

ORDINANCE NO. NS-2490

AN ORDINANCE REPEALING AND REPLACING BEND MUNICIPAL CODE CHAPTER 3.20, UTILITY LICENSE FEE AND USE OF RIGHTS-OF-WAY

Findings

- A. The City of Bend ("City") has constitutional, statutory, and charter authority to manage its public rights-of-way and to receive compensation for private use of the rights-of way, consistent with applicable state and federal law.
- B. The public rights-of-way are valuable community assets for transportation, utility services, and the delivery of other essential services to the City community while also serving an aesthetic function to set the community character of the City.
- C. Prior to the enactment of this Ordinance, the City generally granted individually-negotiated franchises to each utility using the City's rights-of-way to provide utility services, which franchises set forth the terms of use and compensation to be paid for such use.
- D. The City determined that it can more effectively, efficiently, fairly, and uniformly manage the public rights-of-way and provide consistent standards for utility services use of the public rights-of-way through a generally applicable code rather than franchises, unless otherwise required by state or federal law.
- E. The City presented a proposed draft of the amendment to Section 3.20 for utility and public comment on November 16, 2023, and held an initial written public comment period through November 17, 2023. The City responded to and incorporated several requested changes to the initial draft and held a second comment period on a revised draft code from December 6, 2023 to December 20, 2023. The City also held a staff information session for water, power, and natural gas utilities on December 11, 2023, and staff met with individual utility stakeholders upon request. Council heard a staff presentation and discussed the proposed code at Council Work Sessions on April 5, 2023, and December 6, 2023, and Council considered additional written and oral comments during its business meeting on January 17, 2024.
- F. The code is scheduled to go into effect on June 1, 2024, to give staff time to implement the code and to educate the public on the new licensing and registration requirements for covered utilities.
- G. This Ordinance incorporates as findings (1) Section 3.20.010 (Purpose) of the amended Bend Municipal Code Chapter 3.20, attached as Exhibit A, and (2) the Staff Issue Summary presented to Council in connection with the first and second readings of the Ordinance.

Based on these findings, THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The provisions of Bend Municipal Code Chapter 3.20 are deleted in their

entirety and replaced with the code as shown on the attached Exhibit A.

Section 2. This ordinance will go into effect on June 1, 2024.

Section 3. If any provision, section, phrase, or word of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.


Section 3. All other provisions of the Bend Municipal Code remain unchanged by this ordinance and remain in effect.

First Reading Date: January 17, 2024

Second Reading and adopted by roll call vote on February 7, 2024

YES: Mayor Melanie Kebler
Mayor Pro Tem Megan Perkins
Councilor Barb Campbell
Councilor Anthony Broadman
Councilor Ariel Méndez
Councilor Mike Riley
Councilor Megan Norris

NO: none



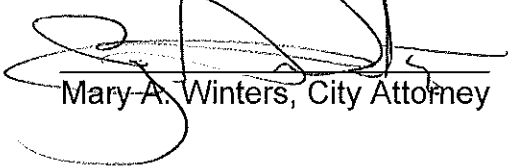
Melanie Kebler, Mayor

ATTEST:

FOR 

Robyn Christie, City Recorder

APPROVED AS TO FORM:



Mary A. Winters, City Attorney

Chapter 3.20

REGULATION OF UTILITY USE OF CITY RIGHTS-OF-WAY

Sections:

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3.20.010 Purpose

The purpose of this Chapter is to:

- A. Permit and manage reasonable access to and utilization of the public rights-of-way of the City for utility services purposes and conserve the limited physical capacity, integrity, and longevity of those public rights-of-way held in trust by the City consistent with applicable state and federal law;
- B. Secure fair and reasonable compensation to the City, who have invested substantial public funds to acquire, build, and maintain the public rights-of-way and City-owned structures and improvements therein, from utilities that benefit from use of this public asset;
- C. Ensure that all persons owning or operating utility facilities or providing

utility services within the City register and comply with the ordinances, rules, policies, and other regulations of the City, as well as with applicable provisions of state and federal law;

D. Ensure that the City can continue to fairly and responsibly protect the public health, safety, and welfare of its residents;

E. Encourage the provision of high-quality utility services on the widest possible basis to the residents, businesses and visitors within the City's territorial and jurisdictional boundaries, while allowing the City to be resilient and adaptive to changes in technology;

F. Allow the City to enter into other or additional agreements with person(s), if required by applicable law, and to amend the requirements of this Chapter and the City regulations, as new technology is developed and deployed; and

~~H.~~ G. Acknowledge state and federal regulation of the provision of utility services within the city of Bend, including Oregon Public Utility Commission's ("PUC") role in ratemaking and allocating exclusive utility service territories for power, water, and other utilities, as applicable, and ensure City's compliance with applicable provisions of state and federal law; and

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~~H.~~ H. Except for the location of facilities in the City's right-of-way, acknowledge that the engineering standards and specifications applicable to City's municipal utility facilities are not applicable to private water utility facilities located within the city of Bend.

3.20.015 Jurisdiction and Management

A. The City has jurisdiction and exercises regulatory management over all public rights-of-way within the City under authority of the Oregon Constitution, the City Charter, and state law.

B. The City has jurisdiction and exercises regulatory management over each public right-of-way, whether the City has a fee, easement, or any other legal interest in such public right-of-way, and whether the legal interest in the public right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure, or any other means.

C. The exercise of jurisdiction and regulatory management over a public right-of-way by the City is not official acceptance of such public right-of-way, and does not obligate the City to maintain or repair any part of such right-of-way.

D. The provisions of this Chapter are subject to and shall be applied consistently 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. Nothing in this Chapter will be interpreted, deemed, or applied in a manner that authorizes or requires the City, its Council, Commissions, Boards, officials,

directors, managers, employees, agents, contractors, or volunteers to violate applicable state or federal laws, rules, or regulations.

E. The provisions of this Chapter do not apply to solid waste management franchisees.

3.20.020 Regulatory Fees and Compensation not a Tax

A. The fees and costs provided for in this Chapter, and any compensation charged and paid as prescribed in this Chapter, are separate from, and in addition to, any and all other federal, state, county, or city charges, including without limitation, 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 any person, its customers, or subscribers, on account of the lease, sale, delivery, or transmission of utility services.

B. The City has determined that any fee, cost, or other charge provided in this Chapter are 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, costs, and other charges provided for in this Chapter are subject to applicable federal and state laws.

3.20.025 Definitions

The following words are defined as follows for the purposes of this Chapter, unless the context clearly indicates or requires a different meaning or otherwise specifies.

A. "Cable service" is to be defined consistent with 47 U.S.C. Section 522(6), as may be amended or superseded, and means the one-way transmission to subscribers of (a) video programming, or (b) 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. "Calendar year" means January 1 to December 31, unless otherwise noted.

C. "City" means the City of Bend, Oregon, a municipal corporation, and its governing authority, and/or its duly appointed and authorized agents. In addition, the "city" may refer to all the territory within its corporate boundaries and as such may change from time to time.

D. "City Council" means the City Council of the City of Bend.

E. "City facilities" means City owned structures or equipment located within the public rights-of-way used for governmental purposes including, but not limited to, fiber-optic cable, streetlights, traffic signals, sanitary sewer, stormwater, or water

infrastructure such as related pipes, manholes, catch basins, wires, conduit, valves, vaults, and appurtenances.

F. "City standards" means all the ordinances, codes, regulations, rules, and policies of the City, as may be amended.

G. "Communication services" means any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, and whether or not the transmission medium is owned by the provider itself. Communications services includes all forms of telephone services and voice, video, data, or information transport, but does not include: (a) cable service; (b) open video system service, as defined in 47 CFR Section 76; (c) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; (d) communications provided over a private communications system or a public communications system; and (e) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

H. "Construction" means any activity in the public right-of-way resulting in physical change thereto, including excavation or placement of structures.

I. "Days" mean calendar days, unless otherwise noted.

J. "Emergency" means a circumstance in which immediate work to facilities is necessary to restore lost service or prevent immediate harm to persons or property.

K. "Federal Communications Commission" or "FCC" means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunication carriers, services, and provider, on a national level.

L. "Gross revenue" means revenues earned or derived from the operation of utility facilities (including revenue derived from any use, rental and/or lease of the facilities to other person(s)), and/or the provision of utility service(s) within the city, without deduction for expense, less net write-off of uncollectable accounts, subject to all applicable limitations in federal and state law. Gross revenues include revenues of any wholly owned subsidiaries of a utility service operator earned or derived from the use or operation of utility facilities within the city.

1. Gross revenues do not include: Fees for installation, disconnection, reconnection, maintenance and services calls, repair, charges for equipment sales, rental, or lease, late fees; non-sufficient funds (NSF) charges; administrative fees; charges imposed by a utility service provider selling electrical energy or gas for public purpose charges (energy efficiency programs, market transformation programs, low-income energy efficiency programs and carbon offset programs); joint pole use revenues; revenues from wholesale sales of power or transmission services; residential exchange program (Bonneville Power Administration credits); revenues associated with Universal Service funding requirements under 47 U.S.C. § 254 and ORS 759.425; revenues associated

with taxes for emergency communications under ORS Chapter 403; telecommunication revenues, tariffed or non-tariffed charges or service applicable to any connection, circuit or equipment which brings an E9-1-1 call to the appropriate responding Public Safety Answering Point, regardless of where the E9-1-1 call is originated; and sales of bonds, mortgages, or other evidence of indebtedness, securities, or stocks.

2. Notwithstanding the preceding definition, the definition of “gross revenue” for water utility service operators shall mean revenue recognized by the PUC for rate setting purposes.

3. Nonprofit mutual or cooperative associations providing electric power to their members may deduct the cost of power from gross revenues.

M. “License” or “ROW License” means the authorization granted by the City to a person(s) pursuant to this Chapter.

N. “Licensee” means any person that is subject to the ROW License requirement of this Chapter or has a valid ROW License issued by the City.

O. “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, but excluding the City.

P. “Private communications system” means a communications system owned by a utility operator for the operator’s exclusive use for internal communications and not for sale or resale, including trade, barter, or other exchange of value, directly or indirectly, to any person.

Q. “Public communications system” means any system owned or operated by a government entity or entities that are primarily for use for internal communications or communications with other government entities, and includes services provided by the state of Oregon pursuant to ORS Sections 190.240 and 283.140. A 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.

R. “Public rights-of-way”, or “Right-of-Way”, or “ROW” means and includes, but is not limited to, the space in, upon, above, along, across, over, or under City-owned or controlled public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements, public access easements, other public easements and all other public ways or areas, including the subsurface under and air space over these areas. This definition applies only to the extent of the City’s right, title, interest, and authority to grant a license or other authorization to occupy and use such areas for utility facilities or provision of utility services.

S. "Public utility easement" means the space in, upon, above, along, across, over, or under a publicly dedicated easement for the construction, reconstruction, operation, maintenance, inspection, and repair of utility facilities. A public utility easement does not include an easement solely for the construction, reconstruction, operation, maintenance, inspection, and/or repair of City facilities, or where the proposed use by the licensee is inconsistent with the terms of any easement, right-of-way, or other legal right for use or occupancy granted to the City.

T. "Registrant" means those persons that have a valid, active registration pursuant to Section 3.20.040.

U. "Revenue" means amounts derived from a person's business operations that are required to be reported as revenue or income on company's income statement under generally accepted accounting principles.

V. "Small wireless facility" means antenna facilities that are used for the provision of personal wireless service that meets each of the following conditions:

1. The facilities (i) are mounted on structures fifty (50) feet or less in height including the antennas, or (ii) are mounted on structures no more than ten percent (10%) taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten percent, (10%) whichever is greater;

2. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume;

3. All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than twenty-eight (28) cubic feet in volume; and,

4. The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

5. "Small wireless facility" does not include fiber, coaxial cable or similar equipment located within the right-of-way, other than wireless equipment associated with the structure that meets the criteria set forth in this subsection V.

W. "State" means the state of Oregon.

X. "Structure" means any facility that is placed in the ROW, including but not limited to poles, vaults or manholes, hand holds, junction boxes, conduit, direct bury cable, wires, pedestals, aerial cables or wires, and transformers.

Y. "Telecommunications Act" means the Communications Policy Act of 1934, as amended by subsequent enactments including the Telecommunications Act of 1996 (47 U.S.C., 151 et seq.) and as hereafter amended.

Z. “Utility facility” or “facility” means any physical component of a system, including but not limited to the poles, pipes, mainlines, conduits, ducts, cables, wires, transmitters, plants, equipment, and other facilities, including strand-mounted equipment, located within, on, along, under, or above the public rights-of-way, any portion or component of which is used or designed to be used to deliver, transmit, or otherwise provide utility service.

AA. “Utility service” means the provision, by means of utility facilities located in the public rights-of-way, whether or not such facilities are owned by the utility service provider, of cable services, communication services, electric energy, natural gas, water, or wireless communications, 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.

BB. “Utility service operator” or “Operator” means any person who owns, places, operates, or maintains a utility facility within the City, whether or not the person provides utility service to customers within the City.

CC. “Utility service provider” or “Provider” means any person who provides utility service to customers within the City limits, whether or not any facilities in the ROW are owned by such provider.

DD. “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.

3.20.030 Other City Laws

A. Every utility services operator and every person that provides utility services within the City, whether such person owns facilities or not, must comply with all applicable City codes, rules, or requirements of the City of Bend.

B. Nothing in this Chapter shall be construed to limit the right of City to require persons to pay permit fees or reasonable costs incurred by City in connection with the issuance of a permit, making an inspection, or performing any other service for or in connection with utility service provided in the City.

3.20.035 Administration

A. This Chapter will be administered by the City, its staff or duly appointed representative. The City Manager may adopt, amend, and repeal procedures, forms, administrative rules, and written policies for administering this Chapter.

B. 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.

3.20.040 Registration

A. Registration Required. Every person who desires to provide utility services to customers within the City must register with the City prior to providing any utility services to any customer in the City on forms provided by the City. Every person providing utility services to customers within the City as of the effective date of this Chapter must register within forty-five (45) days of the later of (a) the effective date of this Chapter, or (b) the expiration of a valid franchise from the City where the franchise holder and the City are not pursuing renewal of the franchise. Persons with a valid ROW license or franchise are not required to register.

B. Registration Term. The registration granted pursuant to this Chapter will be effective the earlier of the date it is issued by the City or the date services were first provided within the City under this Chapter, and will have a term of five (5) calendar years beginning: (1) January 1st of the year in which the registration took effect for registrations that took effect between January 1st and June 30th; or (2) January 1st of the year after the registration took effect for registrations that become effective between July 1st and December 31st.

C. Registration Application. The registration must be on a form provided by the City and must be accompanied by any additional documents required by the City, in the City's reasonable 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 shall be provided. Failure to receive or secure the form provided by the City does not relieve any person from the obligation to register and pay the associated fees or comply with this Section.

D. Registration Application and Renewal Fee. Each application for new and renewal registration must be accompanied by a nonrefundable fee in an amount to be determined by Resolution of the City Council.

E. Changes to Information Contained on the Registration Application. Within thirty (30) days of a change to the information contained in the application, the applicant must notify the City in writing of such change(s).

F. Renewal. At least thirty (30), but no more than one hundred twenty (120), calendar days before the expiration of a registration granted under this Section, a provider seeking renewal of its registration must submit a renewal registration application to the City, including all information and fees required in this Section. If the City determines that the applicant is in violation of the terms of this Chapter or any other City codes, rules, or regulations at the time it submits its application, the City may require, by a written notice, that the applicant cure the violation before the City will consider the application or grant the registration.

3.20.045 ROW Licenses

A. Who Must Apply. Every utility services operator must at all times have a valid ROW License from the City unless the utility services operator has a valid

franchise agreement from the City that is in effect, including during good faith franchise renewal negotiations, provided the applicable franchise renewal fee has been paid.

B. When Must Apply. Every person must obtain a ROW license prior to placing any utility facilities in the public rights-of-way. Every utility services operator as of the effective date of this Chapter must apply for a ROW license from the City within forty-five (45) days of the later of (a) the effective date of this Chapter, or (b) the expiration of a valid franchise from the City, unless a new agreement is granted by the City, or franchise holder and the City are pursuing in good faith renewal of the franchise agreement.

C. ROW License Application. The ROW license application must be on a form provided by the City, and accompanied by any additional documents required by the City, in the City's reasonable discretion and at no cost to the City, to allow the City to easily identify the applicant, its legal status, including its authorization to do business in the state of Oregon, a description of the applicant's utility facilities, the specific service(s) to be provided, if any, and other information that the City determines, in its reasonable discretion at no cost to the City, is necessary to determine the applicant's ability to comply with the terms of this Chapter and all other applicable City standards.

D. ROW License Application Fee and Renewal Fee. The application and renewal application must be accompanied by a nonrefundable application fee set by Resolution of the City Council.

E. Determination by City. The City will issue, within a reasonable time after having received a duly filed application, a written determination granting or denying the license in whole or in part. If the license is denied, the written determination must include the reasons for denial. The application will be evaluated based upon ability to comply with provisions of this Chapter, the continuing capacity of the public rights-of-way to accommodate the applicant's proposed utility facilities, and the applicable federal, state and local laws, rules, regulations, and policies.

F. Changes to Information Contained on the ROW License Application. Within thirty (30) days of a change to the information contained in the license application, the licensee must notify the City in writing of such change(s).

G. Authorization Granted.

1. A ROW license granted under this Section authorizes the licensee to construct, place, maintain, repair, remove, replace, and operate utility facilities in the public rights-of-way, subject to the provisions of City standards, and other applicable provisions of state and federal law.

2. Each ROW license granted under this Section authorizes only those utility facilities applied for by the applicant and approved by the City. The City may approve in one license utility facilities designed to provide more than one type of utility service.

3. A ROW license granted under this Section is personal to the licensee and may not be assigned, sublicensed, or transferred, in whole or in part, except as permitted by this Chapter.

4. A ROW license granted under this Section does not grant, convey, create, or vest in a licensee any real property interest in land, including any fee, leasehold interest, or easement, and does not convey equitable or legal title in the public rights-of-way. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the public rights-of-way. A ROW license granted under this Section is not a warranty of title. Licensee expressly acknowledges and agrees to enter on to and use public rights-of-way in its "as-is and with all faults" condition. The City makes no representations or warranties whatsoever, whether express or implied, as to the public rights-of-way's condition or suitability for the intended or proposed utilization. By its acceptance of the ROW license, the licensee expressly acknowledges and agrees that neither the City nor its agents have made, and the City expressly disclaims, any representations or warranties whatsoever, whether express or implied, with respect to the physical, structural, or environmental condition of the public rights-of-way, and the present or future suitability of the public rights-of-way.

5. The issuance of a ROW license does not constitute a waiver or bar to the City's exercise of any governmental right or power, including without limitation the City's police powers and regulatory powers, regardless of whether such powers existed or were exercised before or after the license is issued.

6. Any person with a valid ROW license granted under this Section is deemed to be a qualified contractor for purposes of Bend Municipal Code Section 3.40.020.

H. Term of ROW License. Subject to the termination provisions in Subsection N of this Section 3.20.045, the ROW license granted pursuant to this Section will be effective the earlier of the date it is issued by the City or the date services were first provided within the City, and will have a term of five (5) calendar years beginning: (1) January 1st of the year in which the license took effect for licenses that took effect between January 1st and June 30th; or (2) January 1st of the year after the license took effect for licenses that become effective between July 1st and December 31st.

I. ROW License Nonexclusive. No ROW license granted pursuant to this Section will confer any exclusive right, privilege, license, or franchise to occupy or use the public rights-of-way for delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises, or other authorizations to other persons, as well as the City's right to use the public rights-of-way, for similar or different purposes. Provided, however, that the geographic area of the authorization

granted by a ROW license pursuant to this Section must be consistent with any utilities' exclusive service territories as delineated by the Oregon Public Utility Commission (PUC) or as set forth under state law or rules.

1. The service territory for licensees providing water utility services within the city of Bend shall be confined to the areas set forth in the applicable private water service franchises, as amended, in effect as of the date of termination of the franchise agreements for each private water service franchisee. The exclusive water service territories may be amended administratively by agreement between the City and the private water service utility operators, provided that each water utility service operator is solely responsible for taking whatever actions are necessary to amend the exclusive service territories at the PUC. The City will maintain such maps, as may be amended, in a Geographical Information System (GIS) format through the term of all ROW licenses held by the private water service utility operators and the maps will be made available to those licensees upon request. Disputes regarding the water utility service territories may be resolved by the dispute resolution procedures described in Section 3.20.110 of this Chapter or directly to the PUC.

J. Reservation of City Rights. The City reserves all rights, title, and interest in its public rights-of-way. A license granted under this Section does not prevent the City from exercising any of its rights, including without limitation grading, paving, repairing, or altering any public rights-of-way, constructing, laying down, repairing, relocating, or removing City facilities, or establishing any other public work, utility, or improvement of any kind, including repairs, replacement, or removal of any City facilities.

K. Multiple Services.

1. A licensee that provides or transmits utility services over its facilities is subject to the ROW license and fee requirements of this Chapter for the portion of the facilities and extent of utility services delivered over those facilities.

2. A licensee that provides or transmits more than one utility service over its facilities is not required to obtain a separate ROW license or franchise agreement for each utility service; provided, that it gives notice to the City of each utility service provided or transmitted and pays the applicable fee for each utility service.

3. A licensee that rents space on licensee's structures under a joint use arrangement that is required by law is not deemed subject to 3.20.045(K)(1) solely by virtue of such arrangement.

L. Transfer or Assignment. A licensee must obtain the written consent of the City prior to the transfer, sublicense, or assignment of a license, which consent will not be unreasonably withheld, conditioned, or delayed, unless (1) the licensee

demonstrates to the City that state or federal law specifically prohibits the City from requiring its prior written consent, or (2) the license is transferred, sublicensed, or assigned to a person that controls, is controlled by, or is under common control with the licensee. A transfer, sublicense, or assignment that requires City consent will only be authorized by the City if the proposed transferee or assignee is authorized under all applicable federal, state, and local 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, state, and local law to approve such transfer, sublicense, or assignment.

1. Without limiting any other rights the City may have to condition its consent, the City may condition its consent to any such transfer, sublicense, or assignment on the transferee, sublicensee, or assignee's written agreement to assume all obligations under the license, this Chapter and other City codes and regulations.

2. If a ROW license is transferred, sublicensed, or assigned, whether pursuant to the City's approval or in the event approval is not required by this Section, the transferee, sublicensee, or assignee will become responsible for fulfilling all the obligations under the license with respect to obligations of the licensee at the time of transfer, sublicensee, or assignment. A transfer, sublicense, or assignment of a license does not extend the term of the license. No transfer, sublicense, or assignment may occur until the successor transferee or assignee has provided proof of insurance, additional insured endorsement, and a bond pursuant to Section 3.20.090. In the event approval is not required by this Section, the licensee must provide the City at least thirty (30) days prior written notice of the transfer, sublicense, or assignment.

3. Licensee shall be entitled to mortgage or otherwise grant security interests in the license in order to secure any legal bond issuance or other indebtedness of licensee, upon obtaining the prior written consent of licensee, without obtaining the consent or satisfying other conditions of the City.

M. Renewal. At least sixty (60), but no more than one hundred twenty (120), calendar days before the expiration of a license granted under this Section, a licensee seeking renewal of its license must submit a renewal application to the City, including all information and fees required in this Section. The City will review the application and grant or deny the license within a reasonable time period after the application is duly filed and before the expiration of the current license. If the license is denied, the written determination must include the reasons for denial. If the City determines that the licensee is in violation of the terms of this Chapter or any other City codes, rules, or regulations at the time it submits its application, the City may require, by a written notice, that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application or grant the license.

N. Termination.

1. Termination of a License. The City Manager may terminate the license granted pursuant to this Section for any of the following reasons:

- a. Material violation of any of the provisions of this Chapter;
- b. Material violation of any provision of the license;
- c. Misrepresentation in a license application;
- d. Failure to pay compensation, fees, or costs due the City after final determination by the City of the, compensation, fees, or costs;
- e. Failure to restore the public rights-of-way after construction as required by this Chapter or other applicable state and local laws, ordinances, rules, and regulations;
- f. Failure to comply with technical, safety, and engineering standards related to work in the public rights-of-way;
- g. Failure to obtain or maintain any and all licenses, permits, certifications, and other authorizations required by state or federal law for the placement, maintenance, or operation of the utility facilities; or
- h. Is in violation of any federal, state or local code, rule, regulation, or other legal requirement applicable to the licensee.

2. Standards for Termination. In determining whether termination is appropriate, the following factors will be among those considered:

- 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.

3. Before the license is terminated the City Manager must provide a written notice of termination to the licensee with the reasons for termination and the date upon which the termination is effective. The termination date set by the City must consider the public health and safety risks to the utility customers that could arise as a result of the termination of the license, and allow sufficient time for the City to implement a plan to assure continued utility service to the

licensee's customers. Any decision to terminate a license is subject to the Notice and Cure provision set forth in subsection (O), below.

4. If a license is terminated by the City, within ninety (90) days the licensee must file a final remittance form with the City stating, "final remittance" and will remit any funds due.

5. The final decision terminating a license may be appealed by the licensee or applicant by submitting a written appeal to the City of Bend City Council within fourteen (14) business days of the date of the final decision. The written notice of appeal must state the reasons why the appellant believes the decision to terminate or deny the license was in error. The City Manager and/or their designee may respond in writing to the appeal within fourteen (14) business days from the date the appeal was received by the City. The City Manager must refer the appeal to the City Council for a hearing no less than sixty (60) calendar days from the date the original appeal was received. Following the hearing, the City Council may either affirm the termination or denial, overturn the termination or denial, or issue another decision in its discretion. The City Council may issue an oral decision, or may deliberate and direct City staff to present a written decision for Council consideration and adoption at a subsequent meeting. The final decision made by the City Council is a quasi-judicial decision and is solely and exclusively appealable by writ of review to the Deschutes County Circuit Court, as provided in ORS 34.010 to 34.100.

6. The appellate procedure described in Subsection N(5), above, shall also apply to final determinations denying a license application under Section 3.20.045(E) or the denying a license renewal application under Section 3.20.045(M).

7. Administrative decisions subject to the procedures in Subsection N(5) shall be stayed pending appeal to the City Council. Such decisions will not be stayed following Council's final decision unless otherwise validly ordered by the Deschutes County Circuit Court.

O. Notice and Cure. The City will give the licensee written notice of any apparent violations before terminating a license. The notice shall include a statement of the nature and general facts of the violation or noncompliance and provide a reasonable time period no less than thirty (30) days, or longer in the reasonable discretion of the City, 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 noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination. If the violation or noncompliance cannot reasonably be cured within the time set forth in the City's notice of violation or noncompliance, the City shall not terminate the license provided the licensee demonstrates that it has commenced and is diligently pursuing a cure. If the licensee does not respond within the reasonable time stated in the notice, or if the City determines in its reasonable discretion that the licensee is not, or is no longer, diligently working toward compliance, the City shall

determine whether the license will be terminated.

P. Termination by Licensee. If a licensee ceases to be required to have a license, as defined under this Chapter, the licensee may terminate or surrender its license with a thirty (30) day notice to the City. Licensee may reapply for a license at any time. No refunds or credits will be given for licenses terminated by the licensee or the City.

1. Within ninety (90) days of surrendering a license, the licensee must file a final remittance form with the City and must remit any funds due.

2. Upon surrendering a license, unless otherwise agreed to by the City based on the nature and quantity of the licensee's facilities, the licensee must file a written statement that it has removed or must remove within a reasonable period not to exceed one (1) year, any and all facilities from the City, according to Section 3.20.055, and no longer is subject to the provisions of this Chapter.

Q. Franchise Agreements.

1. City and a person may enter into a written franchise agreement only as required by applicable state and federal law.

2. The franchise agreement may conflict with the terms of this Chapter, with the review and approval of the City Council. The franchise agreement shall be subject to the provisions of this Chapter to the extent such provisions are not in conflict with any such franchise agreement. In the event of a conflict between the express provisions of a franchise agreement and this Chapter, the franchise agreement will control.

3. If approved by the City, the licensee requesting a franchise agreement must deposit a non-refundable fee, as set by Resolution of City Council, before negotiations occur.

3.20.050 Construction and Restoration

A. City Engineer Policies, Standards, Specifications, and Other Guidelines. The City may develop, amend, and publish or otherwise make publicly available any policies, standards, specifications, and other guidelines for the location of facilities in public rights-of-way subject to this Section, including but not limited to, horizontal, vertical, separation, and other location standards. All such policies, standards, specifications, and other guidelines (a) must be consistent, and not in conflict with, the applicable provisions of state, federal, and local law, which includes this Chapter; and (b) will be effective upon their publication; provided, however, that any permit applications submitted prior to publication will be subject to the policies, standards, specifications, and other guidelines in effect when the submittal occurred.

B. Construction Permits. Except in cases of emergency as set forth in Bend

Municipal Code Section 3.40.045, no person may perform any work in the public right-of-way, or on utility facilities within the public rights-of-way, without first obtaining a permit from the City as required by Chapter 3.4 of the Bend Municipal Code, including paying the applicable fee. The City will not issue a permit for the construction, installation, maintenance, or repair of utility facilities unless the licensee has the proper authorizations required by and is in compliance with this Chapter and all other City codes and regulations, and all applicable fees have been paid.

C. Injury to Persons or Property. All licensees shall preserve and protect from injury or damage other facilities in the public rights-of-way, the public using the public rights-of-way, and any adjoining property, and take other necessary measures to protect persons and property, including but not limited to buildings, walls, fences, trees, and other facilities that may be subject to damage from the permitted work. A licensee must (a) use suitable barricades, flags, flagging attendants, lights, flares, and other measures as required for the safety of all members of the general public; (b) comply with all applicable Americans with Disabilities Act requirements; and (c) comply with all the requirements of the Manual on Uniform Traffic Control Devices (MUTCD).

D. Restoration. Licensees will be responsible for all injury to persons or damage to public or private property resulting from its failure to properly protect people or property and to carry out the work regardless of whether the work is performed by a licensee or by other person(s) performing the work on behalf of the licensee.

1. When a licensee, or any person acting on its behalf, does any work in or affecting any public rights-of-way, it must, at its own expense, promptly restore such rights-of-way or property to the then- current City pavement restoration requirements, in accordance with applicable federal, state, and local laws, codes, ordinances, rules, and regulations, unless otherwise directed by the City. Licensee warrants all restoration work for a period of one year from completion of the work.

2. If weather or other conditions beyond the licensee's control do not permit the complete restoration required by the City, the licensee must temporarily restore the affected public rights-of-way or property. Such temporary restoration will be at the licensee's sole expense and the licensee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule will be subject to approval by the City.

3. If the licensee fails to restore public rights-of-way or property as required in this Chapter or as directed by the City or if the restoration fails within the one-year warranty period, the City shall give the licensee written notice and provide a period of not less than ten (10) days and not exceeding thirty (30) days to restore the public rights-of-way or property, unless otherwise extended by the City. If, after said notice, the licensee fails to restore the public rights-of-way or property within the reasonable period of time stated in such notice and as

required in this Section, the City may cause such restoration to be made at the sole expense of the licensee. In cases where the City believes that an emergency or threat to public safety exists, it may act without notice to, and at the sole expense of, the licensee. Upon receipt of an invoice from the City, the licensee must reimburse the City within thirty (30) days for all reasonable costs incurred by the City.

E. Inspection. Every facility will be subject to the right of periodic inspection by the City or its agents to determine compliance with the provisions of this Chapter and all other applicable state and City laws, codes, ordinances, rules, and regulations. Every licensee must cooperate with the City in permitting the inspection of utility facilities in a timely manner after request by the City. The licensee must perform all testing or permit the City or its agents to perform any testing at the licensee expense, reasonably required by the City to determine that the installation of the licensee's facilities and the restoration of the public rights-of-way comply with the terms of a permit granted under Bend Municipal Code Chapter 3.40.

F. Coordination of Construction. All licensees shall make a good faith effort to both cooperate with and coordinate their construction schedules with those of the City and other users of the public rights-of-way. Prior to March 1 of each year, licensees must provide the City with a schedule of known proposed construction activities for that year that are in, around, or that may affect the public rights-of-way and any City facilities.

1. At the City's request, licensees must meet with the City annually, or as reasonably determined by the City from time to time, to work together to schedule and coordinate construction in the public rights-of-way.

2. All construction locations, activities, and schedules within the public rights-of-way must be coordinated with the City to minimize public inconvenience, disruption, and damage to persons and property.

3.20.055 Location of Facilities

A. Location of Facilities. Unless otherwise agreed to in writing by the City, whenever any existing electric utilities, cable facilities, or wireline communication facilities are located underground within a public right-of-way of the City, a licensee with permission to occupy the same public right-of-way must locate all new facilities underground at its own expense.

1. Whenever all new or existing electric utilities, cable facilities, or wireline communication facilities are located or relocated underground within a public right-of-way of the City, a licensee that currently occupies the same public right-of-way may be required by the City in its reasonable discretion to relocate its facilities underground concurrently with the other affected facilities to minimize disruption of the public rights-of-way.

2. Licensee must comply with all co-location and joint use

requirements as set forth in state and local law, and City standards, as may be amended. Licensee shall offer City the opportunity to co-locate City conduit and lines in trenches dug by Licensee in the rights-of-way and may charge City only any actual incremental additional costs incurred in making the trenches available for City use.

3. The requirements in this Section do not apply to antennas, pedestals, cabinets, small wireless facilities, or similar above-ground equipment of any utility provider, or facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts. The City reserves the right to require written approval of the location of any such above-ground equipment of any licensee.

4. Cost responsibility for underground conversion of facilities will be allocated in accordance with licensee's tariffs and Oregon Administrative Rules, as applicable, and a schedule agreed upon between the City and licensee.

B. Interference with the Public Rights-of-Way. No licensee or other person may locate or maintain facilities or other unlawful encroachments so as to unreasonably interfere with the use of the public rights-of-way by other persons duly authorized to use or be present in or on the public rights-of-way under this Chapter. Facilities must not be located in areas of restricted sight distance or interfere with the proper function of traffic control signs, signals, lighting, or other devices that affect traffic operation. Licensee will consult with the City Engineer prior to placement of facilities, and all use of the public rights-of-way will be consistent with City codes, ordinances, rules, and regulations, in effect and as may be subsequently amended.

C. Relocation of Utility Facilities. When requested to do so in writing by the City, a licensee shall temporarily or permanently remove, relocate, change, or alter the position of any utility facility within a public right-of-way, including relocation of aerial facilities underground, except as such facilities are not required to be located underground pursuant to subsection 3.20.0559(A)(3). Unless otherwise agreed to by City and licensee, the City will not require a licensee to relocate its facilities unless and until the City Engineer or their designee has completed final designs for the applicable development.

1. If the removal or relocation of facilities is caused directly by development of private property, including projects of other public entities that are not the City, and the removal or relocation of facilities occurs within the area to be developed, or is made for the convenience of a third-party, licensee may charge the expense of removal or relocation to the developer or other third-party. Such costs may include acquiring private rights, permits, and other associated costs that result from relocation. Licensee shall be solely responsible for enforcing collection 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 the removal or relocation is

necessary to enable the developer to make any improvements or otherwise satisfy any conditions required under any permit, rule, regulation, approval, or other requirement applicable to the project.

2. If the removal or relocation of facilities results from City's need to provide public facilities, is a City project, or is otherwise requested by City and is made for the purpose of improving a street to City standards or other improvement by the City for the benefit of the public, licensee will remove or relocate its facilities at licensee's expense within a reasonable time after notification by City. The City will coordinate the schedule for relocation of utility facilities and based on such effort, will provide written notice of the time by which the licensee must remove, relocate, change, alter, or underground its facilities. If a licensee fails to remove, relocate, change, alter or underground any utility facility as requested by the City by the date established by the City, the licensee must pay all costs incurred by the City due to such failure, including but not limited to costs related to project delays, and the City may cause, using qualified personnel or contractors consistent with applicable law and regulations, the facilities to be remove, relocated, altered, or undergrounded, at the licensee's sole expense. Upon receipt of an invoice from the City, the licensee must reimburse the City for all reasonable costs incurred within thirty (30) days. If the City requires the subsequent relocation of the same facility within five years of the initial relocation, City shall bear the expense of the subsequent relocation.

3. The City will make a reasonable effort to provide licensee with an alternate location for its facilities within the City right-of-way. However, the City shall bear no responsibility to obtain, compensate, or otherwise assist the licensee in relocation of the facilities to a location not in control of the City.

D. Removal of Unauthorized Facilities.

1. Unless otherwise agreed to in writing by the City and the licensee, or as limited by state law, within one (1) year following written notice from the City or such other time agreed to in writing, a licensee and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within a public right-of-way must, at its own expense, remove the facility and restore the public right-of-way to City standards in effect at the time the work is performed or, with the approval of the City, de-commission, as applicable, and abandon in place such facilities. All abandoned or unauthorized utility facilities that remain in the right of way following that period will considered forfeited and escheat to the City.

2. All facilities currently existing in the right-of-way or allowed by an active permit as of the effective date of this Chapter are deemed authorized utility facilities; provided, however, that such existing facilities may later be deemed to

be abandoned or unauthorized consistent with the provisions of this Chapter and processes set forth in this Section.

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

a. The utility facility is outside the scope of authority granted by the City. This includes facilities that were never authorized and facilities that were once authorized but for which the authorization has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place. A utility facility is not outside the scope of authority granted by the City upon termination of a license, if the licensee has submitted its renewal application, paid all applicable fees, and is actively engaged in good faith efforts to renew its license under this Chapter.

b. The facility has been abandoned and the City has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of one (1) year. A licensee may overcome this presumption by presenting plans to the City for use of the facility within the six months of the date of the written notice required to be provided by the City under Section 3.20.055(D)(1).

E. Removal by City in the Event of Emergency.

1. Except as limited by ORS 221.420 or other state law, the City retains the right and privilege to remove or relocate any facility located within the public rights-of-way of the City, without notice, as the City may determine, in its sole discretion, to be necessary, appropriate, and useful in response to an extreme public health or safety emergency. The City must use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practicable without impeding the City's response to the emergency. In the event of facilities located in the right-of-way, the City shall make reasonable efforts to contact the owner of the facility prior to performing any work on or near the facility. Upon receipt of an invoice from the City, the licensee must reimburse the City for all the costs within thirty (30) days or other time as agreed to by the City.

2. The City is not liable to any person(s) for any damage to utility facilities, or for any consequential losses resulting directly or indirectly from any damage caused by the City's actions, or its contractor, in removing, relocating, altering, or undergrounding the facilities, unless such damage arises directly from the City's sole negligence or willful misconduct.

F. Engineering Designs and Plans. The licensee must provide the City with as-built plans or system maps of their facilities, upon request.

G. Maps. Licensee must provide, at no cost to the City, a comprehensive map showing the location of all facilities, including abandoned facilities, in the rights-of-way. Such map must be provided in GIS format, with accompanying data sufficient to enable for the City to determine the location of facilities as well as any relevant data in licensee's possession showing the type and size of the facility. The licensee must provide such map yearly by March 1, if any changes occurred during the prior year, and at any time upon request by the City. The City may only request such map once per calendar year.

3.20.060 Leased Capacity

A licensee may lease or otherwise provide capacity on or in its facilities to others ("lessees"); provided, that (1) the licensee provides the City with the name and business address of any lessee, within 30 (thirty) days of the effective date of the lease or other agreement to provide capacity; (2) the use of the licensee facilities does not require or involve any additional equipment owned or operated by the lessee to be installed on the facility; (3) the City verifies the lessee has obtained a ROW license or franchise from the City; and (4) the licensee maintains control over and responsibility for the facility at all times.

3.20.065 Maintenance

A. Every licensee must install and maintain all facilities in a manner that complies with applicable federal, state, and local laws, rules, regulations, and policies, as well as applicable industry standards. The licensee will, at its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.

B. If, in the event of an imminent threat to health or safety or in an emergency, and after written notice from the City of the need for repair or maintenance, if practicable under the circumstances, the licensee fails to repair or maintain facilities as requested by the City and by the date established by the City, the City may perform such repair or maintenance using qualified personnel or contractors at the licensee's sole expense. Upon receipt of an invoice from the City, the licensee must reimburse the City for all reasonable costs within thirty (30) days.

3.20.070 Vacation of Public Rights-of-Way

A. The City will retain public utility easements or otherwise request the petitioner for the vacation grant an easement to licensee if the City vacates any right of-way where a licensee has facilities, consistent with Bend Municipal Code Chapter 3.80. If the licensee's facilities must be relocated from a vacated public right-of-way, the petitioner of the vacation 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. If the licensee is required to and fails to remove its facilities within ninety (90) days after a public right-of-way is vacated or as required under this Section, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities using qualified workers in accordance with state and federal laws and regulations at the licensee's sole expense. Upon receipt of an invoice from the City, the licensee must reimburse the City for all reasonable costs within thirty (30) days.

3.20.075 Rights-of-Way Use and Access Fees

A. Every person that owns utility facilities in the City must pay the rights-of-way use fee in the amount determined by resolution of the City Council.

B. Every person that provides utility service in the City must pay the rights-of-way access fee in the amount determined by resolution of the City Council for every utility service provided in the city.

C. A person subject to the both the rights-of-way use fee in subsection A and the rights-of-way access fee in subsection B of this Section may deduct from the total amount due the lower of the fees due under subsection A and subsection B or, in the event the fees due under subsection A and subsection B are the same, deduct from the total amount due the full amount of one of the fees.

D. A person that has a franchise within the City for use of the rights-of-way will not be subject to the fees or payment terms set forth in this section.

E. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor will such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable.

F. Unless otherwise agreed to in writing by the City, the fees set forth under this Section must be paid monthly, in arrears, within forty-five (45) days after the end of each calendar quarter, unless otherwise agreed to by the City. Each payment must be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable (a remittance form will be provided by the City). The City may request and shall be provided, at no cost to the City within 30 (thirty) days, any additional reports or information it deems necessary, in its reasonable discretion, to ensure compliance with this Section. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative documenting calculation, details on number of customers within the City limits, or any other information needed for the City to easily verify compliance.

G. The calculation of the fees required by this Section will be subject to all applicable limitations imposed by federal or state law in effect and as may be subsequently amended.

H. The City reserves the right to enact other fees and taxes applicable to person(s) subject to this Chapter. Unless expressly permitted by the City in enacting such fee or tax, or required by applicable state or federal law, no person 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 under this Chapter.

I. City will pay the rights-of-way use fees and rights-of-way access fee required by this Section for any utility service owned or operated by the City.

3.20.080 Penalties and Interest on Fees

Any person who fails to remit any fees when due will be required to pay interest at the rate of one and one-half percent (1.5%) per month or fractions thereof, without proration for portions of a month, on the total amount due, from the date on which the remittance first became delinquent, until the full amount due plus applicable interest is received by the City. The City reserves the right to impose interest at the maximum amount allowed by law. 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. The interest imposed by this Section is in addition to any penalties that may be assessed under other ordinances or regulations of the City. The City or its designee, in their sole discretion, will have the authority to reduce or waive the penalties and interest due under this Section.

3.20.085 Audits (Formal or Informal) and Records Requests

A. The City may audit and/or request information from any person for a period of six (6) years prior to the date of the audit to verify compliance with this Chapter. The audit may be undertaken either by the City or by a qualified person or entity selected by the City. In connection with an audit or request for information under this Section, the City must make a written request for specific information, identifying the specific code provisions with which the City seeks to confirm compliance, and the person will comply with the request within thirty (30) days of receipt of the City's written request, or such other time as agreed to in writing. All information shall be provided to the City, at no cost to the City.

B. Every person must furnish the City with information sufficient to demonstrate that the person is in compliance with the specific requirements of this Chapter identified in the City's initial information request, including but not limited to payment of any applicable fees.

C. Every licensee must make available for inspection by the City at reasonable times and intervals, upon request by the City, any maps, records, books, diagrams, plans, and other documents maintained by the licensee with respect to its facilities within the public rights-of-way. Access will be provided within the City unless

prior arrangement for access elsewhere has been made with the City.

D. All information provided to the City under this Section that is marked “confidential” will be subject to the protections for confidential information set forth in Section 3.20.100, except that this obligation shall not prevent the City from introducing audit results in any forum where enforcement of the provisions of this Chapter is at issue.

E. If the City’s audit, or review of the books, records, and other documents or information of the person demonstrates that the person has underpaid any fees required by this Chapter by five percent (5%) or more in any one year, the person must reimburse the City for all costs incurred by the City in conducting the audit or review, in addition to any interest owed or other fees imposed by this Chapter.

F. Any underpayment, including all reasonable costs incurred by the City in conducting the audit or review, must be paid within thirty (30) days of the City’s notice to the person of such underpayment. Any overpayment discovered by the City in connection with an audit authorized by this Section must be returned by the City within thirty (30) days of the conclusion of the audit.

G. The City’s audits rights under this Section include the right to periodically conduct audits as part an established audit program designed to ensure compliance with this Chapter.

3.20.090 Insurance and Indemnification

A. Insurance.

1. All Utility Service Operators must maintain in full force and effect the following liability insurance policies that protect the licensee and the City, as well as the City’s officers, agents, and employees, with limits not less than:

- a. Three million dollars (\$3,000,000.00) for comprehensive general liability insurance.
- b. If not otherwise included in the policies required by subsection (a) above, comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits not less than three million dollars (\$3,000,000.00).
- c. Motor vehicle liability insurance for owned, non-owned and hired vehicles with a combined single limit of two million (\$2,000,000.00).
- d. Worker’s compensation insurance as required by ORS chapter 656, as it may be amended, and meeting the minimum

requirements therein. Contractor shall ensure that each subcontractor obtains and maintains workers' compensation insurance and that the carrier notifies the state of Oregon or files a guaranty contract with the state of Oregon Workers' Compensation Division before performing work.

e. Utility operator may utilize primary and umbrella liability insurance.

2. The limits of the insurance shall not be less than and subject to change as to the maximum limits of liability imposed on municipalities of the state of Oregon. The insurance must be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The licensee will provide the City thirty (30) days prior written notice of any cancellation or material alteration of said insurance. If the insurance is canceled or materially altered, the licensee must maintain continuous uninterrupted coverage in the terms and amounts required.

3. The licensee must at all times maintain on file with the City a current certificate of insurance and additional insured endorsement, or proof of self-insurance reasonably acceptable to the City, certifying the coverage required above.

4. At the request of a licensee, the City will determine, in its reasonable discretion, whether a licensee may self-insure. A licensee whose request has been granted must provide the City proof of insurance through a letter of self-insurance or insurance certificate, listing the City as an additional insured.

5. Performance Bond

a. In addition to any other generally applicable bond or security fund obligations required by local ordinance, including Bend Municipal Code Chapter 3.40.010(C), upon the issuance of a new license or renewal of a license, the licensee must furnish proof of the posting of a faithful performance bond running to the City collectively with good and sufficient surety approved by the City, in the penal sum of One Hundred Fifty Thousand Dollars (\$150,000.00), conditioned that licensee will well and truly observe, fulfill, and perform all provisions of this Chapter. Such bond must be issued by a bonding company licensed to do business in the state of Oregon and must be maintained by the licensee for the time period it owns facilities within the rights-of-way.

b. The bond will contain a provision that it will not be terminated or otherwise allowed to expire without thirty (30) days prior written

notice first being given to the City. The bond will be subject to the approval of the City as to its adequacy under the requirements of this Section. During the term of the bond, licensee must file with the City a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond will not expire or be terminated without thirty (30) days prior written notice to the City.

B. Indemnification.

1. To the fullest extent permitted by law, each licensee shall defend, indemnify, and hold harmless the City and its officers, employees, agents and representatives 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 negligence, 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 construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Chapter or by a franchise agreement; provided that this indemnification shall not apply to the extent such claims are directly caused by the negligence or willful misconduct of the City, its officers, agents, employees and volunteers. The acceptance of a license under this Chapter shall constitute such an agreement by the applicant whether the same is expressed or not.

2. Every licensee must also indemnify the City for any damages, claims, additional costs, or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from the licensee's failure to remove or relocate any of its facilities in the public rights-of-way or in a timely manner as required by this Chapter, provided that this indemnification shall not apply to the extent such claims are directly caused by the negligence or willful misconduct of the City, its officers, agents, employees and volunteers

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 to the extent caused by the licensee's work in the right-of-way or presence of licensee's facilities, provided that

this indemnification shall not apply to the extent such claims are caused by an act or omission of the City, its officers, agents, employees and volunteers. Hazardous substance will have the meaning given by ORS 465.200(9).

C. All licensees must grant a waiver of subrogation to the City, its officers, agents, employees and volunteers for any claims arising out of licensee's work or service. In addition, every licensee shall grant to City on behalf of any insurer providing coverage to either licensee or City with respect to the work or services of licensee a waiver of any right to subrogation which any insurer or subcontractor may acquire against City by virtue of the payment of any loss under the insurance coverage.

D. Licensee agrees that in the event of loss due to any of the risks for which it has agreed to provide insurance, recovery shall be solely with its insurance carrier.

3.20.095 Compliance

A. Every person subject to this Chapter shall comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules, and regulations of the City, heretofore or hereafter adopted or established during the term of any license or registration granted under this Chapter.

B. No person will be relieved of their 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 person's conduct.

3.20.100 Confidential/Proprietary Information

If any person is required by this Chapter to provide books, records, maps, or information to the City that the person reasonably believes to be confidential or proprietary, and such books, records, maps or information are clearly marked as confidential at the time of disclosure to the City ("confidential information"), the City will take reasonable steps to protect the confidential information to the extent permitted by Oregon Public Records Laws. In the event the City receives a public records request to inspect any confidential information and the City determines that it will be necessary to reveal the confidential information, to the extent reasonably possible, the City shall notify the person that submitted the confidential information at its last known address with the City of the records request with reasonably sufficient time for the person to seek a protective order or other relief from the district attorney prior to the City releasing the confidential information. The City is not required to incur any costs to protect any confidential information, other than the City's routine internal procedures for complying with the Oregon Public Records Law.

3.20.105 City Permission Required

No person may occupy or encroach on a public right-of-way except as provided in this Chapter or without the express written permission of the City.

3.20.110 Dispute Resolution; Violation and Penalties

A. Persons subject to this Chapter shall attempt in good faith to resolve any and all disputes with City decisionmakers arising out of Sections 3.20.050–3.20.085 of this Chapter by meeting and/or communicating with the relevant City staff person. In general, the person should explain the issue in writing and the City, as necessary, will investigate the concern and respond within a reasonable time. If those parties are not able to resolve the dispute, then the dispute may be escalated to the City Engineer or their designee. If the person and the City Engineer are not able in good faith to resolve the dispute, then the person may escalate the dispute to the City Manager or their designee, who will then attempt in good faith to resolve the dispute. Each step in this dispute resolution process is an essential administrative remedy that must be exhausted prior to any other action, appeal, or challenge related to the dispute. This dispute resolution process is intended to be applied broadly to all matters arising from or related to Sections 3.20.050–3.20.085 of this Chapter, with the exception of decisions to deny or terminate a ROW license as provided in Section 3.20.045.

B. If the dispute remains unresolved following review by the City Manager, or in the event the person refuses to resolve a dispute in good faith, the City may (i) issue a hold on any permit applications filed by the licensee for work in the right-of-way until the violation is cured; (ii) institute code enforcement proceedings as set forth in Bend Municipal Code Section 1.40; or (iii) pursue any other remedy provided in this Chapter, including, for unpaid amounts due under this Chapter, pursue any collection or other remedy provided by law. Provided that the City reserves the right to initiate code enforcement proceedings under Bend Municipal Code Section 1.40 without following the dispute resolution procedure described above if a violation poses an immediate or serious threat to public health or safety or the City otherwise determines based the specific circumstances of the violation that this Chapter needs to be enforced through normal code enforcement procedures.

C. A violation of any provision of this Chapter or any other City regulations, codes, ordinances, or standards, is a Class A civil violation and will be enforced under the provisions of Section 1.40. Each day that the violation exists or continues shall constitute a separate violation.

D. The rights, remedies, and penalties provided in this Chapter are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies, and penalties available to the City under any other provision of law, including without limitation any judicial or other remedy at law or in equity for enforcement of this Chapter and the appeal process set forth in Section 3.20.045(N)(5). 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.

E. In addition to other enforcement authority, the City Manager may have the

City Attorney institute legal proceedings to enforce this Chapter.

3.20.115 Severability and Preemption

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

B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition, 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 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, sentence, clause, phrase, term, provision, condition, covenant, or portion of this Chapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules, or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended, or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the City.

3.20.120 Application to Existing Agreements

This Chapter will not apply to persons with existing valid franchise agreements granted by the City. References to this Chapter in such franchise agreements shall be deemed references to this Chapter as it existed on January 1, 2024, for purposes of carrying out the meaning of a franchise agreement.

Chapter 3.20

REGULATION OF UTILITY USE OF CITY RIGHTS-OF-WAY

Sections:

3.20.010	Purpose
3.20.015	Jurisdiction and Management
3.20.020	Regulatory Fees and Compensation not a Tax
3.20.025	Definitions
3.20.030	Other City Laws
3.20.035	Administration
3.20.040	Registration
3.20.045	ROW Licenses
3.20.050	Construction and Restoration
3.20.055	Location of Facilities
3.20.060	Leased Capacity
3.20.065	Maintenance
3.20.070	Vacation of Public Rights-of-Way
3.20.075	Rights-of-Way Use and Access Fees
3.20.080	Penalties and Interest on Fees
3.20.085	Audits (Formal or Informal) and Records Requests
3.20.090	Insurance and Indemnification
3.20.095	Compliance
3.20.100	Confidential/Proprietary Information
3.20.105	City Permission Required
3.20.110	Dispute Resolution; Violation and Penalties
3.20.115	Severability and Preemption
3.20.120	Application to Existing Agreements

3.20.010 Purpose

The purpose of this Chapter is to:

A. Permit and manage reasonable access to and utilization of the public rights-of-way of the City for utility services purposes and conserve the limited physical capacity, integrity, and longevity of those public rights-of-way held in trust by the City consistent with applicable state and federal law;

B. Secure fair and reasonable compensation to the City, who have invested substantial public funds to acquire, build, and maintain the public rights-of-way and City-owned structures and improvements therein, from utilities that benefit from use of this public asset;

C. Ensure that all persons owning or operating utility facilities or providing

utility services within the City register and comply with the ordinances, rules, policies, and other regulations of the City, as well as with applicable provisions of state and federal law;

D. Ensure that the City can continue to fairly and responsibly protect the public health, safety, and welfare of its residents;

E. Encourage the provision of high-quality utility services on the widest possible basis to the residents, businesses and visitors within the City's territorial and jurisdictional boundaries, while allowing the City to be resilient and adaptive to changes in technology;

F. Allow the City to enter into other or additional agreements with person(s), if required by applicable law, and to amend the requirements of this Chapter and the City regulations, as new technology is developed and deployed; and

G. Acknowledge state and federal regulation of the provision of utility services within the city of Bend, including Oregon Public Utility Commission's ("PUC") role in ratemaking and allocating exclusive utility service territories for power, water, and other utilities, as applicable, and ensure City's compliance with applicable provisions of state and federal law; and

H. Except for the location of facilities in the City's right-of-way, acknowledge that the engineering standards and specifications applicable to City's municipal utility facilities are not applicable to private water utility facilities located within the city of Bend.

3.20.015 Jurisdiction and Management

A. The City has jurisdiction and exercises regulatory management over all public rights-of-way within the City under authority of the Oregon Constitution, the City Charter, and state law.

B. The City has jurisdiction and exercises regulatory management over each public right-of-way, whether the City has a fee, easement, or any other legal interest in such public right-of-way, and whether the legal interest in the public right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure, or any other means.

C. The exercise of jurisdiction and regulatory management over a public right-of-way by the City is not official acceptance of such public right-of-way, and does not obligate the City to maintain or repair any part of such right-of-way.

D. The provisions of this Chapter are subject to and shall be applied consistently 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. Nothing in this Chapter will be interpreted, deemed, or applied in a manner that authorizes or requires the City, its Council, Commissions, Boards, officials,

directors, managers, employees, agents, contractors, or volunteers to violate applicable state or federal laws, rules, or regulations.

E. The provisions of this Chapter do not apply to solid waste management franchisees.

3.20.020 Regulatory Fees and Compensation not a Tax

A. The fees and costs provided for in this Chapter, and any compensation charged and paid as prescribed in this Chapter, are separate from, and in addition to, any and all other federal, state, county, or city charges, including without limitation, 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 any person, its customers, or subscribers, on account of the lease, sale, delivery, or transmission of utility services.

B. The City has determined that any fee, cost, or other charge provided in this Chapter are 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, costs, and other charges provided for in this Chapter are subject to applicable federal and state laws.

3.20.025 Definitions

The following words are defined as follows for the purposes of this Chapter, unless the context clearly indicates or requires a different meaning or otherwise specifies.

A. "Cable service" is to be defined consistent with 47 U.S.C. Section 522(6), as may be amended or superseded, and means the one-way transmission to subscribers of (a) video programming, or (b) 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. "Calendar year" means January 1 to December 31, unless otherwise noted.

C. "City" means the City of Bend, Oregon, a municipal corporation, and its governing authority, and/or its duly appointed and authorized agents. In addition, the "city" may refer to all the territory within its corporate boundaries and as such may change from time to time.

D. "City Council" means the City Council of the City of Bend.

E. "City facilities" means City owned structures or equipment located within the public rights-of-way used for governmental purposes including, but not limited to, fiber-optic cable, streetlights, traffic signals, sanitary sewer, stormwater, or water

infrastructure such as related pipes, manholes, catch basins, wires, conduit, valves, vaults, and appurtenances.

F. "City standards" means all the ordinances, codes, regulations, rules, and policies of the City, as may be amended.

G. "Communication services" means any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, and whether or not the transmission medium is owned by the provider itself. Communications services includes all forms of telephone services and voice, video, data, or information transport, but does not include: (a) cable service; (b) open video system service, as defined in 47 CFR Section 76; (c) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; (d) communications provided over a private communications system or a public communications system; and (e) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

H. "Construction" means any activity in the public right-of-way resulting in physical change thereto, including excavation or placement of structures.

I. "Days" mean calendar days, unless otherwise noted.

J. "Emergency" means a circumstance in which immediate work to facilities is necessary to restore lost service or prevent immediate harm to persons or property.

K. "Federal Communications Commission" or "FCC" means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunication carriers, services, and provider, on a national level.

L. "Gross revenue" means revenues earned or derived from the operation of utility facilities (including revenue derived from any use, rental and/or lease of the facilities to other person(s)), and/or the provision of utility service(s) within the city, without deduction for expense, less net write-off of uncollectable accounts, subject to all applicable limitations in federal and state law. Gross revenues include revenues of any wholly owned subsidiaries of a utility service operator earned or derived from the use or operation of utility facilities within the city.

1. Gross revenues do not include: Fees for installation, disconnection, reconnection, maintenance and services calls, repair, charges for equipment sales, rental, or lease, late fees; non-sufficient funds (NSF) charges; administrative fees; charges imposed by a utility service provider selling electrical energy or gas for public purpose charges (energy efficiency programs, market transformation programs, low-income energy efficiency programs and carbon offset programs); joint pole use revenues; revenues from wholesale sales of power or transmission services; residential exchange program (Bonneville Power Administration credits); revenues associated with Universal Service funding requirements under 47 U.S.C. § 254 and ORS 759.425; revenues associated

with taxes for emergency communications under ORS Chapter 403; telecommunication revenues, tariffed or non-tariffed charges or service applicable to any connection, circuit or equipment which brings an E9-1-1 call to the appropriate responding Public Safety Answering Point, regardless of where the E9-1-1 call is originated; and sales of bonds, mortgages, or other evidence of indebtedness, securities, or stocks.

2. Notwithstanding the preceding definition, the definition of “gross revenue” for water utility service operators shall mean revenue recognized by the PUC for rate setting purposes.

3. Nonprofit mutual or cooperative associations providing electric power to their members may deduct the cost of power from gross revenues.

M. “License” or “ROW License” means the authorization granted by the City to a person(s) pursuant to this Chapter.

N. “Licensee” means any person that is subject to the ROW License requirement of this Chapter or has a valid ROW License issued by the City.

O. “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, but excluding the City.

P. “Private communications system” means a communications system owned by a utility operator for the operator’s exclusive use for internal communications and not for sale or resale, including trade, barter, or other exchange of value, directly or indirectly, to any person.

Q. “Public communications system” means any system owned or operated by a government entity or entities that are primarily for use for internal communications or communications with other government entities, and includes services provided by the state of Oregon pursuant to ORS Sections 190.240 and 283.140. A 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.

R. “Public rights-of-way”, or “Right-of-Way”, or “ROW” means and includes, but is not limited to, the space in, upon, above, along, across, over, or under City-owned or controlled public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements, public access easements, other public easements and all other public ways or areas, including the subsurface under and air space over these areas. This definition applies only to the extent of the City’s right, title, interest, and authority to grant a license or other authorization to occupy and use such areas for utility facilities or provision of utility services.

S. "Public utility easement" means the space in, upon, above, along, across, over, or under a publicly dedicated easement for the construction, reconstruction, operation, maintenance, inspection, and repair of utility facilities. A public utility easement does not include an easement solely for the construction, reconstruction, operation, maintenance, inspection, and/or repair of City facilities, or where the proposed use by the licensee is inconsistent with the terms of any easement, right-of-way, or other legal right for use or occupancy granted to the City.

T. "Registrant" means those persons that have a valid, active registration pursuant to Section 3.20.040.

U. "Revenue" means amounts derived from a person's business operations that are required to be reported as revenue or income on company's income statement under generally accepted accounting principles.

V. "Small wireless facility" means antenna facilities that are used for the provision of personal wireless service that meets each of the following conditions:

1. The facilities (i) are mounted on structures fifty (50) feet or less in height including the antennas, or (ii) are mounted on structures no more than ten percent (10%) taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten percent, (10%) whichever is greater;

2. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume;

3. All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than twenty-eight (28) cubic feet in volume; and,

4. The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

5. "Small wireless facility" does not include fiber, coaxial cable or similar equipment located within the right-of-way, other than wireless equipment associated with the structure that meets the criteria set forth in this subsection V.

W. "State" means the state of Oregon.

X. "Structure" means any facility that is placed in the ROW, including but not limited to poles, vaults or manholes, hand holds, junction boxes, conduit, direct bury cable, wires, pedestals, aerial cables or wires, and transformers.

Y. "Telecommunications Act" means the Communications Policy Act of 1934, as amended by subsequent enactments including the Telecommunications Act of 1996 (47 U.S.C., 151 et seq.) and as hereafter amended.

Z “Utility facility” or “facility” means any physical component of a system, including but not limited to the poles, pipes, mainlines, conduits, ducts, cables, wires, transmitters, plants, equipment, and other facilities, including strand-mounted equipment, located within, on, along, under, or above the public rights-of-way, any portion or component of which is used or designed to be used to deliver, transmit, or otherwise provide utility service.

AA. “Utility service” means the provision, by means of utility facilities located in the public rights-of-way, whether or not such facilities are owned by the utility service provider, of cable services, communication services, electric energy, natural gas, water, or wireless communications, 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.

BB. “Utility service operator” or “Operator” means any person who owns, places, operates, or maintains a utility facility within the City, whether or not the person provides utility service to customers within the City.

CC. “Utility service provider” or “Provider” means any person who provides utility service to customers within the City limits, whether or not any facilities in the ROW are owned by such provider.

DD. “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.

3.20.030 Other City Laws

A. Every utility services operator and every person that provides utility services within the City, whether such person owns facilities or not, must comply with all applicable City codes, rules, or requirements of the City of Bend.

B. Nothing in this Chapter shall be construed to limit the right of City to require persons to pay permit fees or reasonable costs incurred by City in connection with the issuance of a permit, making an inspection, or performing any other service for or in connection with utility service provided in the City.

3.20.035 Administration

A. This Chapter will be administered by the City, its staff or duly appointed representative. The City Manager may adopt, amend, and repeal procedures, forms, administrative rules, and written policies for administering this Chapter.

B. 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.

3.20.040 Registration

A. Registration Required. Every person who desires to provide utility services to customers within the City must register with the City prior to providing any utility services to any customer in the City on forms provided by the City. Every person providing utility services to customers within the City as of the effective date of this Chapter must register within forty-five (45) days of the later of (a) the effective date of this Chapter, or (b) the expiration of a valid franchise from the City where the franchise holder and the City are not pursuing renewal of the franchise. Persons with a valid ROW license or franchise are not required to register.

B. Registration Term. The registration granted pursuant to this Chapter will be effective the earlier of the date it is issued by the City or the date services were first provided within the City under this Chapter, and will have a term of five (5) calendar years beginning: (1) January 1st of the year in which the registration took effect for registrations that took effect between January 1st and June 30th; or (2) January 1st of the year after the registration took effect for registrations that become effective between July 1st and December 31st.

C. Registration Application. The registration must be on a form provided by the City and must be accompanied by any additional documents required by the City, in the City's reasonable 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 shall be provided. Failure to receive or secure the form provided by the City does not relieve any person from the obligation to register and pay the associated fees or comply with this Section.

D. Registration Application and Renewal Fee. Each application for new and renewal registration must be accompanied by a nonrefundable fee in an amount to be determined by Resolution of the City Council.

E. Changes to Information Contained on the Registration Application. Within thirty (30) days of a change to the information contained in the application, the applicant must notify the City in writing of such change(s).

F. Renewal. At least thirty (30), but no more than one hundred twenty (120), calendar days before the expiration of a registration granted under this Section, a provider seeking renewal of its registration must submit a renewal registration application to the City, including all information and fees required in this Section. If the City determines that the applicant is in violation of the terms of this Chapter or any other City codes, rules, or regulations at the time it submits its application, the City may require, by a written notice, that the applicant cure the violation before the City will consider the application or grant the registration.

3.20.045 ROW Licenses

A. Who Must Apply. Every utility services operator must at all times have a valid ROW License from the City unless the utility services operator has a valid

franchise agreement from the City that is in effect, including during good faith franchise renewal negotiations, provided the applicable franchise renewal fee has been paid.

B. When Must Apply. Every person must obtain a ROW license prior to placing any utility facilities in the public rights-of-way. Every utility services operator as of the effective date of this Chapter must apply for a ROW license from the City within forty-five (45) days of the later of (a) the effective date of this Chapter, or (b) the expiration of a valid franchise from the City, unless a new agreement is granted by the City, or franchise holder and the City are pursuing in good faith renewal of the franchise agreement.

C. ROW License Application. The ROW license application must be on a form provided by the City, and accompanied by any additional documents required by the City, in the City's reasonable discretion and at no cost to the City, to allow the City to easily identify the applicant, its legal status, including its authorization to do business in the state of Oregon, a description of the applicant's utility facilities, the specific service(s) to be provided, if any, and other information that the City determines, in its reasonable discretion at no cost to the City, is necessary to determine the applicant's ability to comply with the terms of this Chapter and all other applicable City standards.

D. ROW License Application Fee and Renewal Fee. The application and renewal application must be accompanied by a nonrefundable application fee set by Resolution of the City Council.

E. Determination by City. The City will issue, within a reasonable time after having received a duly filed application, a written determination granting or denying the license in whole or in part. If the license is denied, the written determination must include the reasons for denial. The application will be evaluated based upon ability to comply with provisions of this Chapter, the continuing capacity of the public rights-of-way to accommodate the applicant's proposed utility facilities, and the applicable federal, state and local laws, rules, regulations, and policies.

F. Changes to Information Contained on the ROW License Application. Within thirty (30) days of a change to the information contained in the license application, the licensee must notify the City in writing of such change(s).

G. Authorization Granted.

1. A ROW license granted under this Section authorizes the licensee to construct, place, maintain, repair, remove, replace, and operate utility facilities in the public rights-of-way, subject to the provisions of City standards, and other applicable provisions of state and federal law.

2. Each ROW license granted under this Section authorizes only those utility facilities applied for by the applicant and approved by the City. The City may approve in one license utility facilities designed to provide more than one type of utility service.

3. A ROW license granted under this Section is personal to the licensee and may not be assigned, sublicensed, or transferred, in whole or in part, except as permitted by this Chapter.

4. A ROW license granted under this Section does not grant, convey, create, or vest in a licensee any real property interest in land, including any fee, leasehold interest, or easement, and does not convey equitable or legal title in the public rights-of-way. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the public rights-of-way. A ROW license granted under this Section is not a warranty of title. Licensee expressly acknowledges and agrees to enter on to and use public rights-of-way in its "as-is and with all faults" condition. The City makes no representations or warranties whatsoever, whether express or implied, as to the public rights-of-way's condition or suitability for the intended or proposed utilization. By its acceptance of the ROW license, the licensee expressly acknowledges and agrees that neither the City nor its agents have made, and the City expressly disclaims, any representations or warranties whatsoever, whether express or implied, with respect to the physical, structural, or environmental condition of the public rights-of-way, and the present or future suitability of the public rights-of-way.

5. The issuance of a ROW license does not constitute a waiver or bar to the City's exercise of any governmental right or power, including without limitation the City's police powers and regulatory powers, regardless of whether such powers existed or were exercised before or after the license is issued.

6. Any person with a valid ROW license granted under this Section is deemed to be a qualified contractor for purposes of Bend Municipal Code Section 3.40.020.

H. Term of ROW License. Subject to the termination provisions in Subsection N of this Section 3.20.045, the ROW license granted pursuant to this Section will be effective the earlier of the date it is issued by the City or the date services were first provided within the City, and will have a term of five (5) calendar years beginning: (1) January 1st of the year in which the license took effect for licenses that took effect between January 1st and June 30th; or (2) January 1st of the year after the license took effect for licenses that become effective between July 1st and December 31st.

I. ROW License Nonexclusive. No ROW license granted pursuant to this Section will confer any exclusive right, privilege, license, or franchise to occupy or use the public rights-of-way for delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises, or other authorizations to other persons, as well as the City's right to use the public rights-of-way, for similar or different purposes. Provided, however, that the geographic area of the authorization

granted by a ROW license pursuant to this Section must be consistent with any utilities' exclusive service territories as delineated by the Oregon Public Utility Commission (PUC) or as set forth under state law or rules.

1. The service territory for licensees providing water utility services within the city of Bend shall be confined to the areas set forth in the applicable private water service franchises, as amended, in effect as of the date of termination of the franchise agreements for each private water service franchisee. The exclusive water service territories may be amended administratively by agreement between the City and the private water service utility operators, provided that each water utility service operator is solely responsible for taking whatever actions are necessary to amend the exclusive service territories at the PUC. The City will maintain such maps, as may be amended, in a Geographical Information System (GIS) format through the term of all ROW licenses held by the private water service utility operators and the maps will be made available to those licensees upon request. Disputes regarding the water utility service territories may be resolved by the dispute resolution procedures described in Section 3.20.110 of this Chapter or directly to the PUC.

J. Reservation of City Rights. The City reserves all rights, title, and interest in its public rights-of-way. A license granted under this Section does not prevent the City from exercising any of its rights, including without limitation grading, paving, repairing, or altering any public rights-of-way, constructing, laying down, repairing, relocating, or removing City facilities, or establishing any other public work, utility, or improvement of any kind, including repairs, replacement, or removal of any City facilities.

K. Multiple Services.

1. A licensee that provides or transmits utility services over its facilities is subject to the ROW license and fee requirements of this Chapter for the portion of the facilities and extent of utility services delivered over those facilities.

2. A licensee that provides or transmits more than one utility service over its facilities is not required to obtain a separate ROW license or franchise agreement for each utility service; provided, that it gives notice to the City of each utility service provided or transmitted and pays the applicable fee for each utility service.

3. A licensee that rents space on licensee's structures under a joint use arrangement that is required by law is not deemed subject to 3.20.045(K)(1) solely by virtue of such arrangement.

L. Transfer or Assignment. A licensee must obtain the written consent of the City prior to the transfer, sublicense, or assignment of a license, which consent will not be unreasonably withheld, conditioned, or delayed, unless (1) the licensee

demonstrates to the City that state or federal law specifically prohibits the City from requiring its prior written consent, or (2) the license is transferred, sublicensed, or assigned to a person that controls, is controlled by, or is under common control with the licensee. A transfer, sublicense, or assignment that requires City consent will only be authorized by the City if the proposed transferee or assignee is authorized under all applicable federal, state, and local 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, state, and local law to approve such transfer, sublicense, or assignment.

1. Without limiting any other rights the City may have to condition its consent, the City may condition its consent to any such transfer, sublicense, or assignment on the transferee, sublicensee, or assignee's written agreement to assume all obligations under the license, this Chapter and other City codes and regulations.

2. If a ROW license is transferred, sublicensed, or assigned, whether pursuant to the City's approval or in the event approval is not required by this Section, the transferee, sublicensee, or assignee will become responsible for fulfilling all the obligations under the license with respect to obligations of the licensee at the time of transfer, sublicensee, or assignment. A transfer, sublicense, or assignment of a license does not extend the term of the license. No transfer, sublicense, or assignment may occur until the successor transferee or assignee has provided proof of insurance, additional insured endorsement, and a bond pursuant to Section 3.20.090. In the event approval is not required by this Section, the licensee must provide the City at least thirty (30) days prior written notice of the transfer, sublicense, or assignment.

3. Licensee shall be entitled to mortgage or otherwise grant security interests in the license in order to secure any legal bond issuance or other indebtedness of licensee, upon obtaining the prior written consent of licensee, without obtaining the consent or satisfying other conditions of the City.

M. Renewal. At least sixty (60), but no more than one hundred twenty (120), calendar days before the expiration of a license granted under this Section, a licensee seeking renewal of its license must submit a renewal application to the City, including all information and fees required in this Section. The City will review the application and grant or deny the license within a reasonable time period after the application is duly filed and before the expiration of the current license. If the license is denied, the written determination must include the reasons for denial. If the City determines that the licensee is in violation of the terms of this Chapter or any other City codes, rules, or regulations at the time it submits its application, the City may require, by a written notice, that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application or grant the license.

N. Termination.

1. Termination of a License. The City Manager may terminate the license granted pursuant to this Section for any of the following reasons:

- a. Material violation of any of the provisions of this Chapter;
- b. Material violation of any provision of the license;
- c. Misrepresentation in a license application;
- d. Failure to pay compensation, fees, or costs due the City after final determination by the City of the, compensation, fees, or costs;
- e. Failure to restore the public rights-of-way after construction as required by this Chapter or other applicable state and local laws, ordinances, rules, and regulations;
- f. Failure to comply with technical, safety, and engineering standards related to work in the public rights-of-way;
- g. Failure to obtain or maintain any and all licenses, permits, certifications, and other authorizations required by state or federal law for the placement, maintenance, or operation of the utility facilities; or
- h. Is in violation of any federal, state or local code, rule, regulation, or other legal requirement applicable to the licensee.

2. Standards for Termination. In determining whether termination is appropriate, the following factors will be among those considered:

- 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.

3. Before the license is terminated the City Manager must provide a written notice of termination to the licensee with the reasons for termination and the date upon which the termination is effective. The termination date set by the City must consider the public health and safety risks to the utility customers that could arise as a result of the termination of the license, and allow sufficient time for the City to implement a plan to assure continued utility service to the

licensee's customers. Any decision to terminate a license is subject to the Notice and Cure provision set forth in subsection (O), below.

4. If a license is terminated by the City, within ninety (90) days the licensee must file a final remittance form with the City stating, "final remittance" and will remit any funds due.

5. The final decision terminating a license may be appealed by the licensee or applicant by submitting a written appeal to the City of Bend City Council within fourteen (14) business days of the date of the final decision. The written notice of appeal must state the reasons why the appellant believes the decision to terminate or deny the license was in error. The City Manager and/or their designee may respond in writing to the appeal within fourteen (14) business days from the date the appeal was received by the City. The City Manager must refer the appeal to the City Council for a hearing no less than sixty (60) calendar days from the date the original appeal was received. Following the hearing, the City Council may either affirm the termination or denial, overturn the termination or denial, or issue another decision in its discretion. The City Council may issue an oral decision, or may deliberate and direct City staff to present a written decision for Council consideration and adoption at a subsequent meeting. The final decision made by the City Council is a quasi-judicial decision and is solely and exclusively appealable by writ of review to the Deschutes County Circuit Court, as provided in ORS 34.010 to 34.100.

6. The appellate procedure described in Subsection N(5), above, shall also apply to final determinations denying a license application under Section 3.20.045(E) or the denying a license renewal application under Section 3.20.045(M).

7. Administrative decisions subject to the procedures in Subsection N(5) shall be stayed pending appeal to the City Council. Such decisions will not be stayed following Council's final decision unless otherwise validly ordered by the Deschutes County Circuit Court.

O. Notice and Cure. The City will give the licensee written notice of any apparent violations before terminating a license. The notice shall include a statement of the nature and general facts of the violation or noncompliance and provide a reasonable time period no less than thirty (30) days, or longer in the reasonable discretion of the City, 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 noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination. If the violation or noncompliance cannot reasonably be cured within the time set forth in the City's notice of violation or noncompliance, the City shall not terminate the license provided the licensee demonstrates that is has commenced and is diligently pursuing a cure. If the licensee does not respond within the reasonable time stated in the notice, or if the City determines in its reasonable discretion that the licensee is not, or is no longer, diligently working toward compliance, the City shall

determine whether the license will be terminated.

P. Termination by Licensee. If a licensee ceases to be required to have a license, as defined under this Chapter, the licensee may terminate or surrender its license with a thirty (30) day notice to the City. Licensee may reapply for a license at any time. No refunds or credits will be given for licenses terminated by the licensee or the City.

1. Within ninety (90) days of surrendering a license, the licensee must file a final remittance form with the City and must remit any funds due.

2. Upon surrendering a license, unless otherwise agreed to by the City based on the nature and quantity of the licensee's facilities, the licensee must file a written statement that it has removed or must remove within a reasonable period not to exceed one (1) year, any and all facilities from the City, according to Section 3.20.055, and no longer is subject to the provisions of this Chapter.

Q. Franchise Agreements.

1. City and a person may enter into a written franchise agreement only as required by applicable state and federal law.

2. The franchise agreement may conflict with the terms of this Chapter, with the review and approval of the City Council. The franchise agreement shall be subject to the provisions of this Chapter to the extent such provisions are not in conflict with any such franchise agreement. In the event of a conflict between the express provisions of a franchise agreement and this Chapter, the franchise agreement will control.

3. If approved by the City, the licensee requesting a franchise agreement must deposit a non-refundable fee, as set by Resolution of City Council, before negotiations occur.

3.20.050 Construction and Restoration

A. City Engineer Policies, Standards, Specifications, and Other Guidelines. The City may develop, amend, and publish or otherwise make publicly available any policies, standards, specifications, and other guidelines for the location of facilities in public rights-of-way subject to this Section, including but not limited to, horizontal, vertical, separation, and other location standards. All such policies, standards, specifications, and other guidelines (a) must be consistent, and not in conflict with, the applicable provisions of state, federal, and local law, which includes this Chapter; and (b) will be effective upon their publication; provided, however, that any permit applications submitted prior to publication will be subject to the policies, standards, specifications, and other guidelines in effect when the submittal occurred.

B. Construction Permits. Except in cases of emergency as set forth in Bend

Municipal Code Section 3.40.045, no person may perform any work in the public right-of-way, or on utility facilities within the public rights-of-way, without first obtaining a permit from the City as required by Chapter 3.4 of the Bend Municipal Code, including paying the applicable fee. The City will not issue a permit for the construction, installation, maintenance, or repair of utility facilities unless the licensee has the proper authorizations required by and is in compliance with this Chapter and all other City codes and regulations, and all applicable fees have been paid.

C. Injury to Persons or Property. All licensees shall preserve and protect from injury or damage other facilities in the public rights-of-way, the public using the public rights-of-way, and any adjoining property, and take other necessary measures to protect persons and property, including but not limited to buildings, walls, fences, trees, and other facilities that may be subject to damage from the permitted work. A licensee must (a) use suitable barricades, flags, flagging attendants, lights, flares, and other measures as required for the safety of all members of the general public; (b) comply with all applicable Americans with Disabilities Act requirements; and (c) comply with all the requirements of the Manual on Uniform Traffic Control Devices (MUTCD).

D. Restoration. Licensees will be responsible for all injury to persons or damage to public or private property resulting from its failure to properly protect people or property and to carry out the work regardless of whether the work is performed by a licensee or by other person(s) performing the work on behalf of the licensee.

1. When a licensee, or any person acting on its behalf, does any work in or affecting any public rights-of-way, it must, at its own expense, promptly restore such rights-of-way or property to the then-current City pavement restoration requirements, in accordance with applicable federal, state, and local laws, codes, ordinances, rules, and regulations, unless otherwise directed by the City. Licensee warrants all restoration work for a period of one year from completion of the work.

2. If weather or other conditions beyond the licensee's control do not permit the complete restoration required by the City, the licensee must temporarily restore the affected public rights-of-way or property. Such temporary restoration will be at the licensee's sole expense and the licensee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule will be subject to approval by the City.

3. If the licensee fails to restore public rights-of-way or property as required in this Chapter or as directed by the City or if the restoration fails within the one-year warranty period, the City shall give the licensee written notice and provide a period of not less than ten (10) days and not exceeding thirty (30) days to restore the public rights-of-way or property, unless otherwise extended by the City. If, after said notice, the licensee fails to restore the public rights-of-way or property within the reasonable period of time stated in such notice and as

required in this Section, the City may cause such restoration to be made at the sole expense of the licensee. In cases where the City believes that an emergency or threat to public safety exists, it may act without notice to, and at the sole expense of, the licensee. Upon receipt of an invoice from the City, the licensee must reimburse the City within thirty (30) days for all reasonable costs incurred by the City.

E. Inspection. Every facility will be subject to the right of periodic inspection by the City or its agents to determine compliance with the provisions of this Chapter and all other applicable state and City laws, codes, ordinances, rules, and regulations. Every licensee must cooperate with the City in permitting the inspection of utility facilities in a timely manner after request by the City. The licensee must perform all testing or permit the City or its agents to perform any testing at the licensee expense, reasonably required by the City to determine that the installation of the licensee's facilities and the restoration of the public rights-of-way comply with the terms of a permit granted under Bend Municipal Code Chapter 3.40.

F. Coordination of Construction. All licensees shall make a good faith effort to both cooperate with and coordinate their construction schedules with those of the City and other users of the public rights-of-way. Prior to March 1 of each year, licensees must provide the City with a schedule of known proposed construction activities for that year that are in, around, or that may affect the public rights-of-way and any City facilities.

1. At the City's request, licensees must meet with the City annually, or as reasonably determined by the City from time to time, to work together to schedule and coordinate construction in the public rights-of-way.

2. All construction locations, activities, and schedules within the public rights-of-way must be coordinated with the City to minimize public inconvenience, disruption, and damage to persons and property.

3.20.055 Location of Facilities

A. Location of Facilities. Unless otherwise agreed to in writing by the City, whenever any existing electric utilities, cable facilities, or wireline communication facilities are located underground within a public right-of-way of the City, a licensee with permission to occupy the same public right-of-way must locate all new facilities underground at its own expense.

1. Whenever all new or existing electric utilities, cable facilities, or wireline communication facilities are located or relocated underground within a public right-of-way of the City, a licensee that currently occupies the same public right-of-way may be required by the City in its reasonable discretion to relocate its facilities underground concurrently with the other affected facilities to minimize disruption of the public rights-of-way.

2. Licensee must comply with all co-location and joint use

requirements as set forth in state and local law, and City standards, as may be amended. Licensee shall offer City the opportunity to co-locate City conduit and lines in trenches dug by Licensee in the rights-of-way and may charge City only any actual incremental additional costs incurred in making the trenches available for City use.

3. The requirements in this Section do not apply to antennas, pedestals, cabinets, small wireless facilities, or similar above-ground equipment of any utility provider, or facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts. The City reserves the right to require written approval of the location of any such above-ground equipment of any licensee.

4. Cost responsibility for underground conversion of facilities will be allocated in accordance with licensee's tariffs and Oregon Administrative Rules, as applicable, and a schedule agreed upon between the City and licensee.

B. Interference with the Public Rights-of-Way. No licensee or other person may locate or maintain facilities or other unlawful encroachments so as to unreasonably interfere with the use of the public rights-of-way by other persons duly authorized to use or be present in or on the public rights-of-way under this Chapter. Facilities must not be located in areas of restricted sight distance or interfere with the proper function of traffic control signs, signals, lighting, or other devices that affect traffic operation. Licensee will consult with the City Engineer prior to placement of facilities, and all use of the public rights-of-way will be consistent with City codes, ordinances, rules, and regulations, in effect and as may be subsequently amended.

C. Relocation of Utility Facilities. When requested to do so in writing by the City, a licensee shall temporarily or permanently remove, relocate, change, or alter the position of any utility facility within a public right-of-way, including relocation of aerial facilities underground, except as such facilities are not required to be located underground pursuant to subsection 3.20.055(A)(3). Unless otherwise agreed to by City and licensee, the City will not require a licensee to relocate its facilities unless and until the City Engineer or their designee has completed final designs for the applicable development.

1. If the removal or relocation of facilities is caused directly by development of private property, including projects of other public entities that are not the City, and the removal or relocation of facilities occurs within the area to be developed, or is made for the convenience of a third-party, licensee may charge the expense of removal or relocation to the developer or other third-party. Such costs may include acquiring private rights, permits, and other associated costs that result from relocation. Licensee shall be solely responsible for enforcing collection 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 the removal or relocation is

necessary to enable the developer to make any improvements or otherwise satisfy any conditions required under any permit, rule, regulation, approval, or other requirement applicable to the project.

2. If the removal or relocation of facilities results from City's need to provide public facilities, is a City project, or is otherwise requested by City and is made for the purpose of improving a street to City standards or other improvement by the City for the benefit of the public, licensee will remove or relocate its facilities at licensee's expense within a reasonable time after notification by City. The City will coordinate the schedule for relocation of utility facilities and based on such effort, will provide written notice of the time by which the licensee must remove, relocate, change, alter, or underground its facilities. If a licensee fails to remove, relocate, change, alter or underground any utility facility as requested by the City by the date established by the City, the licensee must pay all costs incurred by the City due to such failure, including but not limited to costs related to project delays, and the City may cause, using qualified personnel or contractors consistent with applicable law and regulations, the facilities to be remove, relocated, altered, or undergrounded, at the licensee's sole expense. Upon receipt of an invoice from the City, the licensee must reimburse the City for all reasonable costs incurred within thirty (30) days. If the City requires the subsequent relocation of the same facility within five years of the initial relocation, City shall bear the expense of the subsequent relocation.

3. The City will make a reasonable effort to provide licensee with an alternate location for its facilities within the City right-of-way. However, the City shall bear no responsibility to obtain, compensate, or otherwise assist the licensee in relocation of the facilities to a location not in control of the City.

D. Removal of Unauthorized Facilities.

1. Unless otherwise agreed to in writing by the City and the licensee, or as limited by state law, within one (1) year following written notice from the City or such other time agreed to in writing, a licensee and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within a public right-of-way must, at its own expense, remove the facility and restore the public right-of-way to City standards in effect at the time the work is performed or, with the approval of the City, de-commission, as applicable, and abandon in place such facilities. All abandoned or unauthorized utility facilities that remain in the right of way following that period will considered forfeited and escheat to the City.

2. All facilities currently existing in the right-of-way or allowed by an active permit as of the effective date of this Chapter are deemed authorized utility facilities; provided, however, that such existing facilities may later be deemed to

be abandoned or unauthorized consistent with the provisions of this Chapter and processes set forth in this Section.

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

a. The utility facility is outside the scope of authority granted by the City. This includes facilities that were never authorized and facilities that were once authorized but for which the authorization has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place. A utility facility is not outside the scope of authority granted by the City upon termination of a license, if the licensee has submitted its renewal application, paid all applicable fees, and is actively engaged in good faith efforts to renew its license under this Chapter.

b. The facility has been abandoned and the City has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of one (1) year. A licensee may overcome this presumption by presenting plans to the City for use of the facility within the six months of the date of the written notice required to be provided by the City under Section 3.20.055(D)(1).

E Removal by City in the Event of Emergency.

1. Except as limited by ORS 221.420 or other state law, the City retains the right and privilege to remove or relocate any facility located within the public rights-of-way of the City, without notice, as the City may determine, in its sole discretion, to be necessary, appropriate, and useful in response to an extreme public health or safety emergency. The City must use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practicable without impeding the City's response to the emergency. In the event of facilities located in the right-of-way, the City shall make reasonable efforts to contact the owner of the facility prior to performing any work on or near the facility. Upon receipt of an invoice from the City, the licensee must reimburse the City for all the costs within thirty (30) days or other time as agreed to by the City.

2. The City is not liable to any person(s) for any damage to utility facilities, or for any consequential losses resulting directly or indirectly from any damage caused by the City's actions, or its contractor, in removing, relocating, altering, or undergrounding the facilities, unless such damage arises directly from the City's sole negligence or willful misconduct.

F. Engineering Designs and Plans. The licensee must provide the City with as-built plans or system maps of their facilities, upon request.

G. Maps. Licensee must provide, at no cost to the City, a comprehensive map showing the location of all facilities, including abandoned facilities, in the rights-of-way. Such map must be provided in GIS format, with accompanying data sufficient to enable for the City to determine the location of facilities as well as any relevant data in licensee's possession showing the type and size of the facility. The licensee must provide such map yearly by March 1, if any changes occurred during the prior year, and at any time upon request by the City. The City may only request such map once per calendar year.

3.20.060 Leased Capacity

A licensee may lease or otherwise provide capacity on or in its facilities to others ("lessees"); provided, that (1) the licensee provides the City with the name and business address of any lessee, within 30 (thirty) days of the effective date of the lease or other agreement to provide capacity; (2) the use of the licensee facilities does not require or involve any additional equipment owned or operated by the lessee to be installed on the facility; (3) the City verifies the lessee has obtained a ROW license or franchise from the City; and (4) the licensee maintains control over and responsibility for the facility at all times.

3.20.065 Maintenance

A. Every licensee must install and maintain all facilities in a manner that complies with applicable federal, state, and local laws, rules, regulations, and policies, as well as applicable industry standards. The licensee will, at its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.

B. If, in the event of an imminent threat to health or safety or in an emergency, and after written notice from the City of the need for repair or maintenance, if practicable under the circumstances, the licensee fails to repair or maintain facilities as requested by the City and by the date established by the City, the City may perform such repair or maintenance using qualified personnel or contractors at the licensee's sole expense. Upon receipt of an invoice from the City, the licensee must reimburse the City for all reasonable costs within thirty (30) days.

3.20.070 Vacation of Public Rights-of-Way

A. The City will retain public utility easements or otherwise request the petitioner for the vacation grant an easement to licensee if the City vacates any right of-way where a licensee has facilities, consistent with Bend Municipal Code Chapter 3.80. If the licensee's facilities must be relocated from a vacated public right-of-way, the petitioner of the vacation 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. If the licensee is required to and fails to remove its facilities within ninety (90) days after a public right-of-way is vacated or as required under this Section, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities using qualified workers in accordance with state and federal laws and regulations at the licensee's sole expense. Upon receipt of an invoice from the City, the licensee must reimburse the City for all reasonable costs within thirty (30) days.

3.20.075 Rights-of-Way Use and Access Fees

A. Every person that owns utility facilities in the City must pay the rights-of-way use fee in the amount determined by resolution of the City Council.

B. Every person that provides utility service in the City must pay the rights-of-way access fee in the amount determined by resolution of the City Council for every utility service provided in the city.

C. A person subject to the both the rights-of-way use fee in subsection A and the rights-of-way access fee in subsection B of this Section may deduct from the total amount due the lower of the fees due under subsection A and subsection B or, in the event the fees due under subsection A and subsection B are the same, deduct from the total amount due the full amount of one of the fees.

D. A person that has a franchise within the City for use of the rights-of-way will not be subject to the fees or payment terms set forth in this section.

E. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor will such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable.

F. Unless otherwise agreed to in writing by the City, the fees set forth under this Section must be paid monthly, in arrears, within forty-five (45) days after the end of each calendar quarter, unless otherwise agreed to by the City. Each payment must be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable (a remittance form will be provided by the City). The City may request and shall be provided, at no cost to the City within 30 (thirty) days, any additional reports or information it deems necessary, in its reasonable discretion, to ensure compliance with this Section. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative documenting calculation, details on number of customers within the City limits, or any other information needed for the City to easily verify compliance.

G. The calculation of the fees required by this Section will be subject to all applicable limitations imposed by federal or state law in effect and as may be subsequently amended.

H. The City reserves the right to enact other fees and taxes applicable to person(s) subject to this Chapter. Unless expressly permitted by the City in enacting such fee or tax, or required by applicable state or federal law, no person 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 under this Chapter.

I. City will pay the rights-of-way use fees and rights-of-way access fee required by this Section for any utility service owned or operated by the City.

3.20.080 Penalties and Interest on Fees

Any person who fails to remit any fees when due will be required to pay interest at the rate of one and one-half percent (1.5%) per month or fractions thereof, without proration for portions of a month, on the total amount due, from the date on which the remittance first became delinquent, until the full amount due plus applicable interest is received by the City. The City reserves the right to impose interest at the maximum amount allowed by law. 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. The interest imposed by this Section is in addition to any penalties that may be assessed under other ordinances or regulations of the City. The City or its designee, in their sole discretion, will have the authority to reduce or waive the penalties and interest due under this Section.

3.20.085 Audits (Formal or Informal) and Records Requests

A. The City may audit and/or request information from any person for a period of six (6) years prior to the date of the audit to verify compliance with this Chapter. The audit may be undertaken either by the City or by a qualified person or entity selected by the City. In connection with an audit or request for information under this Section, the City must make a written request for specific information, identifying the specific code provisions with which the City seeks to confirm compliance, and the person will comply with the request within thirty (30) days of receipt of the City's written request, or such other time as agreed to in writing. All information shall be provided to the City, at no cost to the City.

B. Every person must furnish the City with information sufficient to demonstrate that the person is in compliance with the specific requirements of this Chapter identified in the City's initial information request, including but not limited to payment of any applicable fees.

C. Every licensee must make available for inspection by the City at reasonable times and intervals, upon request by the City, any maps, records, books, diagrams, plans, and other documents maintained by the licensee with respect to its facilities within the public rights-of-way. Access will be provided within the City unless

prior arrangement for access elsewhere has been made with the City.

D. All information provided to the City under this Section that is marked “confidential” will be subject to the protections for confidential information set forth in Section 3.20.100, except that this obligation shall not prevent the City from introducing audit results in any forum where enforcement of the provisions of this Chapter is at issue.

E. If the City’s audit, or review of the books, records, and other documents or information of the person demonstrates that the person has underpaid any fees required by this Chapter by five percent (5%) or more in any one year, the person must reimburse the City for all costs incurred by the City in conducting the audit or review, in addition to any interest owed or other fees imposed by this Chapter.

F. Any underpayment, including all reasonable costs incurred by the City in conducting the audit or review, must be paid within thirty (30) days of the City’s notice to the person of such underpayment. Any overpayment discovered by the City in connection with an audit authorized by this Section must be returned by the City within thirty (30) days of the conclusion of the audit.

G. The City’s audits rights under this Section include the right to periodically conduct audits as part an established audit program designed to ensure compliance with this Chapter.

3.20.090 Insurance and Indemnification

A. Insurance.

1. All Utility Service Operators must maintain in full force and effect the following liability insurance policies that protect the licensee and the City, as well as the City’s officers, agents, and employees, with limits not less than:

a. Three million dollars (\$3,000,000.00) for comprehensive general liability insurance.

b. If not otherwise included in the policies required by subsection (a) above, comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits not less than three million dollars (\$3,000,000.00).

c. Motor vehicle liability insurance for owned, non-owned and hired vehicles with a combined single limit of two million (\$2,000,000.00).

d. Worker’s compensation insurance as required by ORS chapter 656, as it may be amended, and meeting the minimum

requirements therein. Contractor shall ensure that each subcontractor obtains and maintains workers' compensation insurance and that the carrier notifies the state of Oregon or files a guaranty contract with the state of Oregon Workers' Compensation Division before performing work.

e. Utility operator may utilize primary and umbrella liability insurance.

2. The limits of the insurance shall not be less than and subject to change as to the maximum limits of liability imposed on municipalities of the state of Oregon. The insurance must be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The licensee will provide the City thirty (30) days prior written notice of any cancellation or material alteration of said insurance. If the insurance is canceled or materially altered, the licensee must maintain continuous uninterrupted coverage in the terms and amounts required.

3. The licensee must at all times maintain on file with the City a current certificate of insurance and additional insured endorsement, or proof of self-insurance reasonably acceptable to the City, certifying the coverage required above.

4. At the request of a licensee, the City will determine, in its reasonable discretion, whether a licensee may self-insure. A licensee whose request has been granted must provide the City proof of insurance through a letter of self-insurance or insurance certificate, listing the City as an additional insured.

5. Performance Bond

a. In addition to any other generally applicable bond or security fund obligations required by local ordinance, including Bend Municipal Code Chapter 3.40.010(C), upon the issuance of a new license or renewal of a license, the licensee must furnish proof of the posting of a faithful performance bond running to the City collectively with good and sufficient surety approved by the City, in the penal sum of One Hundred Fifty Thousand Dollars (\$150,000.00), conditioned that licensee will well and truly observe, fulfill, and perform all provisions of this Chapter. Such bond must be issued by a bonding company licensed to do business in the state of Oregon and must be maintained by the licensee for the time period it owns facilities within the rights-of-way.

b. The bond will contain a provision that it will not be terminated or otherwise allowed to expire without thirty (30) days prior written

notice first being given to the City. The bond will be subject to the approval of the City as to its adequacy under the requirements of this Section. During the term of the bond, licensee must file with the City a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond will not expire or be terminated without thirty (30) days prior written notice to the City.

B. Indemnification.

1. To the fullest extent permitted by law, each licensee shall defend, indemnify, and hold harmless the City and its officers, employees, agents and representatives 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 negligence, 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 construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Chapter or by a franchise agreement; provided that this indemnification shall not apply to the extent such claims are directly caused by the negligence or willful misconduct of the City, its officers, agents, employees and volunteers. The acceptance of a license under this Chapter shall constitute such an agreement by the applicant whether the same is expressed or not.

2. Every licensee must also indemnify the City for any damages, claims, additional costs, or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from the licensee's failure to remove or relocate any of its facilities in the public rights-of-way or in a timely manner as required by this Chapter, provided that this indemnification shall not apply to the extent such claims are directly caused by the negligence or willful misconduct of the City, its officers, agents, employees and volunteers

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 to the extent caused by the licensee's work in the right-of-way or presence of licensee's facilities, provided that

this indemnification shall not apply to the extent such claims are caused by an act or omission of the City, its officers, agents, employees and volunteers. Hazardous substance will have the meaning given by ORS 465.200(9).

C. All licensees must grant a waiver of subrogation to the City, its officers, agents, employees and volunteers for any claims arising out of licensee's work or service. In addition, every licensee shall grant to City on behalf of any insurer providing coverage to either licensee or City with respect to the work or services of licensee a waiver of any right to subrogation which any insurer or subcontractor may acquire against City by virtue of the payment of any loss under the insurance coverage.

D. Licensee agrees that in the event of loss due to any of the risks for which it has agreed to provide insurance, recovery shall be solely with its insurance carrier.

3.20.095 Compliance

A. Every person subject to this Chapter shall comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules, and regulations of the City, heretofore or hereafter adopted or established during the term of any license or registration granted under this Chapter.

B. No person will be relieved of their 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 person's conduct.

3.20.100 Confidential/Proprietary Information

If any person is required by this Chapter to provide books, records, maps, or information to the City that the person reasonably believes to be confidential or proprietary, and such books, records, maps or information are clearly marked as confidential at the time of disclosure to the City ("confidential information"), the City will take reasonable steps to protect the confidential information to the extent permitted by Oregon Public Records Laws. In the event the City receives a public records request to inspect any confidential information and the City determines that it will be necessary to reveal the confidential information, to the extent reasonably possible, the City shall notify the person that submitted the confidential information at i t s l a s t k n o w n a d d r e s s o n f i l e w i t h t h e C i t y of the records request with reasonably sufficient time for the person to seek a protective order or other relief from the district attorney prior to the City releasing the confidential information. The City is not required to incur any costs to protect any confidential information, other than the City's routine internal procedures for complying with the Oregon Public Records Law.

3.20.105 City Permission Required

No person may occupy or encroach on a public right-of-way except as provided in this Chapter or without the express written permission of the City.

3.20.110 Dispute Resolution; Violation and Penalties

A. Persons subject to this Chapter shall attempt in good faith to resolve any and all disputes with City decisionmakers arising out of Sections 3.20.050–3.20.085 of this Chapter by meeting and/or communicating with the relevant City staff person. In general, the person should explain the issue in writing and the City, as necessary, will investigate the concern and respond within a reasonable time. If those parties are not able to resolve the dispute, then the dispute may be escalated to the City Engineer or their designee. If the person and the City Engineer are not able in good faith to resolve the dispute, then the person may escalate the dispute to the City Manager or their designee, who will then attempt in good faith to resolve the dispute. Each step in this dispute resolution process is an essential administrative remedy that must be exhausted prior to any other action, appeal, or challenge related to the dispute. This dispute resolution process is intended to be applied broadly to all matters arising from or related to Sections 3.20.050–3.20.085 of this Chapter, with the exception of decisions to deny or terminate a ROW license as provided in Section 3.20.045.

B. If the dispute remains unresolved following review by the City Manager, or in the event the person refuses to resolve a dispute in good faith, the City may (i) issue a hold on any permit applications filed by the licensee for work in the right of-way until the violation is cured; (ii) institute code enforcement proceedings as set forth in Bend Municipal Code Section 1.40; or (iii) pursue any other remedy provided in this Chapter, including, for unpaid amounts due under this Chapter, pursue any collection or other remedy provided by law. Provided that the City reserves the right to initiate code enforcement proceedings under Bend Municipal Code Section 1.40 without following the dispute resolution procedure described above if a violation poses an immediate or serious threat to public health or safety or the City otherwise determines based the specific circumstances of the violation that this Chapter needs to be enforced through normal code enforcement procedures.

C. A violation of any provision of this Chapter or any other City regulations, codes, ordinances, or standards, is a Class A civil violation and will be enforced under the provisions of Section 1.40. Each day that the violation exists or continues shall constitute a separate violation.

D. The rights, remedies, and penalties provided in this Chapter are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies, and penalties available to the City under any other provision of law, including without limitation any judicial or other remedy at law or in equity for enforcement of this Chapter and the appeal process set forth in Section 3.20.045(N)(5). 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.

E. In addition to other enforcement authority, the City Manager may have the

City Attorney institute legal proceedings to enforce this Chapter.

3.20.115 Severability and Preemption

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

B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition, 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 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, sentence, clause, phrase, term, provision, condition, covenant, or portion of this Chapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules, or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended, or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the City.

3.20.120 Application to Existing Agreements

This Chapter will not apply to persons with existing valid franchise agreements granted by the City. References to this Chapter in such franchise agreements shall be deemed references to this Chapter as it existed on January 1, 2024, for purposes of carrying out the meaning of a franchise agreement.