

**TITLE 12 – UTILITY OPERATORS**

**CHAPTER 12.15 – UTILITY ACCESS TO AND  
USE OF THE RIGHT-OF-WAY**

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**12.15.010 Short Title.**

The ordinance codified in this Chapter will be known and may be referenced as the "Utility Access to and Use of the Right-of-Way" ordinance.

**12.15.020 Purpose and Intent.**

The purpose and intent of this Chapter is to:

- A.** Grant and manage reasonable access to and use of the right-of-way, held in trust by the City, for utility purposes and to conserve the limited physical capacity of the right-of-way consistent with applicable state and federal law;
- B.** Ensure that the City's current and ongoing costs of granting and managing access to and the use of the right-of-way are fully compensated by the persons seeking such access and causing such costs;
- C.** Secure fair and reasonable compensation to the City and its residents, who have invested millions of dollars in public funds to build and maintain the right-of-way, from persons who generate revenue by placing or using facilities in the right-of-way;

- D. Ensure that all utility companies, persons, and other entities owning or operating facilities or providing services within the City register and comply with the ordinances, rules, and regulations of the City;
- E. Ensure that the City can continue to fairly and responsibly protect the public health, safety, and welfare of its residents, and ensure the structural integrity of its right-of-way when a primary cause for the early and excessive deterioration of the right-of-way is its frequent excavation by persons whose facilities are located in the right-of-way;
- F. Encourage the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the City; and
- G. Provide equal and consistent access to and usage of the right-of-way for all utility companies, persons, and other entities who provide services within the City.

#### **12.15.030 Definitions.**

For the purposes of this Chapter, the following terms, phrases, words, and their derivations will have the meaning given below. 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 word "will" is mandatory and "may" is permissive.

- A. "Business License Appeals Board" means the board in City Code Section 7.02.295 of the City Code.
- B. "Bureau" means the City of Portland, Oregon, Bureau of Planning and Sustainability, along with its employees and agents, or such other bureau as the City Council may designate.
- C. "Cable service" is defined consistent with federal laws and means the one-way transmission to subscribers of video programming or other programming service along with subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- D. "City" means the City of Portland, an Oregon municipal corporation, and individuals authorized to act on the City's behalf.
- E. "City Council" means the elected governing body of the City.
- F. "Competitive telecommunications provider" means a telecommunications services provider that has been classified as a competitive telecommunications provider by the Oregon Public Utility Commission pursuant to ORS 759.020.
- G. "Director" means the director of the City's Bureau of Planning and Sustainability or any successor City bureau.

- H.** “Fossil fuels” means petroleum products (such as crude oil and gasoline), coal, methanol, and gaseous fuels (such as natural gas and propane) that are made from decayed plants and animals that lived millions of years ago and are used as a source of energy. Denatured ethanol and similar fuel additives with less than five percent fossil fuel content, biodiesel/renewable diesel with less than five percent fossil fuel content, and petroleum-based products used primarily for nonfuel uses (such as asphalt, plastics, lubricants, fertilizer, roofing, and paints) are not fossil fuels. For the purposes of this Chapter, hydrogen, renewable natural gas, and other low or lower carbon fuel sources are not considered fossil fuels.
- I.** Except as otherwise provided herein, “gross revenues” means revenue received from retail residential and commercial customers for utility services provided within the City less related net uncollectibles. Gross revenues of a utility include revenues from the use, rental, or lease of the utility’s operating facilities. Gross revenues do not include proceeds from the sale of bonds, mortgages or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer, amounts billed to each utility’s customers for utility license fees due under this ordinance, or revenue from joint pole use.
- J.** "License" means the authorization granted by the City to a utility operator pursuant to this Chapter.
- K.** “Licensee” means a utility operator subject to the provisions of this Chapter.
- L.** “Notice” means any written communication sent to a licensee’s address listed on license’s application or the address listed on licensee’s most recent tax filing with the City. Notice also includes any electronic communication sent to a licensee’s agent when that agent both acknowledges and holds themselves out to be the relevant point-of-contact.
- M.** “Person” means and includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint-stock company, trust, limited liability company, association, local service district, governmental entity, or other organization, including any natural person or any other legal entity.
- N.** “Pipeline system” means all pipeline facilities, together with pump stations, gathering lines, and distribution facilities for the transportation of petroleum or petroleum products, including asphalt, aviation gasoline, and distillate fuel oil, located in or below the right-of-way.
- O.** "Public communications system" means any system owned or operated by a government entity or entities for their exclusive use for internal communications or communications with other government entities, and includes services provided by the State of Oregon pursuant to ORS 190.240 and 283.140. "Public communications system" does not include any system used for sale or resale,

including trade, barter, or other exchange of value, of communications services or capacity on the system, directly or indirectly, to any person.

- P.** "Right-of-way" means and includes, but is not limited to, the surface of and the space above and below any street as defined in City Code Section 17.04.010, road, alley, or highway within the City, used or intended to be used by the general public, to the extent the City has the right to allow for such use.
- Q.** "State" means the State of Oregon.
- R.** "Telecommunications services" means:
- 1.** The transmission of information chosen by a telecommunications utility customer, between or among points specified by the customer, without change in the form or content of the information sent or received, offered for a fee to the public, or to such class of users as to be effectively available to the public, without regard to the transmission protocol employed, and whether or not the transmission medium is owned by the provider itself.
  - 2.** Telecommunications services does not include:
    - a. Cable service, whether provided over a cable system or an open video system, as defined in 47 C.F.R. Part 76.
    - b. Over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor.
    - c. Public communications systems.
    - d. Wireless communications services.
    - e. Direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996 (47 U.S.C. § 152 note).
- S.** "Telecommunications utility" means:
- 1.** Any person that owns, operates, manages, or controls all or a part of any utility facility in the City for the provision of telecommunications services, directly or indirectly to or for the public, whether or not the utility facility, or any portion thereof, is wholly within the City.
  - 2.** Any person that is party to an oral or written agreement for the payment by a telecommunications utility, for service, managerial construction,

engineering or financing fees, and has an affiliated interest with the telecommunications utility.

3. "Telecommunications utility" does not include:
  - a. Any public communications system.
  - b. Any person not providing intrastate telecommunications service to the public in this state, whether or not the person has an office in this state or has an affiliated interest with a telecommunications utility as defined in this Chapter.
  - c. Any person acting only as a competitive telecommunications provider.
  - d. Any person providing only telephone customer premises equipment to the public.
  - e. Providers of wireless communications services.
  
- T. "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, plants, structures, equipment, and other facilities, located within, under, or above the right-of-way, any portion of which is used or designed to be used to deliver, transmit, or otherwise provide utility service(s).
  
- U. "Utility operator" or "operator" means any person who uses, owns, places, operates, or maintains a utility facility within the City, whether or not such person provides utility services.
  
- V. "Utility service" means the provision of electricity, natural gas, telecommunications services, cable services, water, sewer, storm sewer, pipeline, public pay phones, or other services to or from customers within the corporate boundaries of the City, or the transmission of any of these services through the City, whether or not customers within the City are served by those transmissions. Utility service does not include wireless communications services.
  
- W. "Wireless communications services" means any wireless service using Federal Communications Commission-licensed or unlicensed spectrum, including, without limitation, any personal wireless services, as defined in 47 U.S.C. § 332(c)(7)(C).
  
- X. "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.

**12.15.040 Jurisdiction and Management of the Public Right-of-Way.**

- A. The City has jurisdiction and exercises regulatory management over and controls access to all right-of-way within the City under authority of the City Charter and state law.
- B. The City has jurisdiction and exercises regulatory management over each 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 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, to the extent possible, will be interpreted to be consistent with such laws, rules, and regulations.

**12.15.050 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 right-of-way provided for in this Chapter, are separate from, and in addition to, any and all other City, local, state, and federal charges, including any permit fee, or any other generally applicable fee, tax, or charge on the business, occupation, property, or income, 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 or tax 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 or taxes are not imposed on property or property owners.
- C. The fees and costs provided for in this Chapter are subject to applicable state and federal laws.

**12.15.060 Administration.**

- A. This Chapter will be administered by the Director. General management of the right-of-way will be administered by the Bureau of Transportation pursuant to City Code Title 17 and its accompanying rules, regulations, and policies.

- B.** The Director may adopt procedures, forms, and written policies for administering this Chapter.
- C.** Authority granted to the Director may be delegated, in writing, to employees or duly authorized agents of the Bureau.
- D.** The Director may, upon request, issue written interpretations of how this Chapter applies in general or to specific circumstances.
- E.** Nothing in this Chapter precludes the informal disposition of a controversy by the Director, in writing, whether by stipulation or agreed settlement.
- F.** The Director may adopt, amend, and repeal administrative rules relating to matters within the scope of this Chapter.
  - 1.** Before adopting, amending, or repealing a rule, the Director must notify interested parties and hold a public comment period. Such notice, which may be provided by mail or electronic means, such as posting on the Bureau's website, must be published at least four weeks before the close of the public comment period. The notice must include instructions on how an interested party may comment on the proposed rule, a brief description of the subjects covered by the proposed rule, and how to access the full text of the proposed rule.
  - 2.** During the public comment period, the Director will receive written comments concerning the proposed rule. At the conclusion of the public comment period, the Director will either adopt the proposed rule, modify it, or reject it, taking into consideration the comments received. If a substantial modification is made, an additional public comment period will be held. Unless otherwise stated, all rules are effective upon adoption by the Director. All rules adopted by the Director will be filed with the Bureau. Copies of all current rules will be posted on the Bureau's website.
  - 3.** Notwithstanding Subsections 1. and 2. above, the Director may adopt an interim rule without prior public notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, stating the specific facts and circumstances supporting such finding. An interim rule adopted pursuant to this Subsection is effective for a period of not more than 180 calendar days. The Director may extend the interim rule past the 180 calendar days for good cause, as determined in the Director's sole discretion.
- G.** Specific Controls the General. If a conflict exists between two City Code provisions, one of them a general requirement and the other a specific requirement, the more specific requirement will operate as an exception to the general requirement regardless of the priority of enactment.



**12.15.070 Registration.**

- A.** Registration Required. Every person who desires to be a utility operator within the City will register with the City prior to providing any utility services to any customer in the City. Every person providing utility services to customers within the City as of the effective date of this Chapter will register within 45 calendar days of the effective date of this Chapter.
- B.** Annual Registration. After registering with the City pursuant to Subsection A. of this Section, the registrant will, by December 31 of each year, file with the City a new registration form if it intends to provide utility service at any time in the following calendar year. Registrants that file an initial registration pursuant to Subsection A of this Section on or after July 1 will not be required to file an annual registration until December 31 of the following year.
- C.** Registration Application. The registration will be on a form provided by the City and will be accompanied by any additional documents required by the City, in the City's sole discretion and at no cost to the City, to identify the registrant and its legal status, describe the type of utility services provided or to be provided by the registrant, and list the facilities over which the utility services will be provided. Failure to receive or secure a form will not relieve any person from the obligation to register and pay the associated fees under this Chapter.
- D.** Registration Fee. Each application for registration will be accompanied by a nonrefundable registration fee in an amount to be determined by the City Council.

**12.15.080 Licenses.**

- A.** License Required.
  - 1.** Except those utility operators with a valid franchise agreement from the City, every person will obtain a license from the City prior to installing any utility facility or conducting any other work in the right-of-way.
  - 2.** Every utility operator as of the effective date of this Chapter will apply for a license from the City within 45 calendar 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 pursuant to Subsection E of this Section.
  - 3.** Every utility operator will provide a comprehensive map showing the location of all facilities within the City. Such map will be provided in a

format acceptable to the City, with accompanying data sufficient enough for the City to determine the exact location of the facilities, currently Shapefile or Geodatabase format. Such map will not be required more than once per year and will be provided at no cost to the City.

- B.** License Application. The license application will be on a form provided by the City and will be accompanied by any additional documents required, at the sole discretion of the City, at no cost to the City. Such documentation must allow the City to easily identify the applicant and its legal status, including its authorization to do business in Oregon, and include a description of the type of utility service provided or to be provided by the applicant, 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.

If any information in the license application changes, the applicant will submit an updated application within 30 calendar days of the change.

- C.** License Application Fee. The application will be accompanied by a nonrefundable application fee or deposit set by the City Council.
- D.** Determination by City. The City will 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 will include the reasons for denial. The license application will 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 local, state, and federal 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 (or a written interagency agreement if the utility operator is a City bureau), that includes terms that clarify, enhance, expand, waive, or vary from the provisions of this Chapter, consistent with applicable state and federal law. The franchise agreement may conflict with the terms of this Chapter only with the review and approval of the City Council. The interagency agreement may conflict with the terms of this Chapter only with the review and approval of the Director and the directors of bureaus who are parties to the agreement. In the event of a conflict between the express provisions of such an agreement and provisions of this Chapter incorporated by reference therein, the terms of the agreement will control. A franchise application will be accompanied by a nonrefundable application fee or deposit set by the City Council.
- F.** Rights Granted.
- 1.** The license will authorize the licensee, subject to the provisions of the City Code, including without limitation Title 17 and applicable provisions

of state or federal law, to utilize, lease capacity, construct, place, maintain, and operate utility facilities in the right-of-way for the term of the license.

2. Any license granted pursuant to this Chapter will not convey equitable or legal title in the right-of-way and may not be transferred or assigned, except as authorized in Subsection J of this Section.
3. Neither the issuance of the license nor any provisions contained in the license will constitute a waiver or bar to the exercise of any governmental right or power, including without limitation, the police power or regulatory power of the City, as it may exist at the time the license is issued or thereafter obtained.

**G. Term.**

1. Subject to the termination provisions in Subsection M of this Section, the license granted pursuant to this Chapter will be effective as of the first day of the quarter in which it was issued by the City.
2. The license will have an initial term of one year with four automatic one-year renewals for a total term of 5 years. The term of the license will commence on the effective date of the license.

**H. License Nonexclusive.** No license granted pursuant to this Section will confer any exclusive right, privilege, license, or franchise to occupy or use the right-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 right-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 right-of-way. Nothing in the license will be deemed to grant, convey, create, or vest in licensee a real property interest in land, including any fee, leasehold interest, or easement.

**I. Multiple Services.**

1. A licensee 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 fee requirements of this Chapter for the portion of the facilities and extent of utility services delivered over those facilities, whether or not those facilities are owned by the utility operator. Nothing in this paragraph requires a licensee to pay the registration, license, or fee requirements owed to the City by a third party using the licensee's facilities.

2. A licensee that provides or transmits more than one utility service over its facilities is not required to obtain a separate license or franchise for each utility service, provided that it gives notice to the City of each utility service provided or transmitted and pays the applicable fees for each utility service.
- J.** Transfer or Assignment. Unless exempted by applicable state and federal laws, the licensee will obtain the written consent of the City prior to the transfer or assignment of the license, which consent will not be unreasonably withheld, conditioned, or delayed. The license will 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 state or federal laws to approve such transfer or assignment. If a license is transferred or assigned, the transferee or assignee will become responsible for fulfilling all the obligations under the license. A transfer or assignment of a license does not extend the term of the license. The City's granting of consent in one instance will not render unnecessary any subsequent consent in any other instance. No transfer or assignment may occur until the successor transferee has provided proof of insurance pursuant to Section 12.15.100.
- K.** Leases and Sales of Utility Facilities.
1. Leases. The licensee will obtain the written consent of the City prior to leasing any portion of, or capacity on, its utility facilities, which consent will not be unreasonably withheld, conditioned, or delayed. However, the licensee remains solely responsible for locating, servicing, repairing, relocating, or removing such portion of the utility facilities. A lessee of any portion of the licensee's utility facilities will not obtain any rights under this Chapter and will be required to register pursuant to Section 12.15.070. Upon written request from the City, a licensee will provide to the City the name and business address of any lessees of its utility facilities. A licensee is not required to provide such information if disclosure is prohibited by applicable law. The licensee will take reasonable steps to ensure that its lessees are in full compliance with this Chapter.
  2. Sales. A licensee may sell portions of its utility facilities in the ordinary course of its business, without otherwise obtaining the City's written consent, so long as the licensee complies with the following conditions:
    - a. The sale is to the holder of a current and valid franchise, license, permit, or other similar right granted by the City;
    - b. Within 14 calendar days of the sale being executed and becoming final, the licensee will provide written notice to the City,

describing the portions of the utility facilities sold by the licensee, identifying the purchaser of the utility facilities and the location of the utility facilities, and providing an executed counterpart or certified copy of the sales documents;

- c. The licensee remains solely responsible for locating, servicing, repairing, relocating, or removing its remaining utility facilities; and
  - d. Within 14 calendar days of the sale being executed and becoming final, the purchaser of such utility facilities will file written notice to the City that it has assumed sole responsibility for locating, servicing, repairing, relocating, and removing the purchased utility facilities under the purchaser's current and valid franchise, license, permit, or other similar right granted by the City. The purchaser will not obtain any of the licensee's rights under this Chapter.
- L. Renewal.** At least 30 but no more than 120 calendar days prior to the expiration of a license granted pursuant to this Section, a licensee seeking renewal of its license will 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 will review the application as required by Subsection D. of this Section and grant or deny the license within 90 calendar days, or such longer period as determined in the City's sole discretion, 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(s) or submit a detailed plan to cure the violation(s) within a reasonable period of time, as determined in the City's sole discretion, before the City will consider the application or grant the license. If the City requires the licensee to cure or submit a plan to cure a violation(s), the City will grant or deny the license application within 90 calendar days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation. If the licensee does not complete its cure within the time designated in the plan or agreed extensions thereof, the City may deny the renewal and terminate the license. The termination process outlined in Subsections M. and N. of this Section to do not apply to such denial and termination.
- M. Revocation or Termination.**
- 1. Revocation or Termination of a License. The Director may revoke or terminate a 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 a license;

- c. Misrepresentation in a license application;
  - d. Failure to pay taxes, compensation, fees, or costs due the City after final determination of the taxes, compensation, fees, or costs;
  - e. Failure to restore the right-of-way after construction as required by City Code or other applicable local or state laws, ordinances, rules, and regulations;
  - f. Failure to comply with technical, safety, or engineering standards related to work in the right-of-way;
  - g. Failure to obtain or maintain a license, permit, certification, or other authorization required by state or federal law for the use, placement, maintenance, or operation of a utility facility; or
  - h. A receiver or trustee is appointed to take over and conduct a licensee's business, or a receivership, reorganization, insolvency, or other similar action or proceeding is initiated, unless the licensee or its receiver or trustee timely and fully performs all obligations, until such time as the license is either rejected or assumed by the licensee or its receiver or trustee.
2. Standards for Revocation or Termination. In determining whether revocation, termination, or some other sanction is appropriate, the Director will consider the following factors:
- a. Whether the violation was intentional;
  - b. The egregiousness of the violation;
  - c. The harm that resulted;
  - d. The licensee's history of compliance; and
  - e. The licensee's cooperation in discovering, admitting, and curing the violation.
- N.** Notice and Cure. The City will give the licensee written notice of any apparent violations before revoking or terminating a license. The notice will include a clear and concise statement of the nature and general facts of the violation and provide a reasonable time (no less than 20 and no more than 40 calendar days) for the licensee to demonstrate that the licensee has remained in compliance, that the licensee has cured or is in the process of curing any violation, or that it would be in the public interest to impose a penalty or sanction less than revocation or

termination. If the licensee is in the process of curing a violation, the licensee must demonstrate that it acted promptly and continues to actively work on compliance. If the licensee does not respond, the Director may determine whether the license will be revoked or terminated. If the licensee does not complete its cure within the time designated in the plan, the City may terminate the license.

1. Violations of Subsection 12.15.090 A. will not be subject to notice by the City and cure by the licensee, and the Director may immediately revoke or terminate a licensee's license who expands or increases capacity to transport fossil fuels in violation of City Code and binding City policies.
- O.** Removal of Utility Facilities. If the City has revoked or terminated a license or if a license has expired without being renewed or extended or a license renewal has been denied, all the licensee's rights under the license will immediately cease and be divested. Thereafter, except as otherwise provided in writing by the Director, the licensee will obtain permits and other permissions and at its own expense remove its utility facilities from the right-of-way and restore the right-of-way to the standards provided in applicable regulations of the City.

#### **12.15.090 Utility-Specific Provisions.**

##### **A.** Pipeline Services.

1. Licensee will operate in a manner that is consistent with City Code and binding City policies.
  - a. The provision of this Subsection do not restrict:
    - (1) improvements in the safety, or efficiency, seismic resilience, or operations of existing infrastructures;
    - (2) the provision of services directly to the end users;
    - (3) development of emergency backup capacity;
    - (4) infrastructure that enables recovery or re-processing of used petroleum products; or
    - (5) infrastructure that will accelerate the transition to non-fossil fuel energy sources.
2. At any point during the term of a license, a licensee may seek to amend, alter, or add to its pipeline system by filing with the City's Bureau of Planning and Sustainability a map showing such proposed changes. The Bureau will respond in writing with its approval, modifications, or denial

(and its reasoning for any modifications or denial) within 45 calendar days from receiving the proposal.

3. Subject to applicable regulations of the City, licensee may perform all of the construction, repair, and maintenance of its facilities within the City's rights-of-way to consumers' premises and other points as may be required to provide natural gas service, and licensee will apply for and obtain all permits necessary for such construction.
4. Removal of underground facilities used to provide natural gas. With written permission from the City, facilities may be allowed to be abandoned in place at the facility owners' sole expense. However, the owner of the facilities will be financially responsible for the removal of the facilities at any time if:
  - a. there is a risk to public safety or health;
  - b. those facilities interfere with any City projects or other users of the right-of-way; or
  - c. those facilities are exposed due to alteration or work of the subsurface.
5. Cost of Removal or Relocation.
  - a. If the need to remove or relocate a facility is caused directly by development of private property or any project sponsored or funded by a third party (including but not limited to any governmental agency or instrumentality other than the City), and the removal or relocation occurs within the area to be developed, or is made for the benefit or convenience of a third-party, licensee may charge the cost to remove or relocate the facilities to the developer or other third-party. Such costs may include acquiring private rights, permits, and other associated costs that result from the relocation. Licensee will be solely responsible for collecting the costs from the developer or other third-party. For the purpose of this paragraph, the removal or relocation of facilities will be considered "caused directly" by a private development or third-party project if, for example, the removal or relocation is necessary to enable the developer or third party to make any improvements or otherwise satisfy any conditions required under any permit, rule, regulation, or other requirement applicable to the project.
  - b. If the removal or relocation of facilities is requested by the City for a City-funded project that serves a public purpose (e.g., a street widening project undertaken independently of a project described



in Subsection A.5.a.), licensee will remove or relocate its facilities at licensee's sole expense within a reasonable time as determine by the City.

**6. Vacation; Conveyance of Right-of-Way; Condemnation.**

- a.** The City will make a good faith effort to retain public utility easements or otherwise request the petitioner for the vacation to grant an easement to licensee if the City vacates any public right-of-way where licensee has facilities. If the licensee's facilities must be relocated from a vacated public right-of-way, the licensee will bear the expense of moving the facilities and obtaining alternate rights, permits, or easements.
- b.** In the event the City conveys, assigns, or transfers title to any property within any right-of-way in which licensee has facilities, as part of said conveyance, the City will make a good faith effort to secure from such transferee an easement or other rights allowing for such facilities to remain in place in a form acceptable to licensee. In the event such facilities must instead be relocated, licensee will bear the expense of relocating the facilities.
- c.** In the event the licensee has facilities located on any private property that is condemned or otherwise acquired by the City for the purpose of expanding any existing right-of-way or creating any new right-of-way, expenses related to such relocation, including the expense of relocating the facilities and acquiring a new easement or other rights in such form and location as is acceptable to licensee, will be borne by the licensee. In addition, in the event that said facilities remain in place or are relocated within the existing or expanded right-of-way, notwithstanding the terms of Subsection A.5.b., the licensee will be responsible for all related relocation costs, including expense of relocating the facilities and acquiring a new easement or other rights.

**7. Right-of-way Use Fees for Pipeline Services.**

- a.** Payers of pipeline service right-of-way fees can fall under three different payment types depending on the service delivered within the City.
  - (1) Percentage of gross revenue payers. Licensees that provide services to end-use customers (residential and commercial) and earn gross revenues within the City.

- (2) Per foot payers. Any licensee that has assets in the right-of-way but does not earn gross revenues from retail service related to those assets within the City.
- (3) Interstate pipeline gross revenue payer. This fee methodology applies to interstate common carriers of liquid fuels. The fee for interstate common carrier liquid fuel pipelines will be five percent of the gross revenue derived from the pipeline located within the City multiplied by the pipeline's length in the City divided by the entire mainline length of the pipeline. Expressed as a formula, the fee is  $F = .05 \times R \times C/T$ , where R is the gross revenue, C is the pipeline's length in the City and T is the pipeline's total mainline length.

**B. Public Telephone Services.**

1. At the City's request, any licensee providing public telephone service will:
  - a. Disable the ability of a specified public telephone to receive incoming calls;
  - b. Disable the ability of a specified public telephone to process telephone calls made to pagers;
  - c. Disable the total operation of a specified public telephone on a temporary basis to discourage unlawful activity; or
  - d. Relocate a specified public telephone on a temporary or permanent basis to discourage unlawful activity.
2. Removal of Public Telephones. The City, upon 20 calendar days' written notice, may require a licensee to remove or relocate any public telephone installed in the right-of-way. A licensee will comply with applicable City Code and regulations to obtain permits and other permissions and may otherwise remove any public telephone after 20 calendar days' written notice to the City. A licensee may otherwise relocate any public telephones with the City's prior written approval. When any telephone booth installed is removed or relocated, the licensee will restore the location site to a condition satisfactory to the Bureau of Transportation. If the licensee fails to remove any public telephone when required to do so, the City may remove the public telephone, restore the affected area, and require the licensee to reimburse the City for its full costs.

**C. Telecommunications Utility.**

1. Any telecommunications utility using or occupying a street, alley, or highway for other than travel within the City without a franchise for 30 days or longer must pay a right-of-way use fee. The right-of-way use fee will be due and payable so long as the telecommunications utility operates within the City and uses or occupies the City's streets, alleys, or highways for its telecommunications utility services or equipment.
2. The right-of-way use fee for telecommunications utilities under this Subsection is 7 percent of the telecommunications utility's gross revenues earned within the corporate limits of the City for each consecutive 3-month period. For the purposes of this paragraph, "gross revenues" means all revenues derived from exchange access services, as that term is defined in ORS 221.515, less uncollectibles from such revenues.

**D. Electric Utilities.**

1. Cost of Removal or Relocation.
  - a. If the need to remove or relocate a facility is caused directly by development of private property or any project sponsored or funded by a third party (including but not limited to any governmental agency or instrumentality other than the City), and the removal or relocation occurs within the area to be developed, or is made for the benefit or convenience of a third-party, licensee may charge the cost to remove or relocate the facilities to the developer or other third-party. Such costs may include acquiring private rights, permits, and other associated costs that result from the relocation. Licensee will be solely responsible for collecting the costs from the developer or other third-party. For the purpose of this paragraph, the removal or relocation of facilities will be considered "caused directly" by a private development or third-party project if, for example, the removal or relocation is necessary to enable the developer or third party to make any improvements or otherwise satisfy any conditions required under any permit, rule, regulation, or other requirement applicable to the project.
  - b. If the removal or relocation of facilities is requested by City for a City-funded project that serves a public purpose (e.g., a street widening project undertaken independently of a project described in Subsection D.1.a.), licensee will remove or relocate its facilities at licensee's sole expense within the time determine by the City.
2. Vacation; Conveyance of Right-of-Way; Condemnation.

- a.** The City will make a good faith effort to retain public utility easements or otherwise request the petitioner for the vacation to grant an easement to licensee if the City vacates any public right-of-way where licensee has facilities. If licensee's facilities must be relocated from a vacated public right-of-way, the licensee will bear the expense of moving the facilities and obtaining alternate rights, permits, or easements.
- b.** In the event the City conveys, assigns, or transfers title to any property within any right-of-way in which licensee has facilities, as part of said conveyance, the City will make a good faith effort to either:

  - (1) secure from such transferee an easement or other rights allowing for such facilities to remain in place in a form acceptable to licensee; or
  - (2) if such facilities are to be relocated, licensee will obtain an easement or other rights, and the expense of relocating the facilities and obtaining such easement or other rights will be borne by licensee.
- c.** In the event licensee has facilities located on any private property that is condemned or otherwise acquired by City for the purpose of expanding any existing right-of-way or creating any new right-of-way, expenses related to relocation, including the expense of relocating the facilities and acquiring a new easement or other rights in such form and location as is acceptable to licensee, will be borne by licensee. In addition, in the event said facilities remain in place or are relocated within the existing or expanded right-of-way, notwithstanding the terms of Subsection D.1.b., licensee will be responsible for all related relocation costs, including expense of relocating the facilities and acquiring a new easement or other rights.
- d.** Underground Conversion. Licensee will remove and replace overhead facilities with underground facilities at the request of City. Cost responsibility will be allocated in accordance with all applicable Oregon Administrative Rules and a schedule agreed upon by the City and licensee.
- e.** Termination or Abandonment of License. Upon any termination of a license, if the licensee is not engaged in efforts to renew or reapply for a license under this Chapter:

- (1) all above ground facilities installed or used by licensee will be removed by licensee at licensee's expense or, with the City's approval, de-energized and abandoned in place, and the property on which the facilities were located restored by licensee to the condition it was in before installation; and
- (2) all underground facilities installed or used by licensee will be de-energized and abandoned in place.

#### **12.15.100 Insurance and Indemnification.**

- A. Insurance. Work will not commence until all insurance requirements listed below have been met and certificates have been approved by the City Attorney and filed with the Bureau. All required insurance must be issued by companies or financial institutions with an AM Best rating of A- or better that are dully authorized to do business in the State of Oregon.
  1. Insurance Certificate. As evidence of the required insurance coverage, a licensee will furnish compliant insurance certificates, including required endorsements, to the City. The certificates will list the City as a Certificate Holder. There will be no cancellation of the insurance without 30 calendar days' prior written notice to the City. If the insurance is cancelled or terminated prior to the end of a license, the licensee will provide a new policy with the required coverage. Failure to maintain insurance as required may be considered a breach of the license.
  2. Additional Insureds. The coverage will apply as to claims between insureds on the policy. The insurance will be without prejudice to other coverage. For liability coverage, the insurance certificate will list the City as a Certificate Holder and include as additional insureds "the City of Portland, Oregon, and its officers, employees, and agents" and an endorsement to the liability policy will confirm the listing of the City as an additional insured. Notwithstanding the listing of additional insureds, the insurance will protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.
  3. Insurance Costs. The licensee will be financially responsible for all pertinent deductibles, self-insured retentions, or self-insurance.
  4. Required Coverage. The limits provided below will be subject to any changes as to the maximum limits imposed on municipalities of the State of Oregon by Oregon state law during the term of a license.

- a. Commercial General Liability. A licensee will provide and maintain commercial general liability and property damage insurance in the amount of \$2,000,000 per occurrence, and aggregate limit of \$4,000,000 that protects the licensee and the City and its officers, employees, and agents from any and all claims, demands, actions, and suits for damage to property or personal injury arising from the licensee’s work under this Chapter.
        - b. Automobile Liability. A licensee will carry automobile liability insurance with a combined single limit of \$1,000,000 each occurrence, and an umbrella or excess liability coverage of \$2,000,000, for bodily injury and property damage. The insurance will include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the licensee.
        - c. Workers’ Compensation. A licensee will comply with the workers’ compensation law, ORS Chapter 656, as it may be amended. If required, a licensee will maintain coverage for all subject workers as defined by ORS Chapter 656 and will maintain a current, valid certificate of workers’ compensation insurance on file with the Bureau for the entire period during which work is performed within the City limits.
  5. Self-Insurance. At the request of a licensee, the City will determine, in its sole discretion, whether a licensee may self-insure. A licensee whose request has been granted will provide the City proof of insurance through a letter of self-insurance or an insurance certificate, listing the City as an additional insured.
- B. Indemnification.**
1. To the fullest extent permitted by law, each licensee will defend, indemnify, and hold harmless the City and its officers, employees, and agents from and against any and all liability, causes of action, claims, damages, losses, judgments, and other costs and expenses, including 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 presence of the facilities or the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the licensee or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the use, construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services, whether such acts or omissions are authorized, allowed, or prohibited by this Chapter or by a

franchise agreement. The acceptance of a license under Section 12.15.080 of this Chapter will constitute such an agreement by the applicant whether the same is expressed or not. Upon notification of any such claim, the City will notify the licensee and provide the licensee with an opportunity to provide defense regarding any such claim.

2. Every licensee will also indemnify the City for any damages, claims, additional costs, and expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from the licensee's failure to remove or relocate any of its facilities in the right-of-way or easements in a timely manner, unless the licensee's failure arises directly from the City's negligence or willful misconduct.
3. Every licensee will also forever defend, indemnify, and hold harmless the City and its officers, employees, and agents from and against any claims, costs, and expenses of any kind, whether direct or indirect, or pursuant to any state or federal law, statute, regulation, or order, for the removal or remediation of any leaks, spills, contamination, or residues of hazardous substances related to the licensee's work in the right-of-way or presence of licensee's facilities. Hazardous substances will have the meaning given by ORS 465.200(16).

#### **12.15.110 Financial Assurance.**

- A. Unless otherwise agreed to in writing by the City, before a franchise is granted or a license issued pursuant to this Chapter is effective, and as necessary thereafter, the licensee will provide a financial assurance, such as a performance bond or other security, in a form acceptable to the City, as security for the full and complete performance of the franchise or license, and for compliance with the terms of this Chapter. The financial assurance will include any costs, expenses, damages, or loss to the City because of any failure to comply with this Chapter and accompanying ordinances, resolutions, rules, regulations, or policies attributable to the licensee. The licensee will also provide, upon request, written evidence of payment of the required premium.
- B. Amount.
  1. The financial assurance will be in an amount of \$100,000. A licensee will immediately replace or replenish to the full amount any draw-down of the financial assurance by the City. The financial assurance will be in effect until the later of:
    - a. termination of a franchise or license; or
    - b. removal of all or part of a licensee's utility facilities.

2. This obligation is in addition to any performance guarantees required by applicable City Code and regulations.
- C. The financial assurance will contain a provision that it will not be terminated or otherwise allowed to expire without 30 calendar days' prior written notice first being given to the City. The financial assurance is subject to review and approval by the City Attorney.
- D. In no event will the City exercise its rights under the financial assurance if a bona fide, good-faith dispute exists between the City and a licensee.

**12.15.120 Confidential/Proprietary Information.**

If any person is required by this Chapter to provide maps, records, books, diagrams, plans, or other documents to the City that the person reasonably believes to be confidential or proprietary, the City will take reasonable steps to protect the confidential or proprietary nature of the documents to the extent authorized by the Oregon Public Records Law, provided that all documents are clearly marked as confidential by the person at the time of disclosure to the City. The City will not be required to incur any costs to protect such documents, other than the City's routine internal procedures for complying with the Oregon Public Records Law.

**12.15.130 Equal Employment Opportunity/Minority Business Enterprises.**

- A. The licensee will fully comply with the equal employment opportunity requirements of local, state, and federal law, and, in particular, Federal Communications Commission (FCC) rules and regulations relating thereto. Upon request by the City, a licensee will furnish the City a copy of the licensee's annual statistical report filed with the FCC, if applicable, along with proof of the licensee's annual certification of compliance. The licensee will immediately notify the City in the event the licensee is at any time determined to be out of compliance with the FCC or another regulatory body.
- B. The licensee will maintain a policy that all employment decisions, practices, and procedures are based on merit and ability without discrimination on the basis of an individual's race, color, religion or nonreligion, age, sex, gender identity, national origin, sexual orientation, limited English proficiency, marital status, family status, or physical or mental disability. The licensee's policy will apply to all employment actions including advertising, recruiting, hiring, promotion, transfer, remuneration, selection for training, company benefits, disciplinary action, lay-off, and termination.
- C. The licensee will make a determined and good-faith effort to employ and advance in employment women, minorities, and the physically and mentally disabled.
- D. The licensee will make determined and good-faith efforts to use minority and female business enterprises in its contracted expenditures, including without



limitation, contracts for the acquisition of goods, services, materials, supplies, and equipment used in the construction, maintenance, and operation of its utility service system. If directed by the City, the licensee will participate in the City's Minority and Female Business Enterprise Certification Program.

**12.15.140 Fee to Access and Use the Right-of-Way.**

- A.** Every person subject to this Chapter will pay the fee to access and use the right-of-way for every utility service provided in the amount determined by ordinance of the City Council.
- B.** Fee payments required by this Section will be reduced by any franchise or Utility License Law (Chapter 7.14) fee payments received by the City, but in no case will the payment be less than zero dollars.
- C.** Unless otherwise agreed to in writing by the City, the fees set forth in this Section will be paid quarterly, in arrears, for each quarter during the term of the license within 45 calendar days after the end of each calendar quarter and will be accompanied by an accounting of gross revenue, if applicable, and a calculation of the amount payable, in a form satisfactory to the Director.
- D.** The calculation of the fee required by this Section will be subject to all applicable limitations imposed by state or federal law. The licensee may request a refund by filing with the City a written request within 5 years from the date payment is due.
- E.** The City reserves the right to enact other fees and taxes applicable to the utility operators subject to this Chapter. Unless expressly authorized by the City in enacting such fee or tax, or required by applicable state or federal law, no utility operator may deduct, offset, or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the fees required by this Chapter.
- F.** Interest amounts properly assessed in accordance with this Section may only be reduced or waived by the Director for good cause, according to and consistent with written policies.
- G.** No Accord. The City's acceptance of payment will not be construed as an accord that the amount paid is, in fact, the correct amount, nor as a release of any claim the City may have for further or additional sums payable. Further, the licensee's payment of any amount hereunder will not be construed as an accord that the amount paid is, in fact, the correct amount, nor as a release of any claim the licensee may have for refund of any overpayment.
- H.** Penalties on late remittances. Penalties and interest imposed by this Section are in addition to any fines or penalties that may be assessed under other ordinances or regulations of the City.

1. Any person who has not submitted the required remittance forms or remitted the correct fees when due as provided in this Section will pay a penalty listed below in addition to the amount due:
    - a. First occurrence during any one calendar year; ten percent of the amount owed, or \$25, whichever is greater.
    - b. Second occurrence during any one calendar year; 15% of the amount owed, or \$50, whichever is greater.
    - c. Third occurrence during any one calendar year; 20% of the amount owed, or \$75, whichever is greater.
    - d. Fourth occurrence during any one calendar year; 25% of the amount owed, or \$100, whichever is greater.
  2. If the City determines that the nonpayment of any remittance due under this Section is due to fraud or intent to evade the provisions hereof, an additional penalty of 25 percent of the amount owed, or \$500, whichever is greater, will be added thereto in addition to other penalties allowed by law.
  3. In addition to the penalties imposed, any person who fails to remit any fee when due as provided in this Section will pay interest at the rate of one and a half percent per month or fractions thereof, without proration for portions of a month, on the total amount due (including penalties and fines), from the date on which the remittance first became delinquent, until received by the City.
  4. Every penalty imposed, and such interest as accrues under the provision of this Section, will be merged with, and become part of, the fees required to be paid.
- I. The City or its designee, in their sole discretion, will have the authority to reduce or waive the penalties, fines and interest due under Section 12.15.140.

**12.15.150 Audits, Review, and Information Requests.**

- A. Payment of the fee(s) under this Chapter will be subject to audit and review by the City for compliance. The City may audit and review the fees paid by a licensee under this Chapter for a period of no more than 5 years after the period to which such fees relate. Any information requested or required by this Chapter will be delivered to the City, at no cost to the City.

- B.** Within 30 calendar days of a written request from the City, or as otherwise agreed to in writing by the City:
1. Every licensee will deliver to the City information sufficient to easily demonstrate that the licensee is in full compliance with all the requirements of this Chapter and its franchise agreement, if any, including but not limited to payment of any applicable fees.
  2. Every licensee will make available for inspection by the City at reasonable times and intervals all maps, records, books, diagrams, plans, and other documents with respect to its use of the right-of-way. Access will be provided within the City unless prior written arrangement for access elsewhere has been made and agreed to by the City.
  3. If any licensee fails, refuses, or neglects to provide or make records available to the Director for determining licensee's compliance with this Chapter, including but not limited to the amount of fees due or payable, the Director may determine the amount of the fees due or payable based upon readily available facts and information. The Director will notify the licensee in writing of the amount of such fee so determined, together with any penalty or interest due. The total of such amounts will become immediately due and payable, together with any penalties or fines assessed by the Director.
  4. Final audit determinations are appealable to the Business License Appeals Board using the process set forth in City Code Section 7.02.290. The licensee must file a written appeal within 30 calendar days of the date of the final audit determination letter. In such an appeal, the licensee will have the burden of establishing that the Director's determination is incorrect, either in whole or in part.
  5. The filing of any notice of appeal to the Business License Appeals Board will not stay the effectiveness of the Director's determination unless the Business License Appeals Board so directs.
- C.** Any underpayment, including any interest, penalties, or fines, will be paid within 30 calendar days of the City's notice to the licensee of such underpayment.
- D.** Penalties. A penalty of five percent of any underpayment will be due within 45 calendar days of written notice from the City, if the City's review of payments under this Chapter discloses that a licensee has paid 95 percent or less of the fees owing for the period under review.
- E.** The Director may issue and seek enforcement of an administrative subpoena for the purpose of collecting any information necessary to enforce any provision of

this Chapter. Licensee will comply with the administrative subpoena within 60 calendar days of the date the subpoena was sent.

**12.15.160 Compliance.**

- A. Every licensee will comply with all applicable state and federal laws and regulations, including regulations of any administrative agency, as well as all applicable ordinances, resolutions, rules, regulations, and binding policies of the City, heretofore or hereafter adopted or established during the term of any license granted under this Chapter.
- B. No licensee will be relieved of its obligations to comply promptly with this Chapter by reason of any failure of the City to enforce prompt compliance. The City's failure to enforce will not constitute a waiver of any term, condition, or obligation imposed upon the licensee, nor a waiver of rights by the City or acquiescence in the licensee's conduct. The acts or omissions of affiliates are not beyond the licensee's control, and the knowledge of affiliates will be imputed to the licensee.

**12.15.170 Violations; Remedies and Civil Penalties.**

- A. The City will give the licensee written notice of any violations and provide a reasonable time (no less than 20 and no more than 40 calendar days) for the licensee to remedy the violations. If the Director determines the licensee is guilty of violating any provisions of this Chapter or the license after the time to remedy has passed, the Director will consider the standards found in Subsection C. of this Section. A separate and distinct offense will be deemed committed each day on which a violation occurs. The Director may:
  - 1. issue a hold on any permit applications filed by the licensee for work in the right-of-way; or
  - 2. fine the licensee not less than \$100 nor more than \$1,000 for each offense; or
  - 3. take the actions described in both Subsection 1. and 2.
- B. Violations of this Chapter include but are not limited to:
  - 1. Any failure to file a registration or license application at the time required under this Chapter or to promptly update registration or license information;
  - 2. Any failure to pay any fee required by this Chapter when due;
  - 3. Any failure to file the documentation required or fees due;

4. Any failure to provide or make available all maps, records, books, diagrams, plans, or other documents with respect to its utility services and facilities within the right-of-way;
  5. Any repeated failure to comply with this Chapter; or
  6. Any false statement on any registration or license application, on any documentation required, or in response to any audit or compliance investigation conducted under this Chapter.
- C. In assessing civil penalties under this Section, the Director will produce a written decision identifying the violation, the amount of the penalty, and the basis for the decision. In making such determination, the Director will consider the following criteria:
1. The extent and nature of the violation;
  2. Any impacts to the City or the general public resulting from the violation;
  3. Whether the violation was repeated and continuous, or isolated and temporary;
  4. Whether the violation appeared willful or negligent;
  5. The City's costs of investigating the violation and correcting or attempting to correct the violation; and
  6. Any other factors the Director deems relevant.
- D. The Director may reduce or waive any civil penalty for good cause, according to and consistent with written policies.
- E. Except as provided in Subsection 12.15.150 B.4., a determination made by the Director is a quasi-judicial decision and is not appealable to the City Council. Appeals from any determination made by the Director will be solely and exclusively by writ of review to the Circuit Court of Multnomah County, as provided in ORS 34.010 to 34.100.
- F. The remedies in this Section are in addition to the revocation and termination provisions outlined in Subsection 12.15.080 M. of this Chapter. Nothing in this Chapter will be construed as limiting any judicial or other remedy the City may have at law or in equity for enforcement of this Chapter.

**12.15.180 Enforcement.**

In addition to other enforcement authority, upon written approval of the Mayor, the Director may have the City Attorney institute legal proceedings to enforce this Chapter, or any determinations made by the Director under this Chapter.

**12.15.190 Severability and Preemption.**

- A.** The provisions of this Chapter will be interpreted to be consistent with applicable state and federal law, and will be interpreted, to the extent possible, to cover only matters not preempted by state or federal law.
- B.** If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant, 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 will not be affected thereby but will be deemed as a separate, distinct, and independent provision, and such holding will not affect the validity of the remaining portions hereof, and each remaining article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant, or portion of this Chapter will be valid and enforceable to the fullest extent authorized by law. In the event any provision is preempted by state or federal laws, rules, regulations, or decisions, the provision will be preempted only to the extent required by law and any portion not preempted will survive. If any preemptive state or federal law is later repealed, rescinded, amended, or otherwise changed to end the preemption, such provision of this Chapter will thereupon return to full force and effect and will thereafter be binding without further action by the City.

**12.15.200 Application to Existing Agreements.**

- A.** To the extent that this Chapter is not in conflict with and can be implemented consistent with existing agreements, this Chapter will apply to all existing agreements granted to utility operators by the City. To the extent that a term of such an existing agreement irreconcilably conflicts with a provision of this Chapter, the term of the existing agreement will control for the remainder of the agreement's term.
- B.** A licensee who had a franchise agreement with the City prior to obtaining a license under this Title and paid on a linear foot basis will continue to pay fees on that basis. The number of linear feet upon which the fee is calculated will remain in effect until the licensee constructs or acquires facilities in new locations in the right-of-way, sells any facilities within the right-of-way existing at the time of the transition from a franchise to a license under this Chapter, or no longer uses the applicable facilities.