

**Agenda**  
Shady Cove Regular City Council Meeting  
Thursday, February 4, 2021  
6 PM

This meeting will be held via Zoom with Council being present at City Hall.  
Attendees will click on the link or call in to the listed number.

<https://us02web.zoom.us/j/83784419696?pwd=MlcvK01sMjZ4bll1eDB5MTFerb1BGQT09>

Meeting ID: 837 8441 9696

Passcode: 028403

One tap mobile

+13462487799,,83784419696#,,,,\*028403# US (Houston)

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**I. Call to Order**

- A. Roll Call
- B. Pledge of Allegiance
- C. Announcements by Presiding Officer

- 1. This meeting is being digitally recorded.
- 2. The next regularly scheduled meeting of the City Council will be held on February 18 at 6 PM, with Council members present in Council Chambers and the public to attend via Zoom.
- 3. The next regularly scheduled meeting of the Planning Commission is February 11 at 6 PM, with Commission members present in Council Chambers and the public to attend via Zoom.
- 4. The next meeting of the Parks and Rec Commission is on March 2 at 6 PM with Commission members present in Council Chambers and the public to attend via Zoom.
- 5. The next meeting of the Emergency Management Commission is on February 16 at 10 AM to be held via Zoom.
- 6. Public may comment on agenda items - Public must state name, address and standing to discuss an issue. Issues must have a City-wide impact and not be personal issues. Depending on number of comments and time constraints, Council may limit the amount of time to 3 minutes per speaker.
- 7. These meeting dates are subject to change by the circumstances related to COVID-19.

**II. Public Comment on Agenda Items**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Department at (541) 878-2225. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title II).

**III. Consent Agenda**

- A. Bills Paid Report 1/15/21-1/26/21, \$5,643.36
- B. Minutes of January 21, 2021

**IV. Items Removed from Consent Agenda**

**V. Staff Reports**

- A. City Administrator
- B. Jackson County Deputy (CSO)
- C. Fire Chief Winfrey, FD4

**VI. New Business**

None

**VII. Old Business**

- A. CDBG Grant Update
- B. Avista Franchise Fee Agreement Update
- C. Building Code Process
- D. Rules of Government

**VIII. Written Communication**

**IX. Public Comment on Non-Agenda Items**

**X. Council Comments on Non-Agenda Items**

- A. Mayor Tarvin
- B. Councilor McGregor
- C. Councilor Nuckles
- D. Councilor Evertt

**XI. Adjournment**

Check Issue Date	Check	Payee	Description	Amount
1/26/2021	45129	AT&T Mobility	Mobile Phones 12/6-01/05	163.98
1/26/2021	45130	BMI Radio	Music License 01.01.21-12.31.21	373.00
1/26/2021	45131	Canon Financial Services, Inc.	Contract 01.01.21-01.31.21	203.82
1/26/2021	45132	David Christian	Radio Program 01.11.21-01.15.21	90.00
1/26/2021	45133	Dept. of Consumer & Business Services	1Q2018 & 3Q2020 Qtr tax t/up	39.19
1/26/2021	45134	Fanny Obadia	Refund-Cust bill pay svc pd COSC for customer prop tax	2,796.91
1/26/2021	45135	Hunter Communications	Phone/Internet 02.01.21-02.28.21	597.20
1/26/2021	45136	KAS & Associates, Inc.	Aunt Caroline's Park Inspection 12/09&12/16	622.70
1/26/2021	45137	Project A, Inc.	Dev/Hosting 01.15.21	200.00
1/26/2021	45138	RVCOG	R Nolan - 11/2020	373.64
1/26/2021	45139	Upper Rogue Independent	Planning Comm Public Hearing 12/02&12/23	157.50
1/26/2021	45140	WECO - Carson	Gas/Diesel 1.14.21	25.42
Grand Totals:				<u>5,643.36</u>



Councilor Nuckles and Councilor McGregor noted Nay. Motion Failed

Heather Johnson requested information on Budget to Actual Budget Report for 2<sup>nd</sup> Quarter was discussed.

## VI. STAFF REPORTS

- A. Chief Winfrey from Fire District 4 commented on the year ending statistical report which was emailed out earlier, including the Wildfire, Covid, and the new boat. Councilor Evertt questioned a Good Intent call.
- B. Deputy Heise from Jackson County Sheriff's Office commented on the speed trailer on Rogue River Drive. He also commented that it has been fairly mellow. Mayor Tarvin questioned about suspects alluding.
- C. City Administrator Tom Corrigan reported on Jackson County's vaccination clinic. The Emergency Management Commission in working on getting information out to people that do not have Internet or computers. Requested ID badges to do this in the Spring. Emergency Manager from Pacific Power will attend the next meeting. Deputy Bilden is back on the beginning part of the week in addition to Deputy Heise at the end of the week on Winter schedule. Finished the TMDL report for DEQ and Council has it. There will be new requirement for the 1200C permit from DEQ for construction. Some bad emails with Mayor's name on them surfacing. We are addressing with the IT department. Will be pruning trees on Firehouse Lane soon.

## VII. NEW BUSINESS

Steve Mitchell said that Public Comment was skipped and he requested to comment. He talked about the need for the City to do Building Inspections or contract with an entity. The County will only do all of the inspections or none of them. City Administrator was directed to research this issue.

Avista Franchise Agreement – City has adopted Ordinance #292 in 2019 in relation to the Avista Franchise Agreement and a 7% fee. Tabled until Avista can check to see if they have ratified it.

CDBG grant relative to assistance for losses due to Covid were discussed. History of recent grants was reviewed.

## VIII. OLD BUSINESS

None

## IX. WRITTEN COMMUNICATION

City Administrator read a letter from Sandra Barber regarding printing of a local magazine. Also a letter was read from the Trail Creek Church thanking the City for the Personal Protective Equipment that they received. Further the Census Bureau recognized the efforts of the City for the last census. Mayor gave kudos to Staff for handling the PPE and assisting businesses and non-profits. Over 63 businesses were given PPE to assist with Covid. Councilor Nuckles requested that the magazine be handled through Tourism with Parks and Recreation.

#### **X. PUBLIC COMMENT ON NON-AGENDA ITEMS**

Heather Johnson will send concerns on Budget.

#### **XI. COUNCIL COMMENTS**

Councilor Nuckles Thanked the Chief and FD4 with our camera set up similar to theirs. She attended the last Soredi meeting. They had gained income on administering grants for the Counties. Medford and Central Point are experiencing record growth. Parks and Recreation Commission is still waiting for input from Council. Crosswalk requested on Rogue River Drive even though it's a County road. Upper Rogue Independent says birding is still a pending opportunity. Thanked everyone for joining.

Councilor McGregor talked about RVACT and the work on the bridge over the Columbia River. Also commented on the Lost Creek Lake Marina update.

Councilor Evertt had no comments

Mayor Tarvin said City will open up the fifth councilor position until Friday, February 19 at 5 PM. Thanked everyone for their patience in transitioning into the new year. Happy with the new Zoom procedure for meetings.

Steve Mitchell asked to speak in regard to having Commissioner Roberts attend meetings via Zoom. Councilor McGregor asked about advertising the opening for Council. Placing it on the City website is the procedure we have used.

#### **XII. ADJOURNMENT**

There being no further business before the Council, the Mayor adjourned the meeting at 7:30 PM.

Approved:

Attest:

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Shari Tarvin  
Mayor

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Thomas J. Corrigan  
City Administrator

**Council Vote:**

Mayor Tarvin  
Councilor McGregor  
Councilor Nuckles  
Councilor Evertt

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DRAFT

Re: CARES ACT Supplemental Grant: Shady Cove  
Hi Tom,

The outdoor tables are certainly still a good option, and they're very simple to explain to the EDA (two words: 'social distancing.')

The grant cannot be used for residential properties or for rent payments, but you can give local businesses financial assistance if they have a project of some sort related to **Covid** or **Placemaking**.

For example: Let's say a restaurant in Shady Cove wants to purchase an outdoor heater and an outdoor table to comply with social distancing restrictions. If you have documentation of those needs from the restaurant, we can write you a check and you can write the business a check. The same situation can apply to a business that wants a hand-sanitizer station or something like that.

Another example (used by Butte Falls): The water-bottling facility needed a power upgrade in order to keep going and keep retaining jobs. We were able to write Butte Falls a check, and they were able to write Cascade Spring Water a check because the 'project' tied into placemaking and a large number of jobs in the community. (The business, Cascade Mt Spring Water, had to submit exact estimates and documentation beforehand so the city knew how the money would be spent).

So basically, yes, you can give money to business, but we'd need to hear more details about how the businesses will use the money if you write them checks. And they would also have to keep receipt documentation in case of an audit from the EDA.

Unfortunately, just handing out the money to random businesses grant-style is not in compliance with this grant's parameters.

If you have ideas though, please send them our way and we'll provide feedback.





City of Shady Cove  
Ordinance No. 292

**AN ORDINANCE OF THE CITY OF SHADY COVE, OREGON, AUTHORIZING A FRANCHISE AGREEMENT WITH AVISTA CORPORATION DBA AVISTA UTILITIES, A WASHINGTON CORPORATION.**

**WHEREAS**, the City and Avista are currently operating under a ten-year franchise agreement signed in September 2008, with a unilateral automatic ten-year renewal provision that converts the agreement into a twenty-year term expiring in 2028, and

**WHEREAS**, Avista will agree to a new franchise fee in exchange for executing a new twenty- year franchise agreement, and

**WHEREAS**, the City and Avista have drafted a proposed franchise agreement modeled after a recent agreement signed between the City of Shady Cove, Therefor

**THE COUNCIL OF THE CITY OF SHADY COVE ORDAINS AS FOLLOWS:**

The Shady Cove Code of Ordinances is amended as follows:

**Section 2. Nature and Term of Grant**

2.2 Term. The term of this Franchise, and all rights and obligations pertaining thereto, shall be twenty (20) years from the date Franchisee signs and accepts this Franchise in accordance with Section 12.8, unless terminated sooner as provided herein.


**Section 3. Compensation**

3.1 Amount. As compensation for the benefits and privileges granted under this Franchise, and for Franchisee's entry upon and deployment within the Right-of-way, Franchisee shall pay to the City an amount equal to seven percent(7%) of Franchisee's gross revenues (the "Franchise Fee"). The Franchise Fee includes all compensation for the use of Right-of-way in conformance with this Franchise. The Franchise Fee shall not be deemed to be lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or to participate in, or to levy upon the property of Franchisee.

**PASSED AND APPROVED** by the City Council of the City of Shady Cove this 16 day of May, 2019.

Approved:

Attest:

  
Lena Richardson  
Mayor

  
Thomas J. Corrigan  
City Administrator

**Council Vote:**

**Mayor Richardson**

Y

**Councilor Mitchell**

Y

**Councilor McGregor**

Y

**Councilor Tarvin**

Y

**Councilor Hohenstein**

Y



## ***CITY COUNCIL AGENDA REPORT***

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**MEETING DATE:** 02/21/19

**ISSUE BEFORE THE COUNCIL:** Consideration of a Natural Gas Franchise Agreement between the City of Shady Cove and The Avista Corporation (Avista Utilities).

**BACKGROUND:** The existing agreement w Avista will expire at the end of June, 2019. The City and Avista have had a few discussions relative to this agreement. The previous Avista Utilities Franchise Agreement sets the City's compensation level at 5 percent of Avista's gross revenue collected within Shady Cove's incorporated limits. The proposed franchise agreement between the City of Shady Cove and Avista Utilities would increase the percentage of gross revenues collected to 7 percent. The City of Eagle Point has a similar agreement in place with Avista currently.

**ADDITIONAL INFO:**

1. Avista Utilities is a regulated public utility that provides natural gas related products to the citizens of Shady Cove.
2. Natural Gas distribution to our citizens requires the installation, operation and maintenance of related facilities to be located within City public rights-of-way.
3. Avista has requested a nonexclusive franchise to construct, install, maintain, extend and operate a natural gas utility in the City as designated in an agreement.
4. The City desires to set forth the terms and conditions by which Avista may use the rights-of-way within the City.
5. The City and Avista will still need to negotiate the terms in a proposed agreement.
6. Franchise agreement generated revenue is dedicated to the City's General Fund.
7. The terms requested by Avista would change the length of the agreement from ten years with an automatic renewal to a straight twenty-year term.

**STAFF RECOMMENDATION:** Staff recommends an increase in the Franchise Fee Agreement from 5 percent to 7 percent. Last year, as Council has seen in the annual Avista presentation, the City took in \$7,817. An increase would bring that to approximately \$11,000 with added customers. The City Attorney and CIS, our insurance carrier, along with Avista, will need to agree on language within the contract.

**POTENTIAL ACTIONS:** Set Council date for the Franchise Fee Agreement prior to end of May, thus allowing a second reading of the Ordinance before taking effect July 1, 2019. A Right-of-Way Ordinance may also be adopted in the future to set parameters for public properties.

**ATTACHMENTS:** Draft Ordinance

**CITY OF SHADY COVE SHADY COVE, OREGON**  
**ORDINANCE NO. \_\_\_\_\_**

Avista Corporation dba Avista Utilities, a Washington Corporation, ("Avista"), which is authorized to do business within the state of Oregon has filed with the City of Shady Cove, State of Oregon (the "City") a written application for renewal of its Franchise to locate, construct, operate, maintain and use such plants, works, underground pipelines, equipment and appurtenances over, under, along and across all of City's rights of way and public property in the City for the purposes of the transmission, distribution and sale of Gas; and the City has determined it is in the interest of persons and businesses in this jurisdiction to have access to Avista's services

**SECTION 1.0 DEFINITIONS**

For the purposes of this Franchise the following terms, phrases, words and their derivations shall have the meaning given in this Section. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning.

**Avista:** means Avista Corporation, dba Avista Utilities, a Washington Corporation, and its respective successors and assigns, agents and contractors.

**City:** means the City of Shady Cove, a municipal corporation of the State of Oregon, and its respective successors, assigns, agents and contractors.

**Commission:** means the Oregon Public Utility Commission or such successor regulatory agency having jurisdiction over investor-owned public utilities in the State of Oregon.

**Days:** means business days.

**Effective Date:** means thirty (30) days from final passage of this Ordinance, upon which the rights, duties and obligations of this Franchise shall come into effect, and the date from which the time requirement for any notice, extension and/or renewal shall be measured.

**Facilities:** means, collectively, any and all gas transmission, and distribution systems and appurtenances owned by Avista, now and in the future in the Franchise Area, including but not limited to, Gas plants, Gas pipes, pipelines, mains, laterals, conduits, services, regulators, valves, meters, meter-reading devices, fences, vehicular protection devices, communication and control systems and other equipment, appliances, fixtures, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing for the purposes of transmission, distribution, storage and sale of Gas.

**Franchise:** means the grant by the City of rights, privileges and authority embodied in this Ordinance.

**Franchise Area:** means the surface and space above and below all public property and rights-of-way owned or held by the City, including, without limitation, rights-of-way for:

- public roads, streets, avenues, alleys, bridges, tunnels, City-owned easements, and highways as currently exist and/or as may hereafter be constructed, platted, dedicated, acquired or improved within the present limits of the City and as such limits may be extended by annexation or otherwise during the term of this Franchise; and
- all City-owned utility easements dedicated for the placement and location of various utilities, provided such easements would permit Avista to fully exercise the rights granted under this Franchise within the area covered by the easement.

**Gas:** means natural, manufactured, renewable and/or mixed gases.

**Gross Revenues:** Except as otherwise provided in OAR 860-022-0040, "gross revenue(s)" means revenues received from utility operations within City, less related net uncollectables. Gross revenues of an energy utility shall include revenues from the use, rental, or lease of the utility's operating facilities other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another utility purchasing the service is not the ultimate customer.

**Maintenance, maintaining, or maintain:** means, without limit, repairing, replacing, upgrading, examining, testing, inspecting, and removing Avista Facilities, vegetation management, digging and excavating, and restoration of affected Right-of-way surfaces.

**Parties:** means City and Avista collectively.

**Party:** means either City or Avista individually.

**Person:** means a business entity or natural person.

**Right-of-way:** means the surface of and the space along, above, and below any street, road, highway, freeway, bridge, tunnel, lane, sidewalk, alley, City-owned utility easement and/or right-of-way now or hereafter held or administered by the City within its corporate limits.

**State:** means the State of Oregon.

**Tariff:** means the rate schedules, rules, and regulations relating to utility service, filed with and approved by the Commission in effect upon execution and throughout the term of this Franchise.

## **SECTION 2.0 GRANT OF FRANCHISE**

### **2.1 Grant**

City hereby grants to Avista the right, power, privilege and authority to enter upon all roads, rights-of-way, streets, alleys, highways, public places or structures, lying within the Franchise Area to locate, construct, operate and maintain its Facilities for the purpose of controlling, transmitting and distributing Gas, as may be necessary to provide Gas service.

### **2.2 Effective Date**

This Ordinance will be effective thirty (30) days after the date of approval and passage as required by law.

### **2.3 Term**

The rights, privileges and Franchise granted to Avista will extend a term of twenty (20) years from the Effective Date, and shall automatically extend for successive one (1) year terms unless or until either Party gives notice of termination for convenience, in which case this Franchise will terminate 180 days from such written notice.

### **2.4 Non-Exclusive Franchise**

This Franchise is not an exclusive Franchise. This Franchise shall not prohibit the City from granting other franchises within the Franchise Area that do not interfere with Avista's rights under this Franchise. City may not, however, award a Gas Franchise to another party under more favorable or less onerous terms than those of this Franchise without this Franchise being amended to reflect such more favorable or less onerous terms.

### **2.5 Notice of City's Intent to Compete with Avista**

In consideration of Avista's undertaking pursuant to this Franchise, the City agrees that in the event the City intends to engage in the business of providing Gas service during the life of this Franchise or any extension of this Franchise, in competition with Avista, the City will provide Avista with six (6) months' notice of such action.

### **2.6 Assignment of Franchise**

Avista shall have the right to assign its rights, benefits and privileges under this Franchise. Avista shall, at least thirty (30) days prior to such assignment, notify City in writing as to the proposed assignment and the name, address and contact information of said assignee. Upon effectuation of such assignment, the assignee shall be bound to all terms and conditions of this Agreement and shall provide to City, within thirty (30) days of such assignment, its written acceptance of the terms and conditions herein. As permitted by federal and state law and Commission regulation, Avista shall have the right, without notice to or consent of the City, to mortgage or hypothecate its rights, benefits and privileges in and under this Franchise as security for indebtedness.

### **2.7 Payment of Franchise Fees**

**2.7.1** In consideration of the rights, privileges, and franchise granted by City to Avista under this Franchise, Avista will pay City seven percent (7%) of Avista's gross revenues derived from service to customers located within City (the "Franchise Fee"). Avista will pay the Franchise Fee in quarterly installments, which quarterly installments will be due not later than thirty (30) days following the end of the quarter to which the payment relates.

**2.7.2** The franchise fee in Section 2.7.1 will supersede any ordinance adopted by the City during the term of this Franchise Agreement that creates a gross revenue fee or gross revenue tax imposed on utilities and which shall have no effect on Avista.

**2.7.23** Contemporaneously with each quarterly payment, Avista will file with City a sworn statement describing the total gross revenues Avista received during the applicable quarter (the "Accounting Statement"). City's acceptance of any payments under this Section 2.7 will not constitute a waiver by City of any Avista breach of this Franchise.

**2.7.34** Inspection of Books and Records

On an annual basis, no more frequently than every twelve (12) months, upon thirty (30) days prior written notice, the Grantor shall have the right to audit the books and records of Grantee to determine whether the Grantee has paid the franchise fees owed in accordance with generally accepted accounting principles. Grantee and Grantor agree to reasonably cooperate to complete the audit as soon as practicable. Any undisputed additional amounts due to the Grantor as a result of the audit shall be paid within sixty (60) days following written notice to the Grantee by the Grantor, which notice shall include a copy of the audit findings. Reimbursements for underpayments as a result of audit findings are subject to late payment interest as set forth herein. In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, the Grantee, upon request from the Grantor, shall pay an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate, plus one percent (1%) during the period such unpaid amount is owed. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due. Notwithstanding the foregoing, in addition to the interest charges established herein, Grantee shall reimburse Grantor for the reasonable costs of audit (including third party auditors and Grantor's staff time), if such audit disclosed that Grantee has paid 95% or less of the franchise fees owing over the audited period.

**2.7.45** Equality of Franchise Fees and Costs



In the event that the City increases charges as prescribed by law upon Avista for any fees, taxes or other costs in connection with the issuance, maintenance, existence, continuation, and/or use of the Franchise or public right-of-way granted herein, City shall impose equivalent charges for any fees, taxes or other costs upon any and all other franchisee(s) doing the same business as or competing with Avista. In the event that City does not impose equivalent charges upon other franchisee(s) doing the same business as or competing with Avista, the City will charge Avista the fee imposed upon Avista prior to the increase until all franchisee(s) doing the same business as or competing with Avista are charged the same.

#### **2.7.56** Late Payments to Grantor

Except as provided for payments due under Section 2.7.3 herein, City may assess any late franchise fees due under this Franchise at an annual interest rate of prime plus one percent (1%).

#### **2.7.67** Tax Liability

Payment of Franchise Fees to City shall not be a credit against any license, occupation, business, privilege, or excise taxes of general applicability which City may now or hereafter legally impose upon Avista. Nothing contained in this Franchise shall give Avista any credit against utility fees or systems development charges imposed by City or any ad valorem property tax now or hereafter levied against real or personal property within City limits, or against any local improvement assessment, unless it can be considered Franchise Fees as defined by applicable law.

### **SECTION 3.0 AVISTA'S OPERATIONS AND MAINTENANCE**

#### **3.1 Compliance with Laws, Regulations, Codes and Standards**

In carrying out any authorized activities under the privileges granted by this Franchise, Avista shall meet accepted industry standards and codes and shall comply with all applicable laws, regulations and ordinances of any governmental entity with jurisdiction over Avista's Facilities in the Franchise Area. This includes all applicable, laws, regulations and ordinances existing as of the Effective Date or as may be subsequently enacted by any governmental entity with jurisdiction over Avista's operations within the Franchise Area. The City shall have the right to make and enforce reasonable rules and regulations that are not discriminatory in nature pertaining to the conduct of Avista's operations within the Franchise Area. The City will notify Avista prior to the adoption of new Ordinances and Resolutions regarding right-of-way construction standards, right-of-way permit fees, street cutting fees, and/or development permit fees. Notwithstanding the foregoing, failure to provide such notice shall not invalidate such new rules, procedures, or policies of

general applicability, nor exempt Avista from compliance with such new rules, procedures or policies. Service shall be supplied to the City and its inhabitants in accordance with Avista's rules and regulations and Tariffs currently or subsequently filed with and approved by the Commission.

### **3.2 Facility Location by Avista and Non-Interference**

Avista shall have the discretion to determine the placement of its Facilities as may be necessary to provide safe and reliable Gas service, subject to the following non-interference requirements. All construction, installation, repair or relocation of Avista's Facilities performed by Avista in the Franchise Area will be done in such a manner as not to interfere with the construction and maintenance of other utilities, drains, drainage and irrigation ditches and structures, and City-owned property within the Franchise Area.

### **3.3 Facility Location Information**

Avista shall provide the City, upon the City's reasonable request, Facility location information in electronic or hard copy showing the location of its Facilities at specific locations within the Franchised Area, to the extent such information is reasonably available. Avista does not warrant the accuracy of any such Facility location information provided and, to the extent the location of Facilities are shown, such Facilities may be shown in their approximate location. With respect to any excavations within the Franchise Area undertaken by or on behalf of Avista or the City, nothing stated in this Franchise is intended (nor shall be construed) to relieve either party of their respective obligations arising under the State one-call law with respect to determining the location of existing underground utility facilities in the vicinity of such excavations prior to commencing work.

### **3.4 Vegetation Management –Removal of Trees/Vegetation Encroachment**

The right of Avista to maintain its Facilities shall include the right, as exercised in Avista's professional discretion to minimize the likelihood that encroaching (either above or below the ground) vegetation can interfere with or limit access to Avista's Facilities, or pose a threat to public safety and welfare; or its agents may accordingly remove or limit, without recourse or payment of compensation at its sole expense, the growth of vegetation which encroaches upon its Facilities and/or Gas transmission and distribution corridors within the Franchise Area.

### **3.5 Right of Excavation**

For the purpose of implementing the privileges granted under this Franchise, and subject to the conditions described herein, Avista is authorized to make any necessary excavations in, under and across the streets, alleys, roads, rights-of-way and public grounds within the Franchise Area. Such excavation shall be carried out with reasonable dispatch and with as little interference with or inconvenience to the public as may be feasible. Avista shall remove all debris stemming from excavation and construction. The Right-of-way surface shall be restored by Avista after excavation, in accordance with applicable City and Avista specifications. Prior to performing such work, Avista shall obtain all legally required permits, including the opening or disturbance of any Right-

of-way-within the Franchise Area. City shall cooperate with Avista in granting any permits required, providing such grant and subsequent construction by Avista shall not unduly interfere with the use of such Rights-of-way. Avista shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Gas Franchise in the Franchise Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by City as to other public utility companies and other entities operating in the City. The payment of any generally applicable and non-discriminatory right-of-way permit fees, street cutting fees, or development permit fees is required in addition to payment of the Franchise Fee herein.

### **3.6 Emergency Work**

In the event of an emergency requiring immediate action by Avista to protect the public health and safety or for the protection of its Facilities, or the property of the City or other persons in the Franchise Area, Avista may immediately proceed with excavation or other Right-of-way work, with concurrent notice to the City to the extent possible.

## **SECTION 4.0 RESERVATION OF CITY'S RIGHTS AND POWERS**

### **4.1 Reservation of Right**

The City, in granting this Franchise, does not waive any rights which it may not have or may subsequently acquire with respect to road rights-of-way or other property of City under this Franchise, and this Franchise shall not be construed to deprive the City of any such powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the City's roads, rights-of-way and other public property covered by this Franchise. Nothing in the terms of this Franchise shall be construed or deemed to prevent the City from exercising at any time and any power of eminent domain granted to it under the laws of the State.

### **4.2 Necessary Construction/Maintenance by City**

The construction, operation and maintenance of Avista's Facilities authorized by this Franchise shall not preclude the City, its agents or its contractors, from grading, excavating, or doing other necessary road work contiguous to Avista's Facilities; provided that Avista shall be given not less than ten (10) business days' notice of said work, except in events of emergency when there exists an unforeseen and substantial risk or threat to public health, safety, welfare, or waste of resources in which case the City will make reasonable efforts to contact Avista prior to doing the necessary work; and provided further that, if Avista provided an accurate location of its facilities upon request, the City, its agents and contractors, shall be liable actual damages caused by said work to any Facilities belonging to Avista, up to the amount of liability under the Oregon Tort Claims Act.

#### **4.3 Expansion of Avista's Facilities**

Facilities in the City's Franchise Area that are incidental to the Franchise Area, or that have been, or are at any future time acquired, newly constructed, leased, or utilized in any manner by Avista shall be subject to all provisions of this Franchise.

#### **4.4 Change of Boundaries of the City**

Any subsequent additions or modifications of the boundaries of the City, whether by annexation, consolidation, or otherwise, shall be subject to the provisions of this Franchise as to all such areas. The City shall notify Avista of the scope of any change of boundaries not less than thirty (30) days prior to such change becoming effective or in accordance with applicable state laws and shall include all prior installations authorized by permits or other action not previously covered by this Franchise.

#### **4.5 Removal of Abandoned Facilities**

During the Term of this Franchise, or upon a revocation or non-renewal of this Franchise, the City may direct Avista to remove designated abandoned Facilities from the Franchise Area at its own expense and as soon as practicable, but only where such abandoned Facilities constitute a demonstrated threat to public health and safety. Avista shall not be required to remove, or pay for the removal of facilities it has previously abandoned to another franchisee, or utility under a joint use agreement, or Person granted permission to access Avista's facilities.

#### **4.6 Vacation of Properties by City**

If, at any time, the City shall vacate any road, right-of-way or other public property which is subject to rights granted by this Franchise, such vacation shall be subject to the reservation of a perpetual easement to Avista for the purpose of constructing, reconstructing, operating, maintaining, repairing and upgrading Avista's Facilities on the affected property. The City shall, in its vacation procedure, reserve and grant said easement to Avista for Avista's Facilities and shall also expressly prohibit any use of the vacated properties which will interfere with Avista's full enjoyment and use of said easement.

### **SECTION 5.0 RELOCATION OF AVISTA'S FACILITIES**

#### **5.1 Relocation of Facilities Requested by City**

Upon request of the City, Avista shall relocate its Facilities as necessary within the Franchise Area as specifically designated in 60 percent plans by the City for such purpose. For purposes of this provision, all reasonable efforts shall be made by the City, with input from Avista, to minimize the impacts of potential relocation. The City shall provide Avista reasonable notice of any intended or expected requirement or request to relocate Avista's Facilities. Said notice shall not be less than one-hundred twenty (120) calendar days prior to any such relocation and, depending on the circumstances, may be greater than one hundred twenty (120) calendar days if necessary to allow

Avista sufficient time to arrange for relocation. In cases of emergency, or where not otherwise reasonably foreseeable by the City, the notice requirements of this Section may be shortened by discussion and agreement between the Parties. The City shall use reasonable efforts to cause any such relocation to be consistent with any applicable long-term development plan(s) of the City.

In the event a relocation forces Avista off City's existing Public Right(s) of Way then the City shall accommodate such relocation by securing an acceptable, alternate location for utilities and removing any obstructions, including, without limitation, trees, vegetation, or other objects that may interfere with the installation, operation, repair, upgrade or maintenance of Avista's Facilities on the affected Property.

If the City requires the subsequent relocation of any of Avista's Facilities within five (5) years from the date of relocation of such Facilities, the City shall bear the entire cost of such subsequent relocation.

Avista agrees to relocate all Facilities promptly within a reasonable time. Upon notice from the City, the parties agree to meet and determine a reasonable relocation time, which shall not exceed the time normally needed for construction projects of the nature of the City's relocation request unless otherwise mutually agreed.

Notwithstanding the above, Avista shall not be required to relocate facilities of other entities that were assigned to and accepted by another franchisee. Such relocation of these types of facilities shall be accordance with Section 5.2 below.

This Section shall not apply to Facilities in place pursuant to private easement held by Avista, regardless of whether such Facilities are also located within the Franchise Area. In the event the City requests relocation of Facilities that are in place pursuant to an existing easement, said relocation shall be treated in the same manner as a relocation requested by third parties under Section 5.2, below, with the City bearing the expense of relocation.

## **5.2 Relocation of Facilities Requested by Third Parties**

City acknowledges that Avista is obligated to provide gas service and related line extension or relocation of Facilities for the benefit of its customers and to require compensation for such services on a non-preferential basis in accordance with applicable Tariffs.

If Facilities are to be relocated at the request of or for the primary benefit of a third party, the City shall not require Avista to relocate its Facilities until such time as a suitable location can be found and the third party has entered into an agreement to reimburse Avista for its reasonable costs of relocation.

In the event the City applies for federal, state or other non-City funding for right-of-way improvements, the City shall make a reasonable effort to include funding for utility relocation purposes, provided such funds do not interfere with the City's right to obtain the same or similar funds, or

otherwise create any expense or detriment to the City. The City may recover all costs from granting federal or state agency, including internal costs, associated with obtaining such funds.

## **SECTION 6.0 INDEMNITY**

### **6.1 Indemnification of City**

Avista agrees to defend and indemnify the City, its appointed and elected officers and employees or agents, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorney's fees, that the City may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the negligent acts or omissions of Avista, its officers, employees or agents in connection with Avista's obligations under this Franchise; provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages and losses were caused by or result from the negligence of the City, elected officers and employees or agents. Liability of City is limited to the extent of the City's liability under the Oregon Tort Claims Act.

### **6.2 Indemnification of Avista**

To the extent permitted by law, City agrees to defend and indemnify Avista, its officers and employees, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorney's fees, that Avista may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the negligent acts or omissions of the City, its appointed and elected officers and employees or agents in connection with City's obligations under this Franchise; provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages, losses and so forth were caused by or result from the negligence of Avista, its employees or agents.

## **SECTION 7.0 FRANCHISE DISPUTE RESOLUTION**

### **7.1 Non-waiver**

Failure of a Party to declare any breach or default of this Franchise immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not waive such breach or default, but the Party shall have the right to declare any such breach or default at any time. Failure of a Party to declare one breach or default does not act as a waiver of the Party's right to declare another breach or default. In addition, the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a revocation and forfeiture for breach of the conditions of the Franchise.

### **7.2 Dispute Resolution by the Parties**

Disputes regarding the interpretation or execution of the terms of this Franchise that cannot be resolved by department counterparts representing the Parties, shall be submitted to the City's

Attorney and an attorney representing Avista for resolution. If a mutually satisfactory or timely resolution cannot then be reached by the above process, prior to resorting to a court of competent jurisdiction, the Parties shall submit the dispute to a non-binding alternate dispute resolution process agreed to by the Parties.

### **7.3 Right of Enforcement**

No provision of this Franchise shall be deemed to bar the right of the City or Avista to seek judicial relief from a violation of any provision of the Franchise to recover monetary damages for such violations by the other Party or to seek enforcement of the other Party's obligations under this Franchise by means of specific performance, injunctive relief or any other remedy at law or in equity pursuant to Section 7.4. Exclusive venue for any litigation between the City and Avista arising under or regarding this Franchise shall occur, if in the state courts, in Jackson County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.

### **7.4 Attorneys' Fees and Costs**

Each Party shall pay for its own attorneys' fees and costs incurred in any dispute resolution process or legal action arising out of the existence of this Franchise.

## **SECTION 8.0 GENERAL PROVISIONS**

### **8.1 Franchise as Contract, No Third Party Beneficiaries**

This Franchise is a contract between the Parties and binds and benefits the Parties and their respective successors and assigns. This Franchise does not and is not intended to confer any rights or remedies upon any persons, entities or beneficiaries other than the Parties.

### **8.2 Force Majeure**

In the event the Parties are delayed in or prevented from the performance of any of its obligations under the Franchise by circumstances beyond said Party's control (Force Majeure) including, without limitation, third party labor disputes, fire, explosion, flood, earthquake, power outage, acts of God, war or other hostilities and civil commotion, then said Party's performance shall be excused during the period of the Force Majeure occurrence. Each affected Party will use all commercially reasonable efforts to minimize the period of the disability due to the occurrence. Upon removal or termination of the occurrence, said Party will promptly resume performance of the affected Franchise obligations in an orderly and expeditious manner.

### **8.3 Prior Franchises Superseded**

As of the Effective Date this Franchise shall supersede all prior gas franchises for the Franchise Area previously granted to Avista or its predecessors by City, and shall affirm, authorize and ratify all prior installations authorized by permits or other action not previously covered by franchise. Termination of the prior Franchise shall not, however, relieve the Parties from any obligations

which accrued under said Franchise prior to its termination, including but not limited to, any outstanding indemnity, reimbursement or administrative fee payment obligations.

#### **8.4 Severability**

The Franchise is granted pursuant to the laws of the State of Oregon relating to the granting of such rights and privileges by City. If any article, section, sentence, clause, or phrase of this Franchise is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of the Franchise or any of the remaining portions. The invalidity of any portion of this Franchise shall not abate, reduce, or otherwise affect any obligation required of Avista.

#### **8.5 Changes or Amendments**

Changes or amendments to this Franchise shall be in writing and shall not be effective until lawfully adopted by the City and agreed to by Avista.

#### **8.6 Supremacy and Governing Law**

This Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Oregon. In the event of any conflict between this Franchise and any City ordinance, regulation or permit, the provisions of this Franchise shall control. In the event of a conflict between the provisions of this Franchise and Avista's applicable Tariff on file with the Commission, the Tariff shall control.

#### **8.7 Headings**

The headings or titles in this Franchise are for the purpose of reference only and shall not in any way affect the interpretation or construction of this Franchise.

#### **8.8 Acceptance of Franchise**

Avista shall, within thirty (30) days after passage of this Ordinance, file with the City Recorder, its acceptance of the terms and conditions of this Franchise.

#### **8.9 Abandonment or Suspension of Franchise Rights and Obligations**

Avista may at any time abandon the rights and authorities granted hereunder, provided that six (6) months' written notice of intention to abandon is given to City. In addition, pursuant to Section 8.6 and in the event a conflict exists between the terms of this Franchise and Avista's Tariff with the Commission that cannot be resolved, Avista may suspend or abandon the rights and obligations of this Franchise upon reasonable notice to the City.

#### **8.10 Franchise Effective Date**

The Effective Date of this Franchise shall be July 1, 2019, after passage, approval and final passage of this ordinance as provided by law, and provided that it has been duly accepted by Avista as specified above.

#### **8.11 Venue**



This Franchise Agreement has been made entirely within the state of Oregon. If any suit or action is filed by any party to enforce this Franchise Agreement or otherwise with respect to the subject matter of this Agreement, exclusive venue shall be in the federal or state courts in Jackson County, Oregon.

**PASSED** by the Council and signed by me in authentication of its passage this 23<sup>rd</sup> day of May 2019.

\_\_\_\_\_  
Mayor Lena Richardson

ATTEST:

\_\_\_\_\_  
City Recorder

**Letter of Acceptance by Avista**

HONORABLE MAYOR AND CITY COUNCIL  
CITY OF SHADY COVE, COUNTY OF JACKSON, OREGON

IN RE: City of Shady Cove, Ordinance No. \_\_\_\_\_

**“Granting a Franchise to Avista Corporation for the Construction, Operation and Maintenance of Natural Gas Facilities Within the City.”**

Avista Corporation dba Avista Utilities, for itself, its successors and assigns, hereby accepts the terms and conditions of the Franchise Agreement contained in the subject Ordinance and files this written acceptance with the City of Shady Cove. This acceptance is executed on \_\_\_\_\_, 2019.

Avista Corporation dba Avista Utilities

By: \_\_\_\_\_  
Dennis Vermillion  
President, Avista Utilities

**Copy Received for the City of Shady Cove**

On: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
City Representative - Name

**Gas Franchise Ordinance Summary**

**NOTICE: CITY OF SHADY COVE  
PROPOSED FRANCHISE ORDINANCE NO. \_\_\_\_\_ SUMMARY**

Ordinance No. \_\_\_\_\_ will grant Avista Corporation dba Avista Utilities a non-exclusive public utility franchise to locate, construct, install, own, maintain, repair, reconstruct, operate and use facilities within the City's public right of way [the Franchise Area] for the purposes of the transmission, control and distribution of natural gas within the City for a term of 10 years. Avista agrees to meet accepted industry standards and conform to applicable federal and state laws, as well as the regulations of the appropriate state regulatory body with jurisdiction, in the conduct of its operations under the Franchise. The City reserves the right to make reasonable rules and regulations pertaining to the conduct of Avista's operations within the Franchise Area. Avista must not interfere with any existing facilities of other utilities. Avista is authorized to make necessary excavations within the Franchise Area; excavations must be carried out with reasonable dispatch, and the area restored, with as little interference to the public as may be reasonable. Avista must relocate its facilities in the franchise area at the City's request. Avista may remedy encroachment of vegetation in connection with franchised activities. Provisions are made for informal dispute resolution.

(Final Reading of Ordinance \_\_\_\_\_ is anticipated to be held before the Shady Cove City Council on May 23, 2019 at 6:00 p.m. in the City Council Chambers).

**ORDINANCE NO. 2019-##**

**AN ORDINANCE AUTHORIZING A FRANCHISE AGREEMENT BETWEEN THE CITY OF SHADY COVE AND AVISTA CORPORATION DBA AVISTA UTILITIES, A WASHINGTON CORPORATION.**

**WHEREAS**, on May 23, 2019 the City of Shady Cove adopted new Chapter \_\_\_\_ of the municipal code to permit and manage reasonable access to the public rights-of-way of the City for utility purposes; and

**WHEREAS**, utility franchisees currently governed by franchise agreements granted by the City will continue to be subject to the terms of said franchise agreement and not subject to Chapter \_\_\_\_\_ until expiration of the franchise agreement; and

**WHEREAS**, the City and Avista are currently operating under a ten-year franchise agreement signed in September 2008, with a unilateral automatic ten-year renewal provision that converts the agreement into a twenty-year term expiring in 2028, and

**WHEREAS**, Avista will agree to a new franchise fee in exchange for executing a new twenty-year franchise agreement, and

**WHEREAS**, the City and Avista have drafted a proposed franchise agreement modeled after a recent agreement signed between the City of Eagle Point,

**WHEREAS**, the Shady Cove City Council has reviewed the agreement and provided the opportunity for public review and comment through an advertised public meeting.

**THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHADY COVE, OREGON, THAT:**

The Mayor is authorized to sign the franchise agreement with Avista to this Ordinance.

Passed in open session on the 23<sup>rd</sup> day of May 2019.

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Lena Richardson, Mayor

Attest:

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Recorder

# UTILITY **RIGHT-OF-WAY**

Sections:

- [3.40.010 Purpose and intent.](#)
- [3.40.020 Jurisdiction and management of the public \*\*rights-of-way\*\*.](#)
- [3.40.030 Regulatory fees and compensation not a tax.](#)
- [3.40.040 Definitions.](#)
- [3.40.050 Licenses.](#)
- [3.40.060 Construction and restoration.](#)
- [3.40.070 Location of facilities.](#)
- [3.40.080 Leased capacity.](#)
- [3.40.090 City's use of operator facilities.](#)
- [3.40.100 Maintenance.](#)
- [3.40.110 Vacation.](#)
- [3.40.120 Privilege tax.](#)
- [3.40.130 Audits.](#)
- [3.40.140 Insurance and indemnification.](#)
- [3.40.150 Compliance.](#)
- [3.40.160 Confidential/proprietary information.](#)
- [3.40.170 Penalties.](#)
- [3.40.180 Severability and preemption.](#)
- [3.40.190 Application to existing agreements.](#)

## 3.40.010 Purpose and intent.

The purpose and intent of this chapter is to:

- A. Permit and manage reasonable access to the public **rights-of-way** of the city for utility purposes and conserve the limited physical capacity of those public **rights-of-way** held in trust by the city consistent with applicable state and federal law;
- B. Assure that the city's current and ongoing costs of granting and regulating access to and the use of the public **rights-of-way** are fully compensated by the persons seeking such access and creating such costs;
- C. Secure fair and reasonable compensation to the city and its residents for permitting use of the public **rights-of-way**;
- D. Assure that all utility companies, persons and other entities owning or operating facilities and/or providing services within the city register and comply with the ordinances, rules and regulations of the city;
- E. Assure that the city can continue to fairly and responsibly protect the public health, safety and welfare of its citizens;
- F. Encourage the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the city on a competitively neutral basis; and
- G. Comply with applicable provisions of state and federal law. [Ord. 2018-01 § 1 (Exh. A)].

### 3.40.020 Jurisdiction and management of the public rights-of-way.

- A. The city has jurisdiction and exercises regulatory management over all public rights-of-way within the city under authority of the city Charter, its municipal code, and state law.
- B. The city has jurisdiction and exercises regulatory management over each public right-of-way whether the city has a fee, easement, or other legal interest in the right-of-way, and whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
- C. The exercise of jurisdiction and regulatory management of a 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.
- D. The provisions of this chapter are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and shall be consistent with such laws, rules and regulations. [Ord. 2018-01 § 1 (Exh. A)].

### 3.40.030 Regulatory fees and compensation not a tax.

- A. The fees and costs provided for in this chapter, and any compensation charged and paid for use of the public rights-of-way provided for in this chapter, are separate from, and in addition to, any and all federal, state, local, and city charges as may be levied, imposed, or due from a utility operator, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.
- B. The city has determined that any fee provided for by this chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners.
- C. The fees and costs provided for in this chapter are subject to applicable federal and state laws. [Ord. 2018-01 § 1 (Exh. A)].

### 3.40.040 Definitions.

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

- A. “Cable service” is to be defined consistent with federal laws and means the one-way transmission to subscribers of (1) video programming, or (2) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

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

C. "City council" is the elected governing body of the city of Eagle Point, Oregon.

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

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

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

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

H. "Public utility easement" means the space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utilities facilities. "Public utility easement" does not include an easement solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of city facilities. "Public utility easement" includes city utility easement. This definition only applies to the extent of the city's **right**, title and interest in said easement.

I. "**Right-of-way**," for purposes of this chapter, means any land or interest therein by deed, conveyance, agreement, dedication, usage or other process of law has been reserved or dedicated to the city for use of the general public and which includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, **ways**, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, and all other public **ways** or areas, including the subsurface under and air space over these areas, but does not include parks or parkland. This definition applies only to the extent of the city's **right**, title, interest and authority to grant a license to occupy and use such areas for utility facilities.

J. "State" means the state of Oregon.

K. "Telecommunications services" means the transmission for hire of information in electromagnetic frequency, electronic or optical form, including, but not limited to, voice, video or data, whether or not the transmission medium is owned by the provider itself and whether or not the transmission medium is wireline. Telecommunications service includes all forms of telephone services, voice, data and video transport, and broadband internet service, but does not include: (1) cable service; (2) open video system service, as defined in [47 CFR 76](#); (3) private communications system services; (4) over-the-air radio or television broadcasting to the public at large from facilities licensed by the Federal Communications Commission or any successor thereto; and (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996.

L. "Utility facility or facility" means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other

facilities, located within, upon, under or above the **rights-of-way**, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

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

N. "Utility operator or operator" means any person who owns, places, operates or maintains a utility facility within the **rights-of-way** of the city.

O. "Work" means the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation. [Ord. 2018-01 § 1 (Exh. A)].

### 3.40.050 Licenses.

#### A. License Required.

1. Except those utility operators with a valid franchise agreement from the city, every utility operator shall obtain a license from the city prior to constructing, placing or locating any utility facilities in the **right-of-way**.
2. Every person that owns or controls utility facilities in the **right-of-way** as of the effective date of this chapter shall apply for a license from the city within 45 days of the later of (a) the effective date of this chapter, or (b) the expiration of a valid franchise from the city, unless a new franchise is granted by the city prior to the expiration date or other date agreed to in writing by the city.

B. License Application. The license application shall be on a form provided by the city, and shall be accompanied by any additional documents required by the application to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, and the facilities over which the utility service will be provided, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this chapter.

C. License Application Fee. The application shall be accompanied by a nonrefundable application fee or deposit set by resolution of the city council in an amount sufficient to fully recover all of the city's costs related to processing the application for the license.

D. Determination by City. The city shall issue, within a reasonable period of time, a written determination granting or denying the license in whole or in part. If the license is denied, the written determination shall include the reasons for denial. The license shall be evaluated based upon the provisions of this chapter, the continuing capacity of the **right-of-way** to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.



E. Franchise Agreements. If the public interest warrants, the city and utility operator may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this chapter, consistent with applicable state and federal law. The franchise may conflict with the terms of this chapter with the review and approval of city council. The franchisee shall be subject to the provisions of this chapter to the extent such provisions are not in conflict with the franchise.

F. **Rights** Granted.

1. The license granted hereunder shall authorize and permit the licensee, subject to the provisions of the municipal code and other applicable provisions of state or federal law, to construct, place, maintain and operate utility facilities in the **rights-of-way** for the term of the license.
2. The license granted pursuant to this chapter shall not convey equitable or legal title in the **rights-of-way**, and may not be assigned or transferred except as permitted in subsection K of this section.
3. Neither the issuance of the license nor any provisions contained therein shall constitute a waiver or bar to the exercise of any governmental **right** or power, police power or regulatory power of the city as may exist at the time the license is issued or thereafter obtained.

G. Term. Subject to the termination provisions in subsection M of this section, the license granted pursuant to this chapter will remain in effect for a term of five years.

H. License Nonexclusive. No license granted pursuant to this section shall confer any exclusive **right**, privilege, license or franchise to occupy or use the **rights-of-way** for delivery of utility services or any other purpose. The city expressly reserves the **right** to grant licenses, franchises or other **rights** to other persons, as well as the city's **right** to use the **rights-of-way**, for similar or different purposes. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the **rights-of-way**. Nothing in the license shall be deemed to grant, convey, create, or vest in licensee a real property interest in land, including any fee, leasehold interest or easement.

I. Reservation of City **Rights**. Nothing in the license shall be construed to prevent the city from grading, paving, repairing and/or altering any **right-of-way**, constructing, laying down, repairing, relocating or removing city water, transportation or sewer facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any city facilities. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any **right-of-way**, public work, city utility, city improvement or city facility, except those providing utility services in competition with a licensee, licensee's facilities shall be removed or relocated as provided in EPMC [3.40.070](#)(C), (D) and (E), in a manner acceptable to the city, and subject to industry standard engineering and safety codes.

J. Multiple Services.

1. A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the license and privilege tax requirements of this chapter for the portion of the facilities and extent of services delivered over those facilities.

2. A utility operator that provides or transmits more than one utility service over its facilities is not required to obtain a separate license for each utility service, provided that it gives notice to the city of each utility service provided or transmitted and pays the applicable privilege tax for each utility service.

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

L. Renewal. At least 90, but no more than 180, days prior to the expiration of a license granted pursuant to this section, a licensee seeking renewal of its license shall submit a license application to the city, including all information required in subsection B of this section and the application fee required in subsection C of this section. The city shall review the application as required by subsection D of this section and grant or deny the license within 90 days of submission of the application. If the city determines that the licensee is in violation of the terms of this chapter at the time it submits its application, the city may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the city, before the city will consider the application and/or grant the license. If the city requires the licensee to cure or submit a plan to cure a violation, the city will grant or deny the license application within 90 days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

M. Termination.

1. Revocation or Termination of a License. The city council may terminate or revoke the license granted pursuant to this chapter for any of the following reasons:

- a. Violation of any of the provisions of this chapter;
- b. Violation of any provision of the license;
- c. Misrepresentation in a license application;
- d. Abandonment of facilities without approval to abandon in place as described in EPMC [3.40.070\(D\)\(2\)\(b\)](#);
- e. Failure to pay taxes, compensation, fees or costs due the city after final determination of the taxes, compensation, fees or costs;
- f. Failure to restore **rights-of-way** after construction as required by this chapter or other applicable state and local laws, ordinances, rules and regulations;
- g. Failure to comply with technical, safety and engineering standards related to work in the **rights-of-way**; or

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

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

- a. The egregiousness of the misconduct;
- b. The harm that resulted;
- c. Whether the violation was intentional;
- d. The utility operator's history of compliance; and/or
- e. The utility operator's cooperation in discovering, admitting and/or curing the violation.

3. Notice and Cure. The city shall give the utility operator written notice of any apparent violations before terminating a license. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than 20 and no more than 40 days) for the utility operator to demonstrate that the utility operator has remained in compliance, that the utility operator has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the utility operator is in the process of curing a violation or noncompliance, the utility operator must demonstrate that it acted promptly and continues to actively work on compliance. If the utility operator does not respond or if the city administrator or designee, acting reasonably, determines that the utility operator's response is inadequate, the city administrator or designee shall refer the matter to the city council, which shall provide a duly noticed public hearing to determine whether the license shall be terminated or revoked. [Ord. 2018-01 § 1 (Exh. A)].

### 3.40.060 Construction and restoration.

A. Utility 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, and shall comply with the encroachment provisions set forth in Chapter [12.16](#) EPMC.

No person shall construct, install, or perform any work on utility facilities within the **rights-of-way** without first obtaining all required permits in accordance with Chapter [12.16](#) EPMC. The city shall not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the utility operator of the facilities has applied for and received the license required by this chapter, or has a current franchise with the city, and all applicable fees have been paid.

In the event that an emergency impacts public health or safety or an unplanned interruption in utility service requires repairs, the utility operator shall immediately notify the city of the need for such repair. The utility operator may immediately initiate such immediate repairs and shall apply for appropriate permits within five business days following discovery of the emergency.

B. Unless otherwise provided in a franchise agreement or as set forth in subsection (B)(3) of this section, a performance bond or other form of surety acceptable to the city equal to at least 100 percent of the estimated cost of the work within the **right-of-way** of the city shall be provided before construction is commenced.

1. The performance bond or other form of surety acceptable to the city shall remain in force until 60 days after substantial completion of the work, as determined in writing by the city, including restoration of **rights-of-way** and other property affected by the construction.

2. The performance bond or other form of surety acceptable to the city shall guarantee, to the satisfaction of the city:

a. Timely completion of the work;

b. That the work is performed in compliance with applicable plans, permits, technical codes and standards;

c. Proper location of the facilities as specified by the city;

d. Restoration of the **rights-of-way** and other property affected by the work; and

e. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

3. Upon request by a utility operator, the city administrator may waive the bonding requirement for work performed in the **right-of-way** by (i) utility operators regulated by the Oregon Public Utilities Commission; or (ii) contractors on such utility's behalf and under the utility's control, when the utility has adequately performed to the city's satisfaction its obligations under prior franchises or licenses with the city for the immediately preceding three years prior to the request. In the event the city determines that measures are required to repair the **rights-of-way** as a result of work performed by a contractor on behalf of a utility operator, the utility operator shall take necessary corrective measures on behalf of the independent contractor and satisfactory to the city, within 60 days following notice from the city, except in situations where corrective measures are in order to protect public health or safety, in which case corrective measures will be made immediately following notice from the city. Any waiver granted shall be effective for the duration of the license issued pursuant to this section or at such time as the utility or its contractors cease to adequately perform to the city's satisfaction the utility's obligations under its license, whichever first occurs. In the event of inadequate performance, the city shall notify the utility in writing describing the inadequate performance and specifying a date certain (not less than 30 days) by which the inadequate performance will be remedied to the city's satisfaction or a bond or other form of surety described in this subsection shall be provided.

C. A utility operator shall preserve and protect from injury other utility operators' facilities in the **rights-of-way**, the public using the **rights-of-way** and any adjoining property, and take other necessary measures to protect life and property, including but not limited to buildings, walls, fences, trees or utilities that may be subject to damage from the permitted work. A utility operator shall be responsible for all damage to public or private property resulting from its failure to properly protect people and property and to carry out the work.

D. Inspection. Every utility operator's facilities shall be subject to the **right** of periodic inspection by the city to determine compliance with the provisions of this chapter and all other applicable state and city codes, ordinances, rules and regulations. Every utility operator shall cooperate with the city in permitting the inspection of utility facilities upon request of the city.

E. Coordination of Construction. All utility operators are required to make a good faith effort to both cooperate with and coordinate their construction schedules with those of the city and other users of the **rights-of-way**.

1. Utility operators shall meet with the city annually, or as determined by the city, to schedule and coordinate construction in **rights-of-way** to minimize public inconvenience or disruption.

2. All construction locations, activities and schedules within **rights-of-way** shall be coordinated as ordered by the city administrator or designee to minimize public inconvenience, disruption, or damages. [Ord. 2018-01 § 1 (Exh. A)].

### 3.40.070 Location of facilities.

A. Location of Facilities. Unless otherwise agreed to in writing by the city, whenever all existing electric utilities, cable facilities or telecommunications facilities are located underground within a **right-of-way** of the city, any other utility operator with permission to occupy the same **right-of-way** shall locate its facilities underground. This requirement shall not apply to:

1. Facilities used for transmission of electric energy at nominal voltages in excess of 35,000 volts; or

2. To pedestals, cabinets or other above-ground equipment; and

3. To other new facilities; provided, that the city grants prior written approval for overhead placement. The city reserves the **right** to require written approval of the location of any such aboveground equipment.

B. Interference with **Rights-of-Way**. No utility operator or other person may locate or maintain its facilities so as to unreasonably interfere with the use of the **rights-of-way** by the city, by the general public or by other persons authorized to use or be present in or upon the **rights-of-way**. All use of the **rights-of-way** shall be consistent with city codes, ordinances and regulations.

C. Relocation of Utility Facilities.

1. A utility operator shall, at no cost to the city, relocate its aerial utility facilities underground when requested to do so in writing by the city, consistent with applicable state and federal laws, regulations and tariffs.

2. A utility operator shall, at no cost to the city, temporarily or permanently remove, relocate, change or alter the position of any utility facility within a **right-of-way** when requested to do so in writing by the city. Nothing herein shall be deemed to preclude the utility operator from requiring or requesting reimbursement or compensation from a third-party-initiated project, pursuant to applicable laws, regulations, tariffs, and agreements; or otherwise provided, that such reimbursement or compensation shall not delay the utility operator's obligation to comply

with this section in a timely manner. If such project would not occur but for the third-party project, then the third party shall reimburse the utility operator the total costs of the utility operator's temporary or permanent relocation.

3. Except in the case of an emergency impacting public health or safety or an unplanned interruption of utility service, the city shall provide at least 120 days' prior written notice of the amount of time for removal, relocation, change, alteration or undergrounding or as otherwise agreed upon by the city and utility operator. If a utility operator fails to remove, relocate, alter or underground any utility facility as requested by the city and by the date established by the city, the city may cause the utility facility to be removed, relocated, altered or undergrounded at the utility operator's sole expense. Upon receipt of a detailed invoice from the city, the utility operator shall reimburse the city for the costs the city incurred within 120 days.

#### D. Removal of Unauthorized Facilities.

1. Except in the case of an emergency impacting public health or safety or an unplanned interruption of utility service and/or unless otherwise agreed to in writing by the city administrator or designee, within 120 days following written notice from the city, a utility operator and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within a **right-of-way** shall, at its own expense, remove the facility and restore the **right-of-way**.

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

a. The utility facility is outside the scope of authority granted by the city under the license, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised but for which the license or franchise has expired or been terminated. This does not include any facility for which the city has provided written authorization for abandonment in place.

b. The facility has been abandoned and the city has not been provided prior written notice of such abandonment in place. A facility is abandoned if it is not in use and is not planned for further use, excluding spare capacity reserved for future, repair, or third-party use. A facility will be presumed abandoned if it is not used for a period of 15 months. A utility operator may overcome this presumption by presenting plans for future use of the facility.

c. The utility facility is improperly constructed or installed or is in a location not permitted by the license, franchise or this chapter.

d. The utility operator is in violation of a material provision of this chapter and fails to cure such violation within 30 days of the city sending written notice of such violation, unless the city extends such time period in writing.

#### E. Removal by City.

1. The city retains the **right** and privilege to cut or move the facilities of any utility operator or similar entity located within the public **rights-of-way** of the city, without notice, as the city may determine to be necessary, appropriate or useful in response to a public health or safety emergency. Before taking such action, the city will make every reasonable effort to notify a utility operator and try to coordinate such emergency action.

2. If the utility operator fails to remove any facility when required to do so under this chapter, the city may remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations and the utility operator shall be responsible for paying the full cost of the removal and any administrative costs incurred by the city in removing the facility and obtaining reimbursement. Upon receipt of a detailed invoice from the city, the utility operator shall reimburse the city for the costs the city incurred within 30 days. The obligation to remove shall survive the termination of the license or franchise.

3. The city shall not be liable to any utility operator for any damage to utility facilities by the city or its contractor in removing, relocating or altering the facilities pursuant to subsection B, C or D of this section or undergrounding its facilities as required by subsection A of this section, or resulting from the utility operator's failure to remove, relocate, alter or underground its facilities as required by those paragraphs except for any gross negligence or intentional misconduct of the city's agent or contractor.

F. As-Built Drawings. The utility operator shall provide the city with two updated complete sets of as-built plans annually, upon request of the city. [Ord. 2018-01 § 1 (Exh. A)].

### 3.40.080 Leased capacity. [SHARE](#)

A utility operator may lease capacity on or in its systems to others; provided, that upon request, the utility operator provides the city with the name and business address of any lessee. [Ord. 2018-01 § 1 (Exh. A)].

### 3.40.090 City's use of operator facilities. [SHARE](#)

A. The city shall have the **right**, at the city's sole expense with prior written notice to and approval of the utility operator, to suspend and maintain alarms, wires, control boxes and such other equipment as the city may require for fire, police, emergency or other municipal purposes on poles placed by the utility within the **right-of-way**. All city installed overhead and/or underground equipment shall be installed by qualified personnel and shall be in compliance with Oregon State Electrical Codes and the National Electrical Safety Code at all times.

B. The city shall install such equipment so as not to interfere with the electric power and light service of the utility operator or pose a danger to the public utility's facilities, employees, customers or customers' property. The city shall not sell or lease space on the utility operator's poles, conduits, or other equipment to other entities. The city shall indemnify, defend and save the operator harmless from any and all loss sustained by the utility operator on account of any suit, judgment, execution, claim, or demand whatsoever arising out of the city's installation, operation and maintenance of such equipment. [Ord. 2018-01 § 1 (Exh. A)].

### 3.40.100 Maintenance. [SHARE](#)

A. Every utility operator shall install and maintain all facilities in a manner that prevents injury to the **right-of-way**, public utility easements or the city's property. The utility operator shall, at its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.

B. When an underground excavation or construction and installation of facilities has been completed, the utility operator shall remove all debris from the project site and restore the portion of the **right-of-**

**way**, property or place to the same condition or as near as practicable to its previous condition prior to such construction work in accordance with restoration standards established by the city public works director. If the utility operator fails to do so within a reasonable time, the city may restore the site at the utility operator's expense.

C. The city shall provide written notice to the utility operator of any facility that requires maintenance and repair. Unless an emergency condition exists, the maintenance and repair shall be completed within 120 days following notice. If the utility operator fails to provide necessary maintenance or repair as requested by the city and by the date set by the city, the city may perform such maintenance or repair at the utility operator's sole expense. Upon a detailed invoice from the city, the utility operator shall reimburse the city for the costs the city incurred within 120 days. [Ord. 2018-01 § 1 (Exh. A)].

### 3.40.110 Vacation.

If the city vacates any **right-of-way**, or portion thereof, that a utility operator uses, the utility operator shall, at its own expense, remove its facilities from the **right-of-way** unless the city reserves a public utility easement, which the city shall make a reasonable effort to do; provided, that there is no cost or expense to the city that the utility operator is not willing to reimburse, or the utility operator obtains an easement for its facilities. If the utility operator fails to remove its facilities within 120 days after a **right-of-way** is vacated, or as otherwise directed or agreed to in writing by the city, the city may remove the facilities at the utility operator's sole expense. Upon receipt of an invoice from the city, the utility operator shall reimburse the city for the costs the city incurred within 30 days. [Ord. 2018-01 § 1 (Exh. A)].

### 3.40.120 Privilege tax.

#### A. Privilege Tax.

1. Except as set forth in subsections B and C of this section, and except for cable franchises that are required per applicable law, every utility operator shall pay the privilege tax calculated as a percentage of gross revenues earned from the provision of utility service to customers within the city at the following rates for each service provided during the term of the license:

Electric	7%
Natural Gas	7%
Telecommunications	7%
Cable	5%
Water	5%
Sanitary Sewer	7%

2. Unless otherwise agreed to in writing by the city, the privilege tax shall be paid quarterly, in arrears, for each quarter during the term of the license, within 30 days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable.



3. Except as set forth in subsection (A)(4) of this section, for purposes of this subsection A, "gross revenues" means any and all revenue, of any kind, nature or form, derived from the provision of retail utility services to customers within the city, less net uncollectibles.

4. For purposes of this subsection A, "gross revenues" for a telecommunications utility, as defined in ORS [759.005](#), shall be limited to the revenues defined in ORS [221.515](#).

B. **Transmission Line Fee.** A utility operator that does not earn gross revenues from the provision of utility service to customers within the city shall pay the transmission line fee set by council resolution or set forth in the license granted by the city. The fee may be a flat fee per lineal foot of utility facilities in the city or such other fee determined by the council after consideration of the utility operator's use or proposed use of the **right-of-way**. Unless otherwise agreed to in writing by the city, the fee shall be paid annually, in arrears, for each year during the term of this license within 30 days after the end of each calendar year, and shall be accompanied by information sufficient to illustrate the calculation of the amount payable.

C. **Attachment Fee.** A utility operator whose only facilities in the **right-of-way** are facilities mounted on structures within the **right-of-way**, which structures are owned by another person, and with no facilities strung between such structures or otherwise within, under or above the **right-of-way**, shall pay the attachment fee set by council resolution or set forth in the license granted by the city. The fee may be a flat fee per structure or such other fee determined by the council after consideration of the utility operator's use or proposed use of the **right-of-way**. Unless otherwise agreed to in writing by the city, the fee shall be paid annually, in arrears, for each year during the term of this license within 30 days after the end of each calendar year, and shall be accompanied by information sufficient to illustrate the calculation of the amount payable.

D. Privilege tax payments required by this section shall not be payable in the event a utility operator and the city are within the term of a franchise agreement. Upon expiration of any franchise agreement, the utility operator shall make privilege tax payments as required herein.

E. The utility operator shall pay interest at the rate of nine percent per year for any payment due pursuant to this section made after the due date.

F. The calculation of the privilege tax or other fees required by this section shall be subject to all applicable limitations imposed by federal or state law. The city reserves the **right** to enact any and all other taxes and fees applicable to the utilities subject to the chapter. [Ord. 2018-01 § 1 (Exh. A)].

### 3.40.130 Audits.

A. Within 60 days of a written request from the city, or as otherwise agreed to in writing by the city, the provider of utility service shall:

1. Furnish the city with information sufficient to demonstrate that the utility operator is in compliance with all the requirements of this chapter and its franchise agreement, if any, including but not limited to the privilege tax payments required by EPMC [3.40.120](#) and the franchise fee required in any franchise.

2. Make available for inspection by the city at reasonable times and intervals all maps, records, books, diagrams, plans and other documents maintained by the utility operator with respect to its facilities within the public **rights-of-way** or public utility easements. Access shall be

provided within the city, unless prior arrangement for access elsewhere has been made with the city.

B. If the city's audit of the books, records and other documents or information of the utility operator demonstrates that the utility operator has underpaid the privilege tax or franchise fee by five percent or more in any one year, the utility operator shall reimburse the city for the cost of the audit, in addition to any interest owed pursuant to EPMC 3.40.120(E) or as specified in a franchise.

C. Any underpayment, including any interest or audit cost reimbursement, shall be paid within 30 days of the city's notice to the utility service provider of such underpayment.

D. In the event that the city reasonably estimates that the cost of the audit will exceed \$10,000, the utility operator shall have the option to select a neutral and qualified auditor mutually acceptable to the city and the utility operator to perform the audit. [Ord. 2018-01 § 1 (Exh. A)].

### **3.40.140 Insurance and indemnification.**

#### **A. Insurance.**

1. All utility operators shall maintain in full force and effect the following liability insurance policies that protect the utility operator and the city, as well as the city's officers, agents, and employees:

a. Comprehensive general liability insurance with limits not less than:

i. Three million dollars for bodily injury or death to each person;

ii. Three million dollars for property damage resulting from any one accident; and

iii. Three million dollars for all other types of liability.

b. Motor vehicle liability insurance for owned, nonowned and hired vehicles with a limit of \$1,000,000 for each person and \$3,000,000 for each accident.

c. Worker's compensation within statutory limits and employer's liability with limits of not less than \$1,000,000.

d. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000.

2. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the state of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the city and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The certificate of insurance shall provide that the insurance shall not be canceled or materially altered without 30 days' prior written notice first being given to the city. If the insurance is canceled or materially altered, the utility operator shall provide a replacement policy with the terms as outlined in this section. The utility operator shall maintain continuous

uninterrupted coverage in the terms and amounts required. The utility operator may self-insure any or all of the above coverage.

3. The utility operator shall maintain on file with the city a certificate of insurance, or proof of self-insurance acceptable to the city, certifying the coverage required above.

B. Financial Assurance. The utility operator shall provide a performance bond or other financial security, in a form acceptable to the city, as security for the full and complete performance of the franchise or license, if applicable, and compliance with the terms of this chapter, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the city. This obligation is in addition to the performance surety required by EPMC [3.40.060\(B\)](#) for construction of facilities. The provisions of this subsection B shall not apply to utility operators who, in the city's sole discretion, have adequately performed to the city's satisfaction their obligations under prior franchises or licenses with the city for the immediately preceding three years prior to application for a new franchise or license.

C. Indemnification.

1. Each utility operator shall defend, indemnify and hold the city and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including reasonable attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any **way** arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility operator or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this chapter or by a franchise agreement. The acceptance of a license under EPMC [3.40.050](#) shall constitute such an agreement by the applicant whether the same is expressed or not. Upon notification of any such claim the city shall notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.

2. Every utility operator shall also indemnify the city for any damages, claims, additional costs or expenses assessed against or payable by the city arising out of or resulting, directly or indirectly, from the utility operator's failure to remove or relocate any of its facilities in the **rights-of-way** or easements in a timely manner, unless the utility operator's failure arises directly from the city's negligence or willful misconduct. [Ord. 2018-01 § 1 (Exh. A)].

### **3.40.150 Compliance.**

Every utility operator shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules and regulations of the city, heretofore or hereafter adopted or established during the entire term of any license granted under this chapter. [Ord. 2018-01 § 1 (Exh. A)].

### **3.40.160 Confidential/proprietary information.**

If any utility operator is required by this chapter to provide books, records or information to the city that utility operator reasonably believes to be confidential or proprietary, the city shall take reasonable steps to protect the confidential or proprietary nature of the books, records or information, to the extent permitted by Oregon public records laws; provided, that they are clearly designated as such by the utility operator at the time of disclosure to the city. The city shall not be required to incur any costs to protect such documents, except as to the city's routine internal procedures for complying with Oregon public records law. City will advise the utility operator of any public records request relating to the operator's confidential or proprietary information. [Ord. 2018-01 § 1 (Exh. A)].

### **3.40.170 Penalties.** [SHARE](#)

A. Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter shall be fined not less than \$100.00 nor more than \$1,000 for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs. Fines shall be due and payable no later than 30 days from receipt of the city's notification of the offense. Interest on unpaid fines shall accrue at the rate of nine percent per annum from the due date.

B. Nothing in this chapter shall be construed as limiting any judicial or other remedies the city may have at law or in equity for enforcement of this chapter. [Ord. 2018-01 § 1 (Exh. A)].

### **3.40.180 Severability and preemption.** [SHARE](#)

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

B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition or portion of this chapter is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this chapter shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, clause, phrase, term, provision, condition, covenant and portion of this chapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the city. [Ord. 2018-01 § 1 (Exh. A)].

### **3.40.190 Application to existing agreements.** [SHARE](#)

To the extent that this chapter is not in conflict with and can be implemented consistent with existing franchise agreements, this chapter shall apply to all existing franchise agreements granted to utility operators by the city. [Ord. 2018-01 § 1 (Exh. A)].



**NORTHWEST CODE  
PROFESSIONALS**

**Residential and Commercial Codes**

<https://nwcodepros.com/jurisdictions-we-serve/building-permits/oregon/>

**2017 Oregon Residential Specialty Code (ORSC)**

[Oregon Residential Specialty Code 2017](#)

**NFPA Standards**

[NFPA](#)

**2017 Oregon Electrical Specialty Code**

[Electrical Code](#)

[Oregon Amendments to NEC](#)

**2014 Oregon Energy Efficiency Specialty Code**

[Energy Efficiency Specialty Code](#)

**2014 Oregon Structural Specialty Code (OSSC)**

[Oregon Structural Specialty Code](#)

**2014 Oregon Mechanical Specialty Code**

[Mechanical](#)

**2017 Oregon Plumbing Specialty Code**

[Plumbing](#)

**2014 Oregon Fire Code**

[Fire](#)

**2010 Oregon Manufactured Dwelling Installation Specialty Code**

[Manufactured Dwelling Installation](#)

Current Southern Oregon cities/counties utilizing this service:

Ashland, Eagle Pt, Jacksonville, Josephine County, Phoenix, and Rogue River