

## **ORDINANCE NO. 460**

### **A MASTER COMMUNICATIONS INFRASTRUCTURE ORDINANCE**

#### **The City of Aumsville ordains as follows:**

**Section 1. Short Title:** This Ordinance may be referred to as the "Communications Ordinance".

[Section 1 amended by Ord. No. 635 passed February 23, 2015]

#### **Section 2. 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 City charter and state law.
- B. The City has jurisdiction and exercises regulatory management over each public right of way whether the City has a fee, easement, or other legal interest in the right of way. The City has jurisdiction and regulatory management of each right of way whether the legal interest in the right of way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure, or other means.
- C. No person may occupy or encroach on a public right of way without the permission of the City. The City grants permission to use rights of way by franchises and permits.
- D. The exercise of jurisdiction and regulatory management of a public right of way by the City is not official acceptance of the right of way and does not obligate the City to maintain or repair any part of the right of way.
- E. The City retains the right and privilege to cut or move any communications facilities located within the public rights of way of the City, as the City may determine to be necessary, appropriate, or useful in response to a public health or safety emergency.

[Section 2 amended by Ord. No. 635 passed February 23, 2015]

#### **Section 3. Regulatory Fees and Compensation Not a Tax:**

- A. The fees and costs provided for in this Ordinance, and any compensation charged and paid for use of the public rights of way provided for in this Ordinance, are separate from, and in addition to, any and all federal, state, local, and City charges as may be levied, imposed, or due from a communications provider, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of communications services.
- B. The City has determined that any fee 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 are not imposed on property or property owners.
- C. The fees and costs provided for in this Ordinance are subject to

applicable federal and state laws.

[Section 3 amended by Ord. No. 635 passed February 23, 2015]

## **DEFINITIONS**

**Section 4. Definitions:** For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined herein shall be given the meaning set forth in the Communications Policy Act of 1934, as amended, the Cable Act, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act. If not defined there, the words shall be given their common and ordinary meaning.

**Cable Act** shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. § 521, et seq.

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

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

**City Council** means the elected governing body of the City of Aumsville, Oregon.

**Control** means actual working control in whatever manner exercised.

**City Property** means and includes all real property owned by the City, other than public rights of way and utility easements as those are defined herein, and all property held in a proprietary capacity by the City, which are not subject to right of way franchising as provided in this Ordinance.

**Communications Facilities** means the plant and equipment, including but not limited to the poles, conduits, ducts, cable, antennas, and wires, located or to be located within, under or above the rights of way and used or to be used by a communications provider to provide communications service. "Communications Facilities" includes wireline and wireless facilities.

**Communications Provider** means any provider of communications services and includes, but is not limited to, every person that directly or indirectly owns, controls, operates or manages communications facilities within the City.

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

**Communications System** – see “Communications facilities” above.

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

**Construction** means any activity in the public rights of way resulting in physical change thereto, including excavation or placement of structures.

**Days** means calendar days unless otherwise specified.

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

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

**Franchise** means an agreement between the City and a grantee which grants a privilege to use public right of way and utility easements within the City for a dedicated purpose and for specific compensation.

**Grantee** means the person to which a franchise is granted by the City.

**Oregon Public Utilities Commission or PUC** means the statutorily created state agency in the State of Oregon responsible for licensing and regulation of certain communications as set forth in Oregon Law, or its lawful successor.

**Overhead Facilities** means utility poles, utility facilities and communications facilities above the surface of the ground, including the underground supports and foundations for such facilities.

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

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

**Public Rights of Way** or Right of Way include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other City property not generally open to the public for travel. This definition applies only to the extent of the City's right, title, interest, or authority to grant a franchise to occupy and use such areas for communications facilities. "Public rights of way" shall also include utility easements as defined below.

**State** means the State of Oregon.

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

**Underground Facilities** means utility and communications facilities located under the surface of the ground, excluding the underground foundations or supports for "Overhead facilities."

**Utility Easement** means any easement granted to or owned by the City and acquired, established, dedicated, or devoted for public utility purposes. "Utility easement" does not include any easement dedicated solely for City facilities or where the proposed use by the communications provider is inconsistent with the terms and conditions of any easement granted to the City.

**Utility Facilities** means the plant, equipment, and property, including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, plant and equipment located under, on, or above the surface of the ground within the public right of way of the City and used or to be used for the purpose of providing utility or communications services.

[Section 4 amended by Ord. No. 635 passed February 23, 2015]

## **REGISTRATION OF COMMUNICATIONS CARRIERS**

**Section 5. Purpose.** The purpose of registration is:

- A. To assure that all communications facilities and/or communications providers that provide services within the City comply with the ordinances, rules and regulations of the City.
- B. To provide the City with accurate and current information concerning communications providers who offer to provide communications services within the City, or that own or operate communications facilities within the City.
- C. To assist the City in the enforcement of this Ordinance and the collection of any city franchise fees or charges that may be due the City.

[Section 5 amended by Ord. No. 486 passed February 12, 2001; amended by Ord. No. 635 passed February 23, 2015]

### **Section 6. Registration Required:**

- A. Except as provided in Section 8 hereof, all communications providers having communications facilities within the corporate limits of the City and all communications providers that offer or provide communication services to any customer within the City, shall register within 45 days of the effective date of this Ordinance. Any communications provider that desires to have communications facilities within the corporate limits of the City or to provide communications services to any customer within the City after the effective date of this Ordinance shall register prior to such installation or provision of service.
- B. The appropriate application and license from: a) the Oregon Public Utility Commission (PUC); or b) the Federal Communications Commission (FCC) qualifies as necessary registration information. To the extent not included in the application and license materials submitted pursuant to this subsection 6.B, applicants also shall provide the following information:
  - 1. The identity and legal status of the registrant, including the name address, and telephone number of the duly authorized officer, agent, or employee responsible for the accuracy of the registration information.
  - 2. The name, address, and telephone number of the duly authorized officer, agent, or employee to be contacted in case of an emergency.
  - 3. A description of the registrant's existing or proposed communications facilities within the City, a description of the communications facilities that the registrant intends to construct, and a description of the communications services that the registrant intends to offer or provide to persons, firms, businesses, or institutions within the City.
  - 4. Information sufficient to determine whether the transmission, origination, or receipt of the communications services provided, or to be provided, by the registrant constitutes an occupation or privilege

subject to the City's business license requirements. A copy of the business license must be provided.

[Section 6 amended by Ord. No. 486, passed February 12, 2001; amended by Ord. No. 635 passed February 23, 2015]

**Section 7. Registration Application Fee:**

- A. Every communications provider shall pay a registration fee in an amount to be determined by resolution of the City Council sufficient to fully recover all of the City's costs of administering the registration program.
- B. The registration fee required by this Section shall be subject to all applicable limitations imposed by federal or state law.

[Section 7 repealed and replaced with Section 8 by Ord. No. 486, passed February 12, 2001; Renumbered to Section 8 and New Section 7 added by Ord. No.635 passed February 23, 2015]

**Section 8. Exceptions to Registration:** The following communications providers are excepted from registration:

- A. Communications facilities that are owned and operated exclusively for its own use by the State or a political subdivision of this State.
- B. A private communications network, provided that such network does not occupy any public rights of way of the City.

[Former Section 7 renumbered to Section 8 and amended by Ordinance No. 635 passed February 23, 2015]

**Section 9. General.** No person shall commence or continue with the construction, installation or operation of communications facilities within a public right of way except as provided in Sections 10 through 28, and with all applicable codes, rules, and regulations.

[Section 9 renumbered to Section 8 by Ord. No. 486, passed February 12, 2001; Section 8 renumbered to Section 9 and amended by Ord. No. 635 February 23, 2015]

**Section 10. Construction Codes.** Communications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including the National Electrical Code and the National Electrical Safety Code.

[Section 10 renumbered to Section 9 by Ord. No. 486, passed February 12, 2001; Section 9 renumbered to Section 10 and amended by Ord. No. 635 February 23, 2015]

**Section 11. Construction Permits.** Except in an emergency, no person shall construct or install any communications facilities within a public right of way without first obtaining a construction permit, and paying the construction permit

fee established in Section 15 of this Ordinance. No permit shall be issued for the construction or installation of communications facilities within a public right of way:

- A. Unless the communications provider has first filed a registration statement with the City pursuant to Sections 5 through 8 of this Ordinance; and,
- B. Unless the owner of the communications facilities has first applied for and received a franchise pursuant to this Ordinance.

In the event of an emergency, a grantee or its contractor may perform work on its communications facilities without first obtaining a permit from the City; provided that, to the extent reasonably feasible, it attempts to notify the City prior to commencing the emergency work and in any event applies for a permit from the City and pays the permit fee as soon as reasonable practicable, but not more than 48 hours after commencing the emergency work. As used in this Section 11, "emergency" means a circumstance in which immediate repair to damaged or malfunctioning communications facilities is necessary to restore lost service or prevent immediate harm to persons or property.

[Section 11 amended and renumbered to Section 10 by Ord. No. 486, passed February 12, 2001; Section 10 renumbered to Section 11 and amended by Ord. No. 635 February 23, 2015]

**Section 12. Permit Applications.** Applications for permits to construct communications facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

- A. That the facilities will be constructed in accordance with all applicable codes, rules and regulations.
- B. That the facilities will be constructed in accordance with the franchise agreement.
- C. The location and route of all facilities to be installed using overhead facilities including on existing utility poles.
- D. The location and route of all new underground facilities on or in the public rights of way, including the line and grade proposed for the burial at all points along the route which are within the public rights of way. Applicant's existing facilities shall be differentiated on the plans from new construction. A cross section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk or right of way.
- E. 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.
- F. Permit applications are not required for 1) Customer service connections/drops, repairs or maintenance that does not require cutting or breaking of the roadway, curb or sidewalk, and 2) Routine maintenance or

repair of Equipment, and the installation of new replacement cables or wires on existing overhead facilities, when the installation, maintenance or repair will not impact vehicular traffic by closing or blocking a lane of vehicular travel for more than 2 hours.

[Section 12 amended and renumbered to Section 11 by Ord. No. 486, passed February 12, 2001; Section 11 renumbered to Section 12 and amended by Ord. No. 635 February 23, 2015]

**Section 13. Applicant's Verification:** All permit applications shall be accompanied by the verification of a registered professional engineer, or other qualified and duly authorized representative of the applicant, that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

[New Section 13 added by Ord. No. 635 passed February 23, 2015]

**Section 14. Construction Schedule.** All permit applications shall be accompanied by a written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the public works director. [Section 13 repealed and replaced with Section 14 which was amended and renumbered to Section 12 by Ord. No. 486, passed February 12, 2001; Section 12 renumbered to Section 14 and amended by Ord. No. 635 February 23, 2015]

**Section 15. Construction Permit Fee.** Prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount set forth by the City of Aumsville. Such fees shall be designed to defray the costs of city administration of the requirements of this ordinance. [Section 15 amended and renumbered to Section 13 by Ord. No. 486, passed February 12, 2001; Section 13 amended and renumbered to Section 15 by Ord. No. 635 passed February 23, 2015]

**Section 16. Issuance of Permit.** If satisfied that the applications, plans, and documents submitted comply with all requirements of this Ordinance and the franchise agreement, city hall shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as they may deem necessary or appropriate. [Section 16 is renumbered to Section 14 by Ord. No. 486, passed February 12, 2001; Section 14 amended and renumbered to Section 16 by Ord. No. 635 passed February 23, 2015]

**Section 17. Notice of Construction.** Except in the case of an emergency as defined in Section 11, the permittee shall notify the public works director not less than two working days in advance of any excavation or construction in the public rights of way. [Section 17 is renumbered to Section 15 by Ord. No. 486, passed February 12, 2001; Section 15 renumbered to Section 17 by Ord. No. 635 passed



February 23, 2015]

**Section 18. Compliance with Permit.** All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The public works director and/or their representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements. [Section 18 is renumbered to Section 16 by Ord. No. 486, passed February 12, 2001; Section 16 renumbered to Section 18 by

Ord. No. 635 passed February 23, 2015]

**Section 19. Noncomplying Work.** Subject to the notice requirements in Section 27, all work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this Ordinance, shall be removed and/or repaired at the sole expense of the permittee. The City is authorized to stop work in order to ensure compliance with the provision of this Ordinance.

[Section 19 is amended and renumbered to Section 17 by Ord. No. 486, passed February 12, 2001; Section No. 17 amended and renumber to Section No. 19 by Ord. No. 635 passed February 23, 2015]

**Section 20. Completion of Construction.** The permittee shall promptly complete all construction activities so as to minimize disruption of the public rights of way and other public and private property. All construction work within the public rights of way, including restoration, must be completed within 120 days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved by the appropriate city official as contemplated by Section 14.

[Section 20 is amended and renumbered to Section 18 by Ord. No. 486, passed February 12, 2001; Section No. 18 amended and renumber to Section No. 20 by Ord. No. 635 passed February 23, 2015]

**Section 21. As-Built Drawings.** If requested by the City for a necessary public purpose, as determined by the City, the permittee shall furnish the City with up to 2 complete sets of plans drawn to scale and certified to the City as accurately depicting the location of all communications facilities constructed pursuant to the permit. These plans shall be submitted to the City Engineer or designee within 60 days after completion of construction, in a format acceptable to the City.

[Section 21 is amended and renumbered to Section 19 by Ord. No. 486, passed February 12, 2001; Section No. 19 amended and renumber to Section No. 21 by Ord. No. 635 passed February 23, 2015]

**Section 22. Restoration of Public Rights of Way and City Property.**

- A. When a permittee, or any person acting on its behalf, does any work in or affecting any public rights of way or City property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such

- ways or property to the condition that existed prior to construction.
- B. If weather or other conditions do not permit the complete restoration required by this Section, the permittee shall temporarily restore the affected rights of way or property. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the City.
  - C. If the permittee fails to restore rights of way or property to the condition of the property that existed prior to construction, the City shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding 30 days to restore the rights of way or property. If, after said notice, the permittee fails to restore the rights of way or property to as good a condition as existed before the work was undertaken, the City shall cause such restoration to be made at the expense of the permittee. The City will allow additional time for restoration of rights of way in case of acts of God or other unforeseen circumstances not within the permittee's control.
  - D. A permittee or other person acting in its behalf shall use suitable barricades, flags, flagging attendants, lights, flares, and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights of way or property.

[Section 22 is amended and renumbered to Section 20 by Ord. No. 486, passed February 12, 2001; Section No. 20 amended and renumber to Section No. 22 by Ord. No. 635 passed February 23, 2015]

**Section 23. Performance and Completion Bond.** Unless otherwise provided in a franchise agreement, a performance bond or other surety acceptable to the City, equal to at least 100% of the estimated cost of construction of permittee's communication facilities within the public rights of way of the City, shall be provided before construction is commenced.

- A. The surety shall remain in force until 60 days after substantial completion of the work, as determined in writing by the City, including restoration of public rights of way and other property affected by the construction.
- B. The surety shall guarantee, to the satisfaction of the City:
  1. Timely completion of construction;
  2. Construction in compliance with applicable plans, permits, technical codes and standards;
  3. Proper location of the facilities as specified by the City;
  4. Restoration of the public rights of way and other property affected by the construction; and
  5. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

[Section 23 amended and renumbered to section 21 by Ord. No. 486, passed February 12, 2001; Section No. 21 amended and renumber to Section No. 23 by Ord. No. 635 passed February 23, 2015]

## **LOCATION OF TELECOMMUNICATIONS FACILITIES**

**Section 24. Location of Facilities.** All communications facilities located within the public right of way shall be constructed, installed, and located in accordance with the terms of the permit and approved final plans and specifications for the facilities, the franchise, and all applicable City codes, rules and regulations. Unless otherwise specified in a franchise agreement, whenever any existing electric utilities or communications facilities are located underground within a public right of way of the City, a grantee occupying the same public right of way must also locate its new communications facilities underground at its own expense.

[Section 24 amended and renumbered to Section 22 by Ord. No. 486, passed February 12, 2001; Section No. 22 amended and renumber to Section No. 24 by Ord. No. 635 passed February 23, 2015]

**Section 25. Interference with the Public Rights of Way.** No grantee may locate or maintain its communications facilities so as to unreasonably interfere with the use of the public rights of way by the City, by the general public or by other persons authorized to use or be present in or upon the public rights of way. All use of public rights of way shall be consistent with City codes, ordinances and regulations. [Section 25 is renumbered to Section 23 by Ord. No. 486, passed February 12, 2001; Section No. 23 amended and renumber to Section No. 25 by Ord. No. 635 passed February 23, 2015]

### **Section 26. Relocation or Removal of Facilities.**

- A. The City shall have the right to require, when in the public interest, the temporary or permanent removal or relocation of any communications facilities within the public rights of way, including relocating overhead facilities underground).
- B. Nothing in this Section 26 shall be deemed to preclude grantee from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements, provided that grantee shall timely comply with the requirements of this Section 26 regardless of whether or not it has requested or received such reimbursement or compensation.
- C. The City shall provide written notice of the time by which grantee must remove, relocate, change, alter or underground its facilities. If grantee fails to remove, relocate, alter or underground any facility as requested by the City and by the date established by the City, grantee shall pay all costs incurred by the City due to such failure, including but not limited to costs related to project delays, and the City may cause the facility to be removed, relocated, altered or undergrounded at grantee's sole expense

using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations. Upon receipt of a detailed invoice from the City, grantee shall reimburse the City for the costs the City incurred within 30 days.

[Section 26 amended and renumbered to Section 24 by Ord. No. 486, passed February 12, 2001; Section No. 24 amended and renumbered to Section No. 26 by Ord. No. 635 passed February 23, 2015]

**Section 27. Removal of Unauthorized Facilities.** Within 30 days following written notice from the City, any grantee, communications provider, or other person that owns, controls, or maintains any unauthorized communications system, facility, or related appurtenances within the public rights of way of the City shall, at its own expense, remove such facilities and/or appurtenances from the public rights of way of the City. A communications system or facility is unauthorized and subject to removal in any of the following circumstances:

- A. One year after the expiration or termination of the grantee's communications franchise, unless the City has provided written authorization for abandonment in place.
- B. Upon abandonment of a facility within the public rights of way of the City. A facility will be considered abandoned when it is deactivated, out of service, or not used for its intended and authorized purpose for a period of 90 days or longer. A facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the facility is being replaced. The City shall make a reasonable attempt to contact the communications provider before concluding that a facility is abandoned. A facility may be abandoned in place and not removed if authorized in writing by the City and there is no apparent risk to the public safety, health, or welfare.
- C. If the system or facility was constructed or installed without the appropriate prior authority at the time of installation.
- D. If the system or facility was constructed or installed at a location not permitted by the grantee's communications franchise or other legally sufficient permit.

[Section 27 amended and renumbered to Section 25 by Ord. No. 486, passed February 12, 2001; Section No. 25 amended and renumbered to Section No. 27 by Ord. No. 635 passed February 23, 2015]

**Section 28. Coordination of Construction Activities.** All grantees are required to make a good faith effort to cooperate with the City.

- A. By January 1 of each year, grantees shall provide the City with a schedule of their known proposed construction activities in, around or that may affect the public rights of way.
- B. If requested by the City, each grantee shall meet with the City annually or as determined by the City, to schedule and coordinate construction

in the public rights of way. At that time, City will provide available information on plans for local, state, and/or federal construction projects.

- C. All construction locations, activities and schedules shall be coordinated, as ordered by the public works director or designee, to minimize public inconvenience, disruption, or damages.

[Section 28 amended and renumbered to Section 26 by Ord. No. 486, passed February 12, 2001; Section No. 26 renumber to Section No. 28 by Ord. No. 635 passed February 23, 2015]

### **Section 29. Communications Franchise.**

- A. A communications franchise shall be required of any communications provider who desires to occupy public rights of way of the City, provided that a cable operator, as defined in the Cable Act, shall be required to obtain a cable franchise consistent with the Cable Act. The provisions of this Ordinance shall apply to all cable franchises except to the extent expressly preempted by applicable law or otherwise expressly provided in the cable franchise.
- B. Any person whose communications facilities occupy the public rights of way without a valid franchise agreement from the City must comply with the provisions of this Ordinance, including payment of the franchise fee pursuant to Section 36.

[Section 29 is renumbered to Section 27 by Ord. No. 486, passed February 12, 2001; Section 27 amended and renumbered to Section 29 by Ord. No. 635 passed February 23, 2015]

### **Section 30. Application.**

- A. Any person that desires a communications franchise must register as a communications provider, and shall file an application with city hall; which includes the following information:
  1. The identity of the applicant.
  2. A description of the communications services that are to be offered or provided by the applicant over its communications facilities.
  3. Engineering plans, specifications, and a network map in a form customarily used by the applicant, and if required by the City, in a specific computerized format, of the facilities located or to be located within the public rights of way in the City, including the location and route requested for applicant's proposed communications facilities.
  4. The area or areas of the City the applicant desires to serve and a preliminary construction schedule for build-out to the entire franchise area.
  5. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the communications services proposed.

6. An accurate map showing the location of any existing communications facilities in the City that applicant intends to use or lease.
- B. Any communications provider that occupies public rights of way of the City without a franchise as of the effective date of this Ordinance shall file an application pursuant to this Section within 45 days of the effective date of this Ordinance. Any communications provider that desires to occupy the public rights of way of the City after the effective date of this Ordinance shall register prior to installation of any communications facilities in the public rights of way.

[Section 30 amended and renumbered to Section 28 by Ord. No. 486, passed February 12, 2001; Section 28 amended and renumbered to Section 30 by Ord. No. 635 passed February 23, 2015]

**Section 31. Application and Review Fee:**

- A. Subject to applicable state law, applicant shall reimburse the City for such reasonable costs as the City incurs in entering into the franchise agreement.
- B. An application and review fee to be determined by resolution of the City Council shall be deposited with the City as part of the application filed pursuant to Section 30 above. Expenses exceeding the deposit will be billed to the applicant or the unused portion of the deposit will be returned to the applicant following the determination granting or denying the franchise.

[New Section 31 added by Ord. No. 635 passed February 23, 2015]

**Section 32. Determination by the City.** The City shall issue a written determination granting or denying the application in whole or in part. If the application is denied, the written determination shall include the reasons for denial. The application shall be evaluated based upon the continuing capacity of the rights of way to accommodate the applicant's proposed facilities and the applicant's legal, technical, and financial ability to comply with the provisions of this Ordinance and applicable federal, state and local laws, rules, regulations and policies. [Section 31 is repealed and replaced by Section 32 and renumbered to Section 29 by Ord. No. 486, passed February 12, 2001; Section 29 amended and renumbered to Section 32 by Ord. No. 635 passed February 23, 2015]

**Section 33. Rights Granted.** No franchise granted pursuant to this Ordinance shall convey any right, title, or interest in the public rights of way, but shall be deemed a grant to use and occupy the public rights of way for the limited purposes and term, and upon the conditions stated in the franchise agreement. The authority granted by the franchise is limited to the authority to use the public rights of way for the provision of the communications services set forth in the

franchise. Nothing in the franchise shall be construed to prevent the City from grading, paving, repairing and/or altering any public rights of way, constructing, laying down, repairing, relocating, or removing City facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any City facilities. If any of grantee's facilities interfere with the construction, repair, replacement, alteration, or removal of any public rights of way, public work, City utility, City improvement or City facility, except those providing communications services in competition with a grantee, grantee's facilities shall be removed or relocated as provided in Section 26 and 27 of this Ordinance; in a manner acceptable to the City and consistent with industry standard engineering and safety codes. [Section 33 is renumbered to Section 30 by Ord. No. 486, passed February 12, 2001; Section 30 amended and renumbered to Section 33 by Ord. No. 635 passed February 23, 2015]

**Section 34. Term of Grant.** Unless otherwise specified in a franchise agreement, a communications franchise granted hereunder shall be in effect for a term of five years. [Section 34 is renumbered to Section 31 by Ord. No. 486, passed February 12, 2001; Section 31 renumbered to Section 34 by Ord. No. 635 passed February 23, 2015]

**Section 35. Franchise Territory.** Unless otherwise specified in a franchise agreement, a communications franchise granted hereunder shall require the franchise grantee to be capable of serving the entire city. [Section 35 is renumbered to Section 32 by Ord. No. 486, passed February 12, 2001; Section 32 amended and renumbered to Section 35 by Ord. No. 635 passed February 23, 2015]

**Section 36. Franchise Fee.**

- A. A communications franchise granted hereunder shall require the grantee to pay the franchise fee in an amount determined by resolution of the City Council.
- B. Every communications provider that uses the public rights of way in the City to provide communications services without a franchise expressly authorizing the provision of such communications services, whether or not the provider owns the communications facilities used to provide its services and whether or not the provider is required to obtain a franchise pursuant to Section 29 of this Ordinance, shall pay a right of way use fee in the amount determined by resolution of the City Council. The duty to provide information set forth in Section 48 of this Ordinance shall apply to information of communications providers subject to the right of way use fee in this subsection 36.B sufficient to demonstrate compliance with this subsection.
- C. Unless otherwise agreed to in writing by the City, the fee shall be paid within 30 days after the end of each calendar quarter. Each payment shall

be accompanied by an accounting of gross revenues and a calculation of the amount payable. The communications provider shall pay interest at the rate of 9% per year for any payment made after the due date.

- D. The franchise fee required by this Section shall be subject to all applicable limitations imposed by federal or state law.

[Section 36 is amended and renumbered to Section 33 by Ord. No. 486, passed February 12, 2001; Section 33 amended and renumbered to Section 36 by Ord. No. 635 passed February 23, 2015]

**Section 37. Amendment of Grant:** Conditions for amending a franchise:

- A. A new application and grant shall be required of any communications provider that desires to extend or locate its communications facilities in public rights of way of the City, which are not included in a franchise previously granted under this Ordinance.
- B. If ordered by the City to locate or relocate its communications facilities in public rights of way not included in a previously granted franchise, the City shall grant an amendment without further application.
- C. A new application and grant shall be required of any communications provider that desires to provide a service which was not included in a franchise previously granted under this Ordinance unless the service is an additional communications service provided over communications facilities authorized in the franchise, subject to subsection 51.B of this Ordinance.

[Section 37 is renumbered to Section 34 by Ord. No. 486, passed February 12, 2001; Section 34 amended and renumbered to Section 37 by Ord. No. 635 passed February 23, 2015]

**Section 38. Renewal Applications:** A grantee that desires to renew its franchise under this Ordinance shall, not less than 180 days before expiration of the current agreement, file an application with the City for renewal of its franchise which shall include, if requested by the city, new or updated information required pursuant to Section 30 of this Ordinance; and at the City's request, the grantee shall provide any information required pursuant to the franchise agreement between the City and the grantee. The application shall be evaluated based upon the continuing capacity of the rights of way to accommodate the applicant's proposed facilities and the applicant's legal, technical, and financial ability to comply with the provisions of this Ordinance; applicable federal, state and local laws; and all rules, regulations and policies pertaining thereto.

[Section 38 is amended and renumbered to Section 35 by Ord. No. 486, passed February 12, 2001; Section 35 amended and renumbered to Section 38 by Ord. No. 635 passed February 23, 2015]

**Section 39. Obligation to Cure As a Condition of Renewal.** No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the agreement, or of the requirements of this Ordinance, have been cured, or a plan detailing the corrective action to be taken by the grantee



has been approved by the City. [Section 39 is renumbered to Section 36 by Ord. No. 486, passed February 12, 2001; Section 36 and 37 amended and new Section 39 add by Ord. No. 635 passed February 23, 2015]

**Section 40. Assignments or Transfers of System or Franchise:** Unless otherwise provided in an existing franchise, ownership or control of a majority interest in a communications system or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the City, which consent shall not be unreasonable withheld or delayed, and then only on such reasonable conditions as may be prescribed in such consent.

- A. Grantee and the proposed assignee or transferee of the franchise or system shall agree, in writing, to assume and abide by all of the provisions of the franchise.
- B. No transfer shall be approved unless the City determines the assignee or transferee has the legal, technical and financial ability to comply with the provisions of this Ordinance and applicable federal, state and local laws, rules, regulations and policies.
- C. Unless otherwise provided in a franchise agreement, the grantee shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign a communications franchise.
- D. Any transfer or assignment of a communications franchise, system or integral part of a system without prior approval of the City under this Section or pursuant to a franchise agreement shall be void and is cause for revocation of the franchise.

[Section 41 is amended and renumbered to section 38 by Ord. No. 486, passed [February 12, 2001; Section 38 is amended and renumbered to Section 40 by Ord. No. 635 passed February 23, 2015]

**Section 41. Revocation or Termination of Franchise:** A franchise to use or occupy public rights of way of the City may be revoked for the following reasons:

- A. Construction or operation in the City or in the public rights of way of the City without a construction permit.
- B. Construction or operation at an unauthorized location.
- C. Failure to comply with Section 40 herein with respect to sale, transfer or assignment of a communications system or franchise.
- D. Misrepresentation by or on behalf of a grantee in any application to the City.
- E. Abandonment of communications facilities in the public rights of way, unless the City has authorized abandonment in place pursuant to subsection 27.B.
- F. Failure to relocate or remove facilities as required in this Ordinance.
- G. Failure to pay taxes, compensation, fees or costs when and as due the City under this Ordinance.

- H. Insolvency or bankruptcy of the grantee as determined by authority of a court.
- I. Violation of any material provision of this Ordinance
- J. Violation of any material terms of a franchise agreement.

[Section 42 is amended and renumbered to Section 39 by Ord. No. 486, passed February 12, 2001; Section 39 is amended and renumbered to Section 41 by Ord. No. 635 passed February 23, 2015]

**Section 42. Notice and Duty to Cure.** In the event that the City believes that grounds exist for revocation of a franchise, the City shall give the grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time, not exceeding 30 days, to furnish evidence that:

- A. Corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;
- B. Rebutts the alleged violation or noncompliance; and/or
- C. It would be in the public interest to impose some penalty or sanction less than revocation.

[Section 43 is renumbered to Section 40 by Ord. No. 486, passed February 12, 2001; Section 40 is renumbered to 42 by Ord. No. 635 passed February 23, 2015]

**Section 43. Public Hearing.** In the event that a grantee fails to provide evidence reasonably satisfactory to the City as provided in Section 42 hereof, the City Administrator may refer the apparent violation or non-compliance to the City Council. The City Council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter. [Section 44 is renumbered to Section 41, passed February 12, 2001; Section 41 is amended and renumbered to 43 by Ord. No. 635 passed February 23, 2015]

**Section 44. Standards for Revocation or Lesser Sanctions:** If persuaded that the grantee has violated or failed to comply with material provisions of this Ordinance, or of a franchise agreement, the City Council shall determine whether to revoke the franchise, or to establish some lesser sanction and cure, including but not limited to assessment of penalties pursuant to Section 58, considering the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors. Whether:

1. The misconduct was egregious.
2. Substantial harm resulted.
3. The violation was intentional.
4. There is a history of prior violations of the same or other requirements.
5. There is a history of overall compliance.
6. The violation was voluntarily disclosed, admitted, or cured.

[Section 45 is amended and renumbered to Section 42 by Ord. No. 486, passed

February 12, 2001; Section 42 is amended and renumbered to 44 by Ord. No. 635 passed February 23, 2015]

**Section 45. Other City Costs:** All grantees shall, within 30 days after written demand, therefore, reimburse the City for all reasonable direct and indirect costs and expenses incurred by the City in connection with any modification, amendment, renewal or transfer of the franchise or any franchise agreement consistent with applicable state and federal laws. [New Section 45 added by Ord. No. 635 passed February 23, 2015]

### **GENERAL FRANCHISE TERMS**

**Section 46. Facilities:** Upon request, each grantee shall provide the City with an accurate map or maps certifying the location of all communications facilities within the public rights of way. This map or maps shall be in a format acceptable to the City. [Section 46 is repealed and replaced by Section 47 which is amended and renumbered to Section 43 by Ord. No. 486, passed February 12, 2001; Section 43 is amended and renumbered to 46 by Ord. No. 635 passed February 23, 2015]

**Section 47. Damage to Grantee's Facilities:** Unless directly and proximately caused by negligent, careless, wrongful, willful, intentional or malicious acts by the City, and consistent with Oregon law, the City shall not be liable for any damage to or loss of any communications facility within the public rights of way of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public rights of way by or on behalf of the City, or for any consequential losses resulting directly or indirectly therefrom. [New Section 47 added by Ord. No. 635 February 23, 2015]

**Section 48. Duty to Provide Information:**

- A. Except in emergencies, within 60 days of a written request from the City, each grantee shall furnish the City with the following:
  - 1. Information sufficient to demonstrate that grantee has complied with all requirements of this Ordinance, including but not limited to the franchise fee payments required by Section 36 and any franchise agreement.
  - 2. All books, records, maps, and other documents maintained by the grantee with respect to its facilities within the public rights of way shall be made available for inspection by the City at reasonable times and intervals.
- B. Such information, books, records, and other documents shall be furnished at a mutually agreed upon location within the City unless the City agrees in writing to a location outside the City.
- C. If the City's audit or review of the books, records and other documents or

information of the grantee demonstrate that grantee has underpaid the franchise fee by 3% or more in any one year, grantee shall reimburse the City for the cost of the audit or review, in addition to any interest owed pursuant to Section 36 of this Ordinance or as specified in a franchise. Any underpayment, including any interest or audit cost reimbursement, shall be paid within 30 days of the City's notice to grantee of such underpayment.

[Section 48 is repealed and replaced by Section 49 which is amended and renumbered to Section 44 by Ord. No. 486, passed February 12, 2001; Section 44 is amended and renumbered to 48 by Ord. No. 635 passed February 23, 2015]

**Section 49. Service to the City:** If the City contracts for the use of communication facilities, communication services, installation, or maintenance from the grantee, the grantee shall offer the City the grantee's most favorable rate available at the time of the request charged to similar users within Oregon for a similar volume of service, subject to any of grantee's tariffs or price lists on file with the OPUC. With the City's permission, the grantee may deduct the applicable charges from fee payments. Other terms and conditions of such services may be specified in a separate agreement between the City and grantee. [New Section 49 added by Ord. No. 635 passed February 23, 2015]

**Section 50. Compensation for City Property:** If any right is granted, by lease, franchise, or other manner, to use and occupy city property for the installation of communications facilities, the compensation to be paid for such right and use shall be fixed by the City. For purposes of this Section 50 only, "communications facilities" shall mean the plant and equipment, other than customer premises equipment, used by a communications provider. [Section 50 is repealed and replaced by Section 51 and renumbered to Section 45 by Ord. No. 486, passed February 12, 2001; Section 45 amended and renumbered to Section 50 by Ord. No. 635 passed February 23, 2015]

**Section 51. Multiple Services:**

- A. A communications provider that provides or transmits or allows the provision or transmission of communications services and non-communications services over its communications facilities is subject to the requirements of this Ordinance for the portion of the communications facilities and extent of communications services delivered over those communications facilities.
- B. A communications provider that provides or transmits more than one communications service to customers in the City shall pay the applicable right of way use fee pursuant to Section 36.B for each communications service, provided that a communications provider shall not be required to pay a right of way use fee for communications services for which it is paying a franchise fee pursuant to Section 36.A. Unless otherwise required

by law, a communications provider is not required to have a franchise for each communications service it provides using its communications facilities so long as it pays the applicable franchise fee and, if applicable, right of way use fee for each communications service.

- C. Communication providers providing cable service shall also be subject to the cable franchise requirements of the Cable Act and any applicable City cable franchise ordinance.

[Section 52 is renumbered to Section 46 by Ord. No. 486, passed February 12, 2001; Section 46 replaced and renumbered to Section 51 by Ord. No. 635 passed February 23, 2015]

**Section 52. Leased Capacity:** A grantee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers, provided that the grantee shall notify the City that such lease or agreement has been granted to a customer or lessee. [Section 53 is amended and renumbered to Section 47 by Ord. No. 486, passed February 12, 2001; Section 47 is amended and renumbered to Section 52 by Ord. No. 635 passed February 23, 2015]

**Section 53. Grantee Insurance:** Unless otherwise provided in a franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the Grantee and the City, and its elected and appointed officers, officials, agents and employees as additional insured:

- A. Comprehensive general liability insurance with limits not less than
  1. \$3,000,000 for bodily injury or death to each person;
  2. \$3,000,000 for property damage resulting from any one accident; and,
  3. \$3,000,000 for all other types of liability.
- B. Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000 for each person and \$3,000,000 for each accident.
- C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.
- D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000.
- E. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the state of Oregon.
- F. The liability insurance policies required by this Section shall be maintained by the grantee throughout the term of the communications franchise, and such other period of time during which the grantee is operating without a franchise hereunder or is engaged in the removal of its communications facilities. Each such insurance policy shall contain the following endorsement or other endorsement agreed to in writing by the City:

"It is hereby understood and agreed that this policy may not be canceled

nor the intention not to renew be stated until 30 days after receipt by the City, by registered mail, of a written notice addressed to the City Administrator of such intent to cancel or not to renew."

- G. Each grantee shall maintain continuous uninterrupted coverage in the terms and amounts required by this Section. If the insurance is canceled or materially altered, the grantee shall obtain a replacement policy that complies with the terms of this Section and provide the City with a replacement certificate of insurance.
- H. As an alternative to the insurance requirements contained herein, a grantee may provide evidence of self-insurance subject to review and acceptance by the City.

[Section 54 is amended and renumbered to Section 48 by Ord. No. 486, passed February 12, 2001; Section 48 amended and renumbered to Section 53 by Ord. No. 635 passed February 23, 2015]

## **GENERAL PROVISIONS**

**Section 54. Governing Law.** Any franchise granted under this Ordinance is subject to the provisions of the Constitution and laws of the United States, and the State of Oregon and the ordinances and Charter of the City. [Section 56 is repealed and replaced with Section 57 and renumbered to Section 50 by Ord. No. 486, passed February 12, 2001; Section 49 text deleted, Section 50 renumbered to section 54 by Ord. No. 635 passed February 23, 2015]

**Section 55. Written Agreement:** No franchise shall be granted hereunder except by a writing duly executed by the grantee and the City. [Section 58 is renumbered to Section 51 by Ord. No. 486, passed February 12, 2001; Section 51 is amended and renumbered to Section 55 by Ord. No. 635 passed February 23, 2015]

**Section 56. Nonexclusive Grant:** No franchise granted under this Ordinance shall confer any exclusive right, privilege, license or franchise to occupy or use the public rights of way of the City for delivery of communications services or any other purposes. [Section 59 is renumbered to section 52 by Ord. No. 486, passed February 12, 2001; Section 52 is amended and renumbered to Section 56 by Ord. No. 635 passed February 23, 2015]

**Section 57. Severability and Preemption.** If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of the 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 article, section, subsection, sentence, clause, phrase, term,

provision, condition, covenant and portion of this Ordinance shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Ordinance, then the provision shall be read to be preempted only to the extent required by law. In the event such federal or state law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding, without the requirement of further action on the part of the City. [Section 60 is renumbered to Section 53 by Ord. No. 486, passed February 12, 2001; Section 53 is renumbered to Section 57 by Ord. No. 635 passed February 23, 2015]

**Section 58. Penalties.** Any person found guilty of violating, disobeying, omitting, neglecting, or refusing to comply with any of the provisions of this Ordinance shall be fined not less than \$1,000.00 nor more than \$5,000.00 for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs. It is the responsibility of the city attorney to cause a person cited under this ordinance to appear before the municipal court judge for determination of appropriate action and/or fine. [Section 61 is renumbered to Section 54 by Ord. No. 486, passed February 12, 2001; Section 54 is renumbered to Section 58 by Ord. No. 635 passed February 23, 2015]

**Section 59. Other Remedies.** Nothing in this Ordinance shall be construed as limiting any judicial remedies that the City may have at law or in equity, for enforcement of this Ordinance. [Section 62 is renumbered to Section 55 by Ord. No. 486, passed February 12, 2001; Section 55 is renumbered to Section 59 by Ord. No. 635 passed February 23, 2015]

**Section 60. Captions.** The captions to sections throughout this Ordinance are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Ordinance. [Section 63 is renumbered to Section 56 by Ord. No. 486, passed February 12, 2001; Section 56 is renumbered to Section 60 by Ord. No. 635 passed February 23, 2015]

**Section 61. Compliance with Laws:** Any grantee under this Ordinance shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all ordinances, resolutions, rules and regulations of the City heretofore or hereafter adopted or established during the entire term of any franchise granted under this Ordinance, which are relevant and relate to the construction, maintenance and operation of a communications system and/or the provision of communications services. [Section 64 is renumbered to Section 57 by Ord. No. 486, passed February 12, 2001; Section

57 is renumbered to Section 61 by Ord. No. 635 passed February 23, 2015]

**Section 62. Consent.** Wherever the consent of either the City or of the grantee is specifically required by this Ordinance or in a franchise granted pursuant to this Ordinance, such consent will not be unreasonably withheld. [Section 65 is renumbered to Section 58 by Ord. No. 486, passed February 12, 2001; Section 58 is renumbered to 62 by Ord. No. 635 passed February 23, 2015]

**Section 63. Application to Existing Ordinance and Agreements:** To the extent that this Ordinance is not in conflict with and can be implemented with existing ordinance and franchise agreements, this Ordinance shall apply to all existing ordinance and franchise agreements for use of the public right of way for communications services. [Section 66 is renumbered to Section 59 by Ord. No. 486, passed February 12, 2001; Section 59 is amended and renumbered to 63 by Ord. No. 635 passed February 23, 2015]

**Section 64. Confidentiality:** The City agrees to use its best efforts to preserve the confidentiality of information as requested by a grantee, to the extent permitted by the Oregon Public Records Law; provided that documents are clearly marked as confidential by the grantee at the time of disclosure to the City. The City shall not be required to incur any costs to protect the confidentiality of such document, other than the City's routine internal procedures for complying with the Oregon Public Records Law. [Section 67 is renumbered to Section 60 by Ord. No. 486, passed February 12, 2001; Section 60 is amended and renumbered to 64 by Ord. No. 635 passed February 23, 2015]

PASSED by the council October 11, 1999 and signed by the mayor October 14, 1999.