

Several years ago, the City Attorney drafted a Rights of Way (ROW) Ordinance to serve as a common baseline from which all companies providing utilities within Shady Cove would operate. At present, custom Franchise Agreements exist for each utility, all of which differ from one another, making management of utilities extremely difficult. A common ROW Ordinance would establish consistency across all utilities, and streamline City management of these utilities.

Eagle Point adopted this ROW Ordinance with changes. As a courtesy, Mr. John Edwards (Chair of the Planning Commission) offered to look at this document and offer his personal opinion based on his years of public works experience. His comments have been provided for consideration immediately following this introduction.

Following Mr. Edwards' comments, you will find a redlined version of the ROW Ordinance drafted by our Attorney. The redlines are the changes that Eagle Point made. These changes are included so that we can determine if those changes should also apply to Shady Cove.

>>>>> Comments from Mr. John Edwards >>>>>>>>>>>>>>>

I recently reviewed the proposed ordinance # 298 to establish Right Of Way procedure and replacing New Franchise Fee Agreements.

The material I was provided was the red-line copy of our ordinance edited by the City of Eagle Point. I also reviewed LOC documents pertaining to franchise fee surveys as well as a ROW agreement literature.

While the majority of the Eagle Point edited text are format related, I do not agree with the changes regarding the removal of capitalized official titles, referenced chapters, sections, department names, city references etc.

In regards to the text of an ordinance the use of first letter capitals highlight important information, and provide clarity of defined terms within the ordinance structure therefore, I recommend that the original format remain intact.

Concerning the remainder of the ordinance there were a few things I found worth reviewing:

Page one describing the ordinance including the Purpose and Intent index should remain as in the original draft.

In the Purpose and Intent section in subsection H the language regarding small wireless facilities was added and council along with perhaps the city attorney might want to decide on weather to include that in Shady Cove's ordinance or not.

In the section titled Construction and Restoration, subsection E paragraph 1; The redlined text in respect to utility operators providing a schedule of known proposed projects within the city right-of-way prior to January 1 of each year should be retained within our ordinance as written.

This is important in several ways in that the city can insure ample notification to residents and businesses of upcoming work and it will give the city an opportunity to complete its own projects that might be within the scope of the job and perhaps come to an agreement with the utility to perform a task on behalf of the city during the project.

As the City of Shady Cove moves forward to secure funding for future street capital improvement projects it would be beneficial to implement a five year moratorium on construction within the city right-of-way following a significant investment by the city for road, storm drainage, sidewalk, curb and gutter improvements etc. Utilities would be provided ample notice of the city's proposed project timeline so they can perform any infrastructure work prior to the start date of the City project.

In the section titled Privilege Tax(Franchise Fee) the rate table in A-1 should be updated as needed to reflect any rate changes and to remove any outdated franchise utility agreements.

Currently (as provided by staff) Shady Cove has ten franchise agreements in place. They are listed here including the current franchise fees for each;

- Avista - 5%
- Pacific Power - 5%
- Hunter - 5%
- Spectrum - 5%
- Southern Oregon Sanitation - 7%
- Hiland Water - 7%
- Rogue Valley Sewer Service - 7%
- Sprint - 5%
- Vonage - 5%
- Almega Cable - 5%

My research revealed that the federal government has capped cable television utilities at 5% of gross revenues however, utilities that offer only broadband services are not included in that cap limit.

Telecommunications fees are capped at 7% of the base amount by the state of Oregon.

Currently there are no federal or state caps on electric or natural gas franchise fees.

There is room for revenue opportunities for the city by increasing the franchise fees for Pacific Power and Avista from 5% to 7%

Privilege Tax subsection D, the red lined and added text should be reviewed by council and the city attorney.

In the section titled Insurance and Indemnification, my opinion is the 5% numerical dollar amounts should remain with the written amounts as originally drafted.

As for the remainder of the draft including changes made by Eagle Point, I found no other items of concern.

~~An Ordinance of the City of Shady Cove, Oregon~~

~~ORDINANCE # 298~~

~~AN ORDINANCE ESTABLISHING A RIGHT OF WAY PROCEDURE AND REPLACING NEW FRANCHISE
FEE AGREEMENTS~~

3.40.010 Purpose and Intent:

~~Jurisdiction and Management of the Public Rights-of-way
Regulatory Fees and Compensation Not a Tax Definitions~~

~~Business Licenses
Licenses~~

~~Construction and Restoration Location of
Facilities~~

~~Leased Capacity~~

~~City's Use of Operator Facilities
Maintenance~~

~~Vacation Privilege
Tax Audits~~

~~Insurance and Indemnification
Compliance Confidential/Proprietary
Information Penalties~~

~~Severability and Preemption Application
to Existing Agreements~~

Purpose and Intent

The purpose and intent of this ~~Chapter~~chapter is to:

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

H. This chapter shall not apply to small wireless facilities, defined in Chapter 3.44 EPMC, Small Wireless Facilities. [Ord. 2023-01 § 2; Ord. 2018-01 § 1 (Exh. A)].

3.40.020 Jurisdiction and ~~Management~~management of the ~~Public Rights of Way~~public rights-of-way.

- ~~A.~~ A. The ~~City~~city has jurisdiction and exercises regulatory management over all public rights-of-way within the ~~City~~city under authority of the ~~City~~city Charter, its ~~Municipal Code~~municipal code, and state law.
- ~~B.~~ B. The ~~City~~city has jurisdiction and exercises regulatory management over each public right-of-way whether the ~~City~~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.~~ C. The exercise of jurisdiction and regulatory management of a public right-of-way by the Citycity is not official acceptance of the right-of-way, and does not

obligate the ~~City~~city to maintain or repair any part of the right-of-way.

~~D.~~ D. The provisions of this ~~Chapter~~chapter are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and, ~~to the extent possible,~~ shall be ~~interpreted to 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.~~ A. The fees and costs provided for in this ~~Chapter~~chapter, and any compensation charged and paid for use of the public rights-of-way provided for in this ~~Chapter~~chapter, are separate from, and in addition to, any and all federal, state, local, and ~~City~~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.~~ B. The ~~City~~city has determined that any fee provided for by this ~~Chapter~~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.~~ C. The fees and costs provided for in this ~~Chapter~~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~~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.~~ A. “Cable ~~Services~~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.~~ B. “City” means the ~~City~~city of ~~Shady Cove~~Eagle Point, an Oregon municipal corporation, and individuals authorized to act on the ~~City’s~~city’s behalf.

~~C.~~ C. “City ~~Council~~council” is the elected governing body of the ~~City~~city of ~~Shady Cove~~Eagle Point, Oregon.

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

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

~~F.~~ 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.~~ G. "Private ~~Communications System~~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~~state of Oregon pursuant to ORS 190.240 and 283.140.

~~H.~~ H. "Public ~~Utility Easement~~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~~city facilities. "Public ~~Utility Easement~~utility easement" includes ~~City utility easements described in Shady Cove Municipal Code Chapter 9.01~~city utility easement. This definition only applies to the extent of the ~~City's~~city's right, title and interest in said easement.

~~I.~~ I. "Right-of-way" for purposes of this ~~ordinance~~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~~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~~city's right, title, interest and authority to grant a license to occupy and use such areas for utility facilities.

~~J.~~ J. "State" means the ~~State~~state of Oregon.

~~K.~~ K. "Telecommunications ~~Services~~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 ~~and~~and, 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 C.F.R. 76; 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.~~ L. "Utility ~~Facility~~facility or ~~Facility~~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.~~ M. "Utility ~~Services~~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~~city~~, and/or the transmission of any of these services through the City~~city~~ whether or not customers within the City~~city~~ are served by those transmissions.

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

~~O.~~ 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)].

~~Business-3.40.050 Licenses~~

~~A. Business License Required. Except as provided in Subsection (B) of this Section, every person providing utility services to customers within the City shall be considered a "business" as defined in Shady Cove City Code and shall be subject to the requirements set forth therein.~~

~~B. Exceptions. Utility operators that have a valid franchise from the City or that obtain a license pursuant to the Licenses section of this Chapter are exempt from the business license requirement of this with respect to the services provided over the facilities subject to the franchise or license.~~

Licenses

~~A.~~ License Required.

A. License Required.

- ~~1.~~ 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.~~ 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 (~~1a~~) the effective date of this ~~Chapter~~, or (~~2b~~) 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.~~ 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.~~ 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.~~ 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.~~ 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.~~ F. Rights Granted.

~~1.~~ 1. The license granted hereunder shall authorize and permit the licensee, subject to the provisions of the ~~Municipal Code~~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.~~ 2. The license granted pursuant to this ~~Chapter~~chapter shall not convey equitable or legal title in the rights-of-way, and may not be assigned or transferred except as permitted in ~~the License portion~~subsection K of this ~~Chapter~~section.

~~3.~~ 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~~city as may exist at the time the license is issued or thereafter obtained.

~~G.~~ G. Term. Subject to the termination provisions in ~~the License~~subsection M of this ~~Chapter~~section, the license granted pursuant to this ~~Chapter~~chapter will remain in effect for a term of five ~~(5)~~ years.

~~H.~~ H. License ~~Non-Exclusive~~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~~city expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the ~~City's~~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.~~ I. Reservation of City Rights. Nothing in the license shall be construed to prevent the ~~City~~city from grading, paving, repairing and/or altering any right-of-way, constructing, laying down, repairing, relocating or removing ~~City~~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~~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 ~~Sections (EPMC 3.40.070(C), (D) and (E) of this Chapter),~~ in a manner acceptable to the ~~City~~city, and subject to industry standard engineering and safety codes.

~~subject to industry standard engineering and safety codes.~~

~~J.~~ J. Multiple Services.

~~1.~~ 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~~chapter for the portion of the facilities and extent of services delivered over those facilities.

~~2.~~ 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; ~~2.~~ provided that it gives notice to the ~~City~~city of each utility service provided or transmitted and pays the applicable privilege tax for each utility service.

~~K.~~ K. Transfer or Assignment. To the extent permitted by applicable state and federal laws, the licensee shall obtain the written consent of the ~~City~~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.~~ L. Renewal. At least 90, but no more than 180, days prior to the expiration of a license granted pursuant to this ~~Section~~section, a licensee seeking renewal of its license shall submit a license application to the ~~City~~city, including all information required in ~~Section (subsection B) of this section~~ and the application fee required in ~~(subsection C) of this section~~. The ~~City~~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~~city determines that the licensee is in violation of the terms of this ~~Chapter~~chapter at the time it submits ~~its application~~its application, the ~~City~~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~~city, before the ~~City~~city will consider the application and/or grant the license. If the ~~City~~city requires the licensee to cure or submit a plan to cure a violation, the ~~City~~city will grant or deny the license application within 90 days of confirming that the violation has ~~been cured~~been cured or of accepting the licensee's plan to cure the violation.

~~M.~~ M. Termination.

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

- ~~(a)~~ a. Violation of any of the provisions of this ~~Chapter~~chapter;
- ~~(b)~~ b. Violation of any provision of the license;
- ~~(c)~~ c. Misrepresentation in a license application;
- ~~(d)~~ d. Abandonment of facilities without approval to abandon in place as described in ~~Section EPMC 3.40.070(D-)(2-4)~~Section EPMC 3.40.070(D-)(2-4)(b);
- ~~(e)~~ e. Failure to pay taxes, compensation, fees or costs due the ~~City~~city after final determination of the taxes, compensation, fees or costs;
- ~~(f)~~ f. Failure to restore rights-of-way after construction as required by this ~~Chapter~~chapter or other applicable state and local laws, ordinances, rules and regulations;
- ~~(g)~~ g. Failure to comply with technical, safety and engineering standards related to work in the rights-of-way; or
- ~~(h)~~ 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.~~ 2. Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:

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

~~3.~~ 3. Notice and Cure. The ~~City~~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~~city administrator or designee, acting reasonably, determines that the utility operator's response is inadequate, the ~~City Administrator~~city administrator or designee shall refer the matter to the ~~City Council~~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~~restoration.

~~A.~~ 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 ~~the Shady Cove Municipal Code~~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 ~~Municipal Code. The City~~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~~chapter, or has a current franchise with the ~~City~~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~~city of the need for such repair. The utility operator may immediately initiate such immediate repairs and shall apply for appropriate permits within ~~three~~five business days following discovery of the emergency.

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

~~4.~~ 1. The performance bond or other form of surety acceptable to the ~~City~~city shall remain in force until 60 days after substantial completion of the work, as determined in writing by the ~~City~~city, including restoration of rights-of-way and other property affected by the construction.

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

~~(a)~~ a. Timely completion of the work;

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

~~(c)~~ c. Proper location of the facilities as specified by the ~~City~~city;

~~(d)~~ d. Restoration of the rights-of-way and other property affected by the work; and

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

~~3.~~ 3. Upon request by a utility operator, the ~~City Administrator~~city administrator may waive the bonding requirement for work performed in the right-of-way by
~~(i)~~ (i) utility operators regulated by the Oregon Public Utilities Commission;
or

~~(ii)~~ (ii) contractors on such utility's behalf and under the utility's control, when the utility has adequately performed to the ~~City's~~city's satisfaction its obligations under prior franchises or licenses with the ~~City~~city for the immediately preceding three ~~(3)~~ years prior to the request. In the event the ~~City~~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~~city, within 60 days following notice from the ~~City~~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~~city. Any waiver granted shall be effective for the duration of the license issued pursuant to ~~Section 4-18-060~~this section or at such time as the utility or its contractors ~~ceases~~cease to adequately perform to the ~~City's~~city's satisfaction the utility's obligations under its license, whichever first occurs. In the event of inadequate performance, the ~~City~~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~~city's satisfaction or a bond or other form of surety described in ~~Section B~~this subsection shall be provided.

~~C.~~ 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.~~ D. Inspection. Every utility operator's facilities shall be subject to the right of periodic inspection ~~and testing~~ by the City to determine compliance with the provisions of this ~~Chapter~~ 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.~~ 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.~~ 1. Prior to January 1 of each year, utility operators shall provide the City with a schedule of known proposed large capital construction and/or facility maintenance for that year in, around or that may affect the rights-of-way.

~~2.~~ 2. 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.

~~3.~~ 2. All construction locations, activities and schedules within rights-of-way shall be coordinated as ordered by the ~~City Administrator~~ city administrator or designee, to minimize public inconvenience, disruption, or damages. [Ord. 2018-01 § 1 (Exh. A)].

3.40.070 Location of Facilities

~~A.~~ A. Location of Facilities. Unless otherwise agreed to in writing by the City, whenever ~~any~~ 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.~~ 1. Facilities used for transmission of electric energy at nominal voltages in excess of 35,000 volts;

~~_or to~~

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

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

~~B.~~ B. Interference with ~~rights-Rights-of-way-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 Citycity, 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 Citycity codes, ordinances and regulations.

~~C.~~ C. Relocation of Utility Facilities.

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

2. 2. A utility operator shall, at no cost to the Citycity, 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 Citycity. 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. 3. Except in the case of an emergency impacting public health or safety or an unplanned interruption of ~~Utility Service~~utility service, the Citycity shall provide at least 120 ~~days~~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 Citycity and by the date established by the Citycity, the Citycity 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 Citycity, the utility operator shall reimburse the Citycity for the costs the Citycity incurred within 120 days.

~~D.~~ D. Removal of Unauthorized Facilities.

~~1.~~ 1. Except in the case of an emergency impacting public health or safety or an unplanned interruption of ~~Utility Service~~utility service and/or unless otherwise agreed to in writing by the ~~City Administrator~~city administrator or designee, within 120 days following written notice from the ~~City~~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.~~ 2. A utility system or facility is unauthorized under any of the following circumstances:

~~(a)~~ a. The utility facility is outside the scope of authority granted by the ~~City~~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~~city has provided written authorization for abandonment in place.

~~(b)~~ b. The facility has been abandoned and the ~~City~~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)~~ c. The utility facility is improperly constructed or installed or is in a location not permitted by the license, franchise or this ~~Chapter~~chapter.

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

~~E.~~ E. Removal by City.

~~1.~~ 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.~~ 2. If the utility operator fails to remove any facility when required to do so under this ~~Chapter~~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.~~ 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 ~~paragraphs (subsection B), (C) or (D)~~ paragraphs (subsection B), (C) or (D) of this ~~Section 4.18.080~~section or undergrounding its facilities as required by ~~paragraph (subsection A)~~ paragraph (subsection A) of this ~~Section 4.18.080~~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.~~ 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.

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.

~~A.~~ A. The City shall have the right, at the ~~City's~~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 ~~Electric~~Electrical Safety Code at all times.

~~B.~~ B. The ~~City~~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~~customers' property. The ~~City~~city shall not sell or lease space on the utility operator's poles, conduits, or other equipment to other entities. The ~~City~~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~~city's installation, operation and maintenance of such equipment. [Ord. 2018-01 § 1 (Exh. A)].

3.40.100 Maintenance.

~~A.~~ A. Every utility operator shall install and maintain all facilities in a manner that prevents injury to the right-of-way ~~or~~, public utility easements, or the ~~City's~~city's property ~~or the property belonging to another person~~. 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.~~ 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 Administrator~~city public works director. If the utility operator fails to do so within a reasonable time, the ~~City~~city may restore the site at the utility operator's expense.

~~C.~~ C. The ~~City~~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~~city and by the date set by the ~~City~~city, the ~~City~~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)].

~~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.~~

3.40.110 Vacation.

If the Citycity 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 Citycity reserves a public utility easement, which the Citycity shall make a reasonable effort to do, provided, that there is no cost or expense to the Citycity 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 Citycity, the Citycity may remove the facilities at the utility operator's sole expense. Upon receipt of an invoice from the Citycity, the utility operator shall reimburse the Citycity for the costs the Citycity incurred within 30 days. [Ord. 2018-01 § 1 (Exh. A)].

3.40.120 Privilege Tax.

A. Privilege Tax.

~~1.~~ 1. Except as set forth in previous sections 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 Citycity at the following rates for each service each service provided during the term of the license:

Electric	7%
Natural Gas	7%
Telecommunications	7%
Cable	75%
Water	75%
Sanitary Sewer	7%

~~2.~~ 2. Unless otherwise agreed to in writing by the Citycity, 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.~~ 3. Except as set forth in previous chapters 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 utility services to customers within the Citycity, less net uncollectibles.

4. For purposes of this ~~section, subsection A,~~ “gross revenues” for a telecommunications utility, as defined in ORS ~~759.005, 759.005,~~ shall be limited to the revenues defined in ORS ~~221.515, 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.

~~B.~~ C. Attachment Fee. City 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.

~~C. — D. 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 be reduced by 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 fee agreement, the utility operator shall make privilege tax payments received by the City, but in no case will be less than \$0 as required herein.

~~E.~~ E. The utility operator shall pay interest at the rate of nine percent ~~(9%)~~ per year for any payment due pursuant to this section made after the due date.

~~F.~~ 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. chapter. [Ord. 2018-01 § 1 (Exh. A)].

3.40.130 Audits.

~~A.~~ A. Within ~~30~~60 days of a written request from the ~~City~~city, or as otherwise agreed to in writing by the ~~City~~city, the provider of utility service shall:

~~4.~~ 1. Furnish the ~~City~~city with information sufficient to demonstrate that the utility operator is in compliance with all the requirements of this ~~Chapter~~chapter and its franchise agreement, if any, including but not limited to the privilege tax payments required by ~~this Ordinance~~EPMC 3.40.120 and the franchise fee required in any franchise.

~~2.~~ 2. Make available for inspection by the ~~City~~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~~city, unless prior arrangement for access elsewhere has been made with the ~~City~~city.

~~B.~~ B. If the ~~City's~~city's audit of the books, records and other documents or information of the utility operator ~~demonstrated~~demonstrates that the utility operator has underpaid the privilege tax or franchise fee by five percent (~~5%~~) or more in any one year, the utility operator shall reimburse the ~~City~~city for the cost of the audit, in addition to any interest owed pursuant to ~~this Ordinance~~EPMC 3.40.120(E) or as specified in a franchise.

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

~~D.~~ D. In the event that the ~~City~~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~~city and the utility operator to perform the audit. [Ord. 2018-01 § 1 (Exh. A)].

3.40.140 Insurance and ~~Indemnification~~indemnification.

~~A.~~ A. Insurance.

~~4.~~ 1. All utility operators shall maintain in full force and ~~affect~~effect the following liability insurance policies that protect the utility operator and the ~~City~~city, as well as the ~~City's~~city's officers, agents, and employees:

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

~~(i)~~ i. Three million dollars (~~\$3,000,000~~) for bodily injury or death to each person;

~~(ii)~~ ii. Three million dollars (~~\$3,000,000~~) for property damage resulting from any one accident; and

~~(iii)~~ iii. Three million dollars (~~\$3,000,000~~) for all other types of liability.

~~(b)~~ b. Motor vehicle liability insurance for owned, ~~non-owned~~nonowned and hired vehicles with a limit of ~~one million dollars (\$1,000,000)~~ for each person and ~~three million dollars (\$3,000,000)~~ for each accident.

~~(c)~~ c. Worker's compensation within statutory limits and employer's liability with limits of not less than ~~one million dollars (\$1,000,000)~~.

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

~~2.~~ 2. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the ~~State~~state of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the ~~City~~city and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The ~~Certificate~~certificate of ~~Insurance~~insurance shall provide that the insurance shall not be canceled or materially altered without 30 ~~days~~days' prior written notice first being given to the ~~City~~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.~~ 3. The utility operator shall maintain on file with the ~~City~~city a ~~Certificate~~certificate of ~~Insurance~~insurance, or proof of self-insurance acceptable to the ~~City~~city, certifying the coverage required above.

~~B.~~ B. Financial Assurance. The utility operator shall provide a performance bond or other financial security, in a form acceptable to the ~~City~~city, as security for the full and complete performance of the franchise or license, if applicable, and compliance with the terms of this ~~Chapter~~chapter, including any costs, expenses, damages or loss the ~~City~~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~~city. This obligation is in addition to the performance surety required by ~~Section 4.18.070 (B) of this Chapter~~EPMC 3.40.060(B) for construction of facilities. The provisions of this ~~Subsection~~subsection B shall not apply to utility operators who, in the ~~City's~~city's sole discretion, have adequately performed to the ~~City's~~city's satisfaction their obligations under prior franchises or licenses with the ~~City~~city for the immediately preceding three ~~(3)~~ years prior to application for a new franchise or license.

C. Indemnification.

1. Each utility operator shall defend, indemnify and hold the Citycity 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 Chapterchapter or by a franchise agreement. The acceptance of a license under Section 4.18.060-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 Citycity 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 Citycity for any damages, claims, additional costs or expenses assessed against or payable by the Citycity 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'scity'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 Citycity, heretofore or hereafter adopted or established during the entire term of any license granted under this Chapterchapter. [Ord. 2018-01 § 1 (Exh. A)].

3.40.160 Confidential/~~Proprietary Information~~proprietary information.

If any utility operator is required by this ~~Chapter~~chapter to provide books, records or information to the ~~City~~city that utility operator reasonably believes to be confidential or proprietary, the ~~City~~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~~city. The ~~City~~city shall not be required to incur any costs to protect such ~~document~~documents, except as to the ~~City's~~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.

~~A.~~ A. Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this ~~Chapter~~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. ~~Fine~~Fines shall be due and payable no later than 30 days from receipt of the ~~City's~~city's notification of the offense. Interest on unpaid fines shall accrue at the rate of nine percent (~~9%~~) per annum from the due date.

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

3.40.180 Severability and ~~Preemption~~preemption.

~~A.~~ A. The provisions of this ~~Chapter~~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.~~ B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition or portion of this ~~Chapter~~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~~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~~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~~city.

Application to Existing Agreements

~~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.~~

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