

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING AMC TITLE 16 TELECOMMUNICATIONS AND ESTABLISHING STANDARDS FOR TELECOMMUNICATIONS FACILITIES IN THE CITY OF ASHLAND

WHEREAS, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

WHEREAS, the City accepts wireless infrastructure investment and provides a fair and predictable process for the deployment of telecommunications facilities, as the City manages the rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, the City recognizes that telecommunications facilities deliver access and capacity to advanced technology, broadband and first responder services to homes, and businesses, as well as to providers of health care, public safety and educational services providers within the City; and

WHEREAS, the City recognizes that the telecommunications industry needs such facilities, including small wireless facilities, deployed in the public rights-of-way; and

WHEREAS, the City further recognizes it must balance the benefits from telecommunications infrastructure with its aesthetic impact on the community in order to mitigate or avoid adverse visual impacts, encourage the deployment of infrastructure consistent with the surrounding built and natural environment, and preserve the City's historic and environmental resources to the extent feasible; and

WHEREAS, notwithstanding the various changes in state and federal law, local governments continue to retain authority to regulate the placement, construction and modification of telecommunications facilities, subject to those matters where local authority has been limited or removed by state or federal law; and

WHEREAS, the City has made longstanding and sustained efforts to preserve its distinct character, the natural beauty of its environment, and its charm as a popular visitor destination by not allowing incompatible development that degrades the visual and economic value of public and private properties, especially in residential and historic areas; and

WHEREAS, Ashland's topography, forested nature and surrounding watershed, coupled with unprecedented adverse global and regional climate change, gives rise to many unique concerns and situations relating to wildfire safety; and

WHEREAS, if not adequately regulated, the installation of telecommunications facilities within the City can pose a threat to the public health, safety, and welfare; traffic and pedestrian safety hazards, negative impact to trees; creation of visual and aesthetic blights and potential safety concerns arising from improper design of excessive size, heights, noise, or lack of camouflaging; and

WHEREAS, the City intends to exercise its powers to regulate telecommunications facilities to the maximum extent allowed by law, to protect its residents and visitors, promote public health, safety and community welfare, preserve the natural resources and unique quality of Ashland, and protect the character of the City's neighborhoods, while nonetheless respecting and adhering to the law as it is today and may change in the future, by adopting a new code consistent with local, state and federal laws, standards and requirements.

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

Title 16 TELECOMMUNICATIONS of the Ashland Municipal Code is hereby amended and by modifying the following Sections as follows:

# **Title 16**

## **TELECOMMUNICATIONS**

Chapters:

- 16.04 Purpose Definitions**
- 16.08 Registration of Telecommunications**
- 16.12 Carriers Construction Standards**
- 16.16 Construction Standards**
- 16.20 Telecommunications Franchise**
- 16.24 General License And Franchise Terms,**
- 16.26 Rates Cable Franchise Requirements**
- 16.28 Governing Law**

### **Chapter 16.04**

#### **PURPOSE**

#### **DEFINITIONS**

Sections:

- 16.04.010 Purpose**
- 16.04.020 Jurisdiction and Management of the Public Rights-of-**
- 16.04.025 Way Applicability to Cable Service and Open Video**
- 16.04.030 System Regulatory Fees and Compensation Not a**
- 16.04.040 Tax**
- Definitions**

## 16.04.010 Purpose

The purpose of this title is to:

A. Promote the health, safety, and general welfare of the residents of the City of Ashland and to preserve, conserve and enhance the unique natural beauty and irreplaceable natural resources of the City by establishing comprehensive requirements and standards for the siting, design, construction, maintenance and modification of telecommunication facilities in Ashland in order to manage their deployment and minimize adverse aesthetic impacts to Ashland's unique character, consistent with and to the full extent of the City's authority under applicable federal, state and local laws and regulations.

~~A.B.~~ Comply with the provisions of the 1996 Telecommunications Act as they apply to local governments, telecommunications carriers and the services they offer;

~~B.C.~~ Establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications carriers and services deployed within the public rights-of-way;

~~C.D.~~ Promote competition on a competitively neutral basis in the provision of telecommunications services;

~~D.E.~~ Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to businesses institutions and residents of the City;

~~E.F.~~ Permit and manage reasonable access to the public rights-of-way of the City for telecommunications purposes on a competitively neutral basis and conserve the limited physical capacity of those public rights-of-way held in trust by the City;

~~F.G.~~ ~~Assure-Ensure~~ that the City's current and ongoing costs of granting and regulating private access to and the use of the public rights-of-way are fully compensated by the persons seeking such access and causing such costs;

~~G.H.~~ Secure fair and reasonable compensation to the City and its residents for permitting private use of the public right-of-way;

~~H.I.~~ ~~Assure-Ensure~~ that all telecommunications carriers providing facilities or services within the City, or passing through the City, register and comply with the ordinances, rules and regulations of the City;

~~I.J.~~ ~~Assure-Ensure~~ that the City can continue to fairly and responsibly protect the public health, safety and welfare of its citizens;

K. Enable the City to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development;

L. Preserve and protect the City's distinct character, historic districts, and residential areas that promote tourism and economic development in the City, and avoid the intangible public harm of

unsightly or out-of-character deployment; and-

J.M. Ensure the safe installation and maintenance of telecommunications facilities to protect against fire hazards made more prevalent by climate change as well as Ashland's unique forested surroundings, topography and accessibility.

### **16.04.020 Jurisdiction and Management of the Public Rights-of-Way**

- A. The City has jurisdiction and exercises regulatory control over all public rights-of-way within the City under authority of the City charter and state law.
- B. Public rights-of-way include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, ~~public-utility~~ easements and all other public ways or areas, including the subsurface under and air space over these areas.
- C. The City has jurisdiction and exercises regulatory control 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 control over 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.
- D. 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, licenses and permits.
- E. The exercise of jurisdiction and regulatory control over 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.
- F. The City retains the right and privilege to cut or move any telecommunications 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 any public health or safety emergency.

F.G. The City, in its proprietary capacity as owner of city structures, may issue licenses or enter into agreements for use of such city structures, which licenses or agreements are separate from, and in addition to, the permission to use the rights-of-way that may be granted by this title.

### **16.04.025 ~~Applicability to Cable Service and Open Video System~~**

- A. This title shall apply to all telecommunications facilities in the public rights-of-way and all telecommunications services provided in the City, as those terms are defined in this title, including but not limited to small wireless facilities.
- B. To the extent not specifically precluded by the Cable Act or any other federal law, this title shall apply to cable service provided within the City and to Open Video Systems, as that term is used in section 653 of the Telecommunications Act. (Ord. 2850 § 1, amended, 10/19/1999).

### **16.04.030 Regulatory Fees and Compensation Not a Tax**

A. The regulatory fees and costs provided for in this title, and any compensation charged and paid for the public rights-of-way provided for in this title, are separate from, and in addition to, any and all federal, state, local and city taxes as may be levied, imposed or due from a telecommunications carrier, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services and/or use of city structures.

B. The City has determined that any fee imposed by this title is not subject to the property tax limitations of Chapter XI, Section 11(b) of the Oregon Constitution.

## **16.04.040 Definitions**

For the purpose of this title the following terms, phrases, words and their derivations shall have the meaning defined in this chapter. 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 in this chapter shall be given the meaning set forth in the Communications ~~Policy~~ Act of 1934, as amended, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996. If not defined there, the words shall be given their common and ordinary meaning.

A. Aboveground or Overhead Facilities means ~~utility~~ poles, utility facilities and telecommunications facilities above the surface of the ground, including the underground supports and foundations for such facilities.

~~B. Affiliated Interest shall have the same meaning as ORS 759.010.~~

B. Antenna means the same as defined in 47 C.F.R. § 1.6002(b), as may be amended or superseded, which defines the term to mean an apparatus designed for the purpose of emitting radio frequencies (RF) to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 C.F.R. Part 15.

C. Antenna Equipment means the same as defined 47 C.F.R. § 1.6002(c), as may be amended or superseded, which defines the term to mean equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

D. Antenna Facility means the same as defined in 47 C.F.R. § 1.6002(d), as may be amended or superseded, which defines the term to mean an antenna and associated antenna equipment.

~~E.~~ Cable Act shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. Section 521, et seq., as now and hereafter amended.

~~F.~~ Cable Service 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.

G. Collocate or Collocation means mounting or installing an antenna facility on a preexisting pole or structure.

~~F.H. Control or Controlling Interest~~ means actual working control in whatever manner exercised.

I. City Property means and includes all real property owned by the City, other than public streets and utility easements as those are defined in this chapter, and all property held in a proprietary capacity by the City, including city structures, which are not subject to right-of-way licensing and franchising as provided in this title.

F.J. City Structure means a pole or structure located in the public rights-of-way within the City's jurisdictional boundaries that is owned, managed or operated by the City or any subdivision or instrumentality thereof, including the municipal electric utility, including, but not limited to streetlights, traffic signals, poles, or buildings.

~~G.K. Conduit~~ means any structure, or section of any structure, containing one or more ducts, conduits, manholes, handholds, 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 or private utilities.

L. Decorative Pole means a pole that is specially designed and placed for aesthetic purposes.

~~H.M. Duct~~ means a single enclosed raceway for conductors or cable.

N. Eligible Facilities Request means the same as defined in 47 C.F.R. § 1.6100(b)(3), as may be amended or superseded.

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

~~J.P. Franchise~~ means an agreement between the City and a grantee which grants a privilege to use public rights-of-way ~~and utility easements~~ within the City for a dedicated purpose and for specific compensation.

~~K.Q. Grantee~~ means the person to which a license or franchise is granted by the City.

~~L.R. Gross Revenue. Except for a telecommunications utility, g~~Gross revenue means gross-any and all amounts of any kind, nature or form, without deduction for expense, revenue derived by grantee from the provision of telecommunications services originating or terminating in the City on facilities covered by the franchise or license. For the purposes of this definition net uncollectables from revenue included in gross revenues may be excluded from gross revenues. ~~For a telecommunications utility, gross revenue means those revenues derived from exchange access services, as defined in ORS 401.710, less net uncollectable from such revenues.~~

S. Historic District means (i) a group of buildings, properties, or sites that are listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register in accordance with Section VI.D.1a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part

1. Appendix C; and/or, (ii) a historic district as defined in AMC 18.6.1.030.

T. License means the authorization granted by the City to a telecommunications provider pursuant to this title which grants a privilege to use the public right-of-way within the City for the purposes authorized and compensation required in this title.

~~M.—Local Exchange Service means service provided within the boundaries of an exchange as the exchange appears on the exchange maps filed with and approved by the Oregon Public Utility Commission. Local exchange service includes “shared telecommunications service,” as defined in ORS Chapter 759.~~

~~N.U.~~ Oregon Public Utilities Commission or OPUC means the statutorily created state agency in the State of Oregon responsible for licensing, regulation and administration of certain communications providers as set forth in Oregon Law.

~~O.V.~~ Person means an individual, corporation, company, association, Joint Stock Company or association, term, partnership, or limited liability company.

W. Pole means a legally constructed pole, such as a utility, lighting, traffic, or similar pole located or to be located within the public rights of way. A pole does not include a tower as that term is defined in 47 C.F.R. § 1.6100(b)(9), as may be amended or superseded, and does not include a pole or structure that supports electric transmission lines.

~~P.X.~~ Private Telecommunications Network means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service, by a person for the exclusive use of that person and not for resale, directly or indirectly. “Private telecommunications network” includes services provided by the State of Oregon pursuant to ORS [190.240](#) and [283.140](#).

~~Q.Y.~~ Public rights-of-way include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, ~~public utility~~ easements and all other public ways, including the subsurface under and air space over these areas, but only to the extent of the City’s right, title, interest or authority to grant a license or franchise to occupy and use such streets and easements for telecommunications facilities. Public rights-of-way do not include trails, paths, or sidewalks within parks or other areas of the City unless the trail, path or sidewalk has been dedicated as a right-of- way. Public rights-of-way do not include city structures located within the public rights-of-way.

~~R.Z.~~ Public Street means any highway, street, alley or other public right-of-way for motor vehicle travel under the jurisdiction and regulatory control of the City which has been acquired, established, dedicated or devoted to vehicular travel and pedestrian purposes not inconsistent with telecommunications facilities.

AA. Public Works Director means the City Public Works Director or authorized designee.

BB. Shot clock shall mean the presumptively reasonable time to act on a request for authorization to place, construct, or modify personal wireless service facilities as provided in 47 C.F.R. § 1.6003.

CC. Small wireless facility means the same as defined in 47 C.F.R § 1.6002(l), as may be amended or superseded, which defines the term to mean antenna facilities that meet the following conditions:

1. The facilities (i) are mounted on structures 50 feet or less in height including the antennas, or (ii)

are mounted on structures no more than 10 percent taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and,

2. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; and,
3. All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and,
4. The facilities do not require antenna structure registration under 47 C.F.R. Part 17; and
5. The facilities are not located on Tribal lands, as defined under 36 C.F.R. 800.16(x); and
6. The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

~~S-DD.~~ Telecommunications means the transmission between ~~and or~~ among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

~~T-EE.~~ Telecommunications Act means the Telecommunications Act of 1996 (47 U.S.C. 151 et seq.) as adopted and as hereafter amended.

~~U-FF.~~ Telecommunications Carrier means any provider of telecommunications services and includes every person that directly or indirectly owns, controls, operates or manages telecommunications facilities within the City regardless of whether the person also provides telecommunications services ~~and competitive providers of local exchange or inter-exchange services.~~

~~V-GG.~~ Telecommunications Facilities or System means the equipment, other than customer premises equipment, used by a telecommunications carrier to provide telecommunications services regardless of whether the facility owner provides telecommunications services, and includes small wireless facilities.

~~W-HH.~~ Telecommunications Service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Telecommunications service includes but is not limited to any service provided for the purpose of voice, video or data transmission, including, but not limited to, ~~local exchange service, access service, extended area service, call origination, interconnection, switching, transport, or call termination~~ and any other telecommunications services identified and/or authorized by the FCC or the OPUC.

~~X-II.~~ Telecommunications Utility has the same meaning as ORS 759.005~~(1)(a).~~

~~Y-JJ.~~ Reseller means any person that provides telecommunications service using a telecommunications facility within a public right-of-way for which service a separate charge is made, where that person does not own, lease, control or manage the telecommunications facility used to provide the service.

~~Z-KK.~~ Underground Facilities means utility and telecommunications facilities located under the surface



of the ground, excluding the underground foundations or supports for “Overhead facilities.”

~~AA-LL~~ Usable Space means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits.

~~BB-MM~~ \_\_\_\_\_ Utility Easement means any easement within the public right-of-way designated on a subdivision plat or partition map as a utility easement, public utility easement or “P.U.E.” ~~or~~ Utility easement includes any easement granted to or owned by the City and acquired, established, dedicated or devoted for public utility purposes, but only to the extent that use of the easement for telecommunications facilities is not inconsistent with the terms of the City easement, as determined by the City in its sole discretion ~~with the telecommunications facilities.~~

~~CC-NN~~ \_\_\_\_\_ Utility Facilities means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, transformers, plant and equipment located under, on, or above the surface of the ground within the public right-of-way of the City and used or to be used for the purpose of providing utility or telecommunications services. (Ord. 2850 § 2, amended, 10/19/1999)

## **Chapter 16.08**

### **REGISTRATION OF TELECOMMUNICATIONS CARRIERS**

Sections:

<b>16.08.010</b>	<b>Purpose</b>
<b>16.08.020</b>	<b>Registration Required</b>
<b>16.08.030</b>	<b>Registration Fee</b>
<b>16.08.040</b>	<b>Exceptions to Registration</b>

### **16.08.010 Purpose**

The purpose for registration is:

- A. To ~~as~~ensure that all telecommunications carriers who have facilities or 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 the telecommunications carriers who offer to provide telecommunications services within the City, ~~or that own or operate telecommunications facilities within the City.~~
- C. To assist the City in the enforcement of this title and the collection of any city ~~franchise~~ fees or charges that may be due the City.
- D. To assist the City in monitoring compliance with local, state and federal laws as they apply to grantees under this title. (Ord. 2850 § 3, amended, 10/19/1999)

### **16.08.020 Registration Required**

Except as provided in section [16.08.040](#), ~~all telecommunications carriers having telecommunications facilities within the corporate limits of the City, and~~ all telecommunications carriers that offer or provide telecommunications service to customer premises within the City, shall register with the City. The appropriate application and license from: a) the OPUC; or b) the FCC qualify as necessary registration information. Applicants also have the option of providing the following information:

- A. The identity and legal status of the registrant, including the name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.
- B. A description of the ~~registrant's existing or proposed telecommunications facilities within the City, a description of the telecommunications facilities that the registrant intends to construct, and a description of the~~ telecommunications service that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the City.
- C. Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or privilege subject to any business license requirements. A copy of the business license or license number must be provided. (Ord. 2850 § 5, amended, 10/19/1999)

### **16.08.030 Registration Fee**

Each application for registration as a telecommunications carrier shall be accompanied by a nonrefundable registration fee, equal to the minimum new business license fee as established by the council.

## **16.08.040 Exceptions to Registration**

The following telecommunications carriers are exempted from registration:

- A. Telecommunications carriers that are owned and operated exclusively for its own use by the state or a political subdivision of this state and provide telecommunications services for governmental purposes only.
- B. A private telecommunications network; provided, that such network does not use or occupy any public rights-of-way of the City.
- C. Telecommunications carriers that have a license or are grantees under a telecommunications franchise with the City ~~or previous grantees that have timely filed for, and are actively and expeditiously pursuing, a franchise renewal.~~ (Ord. 2850 § 6, amended, 10/19/1999)

## **Chapter 16.12 CONSTRUCTION STANDARDS**

Sections:

- 16.12.010 General Construction**
- 16.12.020 Codes Construction**
- 16.12.030 Permits Permit**
- 16.12.040 Applications Traffic**
- 16.12.060 Control Plan**
- 16.12.070 Construction Permit Fee**
- 16.12.075 Diminished Pavement Life Fee**
- 16.12.080 Issuance of Permit**
- 16.12.090 Construction Schedule**
- 16.12.100 Locates**
- 16.12.110 Compliance with Permit**
- 16.12.140 Noncomplying Work**
- 16.12.150 Completion of Construction**
- 16.12.170 Restoration of Public rights-of-way, Other rights-of-way and City Property**
- 16.12.180 Landscape Restoration**
- 16.12.190 Construction and Completion Bond**

### **16.12.010 General**

No person shall commence or continue with the construction, installation or operation of telecommunications facilities within public rights-of-way in the City except as provided in this chapter.

### **16.12.020 Construction Codes**

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

### **16.12.030 Construction Permits**

A. No person shall construct or install any telecommunications facilities within a public right-of-way in the City without first obtaining a construction permit and paying the construction permit fee established in section [16.12.070](#).

B. ~~The construction permit required in this title authorizes an applicant to undertake only certain activities in accordance with this title and does not create a property right or grant authority to the applicant to interfere with or impinge upon the rights of others who may already have an interest in or authority to use the public rights-of-way. The construction permit required in this title does not authorize the applicant to install telecommunications facilities on, or otherwise use or attach to, city structures in the public rights-of-way. The construction permit is separate from, and in addition to, the required permission to install telecommunications facilities on, or otherwise use or attach to, city structures in the public rights-of-way, which permission may be granted by separate lease, license or attachment agreement.~~

A.C. No permit shall be issued for the construction or installation of telecommunications facilities in the public rights-of-way unless the telecommunications carrier has first applied for and received a license or a franchise pursuant to chapter [16.20](#), or is a previous grantees-licensee or franchisee that has ve timely filed for, and are-is actively and expeditiously pursuing, a franchise-renewal.

B.D. No permit shall be necessary for the installation of a customer specific wire ("a drop") by a franchise grantee where no excavation within the right-of-way occurs.

~~No permit shall be necessary for the installation of telecommunication facilities within a utility easement that is not otherwise within, under or over a public street, road, highway, bridge, alley, bikeway, sidewalk, trail or path.~~ (Ord. 2850 § 7, amended, 10/19/1999)

### **16.12.040 Permit Applications**

A. Applications for permits to construct telecommunications facilities within a public right-of-way shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans, specifications and maps in sufficient detail to demonstrate:

A.—Demonstrate:

1. That the facilities will be constructed in accordance with all applicable codes, rules and regulations, including but not limited all applicable design standards, and that the facilities will be constructed in accordance with the license or franchise agreement.

2. The location and route of all facilities on or in the public rights-of-way to be installed aboveground or on existing utility poles. The location and route of all facilities to be located under the surface of the ground within the public rights-of-way. Existing facilities shall be differentiated on the plans from new construction.

3. The location of all of applicant's existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public rights-of-way along the underground route proposed by the applicant.

4. A typical cross section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk or right-of-way.

5. To the extent the proposed telecommunications facility involves collocation, (i) a structural report performed by a duly licensed engineer demonstrating that the pole or structure will structurally support the additional load and meet any applicable spacing requirements, or that describes how the pole or structure will be modified to meet such requirements; and (ii) a copy of the authorization for use of the property from the pole or structure owner on which the telecommunications facility will be placed or attached.

6. To the extent the proposed telecommunications facility includes antenna facilities or a new pole, accurate visual depictions or representations of the proposed new facilities.

7. To the extent the proposed telecommunication facility includes antenna facilities, reports or similar documentation confirming that the proposed antenna facilities are in compliance with all applicable FCC regulations relating to radio frequency emissions.

4.8. Whether the proposed work is subject to administrative review or discretionary review as provided in AMC 16.12.080.

B. The application shall also be accompanied by computer generated electronic maps of the proposed installations in a format specified by the City unless the applicant demonstrates that the format utilized was developed by the applicant and is proprietary.

C. The application shall ~~Show show~~ the location, dimension and types of all trees which ~~will the applicant proposes to be~~ substantially trimmed, removed or replaced as a result of the areas disturbed during construction and which are within or adjacent to the public rights-of-way along the route proposed by the applicant. The applicant shall comply with all provisions of AMC 13.16 with respect to any trimming, removal, or replacement of trees, including but not limited to obtaining all permits required under AMC 13.16 prior to commencing any work pursuant to a permit issued under this Chapter. ~~submit a landscape plan, satisfactory to the City, for the replacement of such trees.~~

D. An applicant shall immediately submit to the City in writing any changes and amendments to any information submitted in a permit application. Unless otherwise agreed to in writing by the City, any

material changes to an application, as determined by the City in its sole discretion, shall be considered a new application for purposes of any applicable shot clock, unless otherwise provided by applicable Laws. Where the City has determined the application is a new application, the City may require payment of an additional permit application fee in the event the City determines, in its sole discretion, that the new application will materially increase the time and/or costs of the permit review process. (Ord. 2850 § 8, amended, 10/19/1999)

E. An applicant may simultaneously submit not more than 10 applications for telecommunications facilities, or may file a single, consolidated application covering not more than 10 telecommunications facilities, provided that the proposed telecommunications facilities are to be deployed on the same type of structure using similar equipment and within an adjacent, related geographic area of the City. If the applicant files a consolidated application, the applicant shall pay the application fee calculated as though each telecommunication facility were a separate application.

G.F. The Public Works Director is authorized to develop, publish, and update, or amend permit application requirements, forms, checklists, guidelines, informational handouts, and other related materials that the Public Works Director finds necessary, appropriate, or useful in implementing and enforcing this title.

## **16.12.060 Traffic Control Plan**

All work on, in, under, across or along any public rights-of-way shall be performed consistent with the Uniform Manual of Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic. (Ord. 2850 § 9, amended, 10/19/1999)

## **16.12.070 Construction Permit Fee**

~~Unless otherwise provided in a franchise agreement, p~~Prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount to be determined by resolution of the City ~~council~~Council. ~~Nothing in this section shall require a telecommunications utility to pay a permit fee unless the utility is providing telecommunication services in addition to exchange access services.~~ (Ord. 2850 § 10, amended, 10/19/1999)

## **16.12.075 Diminished Pavement Life Fee**

Grantee, for any construction requiring pavement cuts, shall pay to city an amount to reimburse city for the pavement degradation and shortened pavement life that results from such cuts. Such fees shall be set by resolution of the City ~~council~~Council and shall be based upon the linear feet of the pavement cut, the age of the pavement when cut and whether the excavation is transverse or longitudinal. ~~This section shall not apply to a Telecommunication Utility if such fee is determined by a court of competent jurisdiction to fall within the restrictions of ORS 221.515(3). If such determination is made, then the fee shall apply only to cuts made after the determination.~~ (Ord. 2850 § 11, amended, 10/19/1999)

## **16.12.080 Review and Issuance of Permit**

A. Permits Subject to Administrative Review.

1. For applications the Public Works Director determines to be permitted uses subject to administrative review, subject to the provisions of subsection C of this section 16.12.080, if satisfied that the applications, plans and documents submitted comply with all requirements of this title, the Department of Public Works Director shall issue a permit authorizing construction or installation 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, provided that the proposed facility:

- a. Complies with the provisions of this chapter and the license or franchise;
- b. Does not materially interfere with sight lines or clear zones for transportation or pedestrians;
- c. Complies with the Americans with Disabilities Act or similar federal, state, or local laws, standards and regulations regarding pedestrian access or movement;
- d. Complies with all applicable FCC regulations and guidelines for human exposure to RF emissions and will not result in RF exposures that exceed the FCC's maximum permissible exposure level for the general population;
- e. Is designed by qualified, licensed persons to provide the maximum protection that is technically feasible to prevent electrical and fire hazards; and
- f. Complies with City codes, standards and regulations, including the City's design standards and including, without limitation, building and electrical codes, and any other codes, rules, or laws that the City determines are applicable.

2. The following uses within the public rights-of-way shall be permitted uses subject to administrative review.

- a. Installation of a telecommunications facility where the installation is solely coaxial, fiber optic or other cabling that is installed underground or aboveground between two or more existing poles.
- b. Collocation of a small wireless facility that complies with the City's small wireless facilities design standards without any deviations, including deviations allowed pursuant to the deviation provisions of the design standards, and that does not exceed the maximum height set forth in AMC 16.16.020.A.
- c. Collocation of a small wireless facility, including modification or replacement of a pole for collocation of a small wireless facility, where the collocation, modification or replacement qualifies as an eligible facilities request, provided that the Public Works Director may include conditions with the permit to ensure that the collocation, modification or replacement is consistent with applicable provisions of this title and the City's small wireless facilities design standards to the extent consistent with applicable law.

d. Placement of a new, modified, or replacement pole to be used for collocation of a small wireless facility that (i) is not in a historic district; (ii) does not modify or replace a decorative pole; (iii) complies with the city's small wireless facilities design standards without any deviations, including deviations allowed pursuant to the deviation provisions of the design standards, and (iv) does not exceed the maximum height set forth in AMC 16.16.020.A, provided that there are existing poles of similar height within 300 feet of either side of the proposed new pole.

B. Permits Subject to Discretionary Review.

1. For applications subject to discretionary review, subject to the provisions of subsection C of this section 16.132.080, the Public Works Director may issue the permit 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, if the Public Works Director determines that:

a. The proposed telecommunications facility complies with the provisions of subsection A(1)(a)-(e) of this section 16.12.080, except to the extent deviations are expressly granted as provided in this title;

b. The proposed telecommunications facility, as proposed or with the conditions imposed by the Public Works Director, will comply with all applicable city design standards, or the Public Works Director has determined that a deviation from the design standards shall be allowed pursuant to the deviation process in the city's small wireless facilities design standards;

c. The proposed telecommunications facility, as proposed or with the conditions imposed by the Public Works Director, will comply with all applicable city design standards, or the Public Works Director has determined that the proposed facility avoids the intangible public harm of unsightly or out-of-character deployments and the negative impact of the proposed facility on the surrounding uses and public facilities is minimized; and/or

d. The Public Works Director determines in his or her sole discretion that denial of the permit will prohibit or effectively prohibit the provision of telecommunications service or personal wireless service.

2. All uses of the public rights-of-way for telecommunications facilities other than those set forth in subsection A of this section 16.12.030, including uses described in subsection A that do not fully comply with the city's applicable design standards without a deviation, shall be subject to discretionary review as provided in this subsection 16.12.080.B.

3. The Public Works Director shall not issue a permit subject to discretionary review unless the applicant has held at least one local community meeting, attended by at least one representative of the applicant, to inform members of the surrounding area of the proposed telecommunication facility. Meeting documentation shall be provided to the Public Works Director not later than 45 days after the date the applicant submitted the application, unless the applicant and the Public Works Director agree



in writing to a longer period of time and to toll any applicable shot clock to act on the application, and shall include the following.

- a. A copy of the mailing list to properties within 300 feet of the proposed facility.
- b. A copy of the notice of community meeting, mailed one week prior to the meeting.
- c. A copy of the newspaper ad placed in a local paper one week prior to the meeting.
- d. A summary of issues raised during the meeting.
- e. The name(s) of the applicant representative(s) in attendance.

C. Permits Subject to FCC Shot Clocks.

1. In addition to the process set forth in subsections A and B of this section 16.12.080, for permits subject to an FCC shot clock, the Public Works Director may take such steps as may be required for the City to comply with the applicable shot clock, including entering into agreements with applicants to extend the time for action on the application.
2. The applicant may not submit additional information not contained in its initial application, other than information expressly requested by the City, unless the City expressly agrees to consider such supplemental information and, if requested by the City, the applicant agrees to toll the shot clock.

D. Nothing in this title waives or shall be deemed to waive the City's right and ability to challenge the presumption of the reasonable time to act set forth in the applicable shot clock.

E. Use of Consultants. Where deemed reasonably necessary by the City, the City may retain the services of professional consultants to assist the City in carrying out its duties in reviewing and making decisions on permit applications. The applicant shall be responsible for payment of all the actual costs incurred by the City for such services. The City shall provide the applicant with a detailed invoice of time spent and the nature of the review, and the applicant shall submit payment to the City within 30 days of receipt of the invoice.

F. Independent Consultants Retained by Fire Chief. The Fire Chief has the authority to select and retain an independent consultant with expertise and/or specialized training in fire safety and fire hazard mitigation and prevention, which includes wildfire and forest fire prevention, satisfactory to the Fire Chief in connection with any application. The Fire Chief may request independent consultant review on any matter committed to the Fire Chief for review or approval. Subject to applicable laws, if the Fire Chief elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the actual costs in connection with the services provided, which may include without limitation any actual costs incurred by the independent consultant to attend and participate in any meetings or hearings. The City shall provide the applicant with a detailed invoice of time spent and the

nature of the review, and the applicant shall submit payment to the City within 30 days of receipt of the invoice.

A.G. It shall be the obligation of the applicant to use the correct permit forms, to explicitly and correctly identify which type of application they are filing, and to provide probative evidence in the application that the proposed telecommunications facility complies with all applicable federal, state and local laws, rules and regulations, including but not limited to applicable design standards.

## **16.12.090 Construction Schedule**

The permittee shall submit a written construction schedule to the Department of Public Works before commencing any work in or about the public rights-of-way. At the City's request, the construction schedule shall include a best estimate deadline for completion of construction. The schedule is subject to approval by the ~~Director of~~ Public Works Director. The permittee shall further notify the Department of Public Works not less than two working days in advance of commencing the project under the issued permit for excavation or work in the public rights-of-way. When advance notice is not possible because of an emergency, the permittee shall give notice within 24 hours of the excavation or work. When feasible, permittee shall contact all other grantees or utilities located within the public right-of-way where construction is to occur. The purpose of the contact is to determine if joint projects are feasible to minimize duplication of work and unnecessary excavation. For those grantees or utilities expressing interest in a joint project, permittee shall give them reasonable notice of the particular dates on which open trenching exists. Upon mutual agreement, permittee shall make the trench available to grantees and utilities for installation of conduit, pedestals, vaults, laterals, wires, lines or equipment. The payment for the cost of trenching and installation shall be as mutually agreed to by the parties. Provided permittee demonstrates a good faith attempt to coordinate, the City shall not withhold issuance of any permit due to the inability of the permittee and any grantee or utility to agree upon scheduling of the project and/or reimbursement of costs associated with the project. (Ord. 2850 § 12, amended, 10/19/1999)

## **16.12.100 Locates**

The permittee is responsible for becoming familiar with, and understanding the provisions of ORS Chapter [757](#), governing the location of underground facilities (the "One-Call statutes"). Grantee shall comply with the terms and conditions set forth in the OneCall statutes. Every grantee under this title shall join and maintain membership in the Oregon Utility Notification Center and shall comply with the rules adopted by the center regulating the notification and marking of underground facilities. (Ord. 2850 § 13, amended, 10/19/1999)

## **16.12.110 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 Department of Public Works and its representatives shall be provided access to the work site and such information that is not confidential, sensitive or proprietary as they may require to ensure compliance with such requirements. (Ord. 2850 § 14, amended, 10/19/1999)

### **16.12.140 Noncomplying Work**

Upon order of the Department of Public Works, after reasonable notice and an opportunity to cure has been given, all work which does not comply with the permit, the approved plans and specifications for the work, the [license or franchise agreement](#) or the requirements of this title, shall be removed at the sole expense of the permittee. (Ord. 2850 § 17, amended, 10/19/1999)

### **16.12.150 Completion of Construction**

The permittee shall promptly complete all construction activities so as to minimize disruption of the City rights-of-way and other public and private property. All construction work authorized by a permit within city rights-of-way, including restoration, must be completed within 120 days of the date of issuance unless the [Public Works Director](#)~~City engineer~~ agrees to a longer period. (Ord. 2850 § 18, amended, 10/19/1999)

### **16.12.170 Restoration of Public rights-of-way, Other 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, ~~other rights-of-way~~ or city property, it shall, at its own expense, promptly remove any obstructions and restore such ways or property to as near the original condition as reasonably possible, unless otherwise directed by the City.
- 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 if directed to do so by the City engineer. 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. For the purpose of this subsection, temporary restoration means restoring the property to a safe condition permitting such use of the property as was made prior to the work being undertaken. Temporary restoration does not require paving, landscaping or surfacing of a permanent nature.
- C. If the permittee fails to restore rights-of-way or property to as near the original condition as reasonably possible, 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 such notice, the permittee fails to restore the rights-of-way or property to as near the original condition as reasonably possible, the City shall cause such restoration to be made at the expense of the permittee.
- D. A permittee or other person acting in its behalf shall use suitable barricades, flags, flagmen, 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. (Ord. 2850 § 20, amended, 10/19/1999)

### **16.12.180 Landscape Restoration**

- A. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction,

installation, maintenance, repair or replacement of telecommunications facilities, whether such work is done pursuant to a franchise, license, or permit, shall be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work.

B. All restoration work within the public ways shall be done in accordance with landscape plans approved by the City.

C. Any tree, shrub or other landscaping that shows substantial damage within eighteen months of completion of construction, attributable to construction, must be replaced at the sole expense of the grantee.

### **16.12.190 Construction and Completion Bond**

~~Unless otherwise provided in a franchise agreement, or u~~Unless the City ~~otherwise~~ specifically approves an alternative security to assure performance, a performance bond written by a corporate surety acceptable to the City, and authorized to transact business in Oregon, equal to at least 100% of the estimated cost of constructing grantee's telecommunications facilities within the public rights-of-way of the City shall be deposited before construction is commenced.

A. The performance bond 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 performance bond 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. (Ord. 2850 § 21, amended, 10/19/1999)

## **Chapter 16.16**

# **CONSTRUCTION STANDARDS**

Sections:

- 16.16.010**    **Location of Facilities**
- 16.16.020**    **Design Standards**
- 16.16.025**    **Interference with the Public rights-of-way**
- 16.16.030**    **Relocation or Removal of Facilities**
- 16.16.040**    **Removal of Unauthorized Facilities**

## 16.16.010 Location of Facilities

All facilities located within the public right-of-way ~~or utility easements~~ shall be constructed, installed and located in accordance with the following terms and conditions, ~~unless otherwise specified in a franchise agreement~~:

A. Grantee shall install its telecommunications facilities underground unless the City specifically permits attachments to ~~utility~~ poles or other aboveground facilities, provided, however, no entity with existing attachments to ~~utility~~ poles shall be required to install new or existing facilities underground except as provided in the following subsections.

B. Grantee shall install its telecommunications facilities within an existing underground duct or conduit owned by it whenever surplus capacity exists within such utility facility unless grantee demonstrates to satisfaction of ~~city~~ City that such installation is not feasible.

C. A grantee with permission to install overhead facilities shall install its telecommunications facilities on pole attachments to existing ~~utility~~ poles only, and then only if usable space is available as determined by the Department of Electric Utilities or the owner of the poles.

D. Whenever any existing electric utilities are located underground within a public right-of-way of the City, a grantee with permission to occupy the same public right-of-way must also locate its telecommunications facilities underground. Whenever any overhead electric utilities are relocated underground, any grantee with permission to occupy the same public right-of-way must also relocate underground.

E. Whenever any new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public right-of-way of the City, a grantee that currently occupies the same public right-of-way shall relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the public right-of-way, absent extraordinary circumstances or undue hardship as determined by the City and consistent with state law.

F.F. Notwithstanding subsections A, B, D and E of this section 16.16.010, a grantee shall not be required to install underground any telecommunications facilities such as small wireless facilities that cannot, by their nature, operate unless located aboveground, provided that where all other telecommunications facilities in the public rights-of-way are underground in the area where such a telecommunications facility is proposed, the City and grantee shall work to find a location for such telecommunications facilities that is technically feasible and avoids the intangible public harm of unsightly or out-of-character deployments. The City shall have sole discretion to approve or deny the location of all above-ground telecommunications facilities in areas where all other telecommunications facilities are located underground to the extent consistent with applicable law.

F.G. The City engineer may grant exceptions to some or all of the requirements of this section if the engineer determines, in the engineer's sole discretion, that a waiver is necessary to fulfill the purpose and intent of this title or to comply with applicable law. (Ord. 2850 § 24, amended, 10/19/1999)

## **16.16.020 Design Standards**

- A. Maximum Size of Permitted Use. No person may install, modify, or replace small wireless facilities on a pole in the rights-of-way that exceeds the height limits contained in 16.04.040.CC, or install, modify or replace a pole in the rights-of-way with a new pole that will be more than 10 percent taller than other adjacent poles, unless the Public Works Director approves the installation, modification or replacement after discretionary review.
- B. Decorative Poles. No person may collocate a small wireless or other telecommunications facility on a decorative pole, or replace a decorative pole, including with a new decorative pole, unless the Public Works Director approves the collocation or replacement after discretionary review.
- C. Historic District. No person may install small wireless facilities or other antenna facilities in the rights-of-way in Historic Districts, or install new poles to support small wireless facilities or other antenna facilities in the rights-of-way in Historic Districts, unless the Public Works Director approves the installation after discretionary review.
- D. Safety Requirements. No person shall install or retain telecommunications facilities in the following locations:
1. Any location that would create a hazard to public health or safety.
  2. Any location that would adversely affect the normal drainage of surface water, unless an acceptable mitigation is included that will be advantageous to the general public.
  3. Any location that would adversely affect vehicular and/or pedestrian traffic or the parking of vehicles, including placements in any area that obstructs or restricts the view necessary for the safe operation of motor vehicles as determined by the Public Works Director.
  4. Any location that would adversely affect the root structure of any existing trees, or significantly reduce areas that may be used for tree planting.
  5. Any location within 10 feet of any driveways for police stations, fire stations or other emergency responder facilities.
  6. Any location that would physically interfere with or impede access to any:
    - a. aboveground or underground infrastructure for traffic control or public transportation, including, any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, and/or barricade reflectors;
    - b. public transportation vehicles, shelters, street furniture, or other improvements at any public transportation stop;
    - c. aboveground or underground infrastructure owned or operated by any public or private utility;
    - d. fire hydrant or water valve;

e. doors, gates, sidewalk doors, passage doors, stoops, or other ingress and egress points to any building appurtenant to the right-of-way; or

f. fire escape.

E. Notwithstanding any other provision of this Chapter, the City Manager shall have the authority to waive any provision of this title if the City Manager determines in his or her sole discretion that the denial of an application would prohibit or effectively prohibit the provision of telecommunications services in violation of the Telecommunications Act.

### **16.16.025 Interference with the Public rights-of-way**

No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public rights-of-way by the City, by the general public or by other persons authorized to use or be present in or upon the public rights-of-way. All such facilities shall be moved by the grantee, temporarily or permanently, as determined by the City at the sole expense of the grantee. All use of public rights-of-way shall be consistent with city codes, ordinances and regulations.

### **16.16.030 Relocation or Removal of Facilities**

Within 60 days following written notice from the City, a grantee shall, at no expense to the City, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public rights-of-way whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

A. The construction, repairs, maintenance or installation of any city or other public improvement in or upon the public rights-of-way; or:

B. The operations of the City or other governmental entity in or upon the public rights-of-way unless such city operations are exclusively for its telecommunications purposes or cable services which compete with other telecommunications carriers or cable services; or:

~~B.C.~~ The public interest.

Notwithstanding the 60-day limit, a grantee shall, at no expense to the City, relocate overhead facilities within 30 days following written notice from the Electric Utilities Department that the City or a joint pole owner has space on poles for such purpose.

The 30 or 60-day limit may be waived by consent of the parties. Waivers shall not be unreasonably withheld. (Ord. 2850 § 25, amended, 10/19/1999)

### **16.16.040 Removal of Unauthorized Facilities**

Within 30 days following written notice from the City, any grantee, telecommunications carrier, or other person that owns, controls, or maintains any unauthorized telecommunications system, facility or related appurtenances within the public rights-of-way of the City shall, at its own expense, remove such facilities or



appurtenances from the public rights-of-way of the City. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

- A. One year after the expiration or termination of the grantee's telecommunications license or franchise unless the grantee has timely filed for, and is actively and expeditiously pursuing, a license or a franchise renewal.
- 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, if the facility is excess capacity of a current grantee who is not in default, if the facility is being replaced or if the facility has been disconnected because the building or property being served is vacant.
- C. If the system or facility was constructed or installed without the prior grant of a license or telecommunications franchise.
- D. If the system or facility was constructed or installed without the prior issuance of a required construction permit.
- E. If the system or facility was constructed or installed at a location not permitted by the grantee's license or telecommunications franchise or the construction permit.
- F. If the system interferes with or adversely affects existing telecommunication facilities or other utility facilities.
- F.G. If the system is not maintained to ensure the maximum protection that is technically feasible to prevent electrical and fire hazards.

The 30-day limit may be waived by consent of the parties. Waivers shall not be unreasonably withheld. If all the facilities and appurtenances are not removed within one year after the termination or expiration of the license or franchise, or such further time as may be granted by the City, they shall be forfeited to the City. The City may notify the grantee, carrier or other person described above that it waives forfeiture and may compel removal from the public right-of-way and restoration of the right-of-way and may maintain court suit to require such removal and restoration by the grantee, carrier or other person or the payment of the cost thereof by the grantee, carrier or other person. (Ord. 2850 § 26, amended, 10/19/1999)

**Chapter 16.20**  
**TELECOMMUNICATIONS**  
**FRANCHISE LICENSE**

Sections:

<b>16.20.020</b>	<b><del>Telecommunications Franchise</del><u>Telecommunications License</u></b>
<b>16.20.030</b>	<b>Application</b>
<b>16.20.040</b>	<b>Application and Review Fee</b>
<b>16.20.050</b>	<b>Determination by the City</b>
<b>16.20.060</b>	<b><del>Rights Granted</del><u>Authority Granted</u></b>
<b>16.20.070</b>	<b>Term of Grant</b>
<b>16.20.090</b>	<b><del>Franchise Territory</del><u>License Territory</u></b>
<b>16.20.110</b>	<b>Amendment of Grant</b>
<b>16.20.120</b>	<b>Renewal Applications</b>
<b>16.20.130</b>	<b>Renewal Determinations</b>
<b>16.20.140</b>	<b>Obligation to Cure as a Condition of Renewal</b>
<b>16.20.150</b>	<b>Assignments or Transfers of Grant, Notice to city</b>
<b>16.20.170</b>	<b>Revocation or Termination <del>of Franchise</del></b>
<b>16.20.180</b>	<b>Notice and Duty to Cure</b>
<b>16.20.190</b>	<b>Public Hearing</b>
<b>16.20.200</b>	<b>Standards for Revocation or Lesser Sanctions</b>
<b>16.20.210</b>	<b><u>Franchise Agreements</u></b>
<b><u>16.20.220</u></b>	<b>Other City Costs</b>

## **16.20.020 Telecommunications Franchise License**

A. Except as provided in AMC 16.20.210, every A telecommunications franchise shall be required of any telecommunications carrier who desires to occupy public rights-of-way of the City shall obtain a license from the City. (Ord. 2850 § 27, amended, 10/19/1999)

A-B. A telecommunications carrier that owns or controls telecommunications facilities in the rights-of-way as of the effective date of this chapter shall apply for a license from the City within 30 days of the later of: (A) the effective date of this chapter, or (B) the expiration of a valid franchise agreement granted by the City, unless a new franchise agreement is granted by the City pursuant to AMC 16.20.210.

## **16.20.030 Application**

Any person that desires a telecommunications franchise license pursuant to this chapter shall file an application with the Finance Department which shall include the following information:

- A. The identity of the applicant:
- B. A description of the telecommunications services that are to be offered or provided by the applicant and/or other telecommunications carriers over its telecommunications facilities within the City.
- C. Preliminary engineering plans, specifications and a network map of the facilities to be located within the public rights-of-way in the City, including copies in a computerized format specified by the City (unless the applicant demonstrates that the format utilized was developed by the applicant and is proprietary) and all in sufficient detail to identify:
  1. the location and route requested for applicant's proposed telecommunications facilities;
  2. the specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.
- D. If applicant is proposing to install aboveground facilities, to the extent that the applicant will be using utility poles, evidence from the Electric Utilities Department or pole owner that usable space is available for locating the applicant's telecommunications facilities on existing utility poles along the proposed route; and if usable space is not available in some or all service areas, an indication of these locations and a "make ready" schedule for completion.
- E. If the applicant is proposing an underground installation in existing ducts or conduits within the public rights-of-way, provide information in sufficient detail to identify:
  1. the excess capacity currently available in such ducts or conduits before installation of applicant's telecommunications facilities;
  2. the excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

F. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public rights-of-way:

1. the location proposed for the new ducts or conduits;
2. the excess capacity that will exist in such ducts or conduits after the installation of applicant's telecommunications facilities.

G. A preliminary construction schedule and completion date.

H. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the telecommunications facilities.

I. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application.

J. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services proposed, if any.

K. Whether the applicant intends to provide cable service, ~~video dial tone service~~ an open video system or other video programming service, and sufficient information to determine whether such service is subject to cable franchising.

L. An accurate map showing the location of any existing telecommunications facilities in the City that applicant intends to use or lease.

M. A description of ~~the any~~ services or facilities that the applicant will offer or make available to the City and other public, educational and governmental institutions.

N. As Built, after completion of initial construction.

O. A description of applicant's access and line extension policies.

P. The area or areas of the City the applicant desires to serve and a schedule for buildout ~~to the entire franchise area~~. (Ord. 2850 § 27, amended, 10/19/1999)

## **16.20.040 Application and Review Fee**

A. Any application for a franchise or license pursuant to this chapter shall pay an application and review fee in an amount to be determined by resolution of the City ~~council~~ Council. ~~This section shall not apply to a telecommunication utility which provides only local exchange access.~~

B. The application and review fee shall be deposited with the City as part of the application filed pursuant to section 16.20.030. (Ord. 2850 § 27, amended, 10/19/1999)

## 16.20.050 Determination by the City

The City shall issue a written determination granting or denying the application in whole or in part, applying the standards listed below. If the application is denied, the written determination shall include the reasons for denial. The standards to be applied by city are:

- A. The financial and technical ability of the applicant.
- B. The legal ability of the applicant.
- C. The capacity of the public rights-of-way to accommodate the applicant's proposed facilities.
- D. The capacity of the public rights-of-way to accommodate additional utility and telecommunications facilities if the franchise license is granted.

~~E.—The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the franchise is granted.~~

~~F.—The public interest in minimizing the cost and disruption of construction within the public rights-of-way.~~

~~G.—The service that applicant will provide to the community and region.~~

~~H.~~ H. The effect, if any, on public health, safety and welfare if the franchise license is granted.

~~I.~~ F. The availability of alternate routes or locations for the proposed facilities.

~~J.~~ G. Applicable federal and state telecommunications laws, regulations and policies.

~~K.~~ H. Such other factors as may demonstrate that the grant license to use the public rights-of-way will serve the community interest.

## 16.20.060 Rights Authority Granted

No license or franchise granted under this chapter shall convey any right, title or interest in the public rights-of-way, but shall be deemed a grant to use and occupy the public rights-of-way for the limited purposes and term, and upon the conditions stated in this title and the license or the franchise agreement. (Ord. 2850 § 27, amended, 10/19/1999)

## 16.20.070 Term of Grant

~~Unless otherwise specified in a franchise agreement, a~~ license telecommunications franchise granted under this title shall be in effect for a term of five years. (Ord. 2850 § 27, amended, 10/19/1999)

## 16.20.090 Franchise License Territory

~~Unless otherwise specified in a franchise agreement, telecommunications franchise~~ The license granted under this chapter shall be limited to the specific geographic area of the City to be served by the franchise

grantee as described in the license application, and the public rights-of-way necessary to serve such areas. (Ord. 2850 § 27, amended, 10/19/1999)

### **16.20.110 Amendment of Grant**

Conditions for amending a license or franchise:

- A. A new application and grant shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public rights-of-way of the City which are not included in the current license application or a franchise previously granted under this title ~~unless the grantee has already received a franchise to occupy public rights-of-way in all areas of the City.~~
- B. If ordered by the City to locate or relocate its telecommunications facilities in public rights-of-way not included in a previously granted license or franchise, the City shall grant an amendment without further application.

A new application and grant shall be required of any telecommunications carrier that desires to provide a service which was not included in a license or franchise previously granted under this title. (Ord. 2850 § 27, amended, 10/19/1999)

### **16.20.120 Renewal Applications**

A grantee that desires to renew its franchise-license under this chapter shall, not less than 90 days before expiration of the current agreement, file an application with the City for renewal of its franchise-license which shall include the following information:

- A. The information required pursuant to section 16.20.030 that has not previously been provided to the City in connection with grantee's existing franchise-agreementlicense.
- B. Any information requested by the City related to the grantee's compliance with the term of the expiring license required pursuant to the franchise agreement between the City and the grantee. (Ord. 2850 § 27, amended, 10/19/1999)

### **16.20.130 Renewal Determinations**

Within 90 days after receiving a complete application under section 16.20.120, the City shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal.

- A. The financial and technical ability of the applicant.
- B. The legal ability of the applicant.
- C. The continuing capacity of the public rights-of-way to accommodate the applicant's existing facilities.
- D. The applicant's compliance with the requirements of this title and the franchise-agreementlicense.

- E. Applicable federal, state and local telecommunications laws, rules and policies.
- F. Such other factors as may demonstrate that the continued grant to use the public rights-of-way will serve the community interest. (Ord. 2850 § 27, amended, 10/19/1999)

### **16.20.140 Obligation to Cure as a Condition of Renewal**

No franchise license shall be renewed until any ongoing violations or defaults in the grantee's performance of the agreement, compliance with the license or of the requirements of this title, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the City. (Ord. 2850, amended, 10/19/1999)

### **16.20.150 Assignments or Transfers of Grant, Notice to city**

A. Ownership or control of a majority interest in a telecommunications system, license or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the City, which consent shall not be unreasonably withheld or delayed, and then only on such reasonable conditions as may be prescribed in such consent.

1. Grantee and the proposed assignee or transferee of the license, franchise or system shall agree, in writing, to assume and abide by all of the provisions of the license or franchise.
2. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the telecommunications system pursuant to this title.
3. ~~Unless otherwise provided in a franchise agreement, t~~The grantee shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign a telecommunications license or franchise.
4. Any transfer or assignment of a telecommunications license, 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 grant. (Ord. 2850 § 27, amended, 10/19/1999)

### **16.20.170 Revocation or Termination of Franchise**

A license or 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 license or franchise grant of authorization such use of the public rights-of-way for telecommunications facilities.
- B. Construction or operation at an unauthorized location.

- C. Unauthorized substantial transfer of control of the grantee.
- D. Failure to comply with ~~section~~[AMC 16.20.150](#) with respect to sale, transfer or assignment of a telecommunications system, [license](#) or franchise.
- E. Unauthorized sale, assignment or transfer of grantee's [license or](#) franchise assets, or a substantial interest in the [license or](#) franchise.
- F. Misrepresentation by or on behalf of a grantee in any application to the City.
- G. Abandonment of telecommunications facilities in the public rights-of-way.
- H. Failure to relocate or remove facilities as required in this title.
- I. Willful or continued failure to pay taxes, compensation, fees or costs when and as due the City unless subject to a bona fide dispute.
- J. Insolvency or bankruptcy of the grantee.
- K. Violation of a material provision of this title.
- L. Violation of a material term of a [license or](#) franchise agreement. (Ord. 2850 § 27, amended, 10/19/1999)

### **16.20.180 Notice and Duty to Cure**

Pursuant to section [16.20.170](#), in the event that the City believes that grounds exist for revocation of a [license or](#) 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:

- A. That corrective action has been [taken](#), or is being actively and expeditiously pursued, to remedy the violation or noncompliance.
- B. That rebuts the alleged violation or noncompliance.
- C. That it would be in the public interest to impose some penalty or sanction less than revocation. (Ord. 2850 § 27, amended, 10/19/1999)

### **16.20.190 Public Hearing**

In the event that a grantee fails to provide evidence reasonably satisfactory to the City as provided in AMC [16.20.180](#), the City Manager shall refer the apparent violation or noncompliance to the City Council. The City Council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter. (Ord. 3192 § 117, amended, 11/17/2020; Ord. 2850 § 27, amended, 10/19/1999)



## **16.20.200 Standards for Revocation or Lesser Sanctions**

If persuaded that the grantee has violated or failed to comply with material provisions of this title, or of a license or franchise agreement, the City ~~council~~ Council shall determine whether to revoke the license or franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- A. Whether the misconduct was egregious.
- B. Whether substantial harm resulted.
- C. Whether the violation was intentional.
- D. Whether there is a history of prior violations of the same or other requirements.
- E. Whether there is a history of overall compliance.
- F. Whether the violation was voluntarily disclosed, admitted or cured. (Ord. 2850 § 27, amended, 10/19/1999)

## **16.20.210 Franchise Agreements**

If the public interest warrants, as determined by the City in its sole discretion, the City and a telecommunications carrier may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this title, consistent with applicable state and federal law. The franchise may conflict with the terms of this title with the review and approval of City Council. The franchisee shall be subject to the provisions of this title to the extent such provisions are not in conflict with the express provisions of any such franchise. In the event of a conflict between the express provisions of a franchise and this title, the franchise shall control.

## **16.20.220 Other City Costs**

All grantees shall, within 30 days after written demand, reimburse the City for all direct and indirect costs and expenses incurred by the City in connection with any modification, amendment, renewal or transfer of the license or franchise, or negotiation of any franchise agreement. (Ord. 2850 § 27, amended, 10/19/1999)

**Chapter 16.24**  
**GENERAL LICENSE AND FRANCHISE TERMS,**  
**RATES**

Sections:

- 16.24.010 Facilities**
- 16.24.020 Damage to Grantee's Facilities**
- 16.24.030 Duty to Provide Information**
- 16.24.040 Nondiscrimination**
- 16.24.060 Compensation for City Property**
- 16.24.070 ~~Franchise Fees~~ Rights-of-Way Fees**
- 16.24.080 Cable Franchise**
- 16.24.090 Leased Capacity**
- 16.24.100 Grantee Insurance**
- 16.24.110 General Indemnification**
- 16.24.120 Performance Surety**

### **16.24.010 Facilities**

Each grantee shall provide the City with an accurate map or maps certifying the location of all telecommunications facilities within the public rights-of-way. Each grantee shall provide updated maps annually including copies in a computerized format specified by the City (unless the grantee demonstrates that the format utilized was developed by the applicant and is proprietary). (Ord. 2850 § 28, amended, 10/19/1999)

### **16.24.020 Damage to Grantee's Facilities**

Unless directly and proximately caused by willful, intentional, malicious, or negligent acts by the City, the City shall not be liable for any damage to or loss of any telecommunications facility within the public rights-of-way of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public rights-of-way by or on behalf of the City, or for any consequential losses resulting directly or indirectly from such work. (Ord. 2850 § 29, amended, 10/19/1999)

### **16.24.030 Duty to Provide Information**

Within ten days of a written request from the City, each grantee shall furnish the City with information sufficient to demonstrate:

- A. That grantee has complied with all requirements of this title and the license or franchise.
- B. 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.

### **16.24.040 Nondiscrimination**

A grantee shall make its telecommunications services available to any customer within its franchise-service area who shall request such service, without discrimination as to the terms, conditions, rates or charges for grantee's services; provided, however, that nothing in this chapter shall prohibit a grantee from making any reasonable classifications among differently situated customers. (Ord. 2850 § 30, amended, 10/19/1999)

### **16.24.060 Compensation for City Property**

If any right is granted, by lease, franchise or other manner, to use and occupy city structures, or city property not located within a public right-of-way, for the installation of telecommunications facilities, the compensation to be paid for such right and use shall be fixed by the City. (Ord. 2850 § 32, amended, 10/19/1999)

## 16.24.070 ~~Franchise~~ Rights-of-Way Fees

As compensation for the benefits and privileges under its license or franchise and in consideration of permission to use the public right-of-way of the City, the grantee shall pay a quarterly franchise-rights-of-way fee to the City, through the duration of its license or franchise, as follows:

A. The minimum quarterly franchise-rights-of-way fee shall be set by resolution of the council.

~~B. The franchise fee for a telecommunication utility shall equal 7% of its gross revenue on exchange access services earned within the boundaries of the City.~~

~~C.B.~~ Except for limited use telecommunication grantees, the rights-of-way franchise fee shall equal a percent of the grantee's gross revenues derived from grantee's provision of telecommunications services and telecommunications facilities to retail customers in the City and one percent (1%) on all other gross revenues derived from grantee's provision of telecommunications services and telecommunications facilities to wholesale customers in the City, including other telecommunications carriers, if such customers or carriers are also telecommunication grantees under this title. If such customers or carriers are not grantees, then the rights-of-way franchise fee shall equal the fee for retail customers. The amount of the percent for retail customers shall be set by resolution of the council.

~~D.C.~~ A limited use telecommunication grantee shall pay a fee based on the number of linear feet of right-of-way used. A limited use telecommunication grantee is defined as one whose license or franchise limits the amount of linear feet the grantee may occupy or one who has a franchise as of October 1998 for the purpose of long distance telecommunications. The fee per linear foot shall be set by resolution of the council.

The annual rights-of-way franchise fee collectible from a telecommunications utility carrier shall ~~not exceed the~~ be subject to any limitations imposed pursuant to federal laws or maximum amount under Oregon Law. ~~The City shall accept from a telecommunications utility, in full payment of the franchise fee, the maximum amount allowed under Oregon law.~~ On request, the telecommunications utility carrier must provide documentation to support its fee calculation.

~~F.D.~~ Grantee shall be "providing" or engaged in the "provision of" telecommunications services or facilities if it sells, leases, resells, or otherwise conveys such services or facilities for consideration.

~~F.E.~~ A grantee providing resold telecommunications services or facilities shall be entitled to a credit against its rights-of-way franchise fee for an amount equal to a percentage of the price paid for such services or facilities at wholesale. Such percentage shall be set by resolution of the council.

~~F.F.~~ So long as it registers with the City as required in chapter 16.08 and pays the fees required for grantees set forth in subsections A and B above, a reseller may use another person's facilities to engage in telecommunications activities in the right-of-way without obtaining a franchise license, providing the reseller does not, either itself or through an affiliate, own or lease, control or manage any facilities in the right-of-way and is not involved in construction or repair of facilities in the right-of-way.

For purposes of calculating the fees to be paid by a reseller, the amount of compensation paid by the

reseller to the owner or manager of facilities in the right-of-way for the services it resells shall be deducted from the reseller's gross revenues before applying the percentage rates described in subsection C above.

H.G. Payment shall be made by each April 25, July 25, October 25 and January 25 for the quarter just ended.

Any grantee who fails to remit any fee imposed by this chapter within 30 days of the date it is due, shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the fee from the date on which the remittance first became due until paid. (Ord. 2850 § 33, amended, 10/19/1999)

## **16.24.080 Cable Franchise**

Telecommunication carriers providing cable service shall be subject to the City's cable franchise requirements.

## **16.24.090 Leased Capacity**

A grantee shall have the right, without prior city approval, to offer or provide capacity or bandwidth to its customers; provided:

- A. Grantee shall notify the City that such lease or agreement has been granted to a customer or lessee.
- B. The customer or lessee has complied, to the extent applicable, with the requirements of this title.

## **16.24.100 Grantee Insurance**

Unless otherwise provided in a license or 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 coinsured:

- A. Comprehensive general liability insurance with limits not less than \$+3,000,000 for bodily injury or death to each person; \$+3,000,000 for property damage resulting from any one accident; and, \$+3,000,000 for all other types of liability.
- B. Automobile liability for owned, nonowned and hired vehicles with a limit of \$+3,000,000 for each person and \$+3,000,000 for each accident.
- C. Workers' compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.
- D. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the telecommunications license or franchise, and such other period of time during which the grantee is operating without a license or franchise, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

"This policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the City's risk manager of such intent to cancel or not to renew."

Within 60 days after receipt by the City of such notice, and in no event later than 30 days prior to the cancellation, the grantee shall obtain and furnish to the City evidence that the grantee meets requirements of this section.

The insurance policy requirements of this section may be met by a program of self-insurance acceptable to the City. (Ord. 2850 § 34, amended, 10/19/1999)

### **16.24.110 General Indemnification**

~~Each franchise agreement shall include, to the extent permitted by law, grantee's express undertaking to~~  
Every telecommunications carrier shall defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligence~~et~~, careless or wrongful acts, omissions, failures to act, ~~or~~ misconduct or other actions of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this title or by a ~~grant agreement~~license or franchise made granted or entered into pursuant to this title. (Ord. 2850 § 35, amended, 10/19/1999)

### **16.24.120 Performance Surety**

Unless the City otherwise specifically approves an alternative security to assure performance, before a license or franchise granted pursuant to this title is effective, the grantee shall provide and maintain a performance bond, in form and substance acceptable to the City, as security for the full and complete performance of this title, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the City. (Ord. 2850 § 36, amended, 10/19/1999)

## **Chapter 16.26**

### **CABLE FRANCHISE REQUIREMENTS**

Sections:

- 16.26.010 Grant of Franchise**
- 16.26.020 Franchise Required**
- 16.26.030 Length of Franchise**
- 16.26.040 Cable Franchise Characteristics**
- 16.26.050 Cable Franchisee Subject to Other Laws, Police Powers**
- 16.26.060 Operation of a Cable System Without a Franchise**

### **16.26.010 Grant of Franchise**

- A. The City may grant one or more cable television franchises containing such provisions as are reasonably necessary to protect the public interest, and each such franchise shall be awarded in accordance with and subject to the provisions of this chapter.
- B. This chapter may be amended from time to time, and in no event shall this chapter be considered a contract between the City and a franchisee such that the City would be prohibited from amending any provision of this chapter, provided no such amendment shall in any way impair any contract right or increase obligations of a franchisee under an outstanding and effective franchise except in the lawful exercise of the City's police power.
- C. This chapter shall be in addition to the requirements of Title [16](#) that are specifically made applicable to cable service as provided in section [16.04.025](#). In the event of a conflict between this chapter and other requirements of Title [16](#), this chapter shall control.

### **16.26.020 Franchise Required**

- A. No person may construct, operate or maintain a cable system or provide cable service over a cable system within the City without a franchise granted by the City authorizing such activity. No person may be granted a franchise without having entered into a franchise agreement with the City pursuant to this chapter. For the purpose of this provision, the operation of part or all of a cable system within the City means the use or occupancy of rights-of-way by facilities used to provide cable service.
- B. To the extent ~~consistent with applicable permitted by law~~, a telecommunications ~~carrier utility, as defined by state law, which that~~ utilizes its system to provide cable service shall be subject to this chapter and shall require a cable franchise under this chapter.
- C. Services similar to cable service, such as open video system service, shall also be subject to this chapter to the extent ~~provided not prohibited~~ by law.
- D. A system shall not be deemed as operating within the City even though service is offered or rendered to one or more subscribers within the City, if no right-of-way is used or occupied. All cable franchises granted pursuant to this chapter shall contain substantially similar terms and conditions, which, taken as a whole and considering relevant characteristics of the applicants, do not provide more or less favorable terms and conditions than those required of other cable franchisees. (Ord. 2850, amended, 10/19/1999)

### **16.26.030 Length of Franchise**

Unless otherwise specified in a cable franchise, no cable franchise shall be granted for a period of more than five years. (Ord. 2850, added, 10/19/1999)

### **16.26.040 Cable Franchise Characteristics**

- A. A cable franchise authorizes use of rights-of-way for installing, operating and maintaining cables, wires, lines, optical fiber, underground conduit and other devices necessary and appurtenant to the operation of a cable system to provide cable services within the City, but does not expressly or implicitly authorize a franchisee to provide service to, or install a cable system on private property without owner consent, or to use publicly or privately owned poles, ducts or conduits without a separate agreement with the pole owner.
- B. A cable franchise shall not mean or include any exclusive right for the privilege of transacting and carrying on a business within the City as generally required by the laws of the City. A cable franchise shall not confer any authority to provide telecommunications services or any other communications services besides cable services and a separate license or franchise and payment of applicable rights-of-way fees shall be required for the provision of telecommunications or any other communication services in addition to the cable franchise to the extent not prohibited by applicable law. A franchise shall not confer any implicit rights other than those mandated by federal, state or local law.
- C. A cable franchise is nonexclusive and will not explicitly or implicitly: preclude the issuance of other franchises to operate cable systems within the City; affect the City's right to authorize use of rights-of-way by other persons to operate cable systems; or for other purposes as it determines appropriate.
- D. Once a cable franchise has been accepted and executed by the City and a franchisee, such cable franchise shall constitute a valid and enforceable agreement between the franchisee and the City, and the terms, conditions and provisions of such franchise, subject to this chapter and all other duly enacted and applicable laws and regulations, shall define the rights and obligations of the franchisee and the City relating to the franchise.
- E. All privileges prescribed by a cable franchise shall be subordinate to any prior lawful occupancy of the rights-of-way and the City reserves the right to reasonably designate where a franchisee's facilities are to be placed within the rights-of-way through its generally applicable permit procedures.
- F. A cable franchise shall be a privilege that is in the public trust and personal to the original franchisee. No franchise transfer shall occur without the prior written consent of the City ~~council~~ Council upon application made by the franchisee pursuant to this chapter, the franchise and applicable law. Consent shall not be unreasonably withheld, and any purported franchise transfer made without application and prior written consent shall be void and shall be cause for the City to revoke the cable franchise. (Ord. 2850, amended, 10/19/1999)

### **16.26.050 Cable Franchisee Subject to Other Laws, Police Powers**

- A. A cable franchisee shall at all times be subject to and shall comply with all applicable federal, state and local laws and regulations, including this chapter. A cable franchisee shall at all times be subject to all lawful exercise of the police power of the City including, but not limited to, all rights the City may have under the cable act, all powers regarding zoning, supervision of construction, control of rights-of-way and consumer protection.
- B. The City shall have full authority to regulate cable systems, cable franchisees and franchises as may



now, or hereafter be lawfully permissible. (Ord. 2850, added, 10/19/1999)

### **16.26.060 Operation of a Cable System Without a Franchise**

A. Any person who occupies rights-of-way for the purpose of operating or constructing a cable system or provides cable service over a cable system and who does not hold a valid franchise from the City shall be subject to all requirements of this chapter. The City Manager shall have the authority:

1. To require such person to enter into a franchise within 30 days of receipt of written notice that a franchise is required; or
2. To require such person to remove its property and restore the affected area to a condition satisfactory to the City. The City Manager may direct City personnel, or may employ contractors, to remove the property and restore the affected area to a condition satisfactory to the City and charge the person the costs therefor; or
3. To take any other action it is entitled to take under applicable law.

B. In no event shall a franchise be created unless it is issued by the City pursuant to this chapter and subject to a written franchise agreement. (Ord. 3192 § 118, amended, 11/17/2020; Ord. 2850, added, 10/19/1999)

## **Chapter 16.28 GOVERNING LAW**

Sections:

<b>16.28.010</b>	<b>Governing Law</b>
<b>16.28.020</b>	<b>Written Agreement</b>
<b>16.28.030</b>	<b>Nonexclusive Grant</b>
<b>16.28.040</b>	<b>Severability and</b>
<b>16.28.050</b>	<b>Preemption Penalties</b>
<b>16.28.060</b>	<b>Other Remedies</b>
<b>16.28.070</b>	<b>Captions</b>
<b>16.28.080</b>	<b>Compliance with Laws</b>
<b>16.28.090</b>	<b>Consent</b>
<b>16.28.100</b>	<b>Application to Existing Ordinance and Agreements</b>
<b>16.28.110</b>	<b>Confidentiality</b>

## **16.28.010 Governing Law**

Any franchise or license granted under this title 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.

## **16.28.020 Written Agreement**

No franchise or license shall be granted unless the agreement is in writing.

## **16.28.030 Nonexclusive Grant**

No franchise or license granted under this title shall confer any exclusive right, privilege, license or franchise to occupy or use the public rights-of-way of the City for delivery of telecommunications services or any other purposes.

## **16.28.040 Severability and Preemption**

If any chapter, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this title 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 title shall not be affected but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this title 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 enforce-ability of a provision of this title, then the provision shall be read to be preempted to the extent and or the time required by law. In the event such federal or state law, rules or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision that had been preempted is no longer preempted, such provision shall return to full force and effect, and shall be binding, without the requirement of further action on the part of the City.

## **16.28.050 Penalties**

Any person who violates any provision of this ~~Chapter~~ [title](#) is subject to Section [1.08.020](#) of the Ashland Municipal Code. In addition to other legal and equitable remedies available to the City of Ashland, including restriction or termination of service:

- A. Violation of any section of this chapter AMC [16.28](#) is a Class I violation. (Ord. 3137, amended, 2017)

## **16.28.060 Other Remedies**

Nothing in this title shall be construed as limiting any judicial remedies that the City may have, at law or in

equity, for enforcement of this title.

### **16.28.070 Captions**

The captions to sections throughout this title are intended solely to facilitate reading and reference to the sections and provisions. Such captions shall not affect the meaning or interpretation of this title.

### **16.28.080 Compliance with Laws**

Any grantee under this title shall comply with all federal and state laws and regulations, including regulations of any administrative agency, as well as all ordinances, resolutions, rules and regulations of the City now in effect or adopted in the future or established during the entire term of any franchise or license granted under this title, which are relevant and relate to the construction, maintenance and operation of a telecommunications system.

### **16.28.090 Consent**

Wherever the consent of either the City or of the grantees under this title is specifically required in a franchise or license granted, such consent will not be unreasonably withheld.

### **16.28.100 Application to Existing Ordinance and Agreements**

To the extent that this title is not in conflict with and can be implemented with existing ordinance and franchise agreements, this title shall apply to all existing ordinance and franchise agreements for use of the public right-of-way for telecommunications.

### **16.28.110 Confidentiality**

The City agrees to use its best efforts to preserve the confidentiality of information designated by the grantee as a trade secret, to the extent permitted by the Oregon Public Records Law.