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191613

Ordinance

Add Utility Operators Code to govern utility access and use of the City right-of-way and adopt fee schedule for utilities operating in the City right-of-way (add Code Title 12)

Passed

The City of Portland ordains:

Section 1. The Council finds:

1. The Bureau of Planning & Sustainability (BPS) manages the access, fee collection, and agreements pertaining to access to and use of the rights-of-way on behalf of the City.
2. The City has typically granted individually negotiated franchise agreements to each utility using the City's rights-of-way to provide utility services, with each franchise agreement setting forth the terms of use and compensation to be paid for such use.
3. The City has determined that it can more effectively, efficiently, fairly, and uniformly manage the City's rights-of-way and provide consistent standards for utility access to and use of the rights-of-way through licenses, rather than franchise agreements.
4. On June 7, 2023, BPS staff brought an ordinance to add Title 12 to the Portland City Code to the Council for a first reading. On June 14, 2023, Commissioner Rubio recommended to Council that the ordinance be withdrawn from consideration in order to provide BPS staff an opportunity to revise the proposed ordinance to address concerns raised by stakeholders.
5. The ordinance was withdrawn and sent back to BPS staff for further engagement with the companies who operate their assets in the right-of-way (ROW).
6. On September 1, 2023, BPS held a workshop with the majority of the companies who operate assets in the ROW to get consensus on next steps on moving forward with a ROW and to address parties concerns and issues raised during the June 7, 2023, Council hearing.
7. Based on discussions at the workshop, BPS staff agreed with parties on another round of stakeholder comments and edits to PCC Title 12. Staff also agreed to meet with specific stakeholder industry groups to make changes and edits that address their operational needs.

Introduced by

[Commissioner Carmen Rubio](#)

Bureau

[Planning and Sustainability \(BPS\)](#)

Contact

Andrew Speer

Cable Utility Franchise Management

✉ andrew.speer@portlandoregon.gov

Requested Agenda Type

Regular

Date and Time Information

Requested Council Date

January 31, 2024

Changes City Code


Portland Policy Document


8. BPS staff worked with key stakeholder groups from the core utilities (NW Natural, PGE, and Pacific Power), landline telephone providers (LUMEN and Ziply), pipeline companies (WPSA and an interstate pipeline provider), and commercial fiber provider (Tata Communications) to make edits that addressed specific issues raised by industry stakeholders. This process ran from September through November.
9. On December 1, 2023, BPS staff provided ROW users a draft of the ROW Code that incorporated the stakeholder requested edits. BPS also included some minor administrative edits to add clarity and transparency. Stakeholders were given until December 15, 2023, to provide final comments.
10. BPS staff additional comments from nine stakeholders during the final review period, and staff accepted a portion of the requested edits.
11. The Ordinance will add a new Portland City Code Chapter 12.15 that will regulate access for utilities operating in the City's rights-of-way and assist the City in exercising its authority to secure compensation to the City and its residents for utility use of the rights-of-way.
12. The Ordinance adopts a new Portland City Code Title 12 as shown in Exhibit A into City Code.
13. The Ordinance also adopts the right-of-way fee schedule shown in Exhibit B and adds a new franchise negotiation fee to compensate for costs incurred by the City if a party requests a franchise agreement based on special circumstances and the City deems a franchise agreement to be appropriate. The fee would compensate the City for the costs associated with negotiating the agreement.
14. Exhibits A and B will become effective on April 1, 2024, to coincide with the start of the next calendar quarter to accommodate invoicing and payments to the City from licensees who register under this Chapter.

NOW, THEREFORE, the Council directs:

- A. Add Code Title 12, Utility Operators, as shown in Exhibit A, effective April 1, 2024.
- B. Adopt Annual Rights-of-Way Fee Schedule as attached in Exhibit B effective April 1, 2024.
- C. Exhibit B, Annual Rights-of-Way Fees is binding City policy.

Documents and Exhibits

 [Exhibit A \(https://www.portland.gov/sites/default/files/council-documents/2024/exhibita_rowcode_chapter12.15.pdf\)](https://www.portland.gov/sites/default/files/council-documents/2024/exhibita_rowcode_chapter12.15.pdf) 310.43 KB

 [Exhibit B \(https://www.portland.gov/sites/default/files/council-documents/2024/exhibitb_rowcode_feeschedule.pdf\)](https://www.portland.gov/sites/default/files/council-documents/2024/exhibitb_rowcode_feeschedule.pdf) 104.91 KB

An ordinance when passed by the Council shall be signed by the Auditor. It shall be carefully filed and preserved in the custody of the Auditor (City

Charter Chapter 2 Article 1 Section 2-122)

Passed by Council

January 31, 2024

Auditor of the City of Portland

Simone Rede

Impact Statement

Purpose of Proposed Legislation and Background Information

By adopting the Right-of-Way (ROW) code and correlating fee schedule, the City will join roughly one dozen other municipalities in Oregon that have implemented a uniform ROW licensing system via code.

The purpose of this project is to replace the administratively cumbersome, resource-intensive, and outdated system of managing access to the right-of-way through franchise agreements. The proposed new code will apply to all companies that have infrastructure in the right-of-way or maintain a business using that infrastructure, whether or not they own the infrastructure.

The pertinent provisions of the Right-of-Way Ordinance include:

- Providers with existing franchise agreements are exempted until their agreements expire.
- Preserves the City's right to enter into franchise agreements with individual providers in situations where the public interest warrants.
- Wireline cable television providers will continue to operate under franchise agreements due to protections under Federal Communications Commission (FCC) law.
- Each license with utility providers will be for a term of one (1) year with renewal upon annual registration up to five (5) years.
- Licenses are transferrable upon the written consent of the City, provided the transfers are consistent with state and federal law.
- Providers seeking license renewals must submit license applications at least thirty (30) days, but not more than ninety (90) days prior to expiration.
- Includes provides under which the City may terminate licenses.
- Provides for fees to be established by ordinance.

Financial and Budgetary Impacts

The purpose of this code is to clarify and codify the terms and corresponding fees for utilities operating in the City's right-of-way. Utilities who operate under this Chapter will be subject to paying a percentage of gross revenue fee or a dollar per foot fee depending on their type of assets and service they provide in the City. Utility providers will experience no material changes to their annual ROW license payments to the City. Overall,

the annual collection of fees is expected to not change more than one percent over the first five years of implementation.

There may be small positive budgetary impacts in future years due to more efficient administration of the program by eliminating the need for franchise negotiations and individual agreements, improved oversight of account management, and increased compliance.

Community Impacts and Community Involvement

There are no direct community impacts as a result of this ordinance. While general community involvement was not conducted, industry stakeholders were consulted and provided multiple opportunities to give comments and suggest edits over the two-year process.

100% Renewable Goal

n/a

Agenda Items

82 Time Certain in [January 24, 2024 Council Agenda](https://www.portland.gov/council/agenda/2024/1/24)
(<https://www.portland.gov/council/agenda/2024/1/24>)

Passed to second reading

Passed to second reading January 31, 2024 at 9:30 a.m.

104 Regular Agenda in [January 31, 2024 Council Agenda](https://www.portland.gov/council/agenda/2024/1/31)
(<https://www.portland.gov/council/agenda/2024/1/31>)

Passed

Commissioner Carmen Rubio Yea

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Commissioner Mingus Mapps Yea

Mayor Ted Wheeler Yea