

From: Jonathan Thompson <PresJet@msn.com>
Sent: Sunday, April 16, 2023 7:04 PM
To: Davis, Tracy <DavisT@keizer.org>
Subject: Right of Way Ordinance

Mayor Clark and Members of the Keizer City Council-

I write this evening to urge you to continue deferring the right of way ordinance before you tomorrow (Monday) evening. It should be part of a larger conversation which I will address below.

I appreciate Shannon's responses to the questions I raised last month. On the "double taxation" issue we have a philosophical difference. If I own a fiber optic cable in the right of way and transmit my own data, or lease space in my cable, it is still the same impact on the city. My cable is in the right of way. It seems to me that the city should be looking to cover the costs of the right of way rather than use it as an income stream. Keizer residents pay the right of way fees anyway so we are still getting the revenue from the same place we get the police and parks fees, just on a different bill. But, that is a philosophical discussion for which you all make the big bucks. My further concern and my suggestion are more practical.

The city hiring a consultant does not bother me at all. I have been one and hired many in various jobs. However, I am troubled by the way this consultant is compensated. With a commission, her compensation goes up with higher fees. If she were being paid strictly for her time then this would not be an issue. Are we proposing the correct fee or the highest we think we can get through. Is the fee right for Keizer or does it maximize her commission?

Which leads me to my suggestion. Is this the right way to get additional revenue or just the one being brought forward now? Let's continue to the pause on this resolution. We can use the time to take a more holistic look at the revenue situation in the city and what it needs to fund. What needs are not being met currently and what other revenue options do we have? For example, does the police fee need to fund one or two more officers than it does now? Let's ask the community and get them involved. As a budget committee member I would be will to work on something like this.

I urge you to take a step back from the resolution and work it into a larger discussion of our entire revenue system and what it needs to support.

Thank you all for your service to Keizer.

Warmest Regards,

Jonathan

Jonathan Thompson
Cell: (503) 580-1294

From: Kim Allen <kim.allen@wirelesspolicy.com>

Sent: Friday, April 14, 2023 5:19 PM

To: Cathy Clark <ClarkC@keizer.org>; Shaney Starr <StarrS@keizer.org>; Laura Reid <ReidL@keizer.org>; Kyle Juran <JuranK@keizer.org>; Soraida Cross <CrossS@keizer.org>; Daniel Kohler <KohlerD@keizer.org>; Robert Husseman <HussemanR@keizer.org>

Cc: Johnson, Shannon <JohnsonS@keizer.org>; Wood, Tim <WoodT@keizer.org>; Administrator <Administrator@keizer.org>; Davis, Tracy <DavisT@keizer.org>

Subject: Keizer OR 4/17/23 Council Meeting-Agenda Item 8(a)-Verizon comments

Good afternoon, Mayor Clark and Councilors-

I am writing to you on behalf of Verizon Wireless to express continuing concern about the right of way access fee proposing to be imposed for the first time on wireless providers. The right of way access charge is inconsistent with both state and federal law, as is detailed more fully in the attached letter. Our request is that you remove the code references to the right of way access fee for entities that do not have a physical presence in the right of way.

Best regards,

Kim Allen

Senior Vice President, Land Use Entitlements and Strategic Planning

Wireless Policy Group, LLC

1420 W. Gilman Blvd. #9030, Issaquah WA 98027

(425)628-2666-office

Kim.allen@wirelesspolicy.com



April 14, 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: April 17, 2023 Council Agenda #8(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 continue to detail the serious concerns we have regarding the lack of transparency and public process for such a significant change in the way wireless carriers access the right of way in the City of Keizer. The proposed ordinance is deeply flawed and in no way “levels the playing field” by purporting to charge wireless providers with no infrastructure in the right of way the same percentage of gross revenue as those who actually access and use 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 privilege taxes not measured by commercial activity, i.e. gross revenue, and right of way fees. Keizer’s proposed right of way access “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 physical connection to the right of way. It is by

April 14, 2023

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its nature, a tax on a commercial activity in the city and is not permitted under state law. The proposed ordinance exposes the city to risk of legal action in the event it tries to collect this revenue. In the unlikely event that this new fee were to be imposed and collected, it would most certainly be passed through to the residents and businesses of Keizer.

Of equal concern to the city should be the impact this onerous new fee structure will have on wireless service in Keizer. The new ordinance is a powerful disincentive to build out the network and upgrade facilities to keep pace with the ever increasing demand for service. As in many industries, investment follows the path of least resistance and, in prioritizing where network growth and enhancement should occur, a city like Keizer would likely not make the list.

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 will seriously impede providing and enhancing wireless service in the City of Keizer. We request that you reject this new tax on a service so vital to the members of the Keizer community.

Sincerely,

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

Kim Allen

For Verizon Wireless

CC. Shannon Johnson, City Attorney

From: Tony Schacher <schacher@salemelectric.com>

Sent: Friday, April 14, 2023 11:40 AM

To: Cathy Clark <ClarkC@keizer.org>; Brown, Adam <BrownA@keizer.org>; Johnson, Shannon <JohnsonS@keizer.org>; Harms, Tammie <HarmsT@keizer.org>; Davis, Tracy <DavisT@keizer.org>

Cc: JB Phillips <phillips@salemelectric.com>; Adam Deshon <deshon@salemelectric.com>;

Wendy.Veliz@pgn.com; Tony Eaquinto <Anthony.Eaquinto@pgn.com>

Subject: Salem Electric Response to Draft Right of Way Ordinance

Mayor Clark, Adam, Shannon, Tammie, and Tracy,

Attached is the version of the current draft ordinance as we understand it with our comments for the April 17, 2023 City Council meeting. I have included the redline for your further consideration. Also attached is a joint letter from Salem Electric and PGE formally requesting a franchise agreement regardless if the City Council votes in favor of the right of way ordinance. The letter delineates our position on the merits of a separate franchise agreement for your constituents in Keizer for electrical utilities in the City's Rights of Way.

If you have any comments or concerns please feel free to reach out at any time. We look forward to working together productively for many more years

Thank you for your time and consideration,

Tony Schacher

Tony Schacher
General Manager
Schacher@SalemElectric.com
633 7th Street NW | PO Box 5588
Salem, Oregon 97304-0055
503-362-3601 | SalemElectric.com

A BILL

ORDINANCE NO.

2023-_____

FOR

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;

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 shareholders, 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.

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
7 person(s), if the public interest is served, and to amend the requirements of this
8 Ordinance and the 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
15 City 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
3 does 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,
9 officials, directors, managers, employees, agents, contractors, or volunteers to violate
10 applicable 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,
15 any 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,
17 its 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
20 by this Ordinance is not subject to the property tax limitations of Article XI, Sections

1 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property
2 or 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
7 unless the context indicates otherwise. When not inconsistent with the context, words
8 used in the present tense include the future tense, words in the plural number include
9 the singular number, and words in the singular include the plural number. The word
10 "shall" 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
14 subscriber interaction, if any, which is required for the selection or use of such video
15 programming or other programming service.

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

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

1 change from time to time.

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

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

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

10 G. "Communication services" means any service provided for the purpose
11 of transmission of information including, but not limited to, voice, video, or data,
12 without regard to the transmission protocol employed, and whether or not the
13 transmission medium is owned by the provider itself. Communications services
14 includes all forms of telephone services and voice, video, data, or information
15 transport, but does not include: (a) cable service; (b) open video system service, as
16 defined in 47 CFR Section 76; (c) over-the-air radio or television broadcasting to the
17 public-at-large from facilities licensed by the Federal Communications Commission
18 or any successor thereto; (d) communications provided over a private communications
19 system or a public communications system; and (e) direct-to-home satellite service
20 within the meaning of Section 602 of the Telecommunications Act.

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2 H. “Construction” means any activity in the public right-of-way resulting in
3 physical change thereto, including excavation or placement of structures.

4 I. “Days” mean calendar days, unless otherwise noted.

5 J. “Emergency” means a circumstance, as determined by the City, in its
6 sole discretion, in which immediate work to facilities is necessary to restore lost service
7 or prevent immediate harm to persons or property.

8 K. “Federal Communications Commission” or “FCC” means the federal
9 administrative agency, or its lawful successor, authorized to regulate and oversee
10 telecommunication carriers, services, and provider, on a national level.

11 L. “Gross Revenue” means any and all amounts, of any kind, nature, or
12 form, without deduction for expense, less net write-off of uncollectable accounts
13 within the City, earned or derived from the operation of utility facilities (including
14 revenue derived from any use, rental and/or lease of the facilities to other person(s)),
15 and/or the provision of utility service(s) in the City, subject to all applicable limitations
16 in federal and state law.

17 M. “License” or “ROW License” means the authorization granted by the
18 City to a person(s) pursuant to this Ordinance.

19 N. “Licensee” means any person that is subject to the ROW License
20 requirement of this Ordinance or has a valid ROW License issued by the City.

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

6 P. "Private communications system" means a communications system
7 owned by a utility operator for the operator's exclusive use for internal
8 communications and not for sale or resale, including trade, barter, or other exchange
9 of value, directly or indirectly, to any person.

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

17 R. "Registrant" means those persons that have a valid, active registration
18 pursuant to Section 8 of this Ordinance.

19 S. "Public rights-of-way", or "Right-of-Way", or "ROW" means and
20 includes, but is not limited to, the space in, upon, above, along, across, over, or under

1 the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges,
2 trails, paths, sidewalks, bicycle lanes, public utility easements, and all other public
3 ways or areas, including the subsurface under and air space over these areas, but does
4 not include parks, parkland, open space tracts, water quality tracts, or other City-owned
5 property. This definition applies only to the extent of the City's right, title, interest,
6 and authority to grant a license or other authorization to occupy and use such areas for
7 utility facilities or provision of utility services.

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

15 U. "Small wireless facility" means antenna facilities that are used for the
16 provision of personal wireless service that meets each of the following conditions:

- 17 a. The facilities (i) are mounted on structures fifty (50) feet or less
18 in height including the antennas, or (ii) are mounted on structures no more than
19 ten percent (10%) taller than other adjacent structures, or (iii) do not extend
20 existing structures on which they are located to a height of more than fifty (50)

1 feet or by more than ten percent, (10%) whichever is greater;

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

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

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

10 “Small wireless facility” does not include fiber, coaxial cable or similar equipment
11 located within the right-of-way, other than wireless equipment associated with the
12 structure that meets the criteria set forth in subsection U(c),

13 V. “State” means the state of Oregon.

14 W. “Structure” means any facility that is placed in the ROW, including but
15 not limited to poles, vaults or manholes, hand holds, junction boxes, conduit, direct
16 bury cable, wires, pedestals, aerial cables or wires, and transformers.

17 X. “Telecommunications Act” means the Communications Policy Act of
18 1934, as amended by subsequent enactments including the Telecommunications Act
19 of 1996 (47 U.S.C., 151 et seq.) and as hereafter amended.

20 Y. “Utility facility” or “facility” means any physical component of a

Commented [TS2]: We have some concerns regarding the ability to collocate antennas above our supply space. Our current practice would allow for wireless facilities above the supply space. This ordinance would forbid that operation and force providers to use the communications space on the poles.

1 system, including but not limited to the poles, pipes, mainlines, conduits, ducts, cables,
2 wires, transmitters, plants, equipment, and other facilities, including strand-mounted
3 equipment, located within, on, along, under, or above the public rights-of-way, any
4 portion or component of which is used or designed to be used to deliver, transmit, or
5 otherwise provide utility service.

6 Z. “Utility service” means the provision, by means of utility facilities
7 located in the public rights-of-way, whether or not such facilities are owned by the
8 utility service provider, of cable services, communication services, electric energy,
9 natural gas, or wireless communications, to or from customers within the corporate
10 boundaries of the City, or the transmission of any of these services through the City
11 whether or not customers within the City are served by those transmissions.

12 AA. “Utility service operator” or “Operator” means any person who owns,
13 places, operates, or maintains a utility facility within the City, whether or not the person
14 provides utility service to customers within the City.

15 BB. “Utility service provider” or “Provider” means any person who provides
16 utility service to customers within the City limits, whether or not any facilities in the
17 ROW are owned by such provider.

18 CC. “Wireless communication services” means any wireless service using
19 Federal Communications Commission-licensed or unlicensed spectrum including
20 without limitation any personal wireless services, as defined in 47 U.S.C. §

1 332(c)(7)(C).

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

6 Section 6. OTHER CITY LAWS. Every utility services operator and every
7 person that provides utility services within the City, whether such person owns
8 facilities or not, shall comply with all applicable City codes, rules, or requirements of
9 the City of Keizer.

10 Section 7. ADMINISTRATION.

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

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

17 Section 8. REGISTRATION.

18 A. Registration Required. Every person who desires to provide utility
19 services to customers within the City shall register with the City prior to providing any
20 utility services to any customer in the City. Every person providing utility services to

customers within the City as of the effective date of this Ordinance shall register within forty-five (45) calendar days of the effective date of this Ordinance. Persons with a valid ROW license or franchise in good standing are not required to register.

B. Registration Term. The registration granted pursuant to this Ordinance shall be effective the earlier of the date it is issued by the City or the date services were first provided within the City, and shall have a term of five (5) calendar years beginning: (1) January 1st of the year in which the registration took effect for registrations that took effect between January 1st and June 30th; or (2) January 1st of the year after the registration took effect for registrations that become effective between July 1st and December 31st.

C. Registration Application. The registration shall be on a form provided by the City and shall be accompanied by any additional documents required by the City, in the City's sole discretion and at no cost to the City, to identify the registrant and its legal status, describe the type of utility services provided or to be provided by the registrant and list the facilities over which the utility services shall be provided. Failure to receive or secure a form shall not relieve any person from the obligation to register and pay the associated fees or comply with this Ordinance.

D. Registration Application and Renewal Fee. Each application for new and renewal registration shall be accompanied by a nonrefundable fee in an amount to be determined by Resolution of the City Council.

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2 E. Changes to Information Contained on the Registration Application.

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

5 F. Renewal. At least thirty (30), but no more than one hundred twenty
6 (120), calendar days before the expiration of a registration granted under this Section,
7 a provider seeking renewal of its registration shall submit a renewal registration
8 application to the City, including all information and fees required in this Ordinance.
9 If the City determines that the applicant is in violation of the terms of this Ordinance
10 or any other City codes, rules, or regulations at the time it submits its application, the
11 City may require, by a written notice, that the applicant cure the violation before the
12 City will consider the application or grant the registration.

13 Section 9. ROW LICENSES.

14 A. Who Must Apply. Every utility services operator must at all times
15 have a valid ROW License from the City unless the utility services operator has a valid
16 franchise agreement from the City that is in effect and in good standing.

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

8 C. ROW License Application. The ROW license application shall be on a
9 form provided by the City, and shall be accompanied by any additional documents
10 required by the City, in the City's sole discretion and at no cost to the City, that allows
11 the City to easily identify the applicant, its legal status, including its authorization to
12 do business in the state of Oregon, a description of the applicant's utility facilities, the
13 specific service(s) to be provided, if any, and other information that the City
14 determines, in its sole discretion at no cost to the City, is necessary to determine the
15 applicant's ability to comply with the terms of this Ordinance.

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

19 E. Determination by City. The City shall issue, within a reasonable time
20 after having received a duly filed application, a written determination granting or

1 denying the license in whole or in part. If the license is denied, the written
2 determination shall include the reasons for denial. The application shall be evaluated
3 based upon the provisions of this Ordinance, the continuing capacity of the public
4 rights-of-way to accommodate the applicant's proposed utility facilities, and the
5 applicable federal, state and local laws, rules, regulations, and policies.

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

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

9 G. Authorization Granted.

10 a. A ROW license granted under this Ordinance authorizes the
11 licensee to construct, place, maintain, and operate utility facilities in the public
12 rights-of-way, subject to the provisions of City code, rules, regulations, polices,
13 and other applicable provisions of state and federal law.

14 b. Each ROW license granted under this Ordinance authorizes only
15 those utility facilities applied for by the applicant and approved by the City. The
16 City may approve in one license utility facilities designed to provide more than
17 one type of utility service.

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

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

18 e. The issuance of a ROW license does not constitute a waiver or
19 bar to the City's exercise of any governmental right or power, including without
20 limitation the City's police powers and regulatory powers, regardless of whether

1 such powers existed before or after the license is issued.

2 H. Term of ROW License. Subject to the termination provisions in
3 Subsection N of this Section 9, the ROW license 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
6 beginning: (1) January 1st of the year in which the license took effect for licenses that
7 took effect between January 1st and June 30th; or (2) January 1st of the year after the
8 license took effect for licenses that become effective between July 1st and December
9 31st.

10 I. ROW License Nonexclusive. No ROW license granted pursuant to this
11 Section shall confer any exclusive right, privilege, license, or franchise to occupy or
12 use the public rights-of-way for delivery of utility services or any other purpose. The
13 City expressly reserves the right to grant licenses, franchises, or other authorizations
14 to other persons, as well as the City's right to use the public rights-of-way, for similar
15 or different purposes.

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

1 improvement of any kind, including repairs, replacement, or removal of any City
2 facilities.

3 K. Multiple Services.

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

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

13 L. Transfer or Assignment. A licensee shall obtain the written consent of
14 the City prior to the transfer, sublicense, or assignment of a license unless the licensee
15 demonstrates to the City that state or federal law specifically prohibits the City from
16 requiring its prior written consent. A transfer, sublicense, or assignment shall only be
17 authorized by the City if the proposed transferee or assignee is authorized under all
18 applicable federal, state, and local laws to own or operate the utility system and the
19 transfer or assignment is approved by all agencies or organizations required or
20 authorized under federal, state, and local to approve such transfer, sublicense, or

1 assignment.

2
3 a. Without limiting any other rights the City may have to condition
4 its consent, the City may condition its consent to any such transfer, sublicense,
5 or assignment on the transferee, sublicensee, or assignee's written agreement to
6 assume all obligations under the license, this Ordinance and other City codes
7 and regulations.

8 b. If a ROW license is transferred, sublicensed, or assigned, whether
9 pursuant to the City's approval or in the event approval is not required by this
10 Section, the transferee, sublicensee, or assignee shall become responsible for
11 fulfilling all the obligations under the license with respect to obligations of the
12 licensee at the time of transfer, sublicensee, or assignment. A transfer,
13 sublicense, or assignment of a license does not extend the term of the license.
14 No transfer, sublicense, or assignment may occur until the successor transferee
15 or assignee has provided proof of insurance, additional insured endorsement,
16 and a bond pursuant to Section 18. In the event approval is not required by this
17 Section, the licensee shall provide the City at least thirty (30) days prior written
18 notice of the transfer, sublicense, or assignment.

19 M. Renewal. At least thirty (30), but no more than one hundred twenty
20 (120), calendar days before the expiration of a license granted under this Section, a

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

N. Termination.

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

1 as required by this Ordinance or other applicable state and local
2 laws, ordinances, rules, and regulations;

3
4 6. Failure to comply with technical, safety, and engineering
5 standards related to work in the public rights-of-way;

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

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

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

- 15 1. Whether the violation was intentional;
16 2. The egregiousness of the violation;
17 3. The harm that resulted;
18 4. The licensee's history of compliance; and
19 5. The licensee's cooperation in discovering, admitting, and
20 curing the violation.

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

4 O. Notice and Cure. The City shall give the licensee written notice of any
5 apparent violations before revoking or terminating a license. The notice shall include
6 a statement of the nature and general facts of the violation or noncompliance and
7 provide a reasonable time period not to exceed thirty (30) days for the licensee to
8 demonstrate that the licensee has remained in compliance, that the licensee has cured
9 or is in the process of curing any violation or noncompliance, or that it would be in the
10 public interest to impose a penalty or sanction less than termination or revocation. If
11 the licensee is in the process of curing a violation or noncompliance, the licensee must
12 demonstrate that it acted promptly and continues to actively work toward compliance.
13 If the licensee does not respond within the reasonable time stated in the notice, or if
14 the City determines in its sole discretion that the licensee is not, or is no longer, actively
15 working toward compliance, the City shall determine whether the license shall be
16 terminated or revoked.

17 P. Termination by Licensee. If a licensee ceases to be required to have a
18 license, as defined under this Ordinance, the licensee may terminate or surrender its
19 license with a thirty (30) day notice to the City. Licensee may reapply for a license at
20 any time. No refunds or credits shall be given for licenses terminated by the licensee

1 or the City.

2 a. Within thirty (30) days of surrendering a license, the licensee shall
3 file a final remittance form with the City stating, “final remittance” and shall
4 remit any funds due.

5 b. Upon surrendering a license, unless otherwise agreed to by the
6 City, the licensee shall file a written statement that it has removed, or shall
7 remove within sixty (60) days, any and all facilities from the City, according to
8 Section 10, and no longer is subject to the provisions of this Ordinance.

9 **Q. Franchise Agreements.**

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

20 b. If approved by the City, the licensee requesting a franchise

1 agreement shall deposit a non-refundable fee, as set by Resolution of City
2 Council, before negotiations occur.

Commented [TS3]: Salem Electric sees the value of a city right of way ordinance. However, given the required nature of the service that we provide Salem Electric is requesting that our services be addressed in a separate franchise agreement as allowed for in the draft ordinance.

3
4
5 Section 10. CONSTRUCTION AND RESTORATION.

6 A. Public Works Director Policies, Standards, Specifications, and Other
7 Guidelines. The City Council authorizes the Public Works Director to develop, amend,
8 and publish or otherwise make publicly available any policies, standards,
9 specifications, and other guidelines for the location, design, management and operation
10 of facilities in public rights-of-way subject to this Ordinance. All such policies,
11 standards, specifications, and other guidelines (a) must be consistent, and not in
12 conflict with, the applicable provisions of state, federal, and local law, which includes
13 this Ordinance; and

14 (b) shall be effective upon their publication; provided, however, that any permit
15 applications submitted prior to publication shall be subject to the policies, standards,
16 specifications, and other guidelines in effect when the submittal occurred.

17 B. Construction Permits. No person shall perform any work in the public
18 right-of-way, or on utility facilities within the public rights-of-way, without first
19 obtaining a permit from the City. The City shall not issue a permit for the construction,
20 installation, maintenance, or repair of utility facilities unless the licensee has the proper

1 authorizations required by and is in compliance with this Ordinance and all other City
2 codes and regulations, and all applicable fees have been paid.

3 C. Applications for Permits. Applications for permits to construct utility
4 facilities shall be submitted upon forms to be provided by the City and shall comply
5 with all City codes and regulations, including all public works regulations and
6 standards at the time the work commences. All permit applications shall be
7 accompanied by drawings, plans, and specifications in sufficient detail to demonstrate:

8 a. That the facilities shall be constructed in accordance with all
9 applicable laws, codes, rules, and regulations;

10 b. The location and route of all utility facilities to be installed above
11 ground or on existing utility poles;

12 c. The location and route of all utility facilities on or in the public
13 rights-of-way to be located under the surface of the ground, including the line
14 and grade proposed for the burial at all points along the route that are within the
15 public rights-of-way. Applicant's existing utility facilities shall be
16 differentiated on the plans from new construction. A cross section shall be
17 provided showing new or existing utility facilities in relation to the street, curb,
18 sidewalk, or other public rights-of-way; and

19 d. The construction methods to be employed for protection of
20 existing structures, fixtures, and facilities within or adjacent to the public rights-

1 of-way, and description of any structures, fixtures, or facilities that applicant
2 proposes to temporarily or permanently remove or relocate.

3 D. All permit applications shall be accompanied by the verification of a
4 qualified and duly authorized representative of the applicant that the drawings, plans,
5 and specifications submitted with the application comply with applicable technical
6 codes, rules, and regulations. Permit applications shall be accompanied by a written
7 construction schedule, which shall include an estimated start date and a deadline for
8 completion of construction. The construction schedule is subject to approval by the
9 City. Subject to any restrictions in state or federal law, the City may from time to time
10 publish or otherwise make publicly available any additional or different application
11 requirements as the City finds necessary or appropriate for processing applications,
12 which shall be effective immediately upon publication.

13 E. Prior to issuance of a permit, the applicant shall pay a permit fee in the
14 amount determined by Resolution of the City Council.

15 F. If satisfied that the application, plans, and documents submitted comply
16 with all requirements of the City, the City shall issue a permit authorizing construction
17 of the utility facilities, subject to such further conditions, restrictions, or regulations
18 affecting the time, place, and manner of performing the work as the City may deem
19 necessary or appropriate, to the extent not prohibited by applicable state and federal
20 law.

1 G. Except in the case of an emergency that poses an imminent threat to
2 public health or safety and/or injury to persons or property, the permittee shall notify
3 the City not less than seventy-two (72) hours in advance (excluding weekends) of any
4 work in the public rights-of-way.

5 H. All construction practices and activities shall be in accordance with the
6 permit, approved final plans, and specifications for the facilities. The City and its
7 representatives shall be provided access to the work site and such further information
8 as it may require, in the City's sole discretions and at no cost to the City, to ensure
9 compliance with such plans, specifications, and other City codes and regulations.

10 I. All work that does not comply with the permit, the approved or corrected
11 plans and specifications for the work, or the requirements of this Ordinance (including
12 any policies, standards, specifications, or other guidelines adopted by the City), shall
13 be removed within thirty (30) days, or corrected at the sole expense of the permittee.
14 The City is authorized to issue stop work orders in order to ensure compliance.

15 J. The permittee shall promptly complete all construction activities in
16 compliance with the permit and all applicable laws and, in a manner designed to avoid
17 unnecessary disruption, and shall minimize unavoidable disruption of the City public
18 rights-of-way and other public and private property. All construction work within the
19 public rights-of-way, including without limitation any restoration work, must be
20 completed within one hundred twenty (120) days of the date the construction permit is

1 issued unless the City has given written approval of an extension or an alternate
2 schedule.

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

13 L. Restoration. A licensee shall be responsible for all injury to persons or
14 damage to public or private property resulting from its failure to properly protect
15 people or property and to carry out the work regardless of whether the work is
16 performed by a licensee or by other person(s) performing the work on behalf of the
17 licensee.

18 a. When a licensee, or any person acting on its behalf, does any work
19 in or affecting any public rights-of-way, it shall, at its own expense, promptly
20 restore such rights-of-way or property to the current City standards, in

1 accordance with applicable federal, state, and local laws, codes, ordinances,
2 rules, and regulations, unless otherwise directed by the City.

3 b. If weather or other conditions beyond the licensee's control do
4 not permit the complete restoration required by the City, the licensee shall
5 temporarily restore the affected public rights-of-way or property. Such
6 temporary restoration shall be at the licensee's sole expense and the licensee
7 shall promptly undertake and complete the required permanent restoration when
8 the weather or

9
10 other conditions no longer prevent such permanent restoration. Any
11 corresponding modification to the construction schedule shall be subject to
12 approval by the City.

13 c. If the licensee fails to restore public rights-of-way or property as
14 required in this Ordinance, the City shall give the licensee written notice and
15 provide a period of not less than ten (10) days and not exceeding thirty (30)
16 days to restore the public rights-of-way or property. If, after said notice, the
17 licensee fails to restore the public rights-of-way or property as required in this
18 Ordinance, the City may cause such restoration to be made at the sole expense
19 of the licensee. In cases where the City believes that an emergency or threat to
20 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.

M. 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's facilities and the restoration of the public rights-of-way comply with the terms of the permit, this Ordinance, and applicable state and City laws, codes, ordinances, rules, and regulations, in effect at the time of the work.

N. 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, licensees shall meet with the City annually, or as determined by the City, to schedule and coordinate construction in the

Commented [TS4]: Many of the jobs that we have are maintenance or member driven and will come about throughout the year and handled at that time. To what extent does the city want us to provide annual plans?

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 damage to persons and property.

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Section 11. LOCATION OF FACILITIES.

A. Location of Facilities. Unless otherwise agreed to in writing by the City, whenever any existing electric utilities, cable facilities, or wireline communication 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 all new facilities underground at its own expense. The requirements in this Section do not apply to antennas, pedestals, cabinets, small wireless facilities, or similar 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. The City reserves the right to require written approval of the location of any such above-ground equipment of any licensee.

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. a. Whenever all new or existing electric utilities, cable facilities or wireline 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 in its sole discretion and consistent with applicable state and federal law.¶

. b.

1 **B. Interference with the Public Rights-of-Way.** No licensee or other person

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2 may locate or maintain facilities so as to interfere with the use of the public rights-of-
3 way by the City, by the general public, or by other persons duly authorized to use or
4 be present in or on the public rights-of-way. Facilities shall not be located in areas of
5 restricted sight distance or interfere with the proper function of traffic control signs,
6 signals, lighting, or other devices that affect traffic operation. All use of the public
7 rights-of-way shall be consistent with City codes, ordinances, rules, and regulations,
8 in effect and as may be subsequently amended.

9
10 **C. Relocation of Utility Facilities.**

11 a. When requested to do so in writing by the City, a licensee shall,
12 at no cost to the City, temporarily or permanently remove, relocate, change, or
13 alter the position of any utility facility within a public right-of-way, including
14 relocation of aerial facilities underground, except as such facilities are not
15 required to be located underground pursuant to subsection 11(A) of this Section.

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16 b. Nothing herein shall be deemed to preclude the licensee from
17 requesting reimbursement or compensation from a third party, pursuant to
18 applicable laws, regulations, tariffs, or agreements. However, the licensee shall
19 timely comply with the requirements of this Section regardless of whether it has
20 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 requested by the City by the date established by the City,
6 the licensee shall pay all costs incurred by the City due to such failure, including
7 but not limited to costs related to project delays, and the City may cause, using
8 qualified personnel or contractors consistent with applicable law and
9 regulations, the facilities to be remove, relocated, altered, or undergrounded, at
10 the licensee's sole expense. Upon receipt of an invoice from the City, the
11 licensee shall reimburse the City for all costs incurred within thirty (30) days.

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

16 D. Removal of Unauthorized Facilities.

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

1 its own expense, remove the facility and restore the public right-of-way to City
2 standards in effect at the time the work is performed.

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

5 1. The utility facility is outside the scope of authority granted by
6 the City. This includes facilities that were never authorized and
7 facilities that were once authorized but for which the
8 authorization has expired or been terminated. This does not
9 include any facility.

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11 for which the City has provided written authorization for
12 abandonment in place.

13 2. The facility has been abandoned and the City has not provided
14 written authorization for abandonment in place. A facility is
15 abandoned if it is not in use and is not planned for further use. A
16 facility shall be presumed abandoned if it is not used for a period
17 of one (1) year. A licensee may attempt to overcome this
18 presumption by presenting plans for future use of the facility to
19 the City, which will determine application of the presumption in
20 its sole discretion.

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

4 4. The licensee is in violation of a material provision of this
5 Ordinance and fails to cure such violation within thirty (30) days
6 of the City sending written notice of such violation, unless the
7 City, in its sole discretion, extends such time period in writing.

8 E. Removal by City.

9 a. The City retains the right and privilege to cut or move any facility
10 located within the public rights-of-way of the City, without notice, as the City
11 may determine, in its sole discretion, to be necessary, appropriate, or useful in
12 response to a public health or safety emergency. If after contact from the city,
13 the licensee does not satisfactorily respond to the request for removal in a timely
14 manner, the City shall use qualified personnel or contractors consistent with
15 applicable state and federal safety laws and regulations to the extent reasonably
16 practicable without impeding the City's response to the emergency.

17 b. If the licensee fails to remove any facility when required to do so
18 under this Ordinance, the City may remove the facility using qualified personnel
19 or contractors consistent with applicable state and federal safety laws and
20 regulations, and the licensee shall be responsible for paying any and all costs

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Commented [TS5]: Salem Electric requests that the city attempt to contact our office prior to any removal due to the safety sensitive nature of our equipment and the work practices required to make sure that the equipment is safe for removal. The time and effort required to arrange a qualified contractor for our equipment would be better spent in conversations with us.

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1 incurred by the City, including any administrative or collection costs. Upon
2 receipt of an invoice from the City, the licensee shall reimburse the City for all
3 the costs within thirty (30) days. The obligation to remove shall survive the
4 termination of any authorizations granted by the City.

5 c. The City is not liable to any person(s) for any damage to utility
6 facilities, or for any consequential losses resulting directly or indirectly from
7 any damage caused by the City's actions, or its contractor, in removing,
8 relocating, altering, or undergrounding the facilities, unless such damage arises
9 directly from the City's sole active negligence or willful misconduct.

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

15 G. Maps. Licensee shall provide, at no cost to the City, a comprehensive
16 map showing the location of all facilities in the rights-of-way. Such map shall be
17 provided at no cost to the City and in a format acceptable to the City, with
18 accompanying data sufficient to enable for the City to determine the exact location of
19 facilities. The licensee shall provide such map yearly by February 1, if any changes
20 occurred during the prior year, and at any time upon request by the City. The City may

only request such map once per calendar year. The City will treat all submitted maps as confidential and will not release or publish the information.

Section 12. 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, within 60 (sixty) days of the effective date of the lease or other agreement to provide capacity; (2) the use of the licensee facilities does not require or involve any additional equipment owned or operated by the lessee to be installed on the facility unless the lessee has obtained a ROW license or franchise from the City; and (3) the licensee maintains control over and responsibility for the facility at all times.

Section 13. 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 or maintain facilities as requested by the City and by the date established by the City, the City may perform such repair or maintenance using

Commented [TS6]: Given the sensitive nature of site specific information and recent attacks on critical electrical infrastructure we view our information as confidential and only for the specified use of the City of Keizer crews while completing their work and not for public consumption or availability.

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1 qualified personnel or contractors at the licensee's sole expense. Upon receipt of an
2 invoice from the City, the licensee shall reimburse the City for any and all costs within
3 thirty (30) days.

4 Section 14. VACATION OF PUBLIC RIGHTS-OF-WAY.

5 A. If the City vacates any public rights-of-way, or portion thereof, that a
6 licensee uses, the licensee shall, within thirty (30) days following written notice from
7 the City or such other time directed or agreed to in writing by the City, and at licensee's
8 own expense, remove its facilities from the public rights-of-way unless: (a) the City
9 reserves a public utility easement, which the City shall make a reasonable effort to do;
10 provided, that it is practicable to do so and there is no expense to the City; or (b) the
11 licensee obtains an easement for its facilities.

12
13 B. If the licensee fails to remove its facilities within thirty (30) days after a
14 public right-of-way is vacated, or as otherwise directed or agreed to in writing by the
15 City, the City may remove the facilities using qualified workers in accordance with
16 state and federal laws and regulations at the licensee's sole expense. Upon receipt of
17 an invoice from the City, the licensee shall reimburse the City for any and all costs
18 within thirty (30) days.

19 Section 15. RIGHTS-OF-WAY USE AND ACCESS FEES.

20 A. Every person that owns utility facilities in the City shall pay the rights-

of-way use fee in the amount determined by Resolution of the City Council.

B. Every person that provides utility service in the City shall pay the rights-of-way access fee in the amount determined by Resolution of the City Council for every utility service provided in the City.

C. A person subject to the both the rights-of-way use fee in subsection A and the rights-of-way access fee in subsection B of this Section shall deduct from the total amount due the lower of the fees due under subsection A and subsection B or, in the event the fees due under subsection A and subsection B are the same, deduct from the total amount due the full amount of one of the fees.

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

E. 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.

F. Unless otherwise agreed to in writing by the City, the fees set forth under 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

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

8 G. The calculation of the fees required by this Section shall be subject to all
9 applicable limitations imposed by federal or state law in effect and as may be
10 subsequently amended.

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

16 Section 16. PENALTIES AND INTEREST ON FEES. Penalties and interest
17 imposed by this Section are in addition to any penalties that may be assessed under
18 other ordinances or regulations of the City.

19 A. Any person who has not submitted the required remittance forms or
20 remitted the correct fees when due as provided under this Ordinance shall pay a penalty

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1 listed below in addition to the amount due:

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

4 b. Second occurrence during any one calendar year; fifteen percent
5 (15%) of the amount owed, or fifty dollars (\$50.00), whichever is greater.

6 c. Third occurrence during any one calendar year; twenty percent
7 (20%) of the amount owed, or seventy-five dollars (\$75.00), whichever is
8 greater.

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

12 B. If the City determines that the nonpayment of any fees due as required
13 by this Ordinance is due to fraud or intent to evade the provisions hereof, an additional
14 penalty of twenty-five percent (25%) of the amount owed, or five hundred dollars
15 (\$500.00), whichever is greater, shall be added thereto in addition to other penalties
16 stated in the Ordinance or as allowed by law.

17 C. In addition to the penalties imposed, any person who fails to remit any
18 fees when due shall pay interest at the rate of one and one-half percent (1.5%) per
19 month or fractions thereof, without proration for portions of a month, on the total
20 amount due (including penalties), from the date on which the remittance first became

1 delinquent, until received by the City. The City reserves the right to impose interest at
2 the maximum amount allowed by law.

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

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

7 Section 17. AUDITS (FORMAL OR INFORMAL) AND RECORDS
8 REQUESTS.

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

14
15 B. Every person shall furnish the City with information sufficient to
16 demonstrate that the person is in compliance with all the requirements of this
17 Ordinance, all other City regulations, and its franchise agreement, if any, including but
18 not limited to payment of any applicable fees.

19 C. Every licensee shall make available for inspection by the City at
20 reasonable times and intervals, upon request by the City, any maps, records, books,

1 diagrams, plans, and other documents maintained by the licensee with respect to its
2 facilities within the public rights-of-way. Access shall be provided within the City
3 unless prior arrangement for access elsewhere has been made with the City.

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

10 E. Any underpayment, including any and all costs incurred by the City in
11 conducting the audit or review, shall be paid within thirty (30) days of the City's notice
12 to the person of such underpayment.

13
14
15 Section 18. INSURANCE AND INDEMNIFICATION.

16 A. Insurance.

17 a. All Utility Service Operators shall maintain in full force and
18 effect the following liability insurance policies that protect the licensee and the
19 City, as well as the City's officers, agents, and employees, with limits not less
20 than the amounts set by the City Manager:

1 1. Comprehensive general liability insurance.

2 2. Motor vehicle liability insurance for owned, non-owned
3 and hired vehicles.

4 3. Worker's compensation insurance.

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

14
15 c. The licensee shall at all times maintain on file with the City a
16 current certificate of insurance and additional insured endorsement, or proof of
17 self-insurance acceptable to the City, certifying the coverage required above.

18 d. Self-Insurance. At the request of a licensee, the City shall
19 determine, in its sole discretion, whether a licensee may self-insure. A licensee
20 whose request has been granted shall provide the City proof of insurance

1 through a letter of self-insurance or insurance certificate, listing the City as an
2 additional insured.

3 e. Performance Bond

4 1. In addition to any other generally applicable bond or
5 security fund obligations required by local ordinance, upon the
6 Effective Date of this Ordinance, or the issuance of a new license
7 or renewal of a license, the licensee shall furnish proof of the
8 posting of a faithful performance bond running to the City
9 collectively with good and sufficient surety approved by the City,
10 in the penal sum of One Hundred Fifty Thousand Dollars
11 (\$150,000.00), conditioned that Grantee shall well and truly
12 observe, fulfill, and perform all provisions of this Ordinance.
13 Such bond shall be issued by a bonding company licensed to do
14 business in the state of Oregon and shall be maintained by the
15 license for the time period it owns facilities within the City's
16 rights-of-way.

17 2. The bond shall contain a provision that it shall not be
18 terminated or otherwise allowed to expire without thirty (30) days
19 prior written notice first being given to the City. The bond shall
20 be subject to the approval of the City as to its adequacy under the

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

7 **B. Indemnification.**

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

1 franchise agreement. The acceptance of a license under this Ordinance shall
2 constitute such an agreement by the applicant whether the same is expressed or
3 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 in a timely
8 manner as required by this Ordinance, except to the extent the licensee's failure
9 arises directly from the City's negligence or willful misconduct.

10 Section 19. COMPLIANCE. Every person subject to this Ordinance shall
11 comply with all applicable federal and state laws and regulations, including regulations
12 of any administrative agency thereof, as well as all applicable ordinances, resolutions,
13 rules, and regulations of the City, heretofore or hereafter adopted or established during
14 the term of any license or registration granted under this Ordinance.

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

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///
///

Commented [TS7]: 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

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

8 Section 21. CITY PERMISSION REQUIRED. No person may occupy or
9 encroach on a public right-of-way without the express written permission of the City.

10 Section 22. VIOLATIONS AND PENALTIES.

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

17 B. Before issuing the first citation for a violation, the City shall mail written
18 notice of the violation(s) via United States Postal Service (USPS) to the address as
19 listed on the person's application, providing a reasonable time (no less than twenty
20 (20) and no more than forty (40) days from the date of the notice) for the person to

1 remedy the violation to the City's satisfaction. The notice may also be delivered by
2 other means in addition to USPS.

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

8 Section 23. 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
14 be invalid or unenforceable by any court of competent jurisdiction or superseded by
15 state or federal legislation, rules, regulations, or decision, the remainder of this
16 Ordinance shall not be affected thereby but shall be deemed as a separate, distinct, and
17 independent provision, and such holding shall not affect the validity of the remaining
18 portions hereof, and each remaining section, subsection, sentence, clause, phrase, term,
19 provision, condition, covenant, or portion of this Ordinance shall be valid and
20 enforceable to the fullest extent permitted by law. In the event any provision is

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¶

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

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

11 Section 25. EFFECTIVE DATE. This Ordinance shall take effect on July 1,
12 2023.

13 PASSED this _____ day of _____, 2023.

14
15 SIGNED this _____ day of _____, 2023.

16
17
18 _____
19 Mayor

20
21 _____
22 City Recorder



April 14, 2023

VIA ELECTRONIC FILING: Mayor Clark (ClarkC@keizer.org), Adam Brown (BrownA@keizer.org), Shannon Johnson (JohnsonS@keizer.org), Tammie Harms (HarmsT@keizer.org), Tracy Davis (DavisT@keizer.org)

The Honorable Mayor Cathy Clark
Keizer City Councilors
Adam Brown, City Manager
Shannon Johnson, City Attorney
City of Keizer
930 Chemawa Rd NE
Keizer, OR 97307

RE: Salem Electric and Portland General Electric's comments regarding Keizer's proposed Utility Right-of-Way (ROW) Ordinance and request for a Franchise Agreement

Dear Mayor Clark and City Councilors,

We, Salem Electric and Portland General Electric (PGE), are writing to provide comments regarding the proposed Utility ROW ordinance and our request for a franchise agreement. We appreciate the opportunity to provide comments regarding the above referenced Utility ROW ordinance and sharing the benefits to your residents and businesses, our customers, of a franchise agreement.

Salem Electric, PGE, and Keizer have much in common. All of your residents and businesses are our customers and members. Our organizations have an obligation to provide essential services at a reasonable cost. We use the public right-of-way to deliver services. In Salem Electric's and PGE's case, it is with your permission. Over many years, Salem Electric and PGE have had a positive working relationship on topics ranging from mutual efforts during significant weather events to customer/member projects.

We are thankful for the collaborative approach. While we appreciate city staff making a few changes including the key provision regarding undergrounding within the proposed ROW ordinance, we remain concerned with several provisions within the ordinance. Salem Electric and PGE have not been presented with the problems this ordinance is attempting to address. If you are concerned about telecommunications utilities or any other type of utility, they can be addressed in a separate ordinance – that's what the City of Hillsboro has done and the League of Oregon Cities provides with its model telecommunication ordinance. The cities of Tualatin and Newberg also have similar ROW ordinances. But chose to enter into franchise agreements with the electric utility providers because they recognized the value and benefits for their communities.

We believe that a franchise agreement serves your residents and businesses, our customers and members, better than a blanket utility right-of-way ordinance alone. A franchise agreement is allowed per Section Q of the proposed ROW ordinance. A franchise agreement is a mutually agreed upon document that outlines how we will work and plan together. This provides

consistency and certainty for our customers and members - your constituents. It sets the tone for a relationship based on partnership, fairness, and serving our mutual needs.

Why is a franchise agreement in the public and City's interest?

- A franchise agreement recognizes the differences between an electric utility and other kinds of utilities that don't have a legal obligation to serve customers. Salem Electric and PGE, as electric providers, have designated territory and do not compete as telecommunication companies. PGE and Salem Electric have served the community over 100 and 80 years, respectively and will continue for years to come.
- An electric utility provides a necessary and critical service that, among many other things, keeps homes warm and keeps them lighted at night, operates lifesaving medical equipment and powers critical facilities. Every new layer of regulation or liability adds to every resident's cost of living. Every potential delay in service affects our ability to provide safe and reliable electric power. You cannot say that about internet service or telephone.
- A franchise agreement addresses specific state and federal regulations unique to working with and around electricity. While the concept of "utility neutral" would seem like an admirable goal, an electric utility is a very different type of operation than other utilities, particularly telecommunication providers, making it difficult to craft a one-size-fits-all approach. This is one reason why the state and federal governments regulate each type of utility differently. We appreciate the City's concern regarding its legal requirement to treat telecommunications utilities similarly; however, Salem Electric and PGE are not subject to the Federal Telecommunications Act as a telecommunications utility, but rather regulated through the Oregon Public Utility Commission and their locally elected board of directors as electric utilities.
- A franchise agreement governs how our on-the-ground linemen and field personnel operate on a daily basis in the public right-of-way by providing clear and consistent rules. This has saved time, costs, and supported customer and community projects. We understand that good right-of-way management practices are important for keeping roads and facilities in good working order. Our franchise agreements have been a good system for regulating what Salem Electric and PGE do in the City's rights of way. We don't see the need for this ordinance's approach in dealing with your community's electric utilities. If you see issues with other utilities, they can be addressed separately without adding undue costs or burdens to electric consumers.

We hope you will agree that the franchise agreement is the best way to address the City's needs, as well as Salem Electric and PGE customer/member needs to address items that differentiate an electric utility.

We are grateful for the long history of working together with the Keizer community. Thank you for allowing our additional comments. Salem Electric and PGE welcome the opportunity to renegotiate a franchise agreement utilizing the current agreements, which has served the community well for 10 years.

Kind Regards,

Wendy Veliz
Local Government Affairs Manager
Portland General Electric

Anthony C. Schacher
General Manager
Salem Electric

CC: Tony Eaquinto, PGE, JB Phillips, Adam Deshon, Salem Electric

From: Wendy Veliz <Wendy.Veliz@pgn.com>
Sent: Monday, April 17, 2023 2:29 PM
To: Tony Schacher <schacher@salemelectric.com>; Cathy Clark <ClarkC@keizer.org>; Brown, Adam <BrownA@keizer.org>; Johnson, Shannon <JohnsonS@keizer.org>; Harms, Tammie <HarmsT@keizer.org>; Davis, Tracy <DavisT@keizer.org>
Cc: JB Phillips <phillips@salemelectric.com>; Adam Deshon <deshon@salemelectric.com>; Tony Eaquinto <Anthony.Eaquinto@pgn.com>
Subject: RE: Salem Electric Response to Draft Right of Way Ordinance

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.

Mayor Clark, Adam, Shannon, Tammie, and Tracy,

Attached you'll find a copy of the joint letter from both Salem Electric and PGE on PGE letterhead. As Tony Schacher noted, we are respectfully and formally requesting a franchise agreement from the Keizer City Council this evening. We believe a franchise agreement will serve your residents and our customers well.

We appreciate your consideration and available to address any questions.

Kind regards,
Wendy Veliz

Wendy Veliz Local Government Affairs Manager | 503-929-8304

From: Tony Schacher <schacher@salemelectric.com>
Sent: Friday, April 14, 2023 11:40 AM
To: clarkc@keizer.org; Brown, Adam <BrownA@keizer.org>; Johnson, Shannon <JohnsonS@keizer.org>; Harms, Tammie <HarmsT@keizer.org>; Davis, Tracy <DavisT@keizer.org>
Cc: JB Phillips <phillips@salemelectric.com>; Adam Deshon <deshon@salemelectric.com>; Wendy Veliz <Wendy.Veliz@pgn.com>; Tony Eaquinto <Anthony.Eaquinto@pgn.com>
Subject: Salem Electric Response to Draft Right of Way Ordinance

This email is from someone outside PGE.

Please take care when opening links, attachments or responding to this email.

Mayor Clark, Adam, Shannon, Tammie, and Tracy,

Attached is the version of the current draft ordinance as we understand it with our comments for the April 17, 2023 City Council meeting. I have included the redline for your further consideration. Also attached is a joint letter from Salem Electric and PGE formally requesting a franchise agreement regardless if the City Council votes in favor of the right of way ordinance.

The letter delineates our position on the merits of a separate franchise agreement for your constituents in Keizer for electrical utilities in the City's Rights of Way.

If you have any comments or concerns please feel free to reach out at any time. We look forward to working together productively for many more years

Thank you for your time and consideration,

Tony Schacher

Tony Schacher
General Manager
Schacher@SalemElectric.com
633 7th Street NW | PO Box 5588
Salem, Oregon 97304-0055
503-362-3601 | SalemElectric.com [linkprotect.cudasvc.com]

