uses utility
9 facilities in the public rights-of-way, or provisions services as of the effective date of this
10 Ordinance shall apply for a ROW license from the City within forty-five (45) days of the
11 later of (a) the effective date of this Ordinance, or (b) the expiration of a valid franchise
12 from the City, unless a new agreement is granted by the City.

13 C. ROW License Application. The ROW license application shall be on a
14 form provided by the City, and shall be accompanied by any additional documents
15 required by the City, in the City's sole discretion and at no cost to the City, that allows
16 the City to easily identify the applicant, its legal status, including its authorization to do
17 business in the state of Oregon, a description of the type of utility service provided or to
18 be provided by the applicant, the facilities over which the utility service will be provided,
19 and other information that the City determines, in its sole discretion at no cost to the
20 City, is necessary, to determine the applicant's ability to comply with the terms of this

Ordinance. Subject to any applicable restrictions in state or federal law, the City may from time to time and without further authorization from the City Council publish or otherwise make publicly available any additional or different application requirements as the City finds necessary or appropriate for processing applications, which shall be effective immediately upon publication.

D. ROW License Application Fee and Renewal Fee. The application and renewal application shall be accompanied by a nonrefundable application fee set by Resolution of the City Council.

E. Determination by City. The City shall issue, within a reasonable time after having received a duly filed application, 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 Ordinance, the continuing capacity of the public rights-of-way to accommodate the applicant's proposed utility services and the applicable federal, state and local laws, rules, regulations and policies.

F. Changes to Information Contained on the ROW License Application. Within thirty (30) days of a change to the information contained in the license application, the licensee shall notify the City in writing of such change(s).

G. Rights Granted.

a. A ROW license granted under this Ordinance authorizes and

1 permits the licensee to construct, place, maintain, operate utility facilities in the
2 public rights-of-way, and provision services for the term of the license, subject to
3 the provisions of City code, rules, regulations, policies, and other applicable
4 provisions of state and federal law.

5
6 b. Each ROW license granted under this Ordinance authorizes only
7 those utility facilities or utility services applied for by the applicant and approved
8 by the City. The City may approve the provision of multiple services in one
9 license.

10 c. A ROW license granted under this Ordinance shall be personal to
11 the licensee and may not be assigned, sublicensed, or transferred, in whole or in
12 part, except as permitted by this Ordinance.

13 d. A ROW license granted under this Ordinance does not grant,
14 convey, create, or vest in a licensee any real property interest in land, including
15 any fee, leasehold interest, or easement, and does not convey equitable or legal
16 title in the public rights-of-way. The license is subject to all recorded deeds,
17 easements, dedications, conditions, covenants, restrictions, encumbrances and
18 claims of title of record that may affect the public rights-of-way. A ROW license
19 granted under this Ordinance is not a warranty of title. Licensee expressly
20 acknowledges and agrees to enter on to and use public rights-of-way in its "as-is

1 and with all faults" condition. The City makes no representations or warranties
2 whatsoever, whether express or implied, as to the public rights-of-way's
3 condition or suitability for the intended or proposed utilization. By its acceptance
4 of the ROW license, the licensee expressly acknowledges and agrees that neither
5 the City nor its agents have made, and the City expressly disclaims, any
6 representations or warranties whatsoever, whether express or implied, with
7 respect to the physical, structural or environmental condition of the public rights-
8 of-way, and the present or future suitability of the public rights-of-way.

9 e. The issuance of a ROW license does not constitute a waiver or bar
10 to the City's exercise of any governmental right or power, including without
11 limitation the City's police powers and regulatory powers, regardless of whether
12 such powers existed before or after the license is issued.

13 H. Term of ROW License. Subject to the termination provisions in Subsection
14 8.N of this Section, the ROW license granted pursuant to this Ordinance and issued shall
15 be effective as of the date it is issued by the City or the date services began, whichever
16 comes first, and shall have a term of five (5) calendar years beginning: (1) January 1st of
17 the year in which the license took effect for licenses that took effect between January 1st
18 and June 30th; or (2) January 1st of the year after the license took effect for licenses that
19 become effective between July 1st and December 31st.

20 I. ROW License Nonexclusive. No ROW license granted pursuant to this

1 section shall confer any exclusive right, privilege, license, or franchise to occupy or use
2 the public rights-of-way for delivery of utility services or any other purpose. The City
3 expressly reserves the right to grant licenses, franchises, or other rights to other persons,
4 as well as the City's right to use the public rights-of-way, for similar or different
5 purposes.

6
7 J. Reservation of City Rights. The City reserves all rights, title, and interest in
8 its public rights-of-way. A license granted under this Ordinance does not prevent the City
9 from exercising any of its rights, including without limitation grading, paving, repairing,
10 or altering any public rights-of-way, constructing, laying down, repairing, relocating,
11 removing city facilities or establishing any other public work, utility, or improvement of
12 any kind, including repairs, replacement, or removal of any City facilities.

13 a. If any of licensee's utility facilities interfere with the construction,
14 repair, replacement, alteration or removal of any public rights-of-way, public
15 work, City utility, City improvement, improvement that implements a City urban
16 renewal agency project, or City facility, except those providing utility services in
17 competition with a licensee, licensee's facilities shall be removed or relocated as
18 provided in this Ordinance, in a manner acceptable to the City and consistent with
19 industry standard engineering and safety codes.

20 K. Multiple Services.

1 a. A licensee that provides, transmits, or allows the provision or
2 transmission of utility services and other services over its facilities is subject to
3 the ROW license and fee requirements of this Ordinance for the portion of the
4 facilities and extent of utility services delivered over those facilities.

5 b. A licensee that provides or transmits more than one utility service
6 over its facilities is not required to obtain a separate ROW license or franchise for
7 each utility service; provided, that it gives notice to the City of each utility service
8 provided or transmitted and pays the applicable fee for each utility service.

9 c. A licensee is not required to pay the ROW license or fees owed to
10 the City by a third party.

11 L. Transfer or Assignment. A licensee shall obtain the written consent of the
12 City prior to the transfer, sublicense, or assignment of a license, which consent shall not
13 unreasonably be withheld, unless the licensee demonstrates to the City that state or
14 federal law specifically prohibits the City from requiring its prior written consent. A
15 transfer, sublicense, or assignment shall only be authorized if the proposed transferee or
16 assignee is authorized under all applicable federal, state, and local laws to own or operate
17 the utility system and the transfer or assignment is approved by all agencies or
18 organizations required or authorized under federal, state, and local to approve such
19 transfer, sublicense, or assignment.

20 a. If a ROW license is transferred, sublicensed, or assigned, the

1 transferee, sublicensee, or assignee shall become responsible for fulfilling all the
2 obligations under the license with respect to obligations of the licensee at the time
3 of transfer, sublicensee, or assignment. A transfer or assignment of a license does
4 not extend the term of the license. Without limiting any other rights, the City may
5 have to condition its consent, the City may condition its consent on any such
6 transfer, sublicense, or assignment on the transferee, sublicensee, or assignee's
7 written agreement to assume all obligations under the license, this Ordinance and
8 other city codes and regulations.

9 b. Notwithstanding anything in this section to the contrary, a licensee
10 may, by written notice to the City, assign all its rights under a license to an entity
11 that acquires all or substantially all the licensee assets in the market in which the
12 City is located.

13 M. Renewal. At least thirty (30), but no more than one hundred twenty (120),
14 calendar days before the expiration of a license granted under this section, a licensee
15 seeking renewal of its license shall submit a license application to the City, including all
16 information and fees required in this Ordinance. The City shall review the application
17 and grant or deny the license within a reasonable time period after the application is duly
18 filed. If the City determines that the licensee is in violation of the terms of this Ordinance
19 or any other city codes, rules or regulations, at the time it submits its application, the City
20 may require, by a written notice, that the licensee cure the violation or submit a detailed

1 plan to cure the violation within a reasonable period of time, as determined by the City,
2 before the City will consider the application or grant the license.

3 N. Termination.

4 a. Revocation or Termination of a License. The City may terminate or
5 revoke the license granted pursuant to this Ordinance for any of the following
6 reasons:

- 7 1. Violation of any of the provisions of this Ordinance;
- 8 2. Violation of any provision of the license;
- 9 3. Misrepresentation in a license application;
- 10 4. Failure to pay taxes, compensation, fees, or costs due the City
11 after final determination by the City, of the taxes, compensation,
12 fees, or costs;
- 13 5. Failure to restore the public rights-of-way after construction as
14 required by this Ordinance or other applicable state and local laws,
15 ordinances, rules, and regulations;
- 16 6. Failure to comply with technical, safety, and engineering
17 standards related to work in the public rights-of-way;
- 18 7. Failure to obtain or maintain any and all licenses, permits,
19 certifications, and other authorizations required by state or federal
20 law for the placement, maintenance, or operation of the utility

1 facilities; or

2 8. Is in violation of any City code, rule, regulation or other City
3 requirements.

4 b. Standards for Revocation or Termination. In determining whether
5 termination, revocation, or some other sanction is appropriate, the following
6 factors shall be considered:

- 7 1. Whether the violation was intentional;
8 2. The egregiousness of the violation;
9 3. The harm that resulted;
10 4. The licensee history of compliance; and
11 5. The licensee cooperation in discovering, admitting, and curing
12 the violation.

13 c. If a license is terminated by the City, within thirty (30) days the
14 licensee shall file a final remittance form with the City stating, "final
15 remittance" and shall remit any funds due.

16 O. Notice and Cure. The City shall give the licensee written notice of any
17 apparent violations before revoking or terminating a license. The notice shall include a
18 statement of the nature and general facts of the violation or noncompliance and provide a
19 reasonable time period not to exceed thirty (30) days for the licensee to demonstrate that
20 the licensee has remained in compliance, that the licensee has cured or is in the process

1 of curing any violation or noncompliance, or that it would be in the public interest to
2 impose a penalty or sanction less than termination or revocation. If the licensee is in the
3 process of curing a violation or noncompliance, the licensee must demonstrate that it
4 acted promptly and continues to actively work toward compliance. If the licensee does
5 not respond within the reasonable time stated in the notice, the city shall determine
6 whether the license shall be terminated or revoked.

7 P. Termination by Licensee. If a licensee ceases to be required to have a
8 License, as defined under this Ordinance, the licensee may terminate or surrender its
9 license with a thirty (30) day notice to the City. Licensee may reapply for a License at
10 any time. No refunds or credits will be given for licenses terminated by the licensee or
11 the City.

12 a. Within thirty (30) days of surrendering a License, the licensee shall
13 file a final remittance form with the city stating, "final remittance" and shall remit
14 any funds due.

15 b. Upon surrendering a license, unless otherwise agreed to by the City,
16 the licensee shall file a written statement that it has removed, or will remove
17 within sixty (60) days, any and all facilities from the City, according to Section 10
18 and no longer is subject to the provisions of this Ordinance.

19 Q. Franchise Agreements.

20 a. If the public interest warrants, as determined by the City in its sole

1 and absolute discretion, the City and licensee may enter into a written franchise
2 agreement that includes terms that clarify, enhance, expand, waive, or vary the
3 provisions of this Ordinance, consistent with applicable state and federal law. The
4 franchise may conflict with the terms of this Ordinance, with the review and
5 approval of the City Council. The franchise shall be subject to the provisions of
6 this Ordinance to the extent such provisions are not in conflict with any such
7 franchise. In the event of a conflict between the express provisions of a franchise
8 and this Ordinance, the franchise shall control.

9
10
11 b. If approved by the City, the licensee requesting a franchise
12 agreement shall deposit a non-refundable fee, as set by Resolution of City
13 Council, before negotiations occur.

14 Section 9. CONSTRUCTION AND RESTORATION.

15 A. Public Works Director Policies, Standards, Specifications, and Other
16 Guidelines. The City Council authorizes the Public Works Director to develop, amend,
17 and publish or otherwise make publicly available any policies, standards, specifications,
18 and other guidelines for the location, design, and management and operation of facilities
19 in public rights-of-way subject to this Ordinance. All such policies, standards,
20 specifications, and other guidelines (a) must be consistent, and not in conflict with, the

provisions of state, federal, and local law, which includes this Ordinance; and (b) shall be effective upon their publication; provided, however, that any applications submitted prior to publication shall be subject to the policies, standards, specifications, and other guidelines in effect when the submittal occurred.

B. Preconstruction Approval. Prior to the commencement of any construction, extension, or relocation of any facilities upon, over, under, or across any of the streets, highways, or other public rights-of-way within the jurisdiction of the city, the licensee shall advise the City in writing of the location and shall obtain written approval prior to commencement of such work. In evaluating such request, the City may consider whether the proposed facilities comply with any applicable law, which includes without limitation any policies, standards, specifications, or other guidelines adopted by the City. All work done by or for licensee shall be in compliance with the applicable rules, regulations, ordinances, policies, guidelines, standards, specifications, or orders of the City in effect at the time.

C. Construction Permits. No person shall perform any work in the public right-of-way, or on utility facilities within the public 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 licensee has the proper authorizations required by this Ordinance, and all applicable fees have been paid.

D. Applications for Permits. Applications for permits to construct utility

Deleted: Not less than forty-eight (48) hours before commencement of any work that might affect City utilities, licensee shall contact the Oregon Utility Notification Center for the purpose of utility location. The location of all such facilities shall be at places approved by the City

Deleted: .

1 facilities shall be submitted upon forms to be provided by the City and shall comply with
2 all City codes, regulations, including all public works regulations and standards at the
3 time the work is done. All permit applications shall be accompanied by drawings, plans,
4 and specifications in sufficient detail to demonstrate:

5 a. That the facilities shall be constructed in accordance with all
6 applicable laws, codes, rules, and regulations.

7 b. The location and route of all utility facilities to be installed above
8 ground or on existing utility poles and, if the licensee owns the existing utility
9 poles, a comprehensive summary, including ownership and structural condition,
10 of any and all infrastructure currently attached to the pole. An existing utility pole
11 that is damaged or failing may be repaired or replaced in accordance with the
12 current City standards.

13 c. The location and route of all utility facilities on or in the public
14 rights-of-way to be located under the surface of the ground, including the line and
15 grade proposed for the burial at all points along the route that are within the
16 public rights-of-way. Applicant's existing utility facilities shall be differentiated
17 on the plans from new construction. A cross section shall be provided showing
18 new or existing utility facilities in relation to the street, curb, sidewalk, or other
19 public rights-of-way.

20 d. The construction methods to be employed for protection of existing

Deleted: Unless approved in writing by the City, the construction of new utility poles is prohibited.

1 structures, fixtures, and facilities within or adjacent to the public rights-of-way,
2 and description of any improvements that applicant proposes to temporarily or
3 permanently remove or relocate.

4 E. All permit applications shall be accompanied by the verification of a
5 qualified and duly authorized representative of the applicant that the drawings, plans and
6 specifications submitted with the application comply with applicable technical codes,
7 rules, and regulations. Permit applications shall be accompanied by a written
8 construction schedule, which shall include an estimated start date and a deadline for
9 completion of construction. The construction schedule is subject to approval by the city.
10 Subject to any restrictions in state or federal law, the City may from time to time publish
11 or otherwise make publicly available any additional or different application requirements
12 as the City finds necessary or appropriate for processing applications, which shall be
13 effective immediately upon publication.

14 F. Prior to issuance of a street-opening permit, the applicant shall pay a permit
15 fee in the amount determined by Resolution of the City Council.

16 G. If satisfied that the application, plans, and documents submitted comply with
17 all requirements of this Ordinance, the City shall issue a permit authorizing construction
18 of the utility facilities, subject to such further conditions, restrictions or regulations
19 affecting the time, place and manner of performing the work as the City may deem
20 necessary or appropriate (but only to the extent permitted by applicable state and federal

Commented [TS6]: Who specifies what qualified means?

law).

H. Except in the case of an emergency that poses an imminent threat to public health or safety and/or injury to persons or property, the permittee shall notify the City not less than two business days in advance of any excavation or construction in the public rights-of-way.

I. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The City and its representatives shall be provided access to the work site and such further information as they may require, at their sole discretions and at no cost, ensuring compliance with such requirements.

J. All work that does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this Ordinance (including any policies, standards, specifications, or other guidelines adopted by the City), shall be removed within thirty (30) days, or corrected at the sole expense of the permittee. The City is authorized to issue stop work orders in order to assure compliance.

K. The permittee shall promptly complete all construction activities in compliance with all applicable laws and in a manner designed to avoid unnecessary disruption and minimize unavoidable disruption of the City public rights-of-way and other public and private property. All construction work within the public rights-of-way, including without limitation any restoration work, must be completed within one hundred

twenty (120) days of the date the construction permit is issued unless the City has approved an extension or an alternate schedule.

L. Injury to Persons or Property. All licensees shall preserve and protect from injury or damage other facilities in the public rights-of-way, the public using the public rights-of-way and any adjoining property and take other necessary measures to protect persons and property, including but not limited to buildings, walls, fences, trees, and other facilities that may be subject to damage from the permitted work. A licensee shall (a) use suitable barricades, flags, flagging attendants, lights, flares, and other measures as required for the safety of all members of the general public; (b) comply with all applicable Americans with Disabilities Act requirements; and (c) comply with all the requirements of the Manual on Uniform Traffic Control Devices (MUTCD).

M. Restoration. A licensee 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 regardless of whether the work is performed by a licensee or performed by an independent contractor performing the work on behalf of the licensee.

a. When a licensee, or any person acting on its behalf, does any work in or affecting any public rights-of-way, it shall, at its own expense, promptly restore such ways or property to the current City standards, in accordance with applicable federal, state and local laws, codes, ordinances, rules, and regulations,

1 unless otherwise directed by the City.

2 b. If weather or other conditions beyond the licensee control do not
3 permit the complete restoration required by the City, the licensee shall
4 temporarily restore the affected public rights-of-way or property. Such temporary
5 restoration shall be at the licensee's sole expense and the licensee shall promptly
6 undertake and complete the required permanent restoration when the weather or
7 other conditions no longer prevent such permanent restoration. Any
8 corresponding modification to the construction schedule shall be subject to
9 approval by the City.

10 c. If the licensee fails to restore public rights-of-way or property as
11 required in this Ordinance, the City shall give the licensee written notice and
12 provide a period of time not less than ten (10) days and not exceeding thirty (30)
13 days to restore the public rights-of-way or property. If, after said notice, the
14 licensee fails to restore the public rights-of-way or property as required in this
15 Ordinance, the City may cause such restoration to be made at the sole expense of
16 the licensee. In cases where the City believes that an emergency or threat to
17 public safety exists, it may act without notice to and at the sole expense of the
18 licensee. Upon receipt of an invoice from the city, the licensee shall reimburse the
19 City within thirty (30) days for all costs incurred by the City.

20 N. Inspection. Every facility shall be subject to the right of periodic inspection

1 by the City or its agents to determine compliance with the provisions of this Ordinance
2 and all other applicable state and city laws, codes, ordinances, rules, and regulations.
3 Every licensee shall cooperate with the City in permitting the inspection of utility
4 facilities in a timely manner after request by the City. The licensee shall perform all
5 testing or permit the City or its agents to perform any testing at the licensee expense,
6 required by the City to determine that the installation of the licensee facilities and the
7 restoration of the public rights-of-way comply with the terms of this Ordinance and
8 applicable state and City laws, codes, ordinances, rules, and regulations, in effect at the
9 time.

10 O. Coordination of Construction. All licensees shall make a good faith effort to
11 both cooperate with and coordinate their construction schedules with those of the city
12 and other users of the public rights-of-way.

13
14 a. Prior to January 1 of each year, licensees shall provide the City with
15 a schedule of known proposed construction activities for that year, that are in,
16 around, or that may affect the public rights-of-way and any City facilities.

17 b. At the City's request, licensee shall meet with the City annually, or
18 as determined by the City, to schedule and coordinate construction in the public
19 rights-of-way.

20 c. All construction locations, activities, and schedules within the

Commented [TS7]: Many of our jobs are maintenance related and scheduled as needed, to what detail is the annual work plan required?

public rights-of-way shall be coordinated as ordered by the City to minimize public inconvenience, disruption, and damages to persons and property.

Section 10. LOCATION OF FACILITIES.

A. Location of Facilities. ///

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a. Whenever all new or existing electric utilities, cable facilities or communication facilities are located or relocated underground within a public right-of-way of the City, a licensee that currently occupies the same public right-of-way must relocate its facilities underground concurrently with the other affected facilities to minimize disruption of the public rights-of-way, absent extraordinary circumstances or undue hardship as determined by the City and consistent with applicable state and federal law.

b. The requirements in this section do not apply to antennas, pedestals, cabinets, other above-ground equipment of any utility provider, or facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts ("high voltage lines") or existing overhead facilities

Commented [TS8]: This would require us to underground all lines in the city of Keizer. Since there are already a significant number of underground communications facilities all throughout the ROW. The result of this would be a very significant rate increase for the Keizer residents.

Deleted: Unless otherwise agreed to in writing by the City, whenever any existing electric utilities, cable facilities, or communications facilities are located underground within a public right-of-way of the City, a licensee with permission to occupy the same public right-of-way shall locate its facilities underground at its own expense. ¶

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Commented [TS9]: It is standard that all new construction (i.e. new subdivision or lot partition) be installed underground, however to require all services to go underground if any one of the franchisees installs underground is not practical and is very cost prohibitive. Licensees are constantly working on underground facilities for maintenance and installation without the other licensees knowledge or notice.

1 served by Salem Electric. The City reserves the right to require written approval
2 of the location of any such above-ground equipment of any licensee.
3

4 B. Interference with the Public Rights-of-Way. No licensee or other person
5 may locate or maintain facilities so as to interfere with the use of the public rights-of-
6 way by the City, by the general public, or by other persons duly authorized to use or be
7 present in or on the public rights-of-way. Facilities shall not be located in areas of
8 restricted sight distance or interfere with the proper function of traffic control signs,
9 signals, lighting, or other devices that affect traffic operation. All use of the public
10 rights-of-way shall be consistent with City codes, ordinances, rules, and regulations, in
11 effect and as may be subsequently amended.

12 C. Relocation of Utility Facilities.

13 a. When requested to do so in writing by the City, a licensee shall, at
14 no cost to the City, temporarily or permanently remove, relocate, change, or alter
15 the position of any utility facility within a public right-of-way, including
16 relocation of aerial facilities underground in conjunction with projects that the
17 City of Keizer is conducting in the ROW, except as such facilities are not
18 required to be located underground pursuant to subsection 10.A.b of this section.

19 b. Nothing herein shall be deemed to preclude the licensee from
20 requesting reimbursement or compensation from a third party, pursuant to

1 applicable laws, regulations, tariffs, or agreements. However, the licensee shall
2 timely comply with the requirements of this section regardless of whether it has
3 requested or received such reimbursement or compensation.

4 c. The City shall coordinate the schedule for relocation of utility
5 facilities and based on such effort, shall provide written notice of the time by
6 which the licensee must remove, relocate, change, alter, or underground its
7 facilities. If a licensee fails to remove, relocate, change, alter or underground any
8 utility facility as requested by the City by the date established by the City, the
9 licensee shall pay all costs incurred by the City due to such failure, including but

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14 not limited to costs related to project delays, and the city may cause, using
15 qualified personnel or contractors consistent with applicable law and regulations,
16 the facilities to be remove, relocated, altered, or undergrounded, at the licensee's
17 sole expense. Upon receipt of an invoice from the City, the licensee shall
18 reimburse the City for all costs incurred within thirty (30) days.

19 d. The City shall cooperate with the licensee in securing alternate
20 locations. However, the City shall bear no responsibility to obtain, compensate or

1 otherwise assist the licensee in relocation of the facilities to a location not in
2 control of the City.

3 D. Removal of Unauthorized Facilities.

4 a. Unless otherwise agreed to in writing by the City, within thirty (30)
5 days following written notice from the City or such other time agreed to in
6 writing, a licensee and any other person that owns, controls or maintains any
7 abandoned or unauthorized utility facility within a public right-of-way shall, at its
8 own expense, remove the facility and restore the public right-of-way to City
9 standards in effect at the time the work is performed.

10 b. A utility system or facility is unauthorized under any of the
11 following circumstances:

12 1. The utility facility is outside the scope of authority granted by
13 the City. This includes facilities that were never authorized and
14 facilities that were once authorized but for which the authorization
15 has expired or been terminated. This does not include any facility
16 for which the City has provided written authorization for
17 abandonment in place.

18 2. The facility has been abandoned and the City has not provided
19 written authorization for abandonment in place. A facility is
20 abandoned if it is not in use and is not planned for further use. A

1 facility shall be presumed abandoned if it is not used for a period of
2 one (1) year. A licensee may attempt to overcome this presumption
3 by presenting plans for future use of the facility to the City, which
4 will determine application of the presumption in its sole discretion.
5 3. The utility facility is improperly constructed or installed or is
6 in a location not permitted, licensed, franchised, or otherwise
7 authorized by the City.
8 4. The licensee is in violation of a material provision of this
9 Ordinance and fails to cure such violation within thirty (30) days of
10 the City sending written notice of such violation, unless the City, at
11 its sole discretion, extends such time period in writing.

12 E. Removal by City.

13 a. The City retains the right and privilege to cut or move any facility
14 located within the public rights-of-way of the City, without notice, as the City
15 may determine, in its sole discretion, to be necessary, appropriate or useful in
16 response to a public health or safety emergency. The City shall use qualified
17 personnel or contractors consistent with applicable state and federal safety laws
18 and regulations to the extent reasonably practicable without impeding the City's
19 response to the emergency.

20 b. If the licensee fails to remove any facility when required to do so

1 under this Ordinance, the City may remove the facility using qualified personnel
2 or contractors consistent with applicable state and federal safety laws and
3 regulations, and the licensee shall be responsible for paying any and all costs
4 incurred by the City, including any administrative or collection costs. Upon
5 receipt of an invoice from the City, the licensee shall reimburse the City for all
6 the costs within thirty (30) days. The obligation to remove shall survive the
7 termination of any authorizations granted by the City.

8 c. The City is not liable to any person(s) for any damage to utility
9 facilities, or for any consequential losses resulting directly or indirectly from any
10 damage caused by the City's actions, or its contractor, in removing, relocating,
11 altering, or undergrounding the facilities, unless such damage arises directly from
12 the City's sole active negligence or willful misconduct.

13 F. Engineering Designs and Plans. The licensee shall provide the City with as-
14 built plans or system maps of their facilities, upon request, for the purpose of design of
15 other City infrastructure or to confirm existing conditions.

16 G. Licensee shall provide, at no cost to the City, a comprehensive map showing
17 the location of all facilities in the City. Such map shall be provided in a format
18 acceptable to the City, with accompanying data sufficient enough for the City to
19 determine the exact location of facilities. The licensee shall provide such map yearly by
20 February 1, if any changes occurred during the prior year. The City may also request and

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shall be provided the map, at no cost to the City. The City may only request such map once per calendar year.

Section 11. LEASED CAPACITY. A licensee may lease or otherwise provide capacity on or in its facilities to others ("lessees"); provided, that (1) the licensee provides the City with the name and business address of any lessee; (2) the licensee requires that all lessees have obtained proper authority, in the form of a permit, license, or franchise from the City before leasing capacity on or in its facilities; (3) the use of the licensee capacity does not require or involve any additional equipment owned or operated by the lessee to be installed on the facility; and (4) the licensee maintains control over and responsibility for the facility at all times. Nothing in this section relieves or lessens the restrictions or requirements of this Ordinance.

Section 12. MAINTENANCE.

A. Every licensee shall install and maintain all facilities in a manner that complies with applicable federal, state and local laws, rules, regulations, and policies. The licensee 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, the licensee fails to repair and maintain facilities as requested by the City and by the date established by the City, the City may perform such repair or maintenance using qualified personnel or contractors at the licensee's sole expense. Upon receipt of an invoice from

the City, the licensee shall reimburse the city for any and all the costs within thirty (30) days.

Section 13. VACATION OF PUBLIC RIGHTS-OF-WAY.

A. If the City vacates any public rights-of-way, or portion thereof, that a licensee uses, the licensee shall, at its own expense, remove its facilities from the public rights-of-way unless: (a) the City reserves a public utility easement, which the City shall make a reasonable effort to do; provided, that it is practicable to do so and there is no expense to the City; or (b) the licensee obtains an easement for its facilities.

B. If the licensee fails to remove its facilities within thirty (30) days after a public right-of-way is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities using qualified workers in accordance with state and federal laws and regulations at the licensee's sole expense. Upon receipt of an invoice from the City, the licensee shall reimburse the City for any and all the costs within thirty (30) days.

Section 14. FEE.

A. Except as set forth in subsection B and C of this section, every person that owns utility facilities in the City's rights-of-way and every person that utilizes or controls utility facilities in the City's rights-of-way to provide utility service, whether or not the person owns the utility facilities utilized to provision the service(s) and every person that provides utility services within the City, shall pay the fee for every utility service

1 provided in the amount determined by Resolution of the City Council.

2 B. A licensee whose only facilities in the ROW are facilities mounted on
3 above-ground structures within the ROW, which structures are owned by another person,
4 and with no facilities strung between such structures or otherwise within, under or above
5 the ROW (other than equipment necessary to operate the mounted facilities that has been
6 expressly approved by the City to be placed in the ROW), shall pay the attachment fee
7 set by City Council Resolution for each attachment, or such other fee set forth in the
8 authorization(s) granted by the City. Unless otherwise agreed to in writing by the City,
9 the fee shall be paid quarterly, in arrears, within forty-five (45) days after the end of each
10 calendar quarter and shall be accompanied by information sufficient to illustrate the
11 calculation of the amount payable.

12 C. Electric and natural gas utility service operators, that utilize or own, a
13 private communication system, that is exclusively for the providers internal use and is
14 not used by any other entities, is excluded from paying any fees under this Ordinance for
15 those communication services.

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19 D. No acceptance of any payment shall be construed as accord that the amount
20 paid is in fact the correct amount, nor shall such acceptance of payment be construed as a

1 release of any claim the City may have for further or additional sums payable.

2 E. Fees required by this section shall be reduced by any franchise fees, but in
3 no case shall be less than zero dollars (\$0).

4 F. Unless otherwise agreed to in writing by the City, the fee set forth under
5 this Ordinance shall be paid quarterly, in arrears, within forty-five (45) days after the end
6 of each calendar quarter. Each payment shall be accompanied by an accounting of gross
7 revenues, if applicable, and a calculation of the amount payable (a remittance form shall
8 be provided by the City). The City may request and shall be provided, at no cost to the
9 City, any additional reports or information it deems necessary, in its sole discretion, to
10 ensure compliance by the licensee. Such information may include, but is not limited to:
11 chart of accounts, total revenues by categories and dates, list of products and services,
12 narrative documenting calculation, details on number of customers within the city limits,
13 or any other information needed for the City to easily verify compliance.

14 G. The calculation of the fee required by this section shall be subject to all
15 applicable limitations imposed by federal or state law in effect and as may be
16 subsequently amended.

17 H. The City reserves the right to enact other fees and taxes applicable to the
18 licensee subject to this Ordinance. Unless expressly permitted by the City in enacting
19 such fee or tax, or required by applicable state or federal law, no licensee may deduct,
20 offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or

taxes based on the payment of the fees required under this Ordinance.

Section 15. PENALTIES AND INTEREST ON FEES. Penalties and interest imposed by this section are in addition to any penalties that may be assessed under other ordinances or regulations of the City.

A. Any person who has not submitted the required remittance forms or remitted the correct fees when due as provided under this Ordinance shall pay a penalty listed below in addition to the amount due:

a. First occurrence during any one calendar year; ten percent (10%) of the amount owed, or twenty-five dollars (\$25.00), whichever is greater.

b. Second occurrence during any one calendar year; fifteen percent (15%) of the amount owed, or fifty dollars (\$50.00), whichever is greater.

c. Third occurrence during any one calendar year; twenty percent (20%) of the amount owed, or seventy-five dollars (\$75.00), whichever is greater.

d. Fourth occurrence during any one calendar year; twenty-five percent (25%) of the amount owed, or one hundred dollars (\$100.00), whichever is greater.

B. If the City determines that the nonpayment of any fee due required by this Ordinance is due to fraud of intent to evade the provisions hereof, an additional penalty of twenty-five percent (25%) of the amount owed, or five hundred dollars (\$500.00) whichever is greater, shall be added thereto in addition to other penalties stated in the

1 Ordinance or as allowed by law.

2 C. In addition to the penalties imposed, any person who fails to remit any fees
3 or information when due shall pay interest at the rate of one and one-half percent (1.5%)
4 per month or fractions thereof, without proration for portions of a month, on the total
5 amount due (including penalties), from the date on which the remittance first became
6 delinquent, until received by the City. The City reserves the right to impose interest at
7 the maximum amount allowed by law.

8 D. Every penalty imposed, and such interest as accrues under the provision of
9 this section, shall be merged with, and become part of, the fee required to be paid.

10 E. The City or its designee, in their sole discretion, shall have the authority to
11 reduce or waive the penalties and interest due under this section.

12 Section 16. AUDITS AND RECORDS REQUESTS.

13 A. The City may audit and/or request information from any licensee at any
14 time. The City shall make a written request for information and the licensee must comply
15 with the request within thirty (30) days of receipt of the City's written request, or such
16 other time as agreed to in writing. All information shall be provided to the City, at no
17 cost to the City.

1 B. Every licensee shall furnish the City with information enough to demonstrate
2 that the licensee is in compliance with all the requirements of this Ordinance and its
3 franchise agreement, if any, including but not limited to payment of any applicable fees.

4 C. Every licensee shall make available for inspection by the City at reasonable
5 times and intervals all maps, records, books, diagrams, plans and other documents
6 maintained by the licensee with respect to its facilities within the public rights-of-way or
7 public utility easements. Access shall be provided within the City unless prior
8 arrangement for access elsewhere has been made with the City.

9 D. If the City's audit, or review of the books, records and other documents or
10 information of the licensee demonstrates that the licensee has underpaid any fees by two
11 percent (2%) or more in any one year, the licensee shall reimburse the City for all costs
12 incurred by the City, in addition to any interest owed or other fees imposed by this
13 Ordinance or as specified in a franchise agreement.

14 E. Any underpayment, including any and all costs incurred by the City, shall be
15 paid within thirty (30) days of the City's notice to the licensee of such underpayment.

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1 Section 17. INSURANCE AND INDEMNIFICATION.

2 A. Insurance.

3 a. All Utility Service Operators shall maintain in full force and effect
4 the following liability insurance policies that protect the licensee and the City, as
5 well as the City's officers, agents, and employees, with limits not less than the
6 amounts established by City Council Resolution:

- 7 1. Comprehensive general liability insurance.
- 8 2. Motor vehicle liability insurance for owned, non-owned and
9 hired vehicles.
- 10 3. Worker's compensation insurance.

11 b. The limits of the insurance shall be set by the city manager but shall
12 not be less than the maximum limits of liability imposed on municipalities of the
13 state of Oregon. The insurance shall be without prejudice to coverage otherwise
14 existing and shall name, or the certificate of insurance shall name, as additional
15 insureds the City and its officers, agents and employees. The coverage must apply
16 as to claims between insureds on the policy. The licensee shall provide the City
17 thirty (30) days prior written notice of any cancellation or material alteration of
18 said insurance. If the insurance is canceled or materially altered, the licensee shall
19 maintain continuous uninterrupted coverage in the terms and amounts required.

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1 c. The licensee shall at all times maintain on file with the City a
2 current certificate of insurance, or proof of self-insurance acceptable to the City,
3 certifying the coverage required above.

4 d. Self-Insurance. At the request of a licensee, the City shall
5 determine, in its sole discretion, whether a licensee may self-insure. A licensee
6 whose request has been granted shall provide the City proof of insurance through
7 a letter of self-insurance or insurance certificate, listing the City as an additional
8 insured.

9 e. Performance Bond

10 1. In addition to any other generally applicable bond or
11 security fund obligations required by local ordinance, upon the
12 Effective Date of this Ordinance, this issuance of a new license or
13 renewal of a license, the licensee shall furnish proof of the posting
14 of a faithful performance bond running to the Grantors collectively
15 with good and sufficient surety approved by the City, in the penal
16 sum of Three Hundred Fifty Thousand Dollars (\$350,000.00),
17 conditioned that Grantee shall well and truly observe, fulfill and
18 perform all provisions of this Ordinance. Such bond shall be
19 issued by a bonding company licensed to do business in the state of

Oregon and shall be maintained by the license for the time period it owns facilities within the City's rights-of-way.

2. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first being given to the City. The bond shall be subject to the approval of the City as to its adequacy under the requirements of this Section. During the term of the bond, licensee shall file with the City a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without thirty (30) days prior written notice to the City.

B. Indemnification.

a. To the fullest extent permitted by law, each licensee shall defend, indemnify and hold harmless the City and its officers, employees, agents and representatives 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,

1 failure to act or other misconduct of the licensee or its affiliates, officers,
2 employees, agents, contractors, subcontractors or lessees in the construction,
3 operation, maintenance, repair or removal of its facilities, and in providing or
4 offering utility services over the facilities, whether such acts or omissions are
5 authorized, allowed or prohibited by this Ordinance or by a franchise agreement.
6 The acceptance of a license under this Ordinance shall constitute such an
7 agreement by the applicant whether the same is expressed or not.

8 b. Every licensee shall also indemnify the City for any damages,
9 claims, additional costs or expenses assessed against or payable by the City
10 arising out of or resulting, directly or indirectly, from the licensee's failure to
11 remove or relocate any of its facilities in the public rights-of-way or easements in
12 a timely manner, except to the extent the licensee's failure arises directly from the
13 City's negligence or willful misconduct.

14 Section 18. COMPLIANCE. Every licensee shall comply with all applicable
15 federal and state laws and regulations, including regulations of any administrative agency
16 thereof, as well as all applicable ordinances, resolutions, rules and regulations of the
17 City, heretofore or hereafter adopted or established during the term of any license
18 granted under this Ordinance.

19 Section 19. CONFIDENTIAL/PROPRIETARY INFORMATION. If any
20 person is required by this Ordinance to provide books, records, maps or information to

1 the City that the person reasonably believes to be confidential or proprietary, and such
2 books, records, maps or information are deemed as confidential at the time of disclosure
3 to the City (“confidential information”), the City shall take reasonable steps to protect the
4 confidential information to the extent permitted by Oregon Public Records Laws. In the
5 event the City receives a public records request to inspect any confidential information
6 and the City determines that it shall be necessary to reveal the confidential information,
7 to the extent reasonably possible the City shall notify the person that submitted the
8 confidential information of the records request prior to releasing the confidential
9 information. The City shall not be required to incur any costs to protect any confidential
10 information, other than the City’s routine internal procedures for complying with the
11 Oregon Public Records Law.

12 Section 20. CITY PERMISSION REQUIREMENT. No person may occupy or
13 encroach on a public right-of-way without the express written permission of the City.

14 Section 21. OBLIGATIONS OF THE CITY. The exercise of jurisdiction and
15 regulatory control over a public right-of-way by the City is not official acceptance of the
16 right-of-way and does not obligate the City to maintain or repair any part of the public
17 right-of-way.

18 Section 22. VIOLATIONS AND PENALTIES.

19 A. In addition to any other remedy provided in this Ordinance, a violation of
20 any provision of this Ordinance or any other City regulations, codes, ordinances, or

Commented [TS11]: In light of recent attacks on infrastructure we would prefer that all information provided by Salem Electric be deemed confidential unless specifically identified as for public use

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standards, is a civil violation and shall be enforced under the provisions of this Ordinance. Each day that the violation exists or continues shall constitute a separate violation. Each civil violation shall be punishable by a fine of not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000).

B. Before issuing the first citation for a violation, the City shall mail written notice of the violation(s) via United States Postal Service (USPS) to the licensee's address as listed on the ROW license application, providing a reasonable time (no less than twenty (20) and no more than forty (40) days from the date of the notice) for the licensee to remedy the violation to the City's satisfaction. The notice may also be delivered by other means in addition to USPS.

C. The rights, remedies and penalties provided in this Ordinance are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the City under any other provision of law, including without limitation any judicial or other remedy at law or in equity for enforcement of this Ordinance.

Section 23. SEVERABILITY AND PREEMPTION.

A. The provisions of this Ordinance 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,

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

14 Section 24. APPLICATION TO EXISTING AGREEMENTS. To the extent
15 that this Ordinance is not in conflict with and can be implemented consistent with
16 existing agreements, this Ordinance shall apply to all existing agreements granted by the
17 City.

18 Section 25. EFFECTIVE DATE. This Ordinance shall take effect on April 1,
19 2023.

20 PASSED this _____ day of _____, 2023.

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SIGNED this _____ day of _____, 2023.

Mayor

City Recorder

Stakeholder Draft 1-12-23

AT&T Comments - January 30, 2023

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CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2023-_____

ESTABLISHING FEES FOR ORDINANCE NO. 2023-_____

WHEREAS, the City has constitutional and charter authority to manage its rights-of-way and establish fees imposed;

WHEREAS, on _____, 2023, the Keizer City Council adopted Ordinance No. 2023-_____ which regulates utility services utilizing the public right-of-way;

WHEREAS, Ordinance No. 2023-_____ provides that the City Council shall by Resolution establish applicable fees;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that:

Section 1. The right-of-way license application fee shall be Three Hundred Dollars (\$300.00) (excluding Small Cell Wireless Facilities) and shall include an initial five-year license (if approved).

Section 2. The right-of-way license application fee for Small Cell Wireless Facilities shall be Five Hundred Dollars (\$500.00) for up to five sites and One Hundred Dollars (\$100.00) for each additional site, plus any additional reasonable fees the City must incur for outside or additional expertise to evaluate such applications, including

Commented [MP1]: This is the standard FCC fee for reviewing SWF locations and designs, based on the number of SWF locations that might be included in a "batched" application. Suggest simplifying this for the five-year ROW license.

AT&T Comments - January 30, 2023

compliance with the Federal Communications Commission's "RF" standards.

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Commented [MP2]: The City may review an applicant's statement of compliance with the FCC's RF safety regulations. It may not require testing or otherwise regulate RF emissions.

Section 3. The right-of-way license renewal fee (excluding Small Cell Wireless Facilities) shall be Two Hundred and Fifty Dollars (\$250.00) for a five-year license.

Section 4. The fee for franchise negotiations shall be Five Thousand Dollars (\$5,000.00).

Section 5. The fees established by Ordinance No. 2023-____ shall be as follows, and effective as of April 1, 2023, to the extent permitted by applicable law:

Utility Service *Excluding wireless service and facilities, which are addressed in Sections 6 and 7*	Usage Fee
Electric Utility Service Operator	5% of gross revenue, or a minimum of \$5,000.00*, whichever is greater
Electric Utility Service Provider	5% of gross revenue.
Natural Gas Utility Service Operator	5% of gross revenue, or a minimum of \$5,000.00*, whichever is greater
Natural Gas Utility Service Provider	5% of gross revenue
Wireline Cable Operators (Franchise required)	5% of gross revenue
Communication Utility Service Operator	7% of gross revenue, or a minimum of \$5,000.00*, whichever is greater
Communication Utility Service Provider	7% of gross revenue
Utility Service Operator that owns facilities but does not provide services within the city or earn gross revenue within the city.	Based on total linear footage of facilities in the Right-of-Way; \$3.50* per linear foot, or a minimum of \$5,000.00*, whichever is greater.
Franchise Agreement Negotiation Fee	\$5,000.00

Commented [MP3]: Please confirm that the City will only collect per-site fees for wireless, consistent with Section 14.B of the proposed ROW license ordinance.

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*Minimum fees and linear feet fees, shall increase three percent (3%) annually on January 1st of each year, beginning on January 1, 2024.

Commented [RC4]: Delete this fee. It is listed in Section 4 above.

Gross Revenues shall have the meaning defined in Ordinance No. 2023-____.

AT&T Comments - January 30, 2023

Section 6. The annual attachment fee (except for small wireless facilities) shall be Five Thousand Dollars (\$5,000.00) per attachment. The attachment fee shall increase three percent (3%) annually on July 1 of each year, beginning on July 1, 2024.

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Section 7. The annual attachment fee for small wireless facilities shall be Two Hundred and Seventy Dollars (\$270.00) per attachment.

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Section 8. The annual attachment fee shall be assessed as follows:

Installation before the 15th of the month will be assessed the full month. Installations after the 15th of the month will be assessed beginning the next month.

Section 9. When an attachment is removed, the attachment fee will be assessed as follows:

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If removed and the area is restored per Ordinance No. 2023-____, before the 15th of the month, there will be no charge for that month. If removed and the area is restored per Ordinance No. 2023-____ after the 15th of the month, the entire monthly charge will be imposed.

Section 10. This Resolution shall take effect on April 1, 2023.

PASSED this _____ day of _____, 2023.

SIGNED this _____ day of _____, 2023.

Mayor

AT&T Comments - January 30, 2023

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City Recorder

Stakeholder Utility Fee Draft 1-12-23

Keizer City Council Meeting Testimony

March 20, 2023

Good evening, Councilors and Mayor Clark. My name is Tony Schacher (S-C-H-A-C-H-E-R) and I am the general manager of Salem Electric. Thank you for the opportunity to speak with you this evening about the Utility Service Utilizing the Public Rights of Way and Communications License ordinance. Your time regarding this issue is appreciated.

Founded in 1938, Salem Electric is a not-for-profit 501(c)(12) electric cooperative. Unlike investor-owned utilities, electric cooperatives provide electricity to their member-owners at cost. Our members, who are also your constituents, are the owners of the cooperative and we have an obligation to our membership to provide a safe, reliable supply of electricity at reasonable rates.

We have been delivering power to our membership since 1941. Over the years, the City of Keizer has been a great business partner to Salem Electric and we look forward to continuing our strong relationship for many years to come.

The requirements for an electric distribution system are vastly different from the needs of communication companies. One size does not fit all. As a not-for-profit electric distribution cooperative, Salem Electric has been granted a defined service area through a Public Utility Commission authorized territorial agreement and we have a requirement to serve all of our members within those boundaries.

We supply our members with an essential service — electricity. Power outages are different from the loss of phone or internet service. A power outage is an emergency.

We also serve another mission —protecting the public. Our product can be dangerous. We build all of our facilities to the requirements of the National Electric Safety Code and we meet or exceed local requirements for our infrastructure.

During weather events or other disruptions to the power supply, our crews work hand in hand with your public safety officers and public works departments to help get streets accessible and keep the public out of harm's way until restorations are complete. We are our community, and when the community is safe and successful, so are we.

Salem Electric would like to see a bi-lateral franchise agreement used for the purpose of locating our facilities in the City of Keizer rights of way as opposed to an ordinance. This is a proven model that has worked for the City of Keizer since its inception.

The proposed ordinance has sections of significant concern to Salem Electric and our members and is contrary to our mission.

Additionally, the proposed ordinance has many requirements and prohibitions that would not allow us to respond to the needs of our members as we have for years.

New requirements to underground our facilities in all rights of way throughout the city where existing overhead construction is used would be extremely costly and, those costs will be passed on to our Keizer members. These instances would also require a significantly altered and expensive design and construction process that would delay development for our current and potential members. We have been told that is not the intent, however as the ordinance is currently written, that requirement still stands.

In summary, this ordinance as written would be extremely costly to our Keizer members; your constituents, friends, and neighbors. If passed it has the potential to significantly raise rates yet it serves little purpose, nor will it improve the service that we provide.

Salem Electric has a long-standing tradition of taking care of our equipment, our members, and our community, and we plan to continue doing so far into the future. We are good stewards of our system and we are invested in providing safe and reliable electric service.

I urge the council to vote against this ordinance as is proposed. I also request that Salem Electric and the City of Keizer enter into a separate franchise agreement for the use of the rights of way so that we may continue to provide safe, reliable electric service to our members at reasonable rates.

Thank you for your time this evening. I welcome your comments and am available for any questions you might have.

Keizer City Council Meeting | March 20, 2023

Comments | Jeff Anderson

Good evening, Councilors and Mayor Clark. My name is Jeff Anderson (A-N-D-E-R-S-O-N) and I have been a resident of Keizer now in my 45th year. of Keizer, I'm also the Secretary Treasurer of the Salem Electric Board of Directors.

Thank you for the opportunity to address the council this evening about the ordinance to adopt rights of way utility regulations.

The City Council is being asked to adopt a new ordinance that is written in a way that will significantly increase the monthly electric bills of the people who live and work in Keizer! I have a very real concern about how the City of Keizer and the City Council are focusing the finite resources of its citizens and I'm convinced that the Council is not aware of the effect this ordinance will have on your constituents and my members of the Cooperative.

One example that I would like to highlight is that the new ordinance mandates Salem Electric to underground their existing overhead system in areas where other utilities are already underground, however likely all rights-of-way within the city.

I understand that the City Consultant says that is not their intent, But language matters. This would effectively cost the cooperative millions of dollars to accomplish, and this cost will be passed on to our member-owners through dramatic rate increases. Salem Electric's members in Keizer, largely in older housing stock, will bear the brunt of this scheme, which puts aesthetics above safety into code. This will significantly increase rates for the cooperative's members.

All this before safety in sidewalks or repairing streets that are badly in need of attention. It makes no sense to replace a functional, effective, and efficient system when the City hasn't addressed deficiencies in the services it currently provides to its residents.

I understand that one is tax based and the other is part of the cooperative's rate base, but it is all imposed on the residents within the City of Keizer. This amounts to taxation without representation.

Keizer City Council Meeting | March 20, 2023
Comments | Joe Van Meter

Good evening, Councilors and Mayor Clark. My name is Joe Van Meter (V-A-N-M-E-T-E-R) and I'm the president of the Salem Electric Board of Directors and I'm also a resident of Keizer, living here for 50 years. Thank you for the opportunity to speak this evening about the ordinance to adopt rights of way utility regulations.

As a Keizer resident, I'm very concerned about this proposed ordinance. I urge the Council to carefully read the ordinance and fully consider the impact these regulations will have on the citizens of Keizer.

Requiring Salem Electric to underground its lines where overhead service exists is a very costly endeavor and substantially increases the cost of doing business yet provides no additional benefit to members of the Cooperative.

The Co-op has approximately 50 miles of overhead line in Keizer and currently, it costs 1.5 to 2 million dollars per mile to convert service lines from overhead to underground. This cost would likely be spread among the 5,226 Keizer members within the co-op's service territory.

Simple calculations, assuming that annually one mile of line is converted to underground, show that the average

monthly bill could increase by approximately 40%! If all overhead service is moved underground within 5 years, the average monthly bill will increase by more than 500%!

Unlike other affected utilities, Salem Electric is a member-owned electric cooperative. Our only source of revenue is the rates we charge our member-owners. This ordinance, as written, would significantly increase the cost of electricity for homes and businesses and it would have the greatest impact on those who can least afford it. The requirements within the ordinance do not improve effectiveness or efficiency. It simply adds unnecessary cost to people's bills.

Salem Electric operates within a defined service territory granted decades ago by the PUC and has a requirement to serve its members within that territory. It is positioned differently than other utilities, such as the communications companies that are included in this ordinance.

JOIN 12 other municipalities AND
I respectfully ask that the City negotiate a separate franchise agreement with Salem Electric to serve the members within their service territory. This is a better mechanism to regulate the use of the city's rights of way for electric service to its constituents.

Thank you for your time this evening. I welcome your comments and am available for any questions you might have.



Portland General Electric
121 SW Salmon Street • Portland, OR 97204
portlandgeneral.com

Jan 30, 2023 *MARCH 20, 2023*

VIA ELECTRONIC FILING: BrownA@keizer.org; HarmsT@keizer.org

Mayor Cathy Clark and City Councilors
City of Keizer
930 Chemawa Rd NE
Keizer, OR 97307

Re: Portland General Electric's Written City Council Comments Regarding Keizer's
Proposed Utility Public Right-of-Way (ROW) Ordinance

Mayor Clark and Keizer City Councilors:

Thank you for the opportunity to address the City Council this evening regarding the Keizer Utility Public Right-of-Way (ROW) Ordinance. I'm Wendy Veliz, Local Government Affairs Manager for Portland General Electric (PGE).

Keizer and PGE have a long history of working together cooperatively to resolve issues and we are thankful for the collaborative approach. We previously submitted written comments regarding the proposed ordinance and tonight I'll highlight a few continued concerns in my comments.

Gross Revenue Definition: We ask for a definition that is consistent with the OPUC's definition set forth in its administrative rules and used in other cities. The uniformity provides certainty for your residents and businesses, and our customers.

Coordination of Construction: We ask for language that allows for flexibility in a schedule. We may not have a complete list of proposed construction activities for the entire year. We feel it would be more beneficial to both the City and PGE to have a cadence for real-time discussions as projects are contingent on customer schedules.

Location and Relocation: We ask for an ability to allow for exceptions due to potential limited ROW space which could create challenges and a cost burden to customers. We ask for your consideration of adopting the current franchise language regarding relocation of electric facilities which provides clarity on criteria for relocations and timeframes. As the ordinance is currently written it could be costly to customer projects.

Permitting Requirements: The new proposed language requires work to be completed within 120 days of the issuance of the construction permit. The current permits are valid for six months. This new requirement doesn't allow for customer flexibility and could create unnecessary administrative burden to both the City and PGE. We're also concerned regarding new requirements for permits such as detailed drawings and differentiated on plans for new construction. We ask for city notification of potential updates to the permit application requirements and an opportunity to provide feedback. Additionally, this would add cost to customer projects by requiring us to hire an engineering company for the cross-section drawings and potentially access to the city's GIS system

We understand that good right-of-way management practices are important for keeping roads and facilities in good working order. PGE and Keizer have had a long term, good working relationship, and a good system for regulating what PGE does in the city's rights of way. If you see issues with other utilities, they can be addressed separately without adding undue costs or burdens to electric customers, your residents and businesses.

PGE serves approximately 900,000 customers with a service area population of 2 million Oregonians in 51 cities. PGE has franchise agreements in 47 of those 51 cities. In the past year, 15 franchise agreements were expiring or up for renewal and we renewed 15 of them. Based on our experience, cities value a franchise agreement because it serves your residents, our customers, more than a blanket utility right-of-way ordinance since it recognizes the difference between an electric utility and other kinds of utilities that don't have an obligation to serve. We respectfully ask you for a franchise agreement.

Thank you,
Wendy Veliz

CC: Tony Eaquinto, PGE Manager
Tammie Harms, Legal Assistant

Handed out by staff
at the Council
meeting

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A BILL
FOR

ORDINANCE NO.
2023-_____

AN ORDINANCE

ADOPTING RIGHT-OF-WAY UTILITY REGULATIONS

The City of Keizer ordains as follows:

Section 1. TITLE. This Ordinance shall be known and may be referenced as the "Right-of-Way Utility Regulations Ordinance."

Section 2. PURPOSE AND INTENT. The purpose of this Ordinance is to:

A. Permit and manage reasonable access to and utilization of the public rights-of-way of the City for utility services purposes and conserve the limited physical capacity, integrity, and longevity of those public rights-of-way held in trust by the City consistent with applicable state and federal law;

B. Secure fair and reasonable compensation to the City and its residents, who have invested substantial public funds to acquire, build, and maintain the public rights-of-way and City-owned structures and improvements therein, from utilities that benefit from use of this public asset;

C. Ensure that all persons owning or operating utility facilities or providing utility services within the City register and comply with the ordinances, rules, policies, and other regulations of the City, as well as with applicable provisions of state and federal law;

1 D. Ensure that the City can continue to fairly and responsibly protect the
2 public health, safety, and welfare of its residents;

3 E. Encourage the provision of advanced and competitive utility services on
4 the widest possible basis to the residents, businesses and visitors within the City's
5 territorial and jurisdictional boundaries;

6 F. Allow the City to enter into other or additional agreements with person(s),
7 if the public interest is served, and to amend the requirements of this Ordinance and the
8 City regulations, as new technology is developed and deployed;

9 G. Allow the City to be resilient and adaptive to changes in technology; and

10 H. Comply with applicable provisions of state and federal law.

11 Section 3. JURISDICTION AND MANAGEMENT OF THE PUBLIC
12 RIGHTS-OF-WAY.

13 A. The City has jurisdiction and exercises regulatory management over all
14 public rights-of-way within the City under authority of the Oregon Constitution, the City
15 Charter, and state law.

16 B. The City has jurisdiction and exercises regulatory management over each
17 public right-of-way, whether the City has a fee, easement, or any other legal interest in
18 such public right-of-way, and whether the legal interest in the public right-of-way was
19 obtained by grant, dedication, prescription, reservation, condemnation, annexation,
20 foreclosure, or any other means.

1 C. The exercise of jurisdiction and regulatory management over a public
2 right-of-way by the City is not official acceptance of such public right-of-way, and does
3 not obligate the City to maintain or repair any part of such right-of-way.

4 D. The provisions of this Ordinance are subject to and shall be applied
5 consistently with applicable state and federal laws, rules, and regulations, and, to the
6 extent possible, shall be interpreted to be consistent with such laws, rules, and
7 regulations. Nothing in this Ordinance shall be interpreted, deemed, or applied in a
8 manner that authorizes or requires the City, its Council, Commissions, Boards, officials,
9 directors, managers, employees, agents, contractors, or volunteers to violate applicable
10 state or federal laws, rules, or regulations.

11 Section 4. REGULATORY FEES AND COMPENSATION NOT A TAX.

12 A. The fees and costs provided for in this Ordinance, and any compensation
13 charged and paid as prescribed in this Ordinance, are separate from, and in addition to,
14 any and all other federal, state, county, or city charges, including without limitation, any
15 permit fee or any other generally applicable fee, tax, or charge on the business,
16 occupation, property, or income, as may be levied, imposed, or due from any person, its
17 customers, or subscribers, on account of the lease, sale, delivery, or transmission of
18 utility services.

19 B. The City has determined that any fee, cost, or other charge provided for by
20 this Ordinance is not subject to the property tax limitations of Article XI, Sections 11

1 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or
2 property owners.

3 C. The fees, costs, and other charges provided for in this Ordinance are
4 subject to applicable federal and state laws.

5 Section 5. DEFINITIONS. For the purpose of this Ordinance, the following
6 words, terms, phrases, and their derivations shall have the meanings given below unless
7 the context indicates otherwise. When not inconsistent with the context, words used in
8 the present tense include the future tense, words in the plural number include the
9 singular number, and words in the singular include the plural number. The word "shall"
10 is always mandatory and not merely directory.

11 A. “Cable service” is to be defined consistent with of 47 U.S.C. Section
12 522(6), as may be amended or superseded, and means the one-way transmission to
13 subscribers of (a) video programming, or (b) other programming service; and subscriber
14 interaction, if any, which is required for the selection or use of such video programming
15 or other programming service.

16 B. “Calendar year” means January 1 to December 31, unless otherwise noted.

17 C. “City” means the City of Keizer, Oregon, a municipal corporation, and its
18 governing authority, and/or its duly appointed and authorized agents. In addition, the
19 City may refer to all the territory within its corporate boundaries and as such may
20 change from time to time.

1 D. “City Council” means the City Council of the City of Keizer.

2 E. “City facilities” means City owned or publicly owned structures or
3 equipment located within the public rights-of-way used for governmental purposes
4 including, but not limited to, fiber-optic cable, streetlights, traffic signals, sanitary sewer,
5 storm sewer, or water infrastructure such as related pipes, manholes, catch basins, wires,
6 conduit, valves, vaults, and appurtenances.

7 F. “City Standards” means all the ordinances, codes, regulations, and rules of
8 the City of Keizer, heretofore or as may be subsequently amended.

9 G. “Communication services” means any service provided for the purpose of
10 transmission of information including, but not limited to, voice, video, or data, without
11 regard to the transmission protocol employed, and whether or not the transmission
12 medium is owned by the provider itself. Communications services includes all forms of
13 telephone services and voice, video, data, or information transport, but does not include:
14 (a) cable service; (b) open video system service, as defined in 47 CFR Section 76; (c)
15 over-the-air radio or television broadcasting to the public-at-large from facilities licensed
16 by the Federal Communications Commission or any successor thereto; (d)
17 communications provided over a private communications system or a public
18 communications system; and (e) direct-to-home satellite service within the meaning of
19 Section 602 of the Telecommunications Act.

20

1 H. “Construction” means any activity in the public right-of-way resulting in
2 physical change thereto, including excavation or placement of structures.

3 I. “Days” mean calendar days, unless otherwise noted.

4 J. “Emergency” means a circumstance, as determined by the City, in its sole
5 discretion, in which immediate work to facilities is necessary to restore lost service or
6 prevent immediate harm to persons or property.

7 K. “Federal Communications Commission” or “FCC” means the federal
8 administrative agency, or its lawful successor, authorized to regulate and oversee
9 telecommunication carriers, services, and provider, on a national level.

10 L. “Gross Revenue” means any and all amounts, of any kind, nature, or form,
11 without deduction for expense, less net write-off of uncollectable accounts within the
12 City, earned or derived from the operation of utility facilities (including revenue derived
13 from any use, rental and/or lease of the facilities to other person(s)), and/or the provision
14 of utility service(s) in the City, subject to all applicable limitations in federal and state
15 law.

16 M. “License” or “ROW License” means the authorization granted by the City
17 to a person(s) pursuant to this Ordinance.

18 N. “Licensee” means any person that is subject to the ROW License
19 requirement of this Ordinance or has a valid ROW License issued by the City.

20

1 O. “Person” means and includes any individual, firm, sole proprietorship,
2 corporation, company, partnership, co-partnership, joint-stock company, trust, limited
3 liability company, association, local service district, governmental entity, or other
4 organization, including any natural person or any other legal entity.

5 P. “Private communications system” means a communications system owned
6 by a utility operator for the operator’s exclusive use for internal communications and not
7 for sale or resale, including trade, barter, or other exchange of value, directly or
8 indirectly, to any person.

9 Q. “Public communications system” means any system owned or operated by
10 a government entity or entities that are primarily for use for internal communications or
11 communications with other government entities, and includes services provided by the
12 state of Oregon pursuant to ORS Sections 190.240 and 283.140. A public
13 communications system does not include any system used for sale or resale, including
14 trade, barter, or other exchange of value, of communications services or capacity on the
15 system, directly or indirectly, to any person.

16 R. “Registrant” means those persons that have a valid, active registration
17 pursuant to Section 8 of this Ordinance.

18 S. “Public rights-of-way”, or “Right-of-Way”, or “ROW” means and
19 includes, but is not limited to, the space in, upon, above, along, across, over, or under the
20 public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails,

1 paths, sidewalks, bicycle lanes, public utility easements, and all other public ways or
2 areas, including the subsurface under and air space over these areas, but does not include
3 parks, parkland, open space tracts, water quality tracts, or other City-owned property.
4 This definition applies only to the extent of the City’s right, title, interest, and authority
5 to grant a license or other authorization to occupy and use such areas for utility facilities
6 or provision of utility services.

7 T. “Public utility easement” means the space in, upon, above, along, across,
8 over, or under an easement for the construction, reconstruction, operation, maintenance,
9 inspection, and repair of utility facilities. A public utility easement does not include an
10 easement solely for the construction, reconstruction, operation, maintenance, inspection,
11 and/or repair of City facilities, or where the proposed use by the licensee is inconsistent
12 with the terms of any easement, right-of-way, or other legal right for use or occupancy
13 granted to the City.

14 U. “Small wireless facility” means antenna facilities that are used for the
15 provision of personal wireless service that meets each of the following conditions:

16 a. The facilities (i) are mounted on structures fifty (50) feet or less in
17 height including the antennas, or (ii) are mounted on structures no more than ten
18 percent (10%) taller than other adjacent structures, or (iii) do not extend existing
19 structures on which they are located to a height of more than fifty (50) feet or by
20 more than ten percent, (10%) whichever is greater;

1 b. Each antenna associated with the deployment, excluding associated
2 antenna equipment, is no more than three (3) cubic feet in volume;

3 c. All other wireless equipment associated with the structure,
4 including wireless equipment associated with the antenna and any pre-existing
5 associated equipment on the structure, is no more than twenty-eight (28) cubic
6 feet in volume; and,

7 d. The facilities do not result in human exposure to radio frequency in
8 excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

9 “Small wireless facility” does not include fiber, coaxial cable or similar equipment
10 located within the right-of-way, other than wireless equipment associated with the
11 structure that meets the criteria set forth in subsection U(c),

12 V. “State” means the state of Oregon.

13 W. “Structure” means any facility that is placed in the ROW, including but not
14 limited to poles, vaults or manholes, hand holds, junction boxes, conduit, direct bury
15 cable, wires, pedestals, aerial cables or wires, and transformers.

16 X. “Telecommunications Act” means the Communications Policy Act of
17 1934, as amended by subsequent enactments including the Telecommunications Act of
18 1996 (47 U.S.C., 151 et seq.) and as hereafter amended.

19 Y. “Utility facility” or “facility” means any physical component of a system,
20 including but not limited to the poles, pipes, mainlines, conduits, ducts, cables, wires,

1 transmitters, plants, equipment, and other facilities, including strand-mounted
2 equipment, located within, on, along, under, or above the public rights-of-way, any
3 portion or component of which is used or designed to be used to deliver, transmit, or
4 otherwise provide utility service.

5 Z. “Utility service” means the provision, by means of utility facilities located
6 in the public rights-of-way, whether or not such facilities are owned by the utility service
7 provider, of cable services, communication services, electric energy, natural gas, or
8 wireless communications, to or from customers within the corporate boundaries of the
9 City, or the transmission of any of these services through the City whether or not
10 customers within the City are served by those transmissions.

11 AA. “Utility service operator” or “Operator” means any person who owns,
12 places, operates, or maintains a utility facility within the City, whether or not the person
13 provides utility service to customers within the City.

14 BB. “Utility service provider” or “Provider” means any person who provides
15 utility service to customers within the City limits, whether or not any facilities in the
16 ROW are owned by such provider.

17 CC. “Wireless communication services” means any wireless service using
18 Federal Communications Commission-licensed or unlicensed spectrum including
19 without limitation any personal wireless services, as defined in 47 U.S.C. §
20 332(c)(7)(C).

1 DD. “Work” means the construction, demolition, installation, replacement,
2 repair, maintenance, or relocation of any utility facility, including but not limited to any
3 excavation and restoration required in association with such construction, demolition,
4 installation, replacement, repair, maintenance, or relocation.

5 Section 6. OTHER CITY LAWS. Every utility services operator and every
6 person that provides utility services within the City, whether such person owns facilities
7 or not, shall comply with all applicable City codes, rules, or requirements of the City of
8 Keizer.

9 Section 7. ADMINISTRATION.

10 A. This Ordinance shall be administered by the City, its staff or duly
11 appointed representative.

12 B. If a conflict exists between two City ordinance provisions, one of them a
13 general requirement and the other a specific requirement, the more specific requirement
14 shall operate as an exception to the general requirement regardless of the priority of
15 enactment.

16 Section 8. REGISTRATION.

17 A. Registration Required. Every person who desires to provide utility services
18 to customers within the City shall register with the City prior to providing any utility
19 services to any customer in the City. Every person providing utility services to
20 customers within the City as of the effective date of this Ordinance shall register within

1 forty-five (45) calendar days of the effective date of this Ordinance. Persons with a
2 valid ROW license or franchise in good standing are not required to register.

3 B. Registration Term. The registration granted pursuant to this Ordinance
4 shall be effective the earlier of the date it is issued by the City or the date services were
5 first provided within the City, and shall have a term of five (5) calendar years beginning:
6 (1) January 1st of the year in which the registration took effect for registrations that took
7 effect between January 1st and June 30th; or (2) January 1st of the year after the
8 registration took effect for registrations that become effective between July 1st and
9 December 31st.

10 C. Registration Application. The registration shall be on a form provided by
11 the City and shall be accompanied by any additional documents required by the City, in
12 the City's sole discretion and at no cost to the City, to identify the registrant and its legal
13 status, describe the type of utility services provided or to be provided by the registrant
14 and list the facilities over which the utility services shall be provided. Failure to receive
15 or secure a form shall not relieve any person from the obligation to register and pay the
16 associated fees or comply with this Ordinance.

17 D. Registration Application and Renewal Fee. Each application for new and
18 renewal registration shall be accompanied by a nonrefundable fee in an amount to be
19 determined by Resolution of the City Council.

20

1 E. Changes to Information Contained on the Registration Application.

2 Within thirty (30) days of a change to the information contained in the application, the
3 applicant shall notify the City in writing of such change(s).

4 F. Renewal. At least thirty (30), but no more than one hundred twenty (120),
5 calendar days before the expiration of a registration granted under this Section, a
6 provider seeking renewal of its registration shall submit a renewal registration
7 application to the City, including all information and fees required in this Ordinance. If
8 the City determines that the applicant is in violation of the terms of this Ordinance or
9 any other City codes, rules, or regulations at the time it submits its application, the City
10 may require, by a written notice, that the applicant cure the violation before the City will
11 consider the application or grant the registration.

12 Section 9. ROW LICENSES.

13 A. Who Must Apply. Every utility services operator must at all times have a
14 valid ROW License from the City unless the utility services operator has a valid
15 franchise agreement from the City that is in effect and in good standing.

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1 B. When Must Apply. Every person shall obtain a ROW license prior to
2 placing any utility facilities in the public rights-of-way. Every utility services operator
3 as of the effective date of this Ordinance shall apply for a ROW license from the City
4 within forty-five (45) days of the later of (a) the effective date of this Ordinance, or (b)
5 the expiration of a valid franchise from the City, unless a new agreement is granted by
6 the City.

7 C. ROW License Application. The ROW license application shall be on a
8 form provided by the City, and shall be accompanied by any additional documents
9 required by the City, in the City's sole discretion and at no cost to the City, that allows
10 the City to easily identify the applicant, its legal status, including its authorization to do
11 business in the state of Oregon, a description of the applicant's utility facilities, the
12 specific service(s) to be provided, if any, and other information that the City determines,
13 in its sole discretion at no cost to the City, is necessary to determine the applicant's
14 ability to comply with the terms of this Ordinance.

15 D. ROW License Application Fee and Renewal Fee. The application and
16 renewal application shall be accompanied by a nonrefundable application fee set by
17 Resolution of the City Council.

18 E. Determination by City. The City shall issue, within a reasonable time after
19 having received a duly filed application, a written determination granting or denying the
20 license in whole or in part. If the license is denied, the written determination shall

1 include the reasons for denial. The application shall be evaluated based upon the
2 provisions of this Ordinance, the continuing capacity of the public rights-of-way to
3 accommodate the applicant's proposed utility facilities, and the applicable federal, state
4 and local laws, rules, regulations, and policies.

5 F. Changes to Information Contained on the ROW License Application.

6 Within thirty (30) days of a change to the information contained in the license
7 application, the licensee shall notify the City in writing of such change(s).

8 G. Authorization Granted.

9 a. A ROW license granted under this Ordinance authorizes the
10 licensee to construct, place, maintain, and operate utility facilities in the public
11 rights-of-way, subject to the provisions of City code, rules, regulations, policies,
12 and other applicable provisions of state and federal law.

13 b. Each ROW license granted under this Ordinance authorizes only
14 those utility facilities applied for by the applicant and approved by the City. The
15 City may approve in one license utility facilities designed to provide more than
16 one type of utility service.

17 c. A ROW license granted under this Ordinance shall be personal to
18 the licensee and may not be assigned, sublicensed, or transferred, in whole or in
19 part, except as permitted by this Ordinance.

1 d. A ROW license granted under this Ordinance does not grant,
2 convey, create, or vest in a licensee any real property interest in land, including
3 any fee, leasehold interest, or easement, and does not convey equitable or legal
4 title in the public rights-of-way. The license is subject to all recorded deeds,
5 easements, dedications, conditions, covenants, restrictions, encumbrances, and
6 claims of title of record that may affect the public rights-of-way. A ROW license
7 granted under this Ordinance is not a warranty of title. Licensee expressly
8 acknowledges and agrees to enter on to and use public rights-of-way in its "as-is
9 and with all faults" condition. The City makes no representations or warranties
10 whatsoever, whether express or implied, as to the public rights-of-way's
11 condition or suitability for the intended or proposed utilization. By its acceptance
12 of the ROW license, the licensee expressly acknowledges and agrees that neither
13 the City nor its agents have made, and the City expressly disclaims, any
14 representations or warranties whatsoever, whether express or implied, with
15 respect to the physical, structural, or environmental condition of the public rights-
16 of-way, and the present or future suitability of the public rights-of-way.

17 e. The issuance of a ROW license does not constitute a waiver or bar
18 to the City's exercise of any governmental right or power, including without
19 limitation the City's police powers and regulatory powers, regardless of whether
20 such powers existed before or after the license is issued.

1 H. Term of ROW License. Subject to the termination provisions in Subsection
2 N of this Section 9, the ROW license granted pursuant to this Ordinance shall be
3 effective the earlier of the date it is issued by the City or the date services were first
4 provided within the City, and shall have a term of five (5) calendar years beginning: (1)
5 January 1st of the year in which the license took effect for licenses that took effect
6 between January 1st and June 30th; or (2) January 1st of the year after the license took
7 effect for licenses that become effective between July 1st and December 31st.

8 I. ROW License Nonexclusive. No ROW license granted pursuant to this
9 Section shall confer any exclusive right, privilege, license, or franchise to occupy or use
10 the public rights-of-way for delivery of utility services or any other purpose. The City
11 expressly reserves the right to grant licenses, franchises, or other authorizations to other
12 persons, as well as the City's right to use the public rights-of-way, for similar or
13 different purposes.

14 J. Reservation of City Rights. The City reserves all rights, title, and interest
15 in its public rights-of-way. A license granted under this Ordinance does not prevent the
16 City from exercising any of its rights, including without limitation grading, paving,
17 repairing, or altering any public rights-of-way, constructing, laying down, repairing,
18 relocating, or removing City facilities, or establishing any other public work, utility, or
19 improvement of any kind, including repairs, replacement, or removal of any City
20 facilities.

1 K. Multiple Services.

2 a. A licensee that provides or transmits, or allows the provision or
3 transmission, of utility services and other services over its facilities is subject to
4 the ROW license and fee requirements of this Ordinance for the portion of the
5 facilities and extent of utility services delivered over those facilities.

6 b. A licensee that provides or transmits more than one utility service
7 over its facilities is not required to obtain a separate ROW license or franchise
8 agreement for each utility service; provided, that it gives notice to the City of
9 each utility service provided or transmitted and pays the applicable fee for each
10 utility service.

11 L. Transfer or Assignment. A licensee shall obtain the written consent of the
12 City prior to the transfer, sublicense, or assignment of a license unless the licensee
13 demonstrates to the City that state or federal law specifically prohibits the City from
14 requiring its prior written consent. A transfer, sublicense, or assignment shall only be
15 authorized by the City if the proposed transferee or assignee is authorized under all
16 applicable federal, state, and local laws to own or operate the utility system and the
17 transfer or assignment is approved by all agencies or organizations required or
18 authorized under federal, state, and local to approve such transfer, sublicense, or
19 assignment.

1 a. Without limiting any other rights the City may have to condition its
2 consent, the City may condition its consent to any such transfer, sublicense, or
3 assignment on the transferee, sublicensee, or assignee's written agreement to
4 assume all obligations under the license, this Ordinance and other City codes and
5 regulations.

6 b. If a ROW license is transferred, sublicensed, or assigned, whether
7 pursuant to the City's approval or in the event approval is not required by this
8 Section, the transferee, sublicensee, or assignee shall become responsible for
9 fulfilling all the obligations under the license with respect to obligations of the
10 licensee at the time of transfer, sublicensee, or assignment. A transfer, sublicense,
11 or assignment of a license does not extend the term of the license. No transfer,
12 sublicense, or assignment may occur until the successor transferee or assignee
13 has provided proof of insurance, additional insured endorsement, and a bond
14 pursuant to Section 18. In the event approval is not required by this Section, the
15 licensee shall provide the City at least thirty (30) days prior written notice of the
16 transfer, sublicense, or assignment.

17 M. Renewal. At least thirty (30), but no more than one hundred twenty (120),
18 calendar days before the expiration of a license granted under this Section, a licensee
19 seeking renewal of its license shall submit a renewal application to the City, including
20 all information and fees required in this Ordinance. The City shall review the application

1 and grant or deny the license within a reasonable time period after the application is duly
2 filed. If the City determines that the licensee is in violation of the terms of this
3 Ordinance or any other City codes, rules, or regulations at the time it submits its
4 application, the City may require, by a written notice, that the licensee cure the violation
5 or submit a detailed plan to cure the violation within a reasonable period of time, as
6 determined by the City, before the City will consider the application or grant the license.

7 N. Termination.

8 a. Revocation or Termination of a License. The City may terminate or
9 revoke the license granted pursuant to this Ordinance for any of the following
10 reasons:

- 11 1. Violation of any of the provisions of this Ordinance;
- 12 2. Violation of any provision of the license;
- 13 3. Misrepresentation in a license application;
- 14 4. Failure to pay taxes, compensation, fees, or costs due the City
15 after final determination by the City of the taxes, compensation,
16 fees, or costs;
- 17 5. Failure to restore the public rights-of-way after construction as
18 required by this Ordinance or other applicable state and local laws,
19 ordinances, rules, and regulations;
- 20

1 6. Failure to comply with technical, safety, and engineering
2 standards related to work in the public rights-of-way;

3 7. Failure to obtain or maintain any and all licenses, permits,
4 certifications, and other authorizations required by state or federal
5 law for the placement, maintenance, or operation of the utility
6 facilities; or

7 8. Is in violation of any City code, rule, regulation, or other City
8 requirements.

9 b. Standards for Revocation or Termination. In determining whether
10 termination, revocation, or some other sanction is appropriate, the following
11 factors shall be considered:

- 12 1. Whether the violation was intentional;
13 2. The egregiousness of the violation;
14 3. The harm that resulted;
15 4. The licensee's history of compliance; and
16 5. The licensee's cooperation in discovering, admitting, and
17 curing the violation.

18 c. If a license is terminated by the City, within thirty (30) days the
19 licensee shall file a final remittance form with the City stating, "final remittance"
20 and shall remit any funds due.

1 O. Notice and Cure. The City shall give the licensee written notice of any
2 apparent violations before revoking or terminating a license. The notice shall include a
3 statement of the nature and general facts of the violation or noncompliance and provide a
4 reasonable time period not to exceed thirty (30) days for the licensee to demonstrate that
5 the licensee has remained in compliance, that the licensee has cured or is in the process
6 of curing any violation or noncompliance, or that it would be in the public interest to
7 impose a penalty or sanction less than termination or revocation. If the licensee is in the
8 process of curing a violation or noncompliance, the licensee must demonstrate that it
9 acted promptly and continues to actively work toward compliance. If the licensee does
10 not respond within the reasonable time stated in the notice, or if the City determines in
11 its sole discretion that the licensee is not, or is no longer, actively working toward
12 compliance, the City shall determine whether the license shall be terminated or revoked.

13 P. Termination by Licensee. If a licensee ceases to be required to have a
14 license, as defined under this Ordinance, the licensee may terminate or surrender its
15 license with a thirty (30) day notice to the City. Licensee may reapply for a license at
16 any time. No refunds or credits shall be given for licenses terminated by the licensee or
17 the City.

18 a. Within thirty (30) days of surrendering a license, the licensee shall
19 file a final remittance form with the City stating, “final remittance” and shall
20 remit any funds due.

1 b. Upon surrendering a license, unless otherwise agreed to by the
2 City, the licensee shall file a written statement that it has removed, or shall
3 remove within sixty (60) days, any and all facilities from the City, according to
4 Section 10, and no longer is subject to the provisions of this Ordinance.

5 Q. Franchise Agreements.

6 a. If the public interest warrants, as determined by the City in its sole
7 and absolute discretion, the City and a person may enter into a written franchise
8 agreement that may include terms that clarify, enhance, expand, waive, or vary
9 the provisions of this Ordinance, consistent with applicable state and federal law.
10 The franchise agreement may conflict with the terms of this Ordinance, with the
11 review and approval of the City Council. The franchise agreement shall be
12 subject to the provisions of this Ordinance to the extent such provisions are not in
13 conflict with any such franchise agreement. In the event of a conflict between the
14 express provisions of a franchise agreement and this Ordinance, the franchise
15 agreement shall control.

16 b. If approved by the City, the licensee requesting a franchise
17 agreement shall deposit a non-refundable fee, as set by Resolution of City
18 Council, before negotiations occur.

1 Section 10. CONSTRUCTION AND RESTORATION.

2 A. Public Works Director Policies, Standards, Specifications, and Other
3 Guidelines. The City Council authorizes the Public Works Director to develop, amend,
4 and publish or otherwise make publicly available any policies, standards, specifications,
5 and other guidelines for the location, design, management and operation of facilities in
6 public rights-of-way subject to this Ordinance. All such policies, standards,
7 specifications, and other guidelines (a) must be consistent, and not in conflict with, the
8 applicable provisions of state, federal, and local law, which includes this Ordinance; and
9 (b) shall be effective upon their publication; provided, however, that any permit
10 applications submitted prior to publication shall be subject to the policies, standards,
11 specifications, and other guidelines in effect when the submittal occurred.

12 B. Construction Permits. No person shall perform any work in the public
13 right-of-way, or on utility facilities within the public rights-of-way, without first
14 obtaining a permit from the City. The City shall not issue a permit for the construction,
15 installation, maintenance, or repair of utility facilities unless the licensee has the proper
16 authorizations required by and is in compliance with this Ordinance and all other City
17 codes and regulations, and all applicable fees have been paid.

18 C. Applications for Permits. Applications for permits to construct utility
19 facilities shall be submitted upon forms to be provided by the City and shall comply with
20 all City codes and regulations, including all public works regulations and standards at

1 the time the work commences. All permit applications shall be accompanied by
2 drawings, plans, and specifications in sufficient detail to demonstrate:

3 a. That the facilities shall be constructed in accordance with all
4 applicable laws, codes, rules, and regulations;

5 b. The location and route of all utility facilities to be installed above
6 ground or on existing utility poles;

7 c. The location and route of all utility facilities on or in the public
8 rights-of-way to be located under the surface of the ground, including the line and
9 grade proposed for the burial at all points along the route that are within the
10 public rights-of-way. Applicant's existing utility facilities shall be differentiated
11 on the plans from new construction. A cross section shall be provided showing
12 new or existing utility facilities in relation to the street, curb, sidewalk, or other
13 public rights-of-way; and

14 d. The construction methods to be employed for protection of existing
15 structures, fixtures, and facilities within or adjacent to the public rights-of-way,
16 and description of any structures, fixtures, or facilities that applicant proposes to
17 temporarily or permanently remove or relocate.

18 D. All permit applications shall be accompanied by the verification of a
19 qualified and duly authorized representative of the applicant that the drawings, plans,
20 and specifications submitted with the application comply with applicable technical

1 codes, rules, and regulations. Permit applications shall be accompanied by a written
2 construction schedule, which shall include an estimated start date and a deadline for
3 completion of construction. The construction schedule is subject to approval by the City.
4 Subject to any restrictions in state or federal law, the City may from time to time publish
5 or otherwise make publicly available any additional or different application requirements
6 as the City finds necessary or appropriate for processing applications, which shall be
7 effective immediately upon publication.

8 E. Prior to issuance of a permit, the applicant shall pay a permit fee in the
9 amount determined by Resolution of the City Council.

10 F. If satisfied that the application, plans, and documents submitted comply
11 with all requirements of the City, the City shall issue a permit authorizing construction
12 of the utility facilities, subject to such further conditions, restrictions, or regulations
13 affecting the time, place, and manner of performing the work as the City may deem
14 necessary or appropriate, to the extent not prohibited by applicable state and federal law.

15 G. Except in the case of an emergency that poses an imminent threat to public
16 health or safety and/or injury to persons or property, the permittee shall notify the City
17 not less than seventy-two (72) hours in advance (excluding weekends) of any work in
18 the public rights-of-way.

19 H. All construction practices and activities shall be in accordance with the
20 permit, approved final plans, and specifications for the facilities. The City and its

1 representatives shall be provided access to the work site and such further information as
2 it may require, in the City's sole discretions and at no cost to the City, to ensure
3 compliance with such plans, specifications, and other City codes and regulations.

4 I. All work that does not comply with the permit, the approved or corrected
5 plans and specifications for the work, or the requirements of this Ordinance (including
6 any policies, standards, specifications, or other guidelines adopted by the City), shall be
7 removed within thirty (30) days, or corrected at the sole expense of the permittee. The
8 City is authorized to issue stop work orders in order to ensure compliance.

9 J. The permittee shall promptly complete all construction activities in
10 compliance with the permit and all applicable laws and, in a manner designed to avoid
11 unnecessary disruption, and shall minimize unavoidable disruption of the City public
12 rights-of-way and other public and private property. All construction work within the
13 public rights-of-way, including without limitation any restoration work, must be
14 completed within one hundred twenty (120) days of the date the construction permit is
15 issued unless the City has given written approval of an extension or an alternate
16 schedule.

17 K. Injury to Persons or Property. All licensees shall preserve and protect from
18 injury or damage other facilities in the public rights-of-way, the public using the public
19 rights-of-way, and any adjoining property, and take other necessary measures to protect
20 persons and property, including but not limited to buildings, walls, fences, trees, and

1 other facilities that may be subject to damage from the permitted work. A licensee shall
2 (a) use suitable barricades, flags, flagging attendants, lights, flares, and other measures
3 as required for the safety of all members of the general public; (b) comply with all
4 applicable Americans with Disabilities Act requirements; and (c) comply with all the
5 requirements of the Manual on Uniform Traffic Control Devices (MUTCD).

6 L. Restoration. A licensee shall be responsible for all injury to persons or
7 damage to public or private property resulting from its failure to properly protect people
8 or property and to carry out the work regardless of whether the work is performed by a
9 licensee or by other person(s) performing the work on behalf of the licensee.

10 a. When a licensee, or any person acting on its behalf, does any work
11 in or affecting any public rights-of-way, it shall, at its own expense, promptly
12 restore such rights-of-way or property to the current City standards, in
13 accordance with applicable federal, state, and local laws, codes, ordinances, rules,
14 and regulations, unless otherwise directed by the City.

15 b. If weather or other conditions beyond the licensee's control do not
16 permit the complete restoration required by the City, the licensee shall
17 temporarily restore the affected public rights-of-way or property. Such temporary
18 restoration shall be at the licensee's sole expense and the licensee shall promptly
19 undertake and complete the required permanent restoration when the weather or
20

1 other conditions no longer prevent such permanent restoration. Any
2 corresponding modification to the construction schedule shall be subject to
3 approval by the City.

4 c. If the licensee fails to restore public rights-of-way or property as
5 required in this Ordinance, the City shall give the licensee written notice and
6 provide a period of not less than ten (10) days and not exceeding thirty (30) days
7 to restore the public rights-of-way or property. If, after said notice, the licensee
8 fails to restore the public rights-of-way or property as required in this Ordinance,
9 the City may cause such restoration to be made at the sole expense of the
10 licensee. In cases where the City believes that an emergency or threat to public
11 safety exists, it may act without notice to, and at the sole expense of, the licensee.
12 Upon receipt of an invoice from the City, the licensee shall reimburse the City
13 within thirty (30) days for all costs incurred by the City.

14 M. Inspection. Every facility shall be subject to the right of periodic
15 inspection by the City or its agents to determine compliance with the provisions of this
16 Ordinance and all other applicable state and City laws, codes, ordinances, rules, and
17 regulations. Every licensee shall cooperate with the City in permitting the inspection of
18 utility facilities in a timely manner after request by the City. The licensee shall perform
19 all testing or permit the City or its agents to perform any testing at the licensee expense,
20 required by the City to determine that the installation of the licensee's facilities and the

1 restoration of the public rights-of-way comply with the terms of the permit, this
2 Ordinance, and applicable state and City laws, codes, ordinances, rules, and regulations,
3 in effect at the time of the work.

4 N. Coordination of Construction. All licensees shall make a good faith effort
5 to both cooperate with and coordinate their construction schedules with those of the City
6 and other users of the public rights-of-way.

7 a. Prior to January 1 of each year, licensees shall provide the City
8 with a schedule of known proposed construction activities for that year that are
9 in, around, or that may affect the public rights-of-way and any City facilities.

10 b. At the City's request, licensees shall meet with the City annually, or
11 as determined by the City, to schedule and coordinate construction in the public
12 rights-of-way.

13 c. All construction locations, activities, and schedules within the
14 public rights-of-way shall be coordinated as ordered by the City to minimize
15 public inconvenience, disruption, and damage to persons and property.

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1 Section 11. LOCATION OF FACILITIES.

2 A. Location of Facilities. Unless otherwise agreed to in writing by the City,
3 whenever any existing electric utilities, cable facilities, or wireline communication
4 facilities are located underground within a public right-of-way of the City, a licensee
5 with permission to occupy the same public right-of-way shall locate all new facilities
6 underground at its own expense. The requirements in this Section do not apply to
7 antennas, pedestals, cabinets, small wireless facilities, or similar above-ground
8 equipment of any utility provider, or facilities used for transmission of electric energy at
9 nominal voltages in excess of thirty-five thousand (35,000) volts. The City reserves the
10 right to require written approval of the location of any such above-ground equipment of
11 any licensee.

12 B. Interference with the Public Rights-of-Way. No licensee or other person
13 may locate or maintain facilities so as to interfere with the use of the public rights-of-
14 way by the City, by the general public, or by other persons duly authorized to use or be
15 present in or on the public rights-of-way. Facilities shall not be located in areas of
16 restricted sight distance or interfere with the proper function of traffic control signs,
17 signals, lighting, or other devices that affect traffic operation. All use of the public
18 rights-of-way shall be consistent with City codes, ordinances, rules, and regulations, in
19 effect and as may be subsequently amended.

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1 C. Relocation of Utility Facilities.

2 a. When requested to do so in writing by the City, a licensee shall, at
3 no cost to the City, temporarily or permanently remove, relocate, change, or alter
4 the position of any utility facility within a public right-of-way, including
5 relocation of aerial facilities underground, except as such facilities are not
6 required to be located underground pursuant to subsection 11(A) of this Section.

7 b. Nothing herein shall be deemed to preclude the licensee from
8 requesting reimbursement or compensation from a third party, pursuant to
9 applicable laws, regulations, tariffs, or agreements. However, the licensee shall
10 timely comply with the requirements of this Section regardless of whether it has
11 requested or received such reimbursement or compensation.

12 c. The City shall coordinate the schedule for relocation of utility
13 facilities and based on such effort, shall provide written notice of the time by
14 which the licensee must remove, relocate, change, alter, or underground its
15 facilities. If a licensee fails to remove, relocate, change, alter or underground any
16 utility facility as requested by the City by the date established by the City, the
17 licensee shall pay all costs incurred by the City due to such failure, including but
18 not limited to costs related to project delays, and the City may cause, using
19 qualified personnel or contractors consistent with applicable law and regulations,
20 the facilities to be remove, relocated, altered, or undergrounded, at the licensee's

1 sole expense. Upon receipt of an invoice from the City, the licensee shall
2 reimburse the City for all costs incurred within thirty (30) days.

3 d. The City shall cooperate with the licensee in securing alternate
4 locations. However, the City shall bear no responsibility to obtain, compensate,
5 or otherwise assist the licensee in relocation of the facilities to a location not in
6 control of the City.

7 D. Removal of Unauthorized Facilities.

8 a. Unless otherwise agreed to in writing by the City, within thirty (30)
9 days following written notice from the City or such other time agreed to in
10 writing, a licensee and any other person that owns, controls, or maintains any
11 abandoned or unauthorized utility facility within a public right-of-way shall, at its
12 own expense, remove the facility and restore the public right-of-way to City
13 standards in effect at the time the work is performed.

14 b. A utility system or facility is unauthorized under any of the
15 following circumstances:

- 16 1. The utility facility is outside the scope of authority granted by
17 the City. This includes facilities that were never authorized and
18 facilities that were once authorized but for which the authorization
19 has expired or been terminated. This does not include any facility
20

1 for which the City has provided written authorization for
2 abandonment in place.

3 2. The facility has been abandoned and the City has not provided
4 written authorization for abandonment in place. A facility is
5 abandoned if it is not in use and is not planned for further use. A
6 facility shall be presumed abandoned if it is not used for a period
7 of one (1) year. A licensee may attempt to overcome this
8 presumption by presenting plans for future use of the facility to the
9 City, which will determine application of the presumption in its
10 sole discretion.

11 3. The utility facility is improperly constructed or installed or is
12 in a location not permitted, licensed, franchised, or otherwise
13 authorized by the City.

14 4. The licensee is in violation of a material provision of this
15 Ordinance and fails to cure such violation within thirty (30) days of
16 the City sending written notice of such violation, unless the City, in
17 its sole discretion, extends such time period in writing.

18 E. Removal by City.

19 a. The City retains the right and privilege to cut or move any facility
20 located within the public rights-of-way of the City, without notice, as the City

1 may determine, in its sole discretion, to be necessary, appropriate, or useful in
2 response to a public health or safety emergency. The City shall use qualified
3 personnel or contractors consistent with applicable state and federal safety laws
4 and regulations to the extent reasonably practicable without impeding the City's
5 response to the emergency.

6 b. If the licensee fails to remove any facility when required to do so
7 under this Ordinance, the City may remove the facility using qualified personnel
8 or contractors consistent with applicable state and federal safety laws and
9 regulations, and the licensee shall be responsible for paying any and all costs
10 incurred by the City, including any administrative or collection costs. Upon
11 receipt of an invoice from the City, the licensee shall reimburse the City for all
12 the costs within thirty (30) days. The obligation to remove shall survive the
13 termination of any authorizations granted by the City.

14 c. The City is not liable to any person(s) for any damage to utility
15 facilities, or for any consequential losses resulting directly or indirectly from any
16 damage caused by the City's actions, or its contractor, in removing, relocating,
17 altering, or undergrounding the facilities, unless such damage arises directly from
18 the City's sole active negligence or willful misconduct.

1 F. Engineering Designs and Plans. The licensee shall provide the City with
2 as-built plans or system maps of their facilities, upon request, for the purpose of design
3 of other City infrastructure or to confirm existing conditions.

4 G. Maps. Licensee shall provide, at no cost to the City, a comprehensive map
5 showing the location of all facilities in the rights-of-way. Such map shall be provided at
6 no cost to the City and in a format acceptable to the City, with accompanying data
7 sufficient to enable for the City to determine the exact location of facilities. The licensee
8 shall provide such map yearly by February 1, if any changes occurred during the prior
9 year, and at any time upon request by the City. The City may only request such map
10 once per calendar year.

11 Section 12. LEASED CAPACITY. A licensee may lease or otherwise provide
12 capacity on or in its facilities to others ("lessees"); provided, that (1) the licensee
13 provides the City with the name and business address of any lessee, within 60 (sixty)
14 days of the effective date of the lease or other agreement to provide capacity; (2) the use
15 of the licensee facilities does not require or involve any additional equipment owned or
16 operated by the lessee to be installed on the facility unless the lessee has obtained a
17 ROW license or franchise from the City; and (3) the licensee maintains control over and
18 responsibility for the facility at all times.

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1 Section 13. MAINTENANCE.

2 A. Every licensee shall install and maintain all facilities in a manner that
3 complies with applicable federal, state, and local laws, rules, regulations, and policies.
4 The licensee shall, at its own expense, repair and maintain facilities from time to time as
5 may be necessary to accomplish this purpose.

6 B. If, after written notice from the City of the need for repair or maintenance,
7 the licensee fails to repair or maintain facilities as requested by the City and by the date
8 established by the City, the City may perform such repair or maintenance using qualified
9 personnel or contractors at the licensee's sole expense. Upon receipt of an invoice from
10 the City, the licensee shall reimburse the City for any and all costs within thirty (30)
11 days.

12 Section 14. VACATION OF PUBLIC RIGHTS-OF-WAY.

13 A. If the City vacates any public rights-of-way, or portion thereof, that a
14 licensee uses, the licensee shall, within thirty (30) days following written notice from the
15 City or such other time directed or agreed to in writing by the City, and at licensee's own
16 expense, remove its facilities from the public rights-of-way unless: (a) the City reserves
17 a public utility easement, which the City shall make a reasonable effort to do; provided,
18 that it is practicable to do so and there is no expense to the City; or (b) the licensee
19 obtains an easement for its facilities.

1 B. If the licensee fails to remove its facilities within thirty (30) days after a
2 public right-of-way is vacated, or as otherwise directed or agreed to in writing by the
3 City, the City may remove the facilities using qualified workers in accordance with state
4 and federal laws and regulations at the licensee's sole expense. Upon receipt of an
5 invoice from the City, the licensee shall reimburse the City for any and all costs within
6 thirty (30) days.

7 Section 15. RIGHTS-OF-WAY USE AND ACCESS FEES.

8 A. Every person that owns utility facilities in the City shall pay the rights-of-
9 way use fee in the amount determined by Resolution of the City Council.

10 B. Every person that provides utility service in the City shall pay the rights-
11 of-way access fee in the amount determined by Resolution of the City Council for every
12 utility service provided in the City.

13 C. A person subject to the both the rights-of-way use fee in subsection A and
14 the rights-of-way access fee in subsection B of this Section shall deduct from the total
15 amount due the lower of the fees due under subsection A and subsection B or, in the
16 event the fees due under subsection A and subsection B are the same, deduct from the
17 total amount due the full amount of one of the fees.

18 D. Fees required by this Section shall be reduced by any franchise fees, but in
19 no case shall be less than zero dollars (\$0).

20

1 E. No acceptance of any payment shall be construed as accord that the
2 amount paid is in fact the correct amount, nor shall such acceptance of payment be
3 construed as a release of any claim the City may have for further or additional sums
4 payable.

5 F. Unless otherwise agreed to in writing by the City, the fees set forth under
6 this Section shall be paid quarterly, in arrears, within forty-five (45) days after the end of
7 each calendar quarter. Each payment shall be accompanied by an accounting of gross
8 revenues, if applicable, and a calculation of the amount payable (a remittance form shall
9 be provided by the City). The City may request and shall be provided, at no cost to the
10 City, any additional reports or information it deems necessary, in its sole discretion, to
11 ensure compliance with this Section. Such information may include, but is not limited
12 to: chart of accounts, total revenues by categories and dates, list of products and
13 services, narrative documenting calculation, details on number of customers within the
14 City limits, or any other information needed for the City to easily verify compliance.

15 G. The calculation of the fees required by this Section shall be subject to all
16 applicable limitations imposed by federal or state law in effect and as may be
17 subsequently amended.

18 H. The City reserves the right to enact other fees and taxes applicable to
19 person(s) subject to this Ordinance. Unless expressly permitted by the City in enacting
20 such fee or tax, or required by applicable state or federal law, no person may deduct,

1 offset, or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or
2 taxes based on the payment of the fees required under this Ordinance.

3 Section 16. PENALTIES AND INTEREST ON FEES. Penalties and interest
4 imposed by this Section are in addition to any penalties that may be assessed under other
5 ordinances or regulations of the City.

6 A. Any person who has not submitted the required remittance forms or
7 remitted the correct fees when due as provided under this Ordinance shall pay a penalty
8 listed below in addition to the amount due:

9 a. First occurrence during any one calendar year; ten percent (10%) of
10 the amount owed, or twenty-five dollars (\$25.00), whichever is greater.

11 b. Second occurrence during any one calendar year; fifteen percent
12 (15%) of the amount owed, or fifty dollars (\$50.00), whichever is greater.

13 c. Third occurrence during any one calendar year; twenty percent
14 (20%) of the amount owed, or seventy-five dollars (\$75.00), whichever is greater.

15 d. Fourth occurrence during any one calendar year; twenty-five
16 percent (25%) of the amount owed, or one hundred dollars (\$100.00), whichever
17 is greater.

18 B. If the City determines that the nonpayment of any fees due as required by
19 this Ordinance is due to fraud or intent to evade the provisions hereof, an additional
20 penalty of twenty-five percent (25%) of the amount owed, or five hundred dollars

1 (\$500.00), whichever is greater, shall be added thereto in addition to other penalties
2 stated in the Ordinance or as allowed by law.

3 C. In addition to the penalties imposed, any person who fails to remit any fees
4 when due shall pay interest at the rate of one and one-half percent (1.5%) per month or
5 fractions thereof, without proration for portions of a month, on the total amount due
6 (including penalties), from the date on which the remittance first became delinquent,
7 until received by the City. The City reserves the right to impose interest at the
8 maximum amount allowed by law.

9 D. Every penalty imposed, and such interest as accrues under the provision of
10 this Section, shall be merged with, and become part of, the fees required to be paid.

11 E. The City or its designee, in their sole discretion, shall have the authority to
12 reduce or waive the penalties and interest due under this Section.

13 Section 17. AUDITS (FORMAL OR INFORMAL) AND RECORDS
14 REQUESTS.

15 A. The City may audit and/or request information from any person at any
16 time to verify compliance with this Ordinance. The City shall make a written request for
17 information and the person shall comply with the request within thirty (30) days of
18 receipt of the City's written request, or such other time as agreed to in writing. All
19 information shall be provided to the City, at no cost to the City.

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1 B. Every person shall furnish the City with information sufficient to
2 demonstrate that the person is in compliance with all the requirements of this Ordinance,
3 all other City regulations, and its franchise agreement, if any, including but not limited
4 to payment of any applicable fees.

5 C. Every licensee shall make available for inspection by the City at reasonable
6 times and intervals, upon request by the City, any maps, records, books, diagrams, plans,
7 and other documents maintained by the licensee with respect to its facilities within the
8 public rights-of-way. Access shall be provided within the City unless prior arrangement
9 for access elsewhere has been made with the City.

10 D. If the City's audit, or review of the books, records, and other documents or
11 information of the person demonstrates that the person has underpaid any fees required
12 by this Ordinance by two percent (2%) or more in any one year, the person shall
13 reimburse the City for all costs incurred by the City in conducting the audit or review, in
14 addition to any interest owed or other fees imposed by this Ordinance or as specified in a
15 franchise agreement.

16 E. Any underpayment, including any and all costs incurred by the City in
17 conducting the audit or review, shall be paid within thirty (30) days of the City's notice
18 to the person of such underpayment.

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1 Section 18. INSURANCE AND INDEMNIFICATION.

2 A. Insurance.

3 a. All Utility Service Operators shall maintain in full force and effect
4 the following liability insurance policies that protect the licensee and the City, as
5 well as the City's officers, agents, and employees, with limits not less than the
6 amounts set by the City Manager:

7 1. Comprehensive general liability insurance.

8 2. Motor vehicle liability insurance for owned, non-owned and
9 hired vehicles.

10 3. Worker's compensation insurance.

11 b. The limits of the insurance shall be set by the City Manager but
12 shall not be less than the maximum limits of liability imposed on municipalities
13 of the state of Oregon. The insurance shall be without prejudice to coverage
14 otherwise existing and shall name as additional insureds the City and its officers,
15 agents, and employees. The coverage must apply as to claims between insureds
16 on the policy. The licensee shall provide the City thirty (30) days prior written
17 notice of any cancellation or material alteration of said insurance. If the insurance
18 is canceled or materially altered, the licensee shall maintain continuous
19 uninterrupted coverage in the terms and amounts required.

1 c. The licensee shall at all times maintain on file with the City a
2 current certificate of insurance and additional insured endorsement, or proof of
3 self-insurance acceptable to the City, certifying the coverage required above.

4 d. Self-Insurance. At the request of a licensee, the City shall
5 determine, in its sole discretion, whether a licensee may self-insure. A licensee
6 whose request has been granted shall provide the City proof of insurance through
7 a letter of self-insurance or insurance certificate, listing the City as an additional
8 insured.

9 e. Performance Bond

10 1. In addition to any other generally applicable bond or
11 security fund obligations required by local ordinance, upon the
12 Effective Date of this Ordinance, or the issuance of a new license
13 or renewal of a license, the licensee shall furnish proof of the
14 posting of a faithful performance bond running to the City
15 collectively with good and sufficient surety approved by the City,
16 in the penal sum of One Hundred Fifty Thousand Dollars
17 (\$150,000.00), conditioned that Grantee shall well and truly
18 observe, fulfill, and perform all provisions of this Ordinance. Such
19 bond shall be issued by a bonding company licensed to do business

1 in the state of Oregon and shall be maintained by the license for the
2 time period it owns facilities within the City's rights-of-way.

3 2. The bond shall contain a provision that it shall not be
4 terminated or otherwise allowed to expire without thirty (30) days
5 prior written notice first being given to the City. The bond shall be
6 subject to the approval of the City as to its adequacy under the
7 requirements of this Section. During the term of the bond, licensee
8 shall file with the City a duplicate copy of the bond along with
9 written evidence of payment of the required premiums unless the
10 bond otherwise provides that the bond shall not expire or be
11 terminated without thirty (30) days prior written notice to the City.

12 B. Indemnification.

13 a. To the fullest extent permitted by law, each licensee shall defend,
14 indemnify, and hold harmless the City and its officers, employees, agents and
15 representatives from and against any and all liability, causes of action, claims,
16 damages, losses, judgments, and other costs and expenses, including attorney fees
17 and costs of suit or defense (at both the trial and appeal level, whether or not a
18 trial or appeal ever takes place), that may be asserted by any person or entity in
19 any way arising out of, resulting from, during, or in connection with, or alleged to
20 arise out of or result from the negligence, careless or wrongful acts, omissions,

1 failure to act, or other misconduct of the licensee or its affiliates, officers,
2 employees, agents, contractors, subcontractors, or lessees in the construction,
3 operation, maintenance, repair, or removal of its facilities, and in providing or
4 offering utility services over the facilities, whether such acts or omissions are
5 authorized, allowed, or prohibited by this Ordinance or by a franchise agreement.

6 The acceptance of a license under this Ordinance shall constitute such an
7 agreement by the applicant whether the same is expressed or not.

8 b. Every licensee shall also indemnify the City for any damages,
9 claims, additional costs, or expenses assessed against or payable by the City
10 arising out of or resulting, directly or indirectly, from the licensee's failure to
11 remove or relocate any of its facilities in the public rights-of-way or in a timely
12 manner as required by this Ordinance, except to the extent the licensee's failure
13 arises directly from the City's negligence or willful misconduct.

14 Section 19. COMPLIANCE. Every person subject to this Ordinance shall
15 comply with all applicable federal and state laws and regulations, including regulations
16 of any administrative agency thereof, as well as all applicable ordinances, resolutions,
17 rules, and regulations of the City, heretofore or hereafter adopted or established during
18 the term of any license or registration granted under this Ordinance.

19 Section 20. CONFIDENTIAL/PROPRIETARY INFORMATION. If any
20 person is required by this Ordinance to provide books, records, maps, or information to

1 the City that the person reasonably believes to be confidential or proprietary, and such
2 books, records, maps or information are clearly marked as confidential at the time of
3 disclosure to the City (“confidential information”), the City shall take reasonable steps to
4 protect the confidential information to the extent permitted by Oregon Public Records
5 Laws. In the event the City receives a public records request to inspect any confidential
6 information and the City determines that it shall be necessary to reveal the confidential
7 information, to the extent reasonably possible the City shall notify the person that
8 submitted the confidential information of the records request prior to releasing the
9 confidential information. The City shall not be required to incur any costs to protect any
10 confidential information, other than the City’s routine internal procedures for complying
11 with the Oregon Public Records Law.

12 Section 21. CITY PERMISSION REQUIRED. No person may occupy or
13 encroach on a public right-of-way without the express written permission of the City.

14 Section 22. VIOLATIONS AND PENALTIES.

15 A. In addition to any other remedy provided in this Ordinance, a violation of
16 any provision of this Ordinance or any other City regulations, codes, ordinances, or
17 standards, is a civil violation and shall be enforced under the provisions of this
18 Ordinance. Each day that the violation exists or continues shall constitute a separate
19 violation. Each civil violation shall be punishable by a fine of not less than one hundred
20 dollars (\$100.00) and not more than one thousand dollars (\$1,000).

1 B. Before issuing the first citation for a violation, the City shall mail written
2 notice of the violation(s) via United States Postal Service (USPS) to the address as listed
3 on the person's application, providing a reasonable time (no less than twenty (20) and no
4 more than forty (40) days from the date of the notice) for the person to remedy the
5 violation to the City's satisfaction. The notice may also be delivered by other means in
6 addition to USPS.

7 C. The rights, remedies, and penalties provided in this Ordinance are
8 cumulative, are not mutually exclusive, and are in addition to any other rights, remedies,
9 and penalties available to the City under any other provision of law, including without
10 limitation any judicial or other remedy at law or in equity for enforcement of this
11 Ordinance.

12 Section 23. SEVERABILITY AND PREEMPTION.

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

16 B. If any article, section, subsection, sentence, clause, phrase, term, provision,
17 condition, covenant, or portion of this Ordinance is for any reason declared or held to be
18 invalid or unenforceable by any court of competent jurisdiction or superseded by state or
19 federal legislation, rules, regulations, or decision, the remainder of this Ordinance shall
20 not be affected thereby but shall be deemed as a separate, distinct, and independent

1 provision, and such holding shall not affect the validity of the remaining portions hereof,
2 and each remaining section, subsection, sentence, clause, phrase, term, provision,
3 condition, covenant, or portion of this Ordinance shall be valid and enforceable to the
4 fullest extent permitted by law. In the event any provision is preempted by federal or
5 state laws, rules, or regulations, the provision shall be preempted only to the extent
6 required by law and any portion not preempted shall survive. If any federal or state law
7 resulting in preemption is later repealed, rescinded, amended, or otherwise changed to
8 end the preemption, such provision shall thereupon return to full force and effect and
9 shall thereafter be binding without further action by the City.

10 Section 24. APPLICATION TO EXISTING AGREEMENTS. To the extent
11 that this Ordinance is not in conflict with and can be implemented consistent with
12 existing franchise agreements, this Ordinance shall apply to all existing franchise
13 agreements granted by the City.

14 Section 25. EFFECTIVE DATE. This Ordinance shall take effect on July 1,
15 2023.

16 PASSED this _____ day of _____, 2023.

17

18 SIGNED this _____ day of _____, 2023.

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22

Mayor

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24

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City Recorder